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# A BILL FOR AN ACT

RELATING TO THE YOUTH VAPING EPIDEMIC.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that tobacco use remains  
2 the leading cause of preventable disease and death in the United  
3 States and in Hawaii. Tobacco use is a serious public health  
4 problem that results in loss of life and financial burdens on  
5 society and the healthcare system. Annually, \$526,000,000 in  
6 health care costs are directly attributed to smoking in the  
7 State.

8           The legislature further finds that, while there has been a  
9 decline in the use of combustible cigarettes over the last  
10 decade, there has been a dramatic increase in the use of  
11 electronic smoking devices by Hawaii's youth. Between 2011 to  
12 2015, the proportion of youth experimenting with electronic  
13 smoking devices increased six-fold among middle school youth and  
14 four-fold among high school youth. In 2017, twenty-seven per  
15 cent of middle school students and forty-two per cent of public  
16 high school students tried electronic smoking devices. Today,  
17 sixteen per cent of middle school students and more than a



1 quarter of high school students use electronic smoking devices.  
2 Current use of electronic smoking devices by county is even more  
3 problematic, with figures exceeding thirty per cent on the  
4 islands of Hawaii, Maui, and Kauai. These rates are higher than  
5 the national average, demonstrate a disturbing trend of youth  
6 nicotine use, and threaten to undermine the historic decline in  
7 combustible cigarette use that has been achieved.

8 The popularity of electronic cigarettes among youth is  
9 especially concerning because these products contain nicotine.  
10 The United States Surgeon General noted in the 2016 report  
11 titled "E-Cigarette Use Among Youth and Young Adults" that  
12 "[b]ecause the adolescent brain is still developing, nicotine  
13 use during adolescence can disrupt the formation of brain  
14 circuits that control attention, learning, and susceptibility to  
15 addiction."

16 Use of an electronic smoking device also puts the user at  
17 risk for lung injury and even death. Following more than one  
18 thousand reported cases of lung injury and eighteen confirmed  
19 deaths associated with the use of electronic cigarette or  
20 "vaping" products nationwide, in 2019, the department of health  
21 issued a health advisory urging everyone to stop vaping.



1           The legislature further finds that a significant driver to  
2 increased youth use of electronic smoking devices is the  
3 availability of flavored tobacco products. While a 2009 federal  
4 law, the Family Smoking Prevention and Tobacco Control Act,  
5 prohibited characterizing flavors, including fruit and candy  
6 flavorings, in cigarettes, it did not ban the use of  
7 characterizing flavors in other tobacco products, such as  
8 electronic smoking devices. The tobacco industry and electronic  
9 smoking device industry have in recent years significantly  
10 increased the introduction and marketing of flavored non-  
11 cigarette tobacco products for electronic smoking devices.

12           Adding flavoring to tobacco changes the taste and reduces  
13 the harshness of the otherwise unflavored tobacco product,  
14 making smoking more appealing and easier for beginners to try  
15 and ultimately become addicted. According to a recent survey,  
16 eighty-one per cent of youth who have ever used a tobacco  
17 product reported that the first tobacco product they used was  
18 flavored.

19           It is no coincidence that the number of electronic  
20 cigarette flavors has skyrocketed in recent years, with more  
21 than fifteen thousand unique electronic cigarette flavors



1 identified in a 2018 study. Hawaii has experienced the  
2 heightened promotion of electronic cigarette products that offer  
3 flavors designed to appeal to the State's youth, such as candy,  
4 fruit, chocolate, mint, Kona coffee, Maui mango, shaka  
5 strawberry, and Molokai hot bread. Additionally, many of the  
6 packages are designed to resemble popular candies, such as Jolly  
7 Ranchers and Sour Patch Kids. The legislature additionally  
8 finds that young people are disproportionately using flavored  
9 tobacco products, including menthol. In Hawaii, seventy-eight  
10 per cent of Native Hawaiians and Pacific Islanders and forty-two  
11 per cent of Caucasian adult smokers consume menthol cigarettes.  
12 Menthol cigarette use is high among Filipinos as well. Current  
13 estimates predict that menthol cigarette smoking will contribute  
14 to more than three hundred thousand deaths by 2050.

15 Given the significant threat to public health posed by  
16 flavored tobacco products, including menthol, twenty-six local  
17 jurisdictions in four states--California, Colorado,  
18 Massachusetts, and Minnesota--have enacted legislation to  
19 prohibit the sale of flavored tobacco products, including  
20 menthol. The legislature concludes that Hawaii should also take  
21 steps to regulate flavored tobacco products to reduce tobacco-



1 related health disparities and address the youth vaping  
2 epidemic.

3 Accordingly, the purpose of this Act is to prohibit the  
4 sale or distribution of all flavored tobacco products in the  
5 State. This Act shall be known and may be cited as the  
6 Reversing the Youth Tobacco Epidemic Act of 2020.

7 SECTION 2. Chapter 712, Hawaii Revised Statutes, is  
8 amended by adding a new section to part IV to be appropriately  
9 designated and to read as follows:

10 "§712- Sale or advertising of tobacco products; remote  
11 retail sales; flavored; nicotine-free. (1) Beginning  
12 January 1, 2021, it shall be unlawful for any retailer or any  
13 agents or employees of the retailer to:

14 (a) Sell, offer for sale, or possess with the intent to  
15 sell or offer for sale, a flavored tobacco product;

16 (b) Mislabel as nicotine-free, or sell or market for sale  
17 as nicotine-free, any e-liquid product that contains  
18 nicotine; or

19 (c) Market, advertise, or promote any electronic smoking  
20 device in a manner that is designed to appeal to an  
21 individual under twenty-one years of age.



1       (2) A statement or claim directed to consumers or the  
2 public that the tobacco product is flavored, including text,  
3 color, or images on the tobacco product's labeling or packaging  
4 that is used to explicitly or implicitly communicate that the  
5 tobacco product has a flavor other than tobacco made by a  
6 retailer or manufacturer or an agent or employee of the retailer  
7 or manufacturer in the course of the person's agency or  
8 employment, is prima facie evidence that the tobacco product is  
9 a flavored tobacco product.

10       (3) Any flavored tobacco product found in the retailer's  
11 possession that is in violation of this section shall be  
12 considered contraband, promptly seized, subject to immediate  
13 forfeiture and destruction and shall not be subject to the  
14 procedures set forth in chapter 712A.

15       (4) For the first offense, any retailer that violates this  
16 section may be fined not more than \$500 and any agent or  
17 employee of the retailer who knowingly violates this section may  
18 be fined not more than \$500. Any subsequent offenses shall  
19 subject the offender to a fine of not less than \$500 nor more  
20 than \$2,000. Each flavored tobacco product in the retailer's  
21 possession shall be considered a separate violation of this



1 section. All fines shall be paid to the department of health  
2 and deposited into the Hawaii tobacco prevention and control  
3 trust fund established pursuant to section 328L-5.

4 (5) Notwithstanding any other law to the contrary, any  
5 county may adopt a rule or ordinance that places greater  
6 restrictions on the access to flavored tobacco products than  
7 provided for in this section. In the case of a conflict between  
8 the restrictions in this section and any county rule or  
9 ordinance regarding access to flavored tobacco products, the  
10 more stringent restrictions shall prevail.

11 (6) For the purposes of this section:

12 "Distinguishable" means perceivable by either the sense of  
13 smell or taste.

14 "Electronic smoking device" has the same meaning as defined  
15 in section 712-1258(7).

16 "E-liquid" means any liquid or like substance, including  
17 heated tobacco products, which may or may not contain nicotine,  
18 that is designed or intended to be used in an electronic smoking  
19 device, whether or not packaged in a cartridge or other  
20 container. The term "e-liquid" does not include prescription  
21 drugs; medical cannabis or manufactured cannabis products; or



1 medical devices used to inhale or ingest prescription drugs,  
2 including devices sold at a licensed medical cannabis  
3 dispensary.

4 "Entity" means one or more individuals, a company,  
5 corporation, a partnership, an association, or any other type of  
6 legal entity.

7 "Flavored tobacco product" means any tobacco product that  
8 contains a taste or smell, other than the taste or smell of  
9 tobacco, that is distinguishable by a consumer either prior to  
10 or during the consumption of a tobacco product, including but  
11 not limited to any mentholated tobacco product or a product that  
12 contains a taste or smell relating to fruit, mint, menthol,  
13 wintergreen, chocolate, cocoa, vanilla, honey, or any candy,  
14 dessert, alcoholic beverage, herb, or spice.

15 "Labeling" means written, printed, pictorial, or graphic  
16 matter upon a tobacco product or any of its packaging.

17 "Packaging" means a pack, box, carton, or container of any  
18 kind, or if no other container, any wrapping, including  
19 cellophane, in which a tobacco product is sold or offered for  
20 sale to a consumer.





1       "Retailer" means an entity that sells, offers for sale, or  
2 exchanges or offers to exchange for any form of consideration  
3 tobacco products or e-liquids to consumers. The term "retailer"  
4 includes the owner of a tobacco retail location.

5       "Tobacco product" has the same meaning as defined in  
6 section 712-1258(7).

7       "Tobacco retail location" means any premises where tobacco  
8 products are sold or distributed to a consumer, including but  
9 not limited to any store, bar, lounge, cafe, stand, outlet,  
10 vehicle, cart, location, vending machine, or structure."

11       SECTION 3. Section 328L-5, Hawaii Revised Statutes, is  
12 amended as follows:

13       1. By amending subsection (a) to read:

14       "(a) There is established the Hawaii tobacco prevention  
15 and control trust fund as a separate fund of a nonprofit entity  
16 having a board of directors and qualifying under section  
17 501(c)(3) of the Internal Revenue Code of 1986, as amended, into  
18 which shall be deposited moneys received as provided under  
19 section 328L-2(b)(2) [-] and section 712- . The director of  
20 health with the concurrence of the governor, shall select, in  
21 accordance with law, the entity based upon the proven record of



1 accomplishment of the entity in administering a similar trust  
2 fund."

3 2. By amending subsection (e) to read:

4 "(e) The assets of the Hawaii tobacco prevention and  
5 control trust fund shall consist of:

6 (1) Moneys appropriated under section 328L-2(b)(2);

7 (2) Moneys appropriated to the Hawaii tobacco prevention  
8 and control trust fund by the state, county, or  
9 federal government;

10 (3) Private contributions of cash or property; ~~[and]~~

11 (4) Income and capital gains earned by the trust fund~~[-]~~;  
12 and

13 (5) Moneys deposited into the Hawaii tobacco prevention  
14 and control trust fund pursuant to section 712- ."

15 SECTION 4. Section 712-1258, Hawaii Revised Statutes, is  
16 amended by amending subsection (6) to read as follows:

17 "(6) Any person who violates subsection (1) or (4), or  
18 both, shall be fined \$500 for the first offense. Any subsequent  
19 offenses shall subject the person to a fine not less than \$500  
20 nor more than \$2,000. Any person under twenty-one years of age  
21 who violates subsection (5) ~~[shall be]~~;



- 1        (a) For the first offense, shall:
- 2            (i) Be fined \$10 for the first offense [~~Any~~];
- 3            (ii) Complete a tobacco education program or a tobacco
- 4            use cessation program approved by the director of
- 5            health; or
- 6            (iii) Perform three hours of community service during
- 7            hours when the person is not employed and is not
- 8            attending school; and
- 9        (b) For any subsequent offense, shall [subject]:
- 10           (i) Subject the violator to a fine of \$50, no part of
- 11           which shall be suspended[-]; or [the person shall
- 12           be required to perform]
- 13           (ii) Perform not less than forty-eight hours nor more
- 14           than seventy-two hours of community service
- 15           during hours when the person is not employed and
- 16           is not attending school[-];
- 17        provided that if the person is under eighteen years of age, that
- 18        person's parent or guardian shall be notified of the offense and
- 19        given fifteen days to select which penalty shall be imposed on
- 20        the person and if no selection is made within fifteen days, the



1 court shall impose a fine pursuant to paragraph (a)(i) or  
2 (b)(i).

3 Any tobacco product or electronic smoking device, as those  
4 terms are defined in subsection (7), in the person's possession  
5 at the time of violation of subsection (5) shall be seized,  
6 summarily forfeited to the State, and destroyed by law  
7 enforcement following the conclusion of an administrative or  
8 judicial proceeding finding that a violation of subsection (5)  
9 has been committed. The procedures set forth in chapter 712A  
10 shall not apply to this subsection."

11 SECTION 5. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2020.



**Report Title:**

Flavored Tobacco Products; Electronic Smoking Devices; Sale; Ban

**Description:**

Bans the sale of flavored tobacco products. Prohibits mislabeling of e-liquid products containing nicotine. Establishes fines and penalties for violations. Authorizes a court to impose, as a penalty on a person eighteen to twenty-one years of age who is convicted of possession of a tobacco product or electronic smoking device, the requirement to complete a tobacco education program, complete a tobacco use cessation program, or perform community service instead of paying a fine. Requires a parent or guardian of a minor to select from among the penalties for a minor convicted of possession of a tobacco product or electronic smoking device. (SD1)

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