

S. B. NO. 1146

JAN 27 2021

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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

1 SECTION 1. Tobacco use remains the leading cause of
2 preventable disease and death in the United States and in
3 Hawaii. Tobacco use is a serious public health problem in terms
4 of the human suffering and loss of life it causes, as well as
5 the financial burden it imposes on society and our healthcare
6 system. Annually, \$526,000,000 in health care costs are
7 directly attributed to smoking in the State.

8 Furthermore, ninety-five per cent of all smokers start
9 before the age of twenty-one. Eighty-one per cent of youth who
10 have ever used a tobacco product report that the first tobacco
11 product they used was flavored. Flavored tobacco products
12 promote youth initiation of tobacco use and help young
13 occasional smokers become daily smokers by reducing or masking
14 the natural harshness and taste of tobacco smoke, thereby
15 increasing the appeal of tobacco products.

1 Menthol, in particular, is used by the tobacco industry
2 because it has a cooling and numbing effect and can reduce the
3 throat irritation from smoking, thus making menthol cigarettes
4 an appealing option for youth who are initiating tobacco use.
5 Candy and fruit flavors improve the taste and reduce the
6 harshness of tobacco products, making them more appealing and
7 easier for beginners to try tobacco products and ultimately
8 become addicted. The popularity of electronic cigarettes among
9 youth is concerning, as these products contain nicotine salts.
10 The United States Surgeon General noted in the 2016 report
11 titled "E-Cigarette Use Among Youth and Youth 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 Furthermore, while there has been a significant decline in
17 the use of combustible cigarettes over the last decade, there
18 has been a dramatic increase in the use of electronic smoking
19 devices by Hawaii's youth. Vaping in Hawaii is at an epidemic
20 level. Between 2011 to 2015, the proportion of youth
21 experimenting with electronic smoking devices increased six-fold
22 among middle school youth and four-fold among high school youth.

1 In 2019, thirty-one per cent of middle school and forty-eight
2 per cent of public high school students tried electronic smoking
3 devices. Today, eighteen per cent of middle school and more
4 than almost a third of high school students vape. Current use
5 of electronic smoking devices by county is even more
6 problematic, with figures exceeding thirty per cent on the
7 islands of Hawaii, Maui, and Kauai. These rates rank among the
8 highest in the country and demonstrate a disturbing trend of
9 youth nicotine use and threaten the historic decline achieved in
10 combustible cigarette use.

11 Furthermore, a 2009 federal law, the Family Smoking
12 Prevention and Tobacco Control Act, prohibited characterizing
13 flavors, including fruit and candy flavorings, in cigarettes but
14 did not ban menthol in cigarettes or the use of characterizing
15 flavors in other tobacco products. Only cigarettes, roll-your-
16 own tobacco, and smokeless tobacco are subject to regulation
17 under this Act. The tobacco industry and electronic smoking
18 device industry have since significantly increased the
19 introduction and marketing of flavored non-cigarette tobacco
20 products, especially electronic smoking devices. It is no
21 coincidence that the number of electronic cigarette flavors have
22 skyrocketed in recent years, with more than fifteen thousand

1 five hundred unique e-cigarette flavors identified in a 2018
2 study. Hawaii has experienced the heightened promotion of vape
3 products that offer candy and local flavors designed to appeal
4 to the State's youth, such as candy, fruit, chocolate, mint,
5 menthol, Kona coffee, Maui Mango, Shaka strawberry, and Moloka'i
6 hot bread. Additionally, many of the packages are designed to
7 look like candies popular with children, such as Jolly Ranchers
8 and Sour Patch Kids.

9 Additionally, young people are disproportionately using
10 flavored tobacco products, including menthol. According to the
11 2010 study, "Smoking and Tobacco Use in Hawaii," seventy-eight
12 per cent of Native Hawaiian and Pacific islander adult smokers
13 and forty-two per cent of Caucasian adult smokers consume
14 menthol cigarettes. A 2018 study also indicated that sixty-
15 seven percent of Filipino adult smokers preferred the menthol
16 flavor. Conservative estimates noted in a 2011 paper suggest
17 that over three hundred thousand deaths nationally can be
18 averted by the year 2050, if menthol cigarette smoking is
19 eliminated.

20 Given the significant threat to public health posed by
21 flavored tobacco products, including those with menthol, five
22 states, including California, Massachusetts, New Jersey, New

1 York, and Rhode Island, and dozens of cities have enacted
2 policies ending the sale of flavored tobacco products. These
3 laws now protect over 25% of the U.S. population. Therefore
4 Hawaii should also take steps to regulate these products to
5 reduce tobacco-related health disparities and address the youth
6 vaping epidemic.

7 Accordingly, the purpose of this Act is to prohibit the
8 sale or distribution in Hawaii of all flavored tobacco products,
9 including products with menthol.

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

13 **"§712- Sale of flavored tobacco products; mislabeling as**
14 **nicotine-free.** (1) Beginning January 1, 2022, it shall be
15 unlawful for any retailer or any agents or employees of the
16 retailer to:

17 (a) Sell, offer for sale, or possess with the intent to
18 sell or offer for sale, a flavored tobacco product; or
19 (b) Mislabel as nicotine-free, or sell or market for sale
20 as nicotine-free, any e-liquid product that contains
21 nicotine.

1 (2) A statement or claim directed to consumers or the
2 public that the tobacco product has or produces a characterizing
3 flavor, including but not limited to text, color, or images on
4 the tobacco product's labeling or packaging that is used to
5 explicitly or implicitly communicate that the tobacco product
6 has a characterizing flavor made by a manufacturer or an agent
7 or employee of the manufacturer in the course of the person's
8 agency or employment, is prima facie evidence that the tobacco
9 product is 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, summarily forfeited to
13 the State, and destroyed by law enforcement following the
14 conclusion of an administrative or judicial proceeding finding
15 that a violation of this section has been committed and shall
16 not be subject to the procedures set forth in chapter 712A.

17 (4) Any retailer and any agents or employees of a retailer
18 who violate this section shall be subject to a fine not
19 exceeding \$500. Any subsequent violation shall subject the
20 offender to a fine of not less than \$500 nor more than \$2,000.

21 (5) Notwithstanding any other law to the contrary, any
22 county may adopt a rule or ordinance that places greater

1 restrictions on the access to flavored tobacco products than
2 provided in this section. In the case of a conflict between the
3 restrictions in this section and any county rule or ordinance
4 regarding access to flavored tobacco products, the more
5 stringent restrictions shall prevail.

6 (6) For the purposes of this section:

7 "Characterizing flavor" means a distinguishable taste or
8 aroma, or both, other than the taste or aroma of tobacco,
9 imparted by a tobacco product or any byproduct produced by the
10 tobacco product. Characterizing flavors include but are not
11 limited to tastes or aromas relating to any candy, chocolate,
12 vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic
13 beverage, menthol, mint, wintergreen, herb, or spice. A tobacco
14 product shall not be determined to have a characterizing flavor
15 solely because of the use of additives or flavorings or the
16 provision of ingredient information in the absence of a
17 distinguishable taste or aroma, or both.

18 "Cigarette" means any roll for smoking made wholly or in
19 part of tobacco, irrespective of size and shape and whether or
20 not the tobacco is flavored, adulterated, or mixed with any
21 other ingredient, the wrapper or cover of which is made of paper
22 or any other substance or material except tobacco.

1 "Constituent" means any ingredient, substance, chemical, or
2 compound, other than tobacco, water, or reconstituted tobacco
3 sheet, that is added by the manufacturer to a tobacco product
4 during the processing, manufacture, or packing of the tobacco
5 product.

6 "Distinguishable" means perceivable by either the sense of
7 smell or taste.

8 "Electronic smoking device" means any electronic product
9 that can be used to aerosolize and deliver nicotine or other
10 substances to a person inhaling from the device, including but
11 not limited to an electronic cigarette, electronic cigar,
12 electronic cigarillo, or electronic pipe, and any e-liquid,
13 cartridge or other component of the device or related product.

14 "E-liquid" means any liquid or like substance, which may or
15 may not contain nicotine, that is designed or intended to be
16 used in an electronic smoking device, whether or not packaged in
17 a cartridge or other container. "E-liquid" shall not include
18 prescription drugs; medical cannabis or manufactured cannabis
19 products pursuant to chapter 329D; or medical devices used to
20 aerosolize, inhale, or ingest prescription drugs, including
21 manufactured cannabis products manufactured or distributed in
22 accordance with section 329D-10(a)..

1 "Entity" means one or more individuals, a limited liability
2 company, corporation, a partnership, an association, or any
3 other type of business.

4 "Flavored tobacco product" means any tobacco product that
5 contains a constituent that imparts a characterizing flavor.

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

8 "Packaging" means a pack, box, carton, or container of any
9 kind, or if no other container, any wrapping, including
10 cellophane, in which a tobacco product is sold or offered for
11 sale to a consumer.

12 "Retailer" means an entity who sells, offers for sale, or
13 exchanges or offers to exchange tobacco products to consumers
14 for any form of consideration. The term "retailer" includes the
15 owner of a tobacco retail location.

16 "Tobacco product" means any product made or derived from
17 tobacco that contains nicotine or other substances and is
18 intended for human consumption or is likely to be consumed,
19 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
20 ingested by other means. "Tobacco product" includes but is not
21 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
22 snuff, snus, e-liquid, or an electronic smoking device.

1 "Tobacco product" does not include drugs, devices, or
2 combination products approved for sale by the United States Food
3 and Drug Administration, as those terms are defined in the
4 Federal Food, Drug, and Cosmetic Act.

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

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 5. New statutory material is underscored.

19 SECTION 6. This Act, upon its approval, shall take effect
20 on January 1, 2022.

21 INTRODUCED BY: 

22 BY REQUEST

1 Report Title:

2 Flavored Tobacco Products; Sale; Ban

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4 Description:

5 Bans the sale of flavored tobacco products and mislabeled e-
6 liquid products. Effective 1/1/2022.

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10 *The summary description of legislation appearing on this page is for informational purposes only and is*
11 *not legislation or evidence of legislative intent.*

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO FLAVORED TOBACCO PRODUCTS.

PURPOSE: To prohibit the sale, offering for sale, furnishing, or distribution of any flavored tobacco products, including menthol tobacco products, and the mislabeling as nicotine-free any e-liquid product containing nicotine within the State.

MEANS: Add a new section to part IV of Chapter 712, Hawaii Revised Statutes (HRS) and amend section 712-1258, HRS.

JUSTIFICATION: This measure responds to the epidemic of youth vaping due to the appeal of electronic smoking devices (ESDs) that feature flavored tobacco products, including menthol, that are a gateway to cigarettes and other substances.

Impact on the public: This measure will protect youth through prohibiting the sales or distribution of all flavored tobacco products. Most ESDs contain nicotine which is addictive, and youth who regularly use ESDs are more likely to use THC and other substances. Youth ESD users are 4 times more likely to become regular cigarette users. Menthol and other flavors are popular with younger smokers. This measure will not prohibit adults smokers from obtaining non-flavored tobacco products.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity; flavor restrictions will create parity between cigarettes and ESDs.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

HTH-590.

OTHER AFFECTED
AGENCIES:

Department of the Attorney General; County
law enforcement agencies; Department of
Taxation.

EFFECTIVE DATE:

January 1, 2022.