

JAN 19 2022

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.

16 Menthol, in particular, is used by the tobacco industry
17 because it has a cooling and numbing effect and can reduce the



1 throat irritation from smoking, thus making menthol cigarettes
2 an appealing option for youth who are initiating tobacco use.
3 Candy and fruit flavors improve the taste and reduce the
4 harshness of tobacco products, making them more appealing and
5 easier for beginners to try tobacco products and ultimately
6 become addicted. The popularity of electronic cigarettes among
7 youth is concerning, as these products contain nicotine salts.
8 The United States Surgeon General noted in the 2016 report
9 titled "E-Cigarette Use Among Youth and Youth Adults" that
10 "[b]ecause the adolescent brain is still developing, nicotine
11 use during adolescence can disrupt the formation of brain
12 circuits that control attention, learning, and susceptibility to
13 addiction."

14 Furthermore, while there has been a significant decline in
15 the use of combustible cigarettes over the last decade, there
16 has been a dramatic increase in the use of electronic smoking
17 devices by Hawaii's youth. Vaping in Hawaii is at an epidemic
18 level. Between 2011 to 2015, the proportion of youth
19 experimenting with electronic smoking devices increased six-fold
20 among middle school youth and four-fold among high school youth.
21 In 2019, thirty-one per cent of middle school and forty-eight



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

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



1 states, including California, Massachusetts, New Jersey, New
2 York, and Rhode Island, and dozens of cities have enacted
3 policies ending the sale of flavored tobacco products. These
4 laws now protect over twenty-five per cent of the United States
5 population. Therefore, the legislature finds that Hawaii should
6 also take steps to regulate these products to reduce tobacco-
7 related health disparities and address the youth vaping
8 epidemic.

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

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

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

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



1 (b) Mislabeled as nicotine-free, or sell or market for sale
2 as nicotine-free, any e-liquid product that contains
3 nicotine.

4 (2) A statement or claim directed to consumers or the
5 public that the tobacco product has or produces a characterizing
6 flavor, including but not limited to text, color, or images on
7 the tobacco product's labeling or packaging that is used to
8 explicitly or implicitly communicate that the tobacco product
9 has a characterizing flavor made by a manufacturer or an agent
10 or employee of the manufacturer in the course of the person's
11 agency or employment, is prima facie evidence that the tobacco
12 product is a flavored tobacco product.

13 (3) Any flavored tobacco product found in the retailer's
14 possession that is in violation of this section shall be
15 considered contraband, promptly seized, summarily forfeited to
16 the State, and destroyed by law enforcement following the
17 conclusion of an administrative or judicial proceeding finding
18 that a violation of this section has been committed and shall
19 not be subject to the procedures set forth in chapter 712A.

20 (4) Any retailer and any agents or employees of a retailer
21 who violate this section shall be subject to a fine not



1 exceeding \$500. Any subsequent violation shall subject the
2 offender to a fine of not less than \$500 and not more than
3 \$2,000.

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 in this section. In the case of a conflict between the
8 restrictions in this section and any county rule or ordinance
9 regarding access to flavored tobacco products, the more
10 stringent restrictions shall prevail.

11 (6) For the purposes of this section:

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



1 provision of ingredient information in the absence of a
2 distinguishable taste or aroma, or both.

3 "Cigarette" means any roll for smoking made wholly or in
4 part of tobacco, irrespective of size and shape and whether or
5 not the tobacco is flavored, adulterated, or mixed with any
6 other ingredient, the wrapper or cover of which is made of paper
7 or any other substance or material except tobacco.

8 "Constituent" means any ingredient, substance, chemical, or
9 compound, other than tobacco, water, or reconstituted tobacco
10 sheet, that is added by the manufacturer to a tobacco product
11 during the processing, manufacture, or packing of the tobacco
12 product.

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

15 "Electronic smoking device" means any electronic product
16 that can be used to aerosolize and deliver nicotine or other
17 substances to a person inhaling from the device, including but
18 not limited to an electronic cigarette, electronic cigar,
19 electronic cigarillo, or electronic pipe, and any e-liquid,
20 cartridge or other component of the device or related product.



1 "E-liquid" means any liquid or like substance, which may or
2 may not contain nicotine, that is designed or intended to be
3 used in an electronic smoking device, whether or not packaged in
4 a cartridge or other container. "E-liquid" shall not include
5 prescription drugs; medical cannabis or manufactured cannabis
6 products pursuant to chapter 329D; or medical devices used to
7 aerosolize, inhale, or ingest prescription drugs, including
8 manufactured cannabis products manufactured or distributed in
9 accordance with section 329D-10(a).

10 "Entity" means one or more individuals, a limited liability
11 company, corporation, a partnership, an association, or any
12 other type of business.

13 "Flavored tobacco product" means any tobacco product that
14 contains a constituent that imparts a characterizing flavor.

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 who sells, offers for sale, or
2 exchanges or offers to exchange tobacco products to consumers
3 for any form of consideration. The term "retailer" includes the
4 owner of a tobacco retail location.

5 "Tobacco product" means any product made or derived from
6 tobacco that contains nicotine or other substances and is
7 intended for human consumption or is likely to be consumed,
8 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
9 ingested by other means. "Tobacco product" includes but is not
10 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
11 snuff, snus, e-liquid, or an electronic smoking device.

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

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



S.B. NO. 2037

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

4 SECTION 4. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on January 1, 2023.

12

INTRODUCED BY: _____



S.B. NO. 2037

Report Title:

Flavored Tobacco Products; Sale; Ban

Description:

Bans the sale of flavored tobacco products and mislabeled e-liquid products. Effective 1/1/2023.

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