

JAN 26 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. According to the Centers for Disease Control and
7 Prevention's 2014 "Best Practices for Comprehensive Tobacco
8 Control Programs" guide, \$526,000,000 in health care costs are
9 directly attributed to smoking in the State of Hawaii.

10 Furthermore, in a 2016 report titled "E-Cigarette Use Among
11 Youth and Young Adults," the United States Surgeon General
12 explained that ninety-five per cent of all smokers start smoking
13 before the age of twenty-one. A 2017 study published in the
14 American Journal of Preventive Medicine found that eighty-one
15 per cent of youth who ever used a tobacco product report that
16 the first product they used was flavored. Flavored tobacco
17 products promote youth initiation to tobacco use and push young
18 occasional smokers to become daily smokers by reducing or

1 masking the natural harshness and taste of tobacco smoke,
2 thereby increasing the appeal of tobacco products.

3 Menthol is used by the tobacco industry because it has a
4 cooling and numbing effect and can reduce the throat irritation
5 caused by smoking, thus making menthol cigarettes an appealing
6 option for youth who are initiating tobacco use. Candy and
7 fruit flavors improve the taste and reduce the harshness of
8 tobacco products, making them more appealing and easier for
9 beginners to try tobacco products and ultimately become
10 addicted. The popularity of electronic cigarettes among youth
11 is concerning. The combination of enticing flavors and nicotine
12 salts allows higher levels of nicotine to be inhaled with less
13 irritation because they have a lower potential of hydrogen, also
14 known as "pH." In the 2016 report titled "E-Cigarette Use Among
15 Youth and Young Adults," the United States Surgeon General
16 stated that, "Compared with older adults, the brain of the youth
17 and young adults is more vulnerable to the negative consequences
18 of nicotine exposure. The effects include addiction, priming
19 for use of other addictive substances, reduced impulse control,
20 deficits in attention and cognition, and mood disorders."

21 While there has been a significant decline in the use of
22 combustible cigarettes over the last decade, there has been a
23 dramatic increase in the use of electronic smoking devices by

1 Hawaii's youth. Vaping in Hawaii is at an epidemic level.
2 According to the 2011 and 2015 Hawaii Youth Tobacco Survey,
3 during these four years, the proportion of youth experimenting
4 with electronic smoking devices increased six-fold among middle
5 school youth and four-fold among high school youth. According
6 to the 2019 Hawaii Youth Risk Behavior Survey, thirty-one per
7 cent of middle school and forty-eight per cent of public high
8 school students had tried electronic smoking devices. The 2019
9 Hawaii Youth Risk Behavior Survey also indicates that eighteen
10 per cent of middle school and thirty-one per cent of high school
11 students currently vape. The 2019 Hawaii Youth Risk Behavior
12 Survey also shows the rates are higher in the neighbor island
13 counties with high school vaping use rates exceeding thirty-five
14 per cent for Hawaii, Maui, and Kauai. These rates rank among
15 the highest in the country.

16 Furthermore, while the 2009 Family Smoking Prevention and
17 Tobacco Control Act (Tobacco Control Act, P.L. 111-31),
18 prohibited characterizing flavors, including fruit and candy
19 flavorings, in cigarettes, it did not ban menthol in cigarettes
20 or the use of characterizing flavors in other tobacco products.
21 The Tobacco Control Act provided the United States Food and Drug
22 Administration with the authority to regulate cigarettes, roll-
23 your-own tobacco, and smokeless tobacco, but required the Food

1 and Drug Administration to undertake an extensive rulemaking
2 process to extend its regulatory authority to include e-
3 cigarettes. Delays in the regulatory process allowed the
4 tobacco industry and electronic smoking device industry to
5 significantly increase the introduction of and extensively
6 market flavored non-cigarette tobacco products, especially in
7 electronic smoking devices. It is no coincidence that the
8 number of electronic cigarette flavors have skyrocketed in
9 recent years. In a 2018 study published in The Journal of
10 Medical Internet Research, the count of flavor labels was
11 reported to have more than doubled from 7,776 in 2013-2014 to
12 15,586 in 2016-2017. Hawaii has experienced the heightened
13 promotion of vape products that offer candy and local flavors
14 designed to appeal to the State's youth, such as orange soda,
15 apple mui, Kona coffee, Maui Mango, Shaka strawberry, lychee
16 ice, and Molokai Hot Bread. Additionally, many of the packages
17 are designed to look like candies popular with children, such as
18 Jolly Ranchers and Sour Patch Kids.

19 Additionally, young people are disproportionately using
20 flavored tobacco products, including menthol. According to a
21 2010 Hawaii State Department of Health report titled "Smoking
22 and Tobacco Use in Hawaii: Facts, Figures and Trends," seventy-
23 eight per cent of Native Hawaiian and Pacific islander adult

1 smokers and forty-two per cent of Caucasian adult smokers
2 consume menthol cigarettes. A 2019 study published in the
3 Hawai'i Journal of Health and Social Welfare found that sixty-
4 seven per cent of Filipino adult smokers preferred the menthol
5 flavor. In a 2011 modeling study published in the American
6 Journal of Public Health, an estimated 633,252 deaths nationally
7 can be averted by the year 2050, if menthol cigarette smoking is
8 banned.

9 Given the significant threat to public health posed by
10 flavored tobacco products, including those with menthol, five
11 states, including California, Massachusetts, New Jersey, New
12 York, and Rhode Island, and dozens of cities have enacted laws
13 prohibiting the sale of flavored tobacco products. These laws
14 now protect over twenty-five per cent of the United States
15 population. Hawaii should also take steps to regulate these
16 products to reduce tobacco-related health disparities and
17 address the youth vaping epidemic.

18 Accordingly, the purpose of this Act is to prohibit the
19 sale or distribution in Hawaii of all flavored tobacco products,
20 including products with menthol, and prohibit the mislabeling of
21 products as nicotine-free.

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

4 "§712- Sale of flavored tobacco products; mislabeling as
5 nicotine-free. (1) Beginning January 1, 2023, it shall be
6 unlawful for any retailer or any agent or employee of the
7 retailer to:

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

10 (b) Mislabel as nicotine-free, or sell or market for sale
11 as nicotine-free, any e-liquid product that contains
12 nicotine.

13 (2) A statement or claim, including but not limited to
14 text, color, or images on the tobacco product's labeling or
15 packaging that is used to explicitly or implicitly communicate
16 that the tobacco product has a flavor other than tobacco, made
17 by a manufacturer or an agent or employee of the manufacturer in
18 the course of the person's agency or employment, and directed to
19 consumers or the public shall be prima facie evidence that the
20 tobacco product is a flavored tobacco product.

21 (3) Any flavored tobacco product found in a retailer's
22 possession that is in violation of this section shall be
23 considered contraband, promptly seized, subject to immediate

1 forfeiture and destruction or disposal as hazardous waste, and
2 shall not be subject to the procedures set forth in chapter
3 712A.

4 (4) Any retailer and any agent or employee of a retailer
5 who violates this section shall be subject to a fine not
6 exceeding \$500. Any subsequent violation shall subject the
7 offender to a fine of not less than \$500 nor more than \$2,000.

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

15 (6) For the purposes of this section:

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

1 solely because of the use of additives or flavorings or the
2 provision of ingredient information in the absence of a
3 distinguishable taste or aroma, or both.

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

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

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

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

22 "E-liquid" means any liquid or like substance, which may or
23 may not contain nicotine, that is designed or intended to be

1 used in an electronic smoking device, whether or not packaged in
2 a cartridge or other container. "E-liquid" shall not include
3 prescription drugs; medical cannabis or manufactured cannabis
4 products pursuant to chapter 329D; or medical devices used to
5 aerosolize, inhale, or ingest prescription drugs, or
6 manufactured cannabis products manufactured or distributed in
7 accordance with section 329D-10(a).

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

11 "Flavored tobacco product" means any tobacco product that
12 contains a constituent that imparts a characterizing flavor.

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

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

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

S.B. NO. 3118

1 "Tobacco product" means any product containing, made of, or
2 derived from tobacco or nicotine that is intended for human
3 consumption or is likely to be consumed, whether smoked, heated,
4 chewed, absorbed, dissolved, inhaled, or ingested by other
5 means. "Tobacco product" includes but is not limited to a
6 cigarette, cigar, pipe tobacco, chewing or smokeless tobacco,
7 snuff, snus, e-liquid, or an electronic smoking device.
8 "Tobacco product" does not include drugs, devices, or
9 combination products approved for sale by the United States Food
10 and Drug Administration, as those terms are defined in the
11 Federal Food, Drug, and Cosmetic Act.

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

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

19 SECTION 4. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act that can be given effect without the

S.B. NO. 3118

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 5. New statutory material is underscored.

4 SECTION 6. This Act, upon its approval, shall take effect
5 on January 1, 2023.

6

7

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "MUN. M.", is written over a horizontal line.

8

BY REQUEST

S.B. NO. 3118

Report Title:

Flavored Tobacco Products; Sale; Ban

Description:

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

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

JUSTIFICATION SHEET

SB. NO. 3118

DEPARTMENT: Health

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

PURPOSE: To prohibit the sale, offering for sale, furnishing, or distribution of any flavored tobacco products, including products derived from nicotine and 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).

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. Additionally, international studies have identified counterfeit electronic cigarette products with mislabeled nicotine concentrations necessitating better control and monitoring of nicotine containing products and sales outlets.¹

Impact on the public: This measure will protect youth through prohibiting the sales or distribution of all flavored tobacco products. The fiscal impact of a ban on flavored tobacco products in Hawaii would result in modest reductions in Hawaii's tax revenues while at the same time leading to reductions in chronic diseases and health

¹ Omaiye, E. E., Cordova, I., Davis, B., & Talbot, P. (2017). Counterfeit Electronic Cigarette Products with Mislabeled Nicotine Concentrations. *Tobacco Regulatory Science*, 3(3), 347-357. <https://doi.org/10.18001/TRS.3.3.10>

care spending, including Medicaid spending in the state.²

Most ESDs contain nicotine which is addictive, and youth who regularly use ESDs are more likely to use tetrahydrocannabinol (THC) and other substances. Youth ESD users are four times more likely to become regular cigarette users. Menthol and other flavors are popular with younger smokers. This measure will not prohibit adult 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. Mislabeled nicotine containing products can be monitored and controlled.

A reduction in tobacco use resulting from a comprehensive flavor ban would likely lead to significant reductions in health care spending.

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, 2023.

² Chaloupka, F.J. *Potential Effects of a Ban on the Sale of Flavored Tobacco Products in Hawaii*, University of Illinois at Chicago, 2021