

JAN 21 2022

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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 Hawaii. Tobacco use is a serious public health
4 problem that results in human suffering and loss of life and
5 causes financial burdens on society and the health care system.
6 Annually, \$526,000,000 in health care costs are directly
7 attributed to smoking in the State.

8 The legislature notes that ninety-five per cent of all
9 smokers start before the age of twenty-one. Eighty-one per cent
10 of youth who have ever used a tobacco product report that the
11 first tobacco product they used was flavored. Flavored tobacco
12 products 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 The legislature further finds that, while there has been a
17 decline in the use of combustible cigarettes over the last



1 decade, there has been a dramatic increase in the use of
2 electronic smoking devices, including electronic cigarettes, by
3 Hawaii's youth. Vaping in Hawaii is at an epidemic level.
4 Between 2011 to 2015, the proportion of youth experimenting with
5 electronic smoking devices increased six-fold among middle
6 school youth and four-fold among high school youth. In 2019,
7 thirty-one per cent of middle school students and forty-eight
8 per cent of public high school students tried electronic smoking
9 devices. Today, eighteen per cent of middle school students and
10 almost a third of high school students vape. Current use of
11 electronic smoking devices by county is even more problematic,
12 with figures exceeding thirty per cent in Hawaii, Maui, and
13 Kauai counties. These rates are higher than the national
14 average, demonstrate a disturbing trend of youth nicotine use,
15 and threaten to undermine the historic decline in combustible
16 cigarette use.

17 The popularity of electronic cigarettes among youth is
18 especially concerning, as these products contain nicotine salts.
19 The United States Surgeon General noted in the 2016 report
20 titled "E-Cigarette Use Among Youth and Young Adults" that
21 "[b]ecause the adolescent brain is still developing, nicotine



1 use during adolescence can disrupt the formation of brain
2 circuits that control attention, learning, and susceptibility to
3 addiction."

4 The legislature notes that in 2009, a federal law, the
5 Family Smoking Prevention and Tobacco Control Act, prohibited
6 characterizing flavors, including fruit and candy flavorings, in
7 cigarettes; however, it did not ban menthol in cigarettes or the
8 use of characterizing flavors in other tobacco products. Only
9 cigarettes, roll-your-own tobacco, and smokeless tobacco are
10 subject to regulation under the Act. The tobacco industry and
11 electronic smoking device industry have since significantly
12 increased the introduction and marketing of flavored non-
13 cigarette tobacco products, especially electronic smoking
14 devices.

15 It is no coincidence that the number of electronic
16 cigarette flavors has skyrocketed in recent years, with more
17 than fifteen thousand unique electronic cigarette flavors
18 identified in a 2018 study. Hawaii has experienced the
19 heightened promotion of electronic cigarette products that offer
20 flavors designed to appeal to the State's youth, such as candy,
21 fruit, chocolate, mint, Kona coffee, Maui mango, shaka



1 strawberry, and Molokai hot bread. Additionally, many of the
2 packages are designed to resemble popular candies, such as Jolly
3 Ranchers and Sour Patch Kids.

4 The legislature additionally finds that young people and
5 people of color are disproportionately using flavored tobacco
6 products, including menthol. Menthol, in particular, is used by
7 the tobacco industry because it has a cooling and numbing effect
8 and can reduce the throat irritation from smoking, thus making
9 menthol cigarettes an appealing option for youth who are
10 initiating tobacco use. The 2021 National Youth Tobacco Survey
11 found that eighty-five per cent of youth electronic cigarette
12 users reported using flavored products, with fruit, sweet
13 flavors like candy or desserts, mint, and menthol reported as
14 the most popular flavors. According to the 2010 study, "Smoking
15 and Tobacco Use in Hawaii", seventy-eight per cent of Native
16 Hawaiian and Pacific Islander adult smokers consume menthol
17 cigarettes, compared to forty-two per cent of Caucasian adult
18 smokers. A 2018 study also indicated that sixty-seven per cent
19 of Filipino adult smokers preferred menthol cigarettes. A
20 recent report also estimates that ending the sale of flavored
21 tobacco in Hawaii would save the State at least \$48,000,000 in



1 long-term health care costs, prevent seven hundred premature
2 smoking-related deaths, prompt over three thousand menthol
3 cigarette smokers to quit, and prevent youth from initiating
4 smoking with menthol cigarettes.

5 Given the significant threat to public health posed by
6 flavored tobacco products, including those with menthol, five
7 states, California, Massachusetts, New Jersey, New York, and
8 Rhode Island, and hundreds of localities have enacted
9 legislation to prohibit the sale of flavored tobacco products,
10 including menthol. The legislature concludes that Hawaii should
11 also take steps to regulate flavored tobacco products to reduce
12 tobacco-related health disparities and address the youth vaping
13 epidemic.

14 Accordingly, the purpose of this Act is to prohibit the
15 sale or distribution in Hawaii of all flavored tobacco products,
16 including products with menthol.

17 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§712- Sale of flavored tobacco products prohibited.

21 (1) Beginning January 1, 2023, it shall be unlawful for any



1 retailer or any agents or employees of the retailer to sell,
2 offer for sale, or possess with the intent to sell or offer for
3 sale, a flavored tobacco product.

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 who violates this section shall be fined
21 \$1,000 for the first offense, \$2,000 for the second offense, and



1 \$5,000 for a third or subsequent offenses. In addition, a
2 retailer shall be responsible for all costs associated with the
3 disposal of any confiscated products found to be in violation of
4 this section.

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

12 (6) For the purposes of this section:

13 "Characterizing flavor" means a taste or aroma, or both,
14 other than the taste or aroma of tobacco, imparted by a tobacco
15 product or any byproduct produced by the tobacco product that is
16 distinguishable by an ordinary consumer. Characterizing flavors
17 include but are not limited to tastes or aromas relating to any
18 candy, chocolate, vanilla, honey, fruit, cocoa, coffee, dessert,
19 alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

20 A tobacco product shall not be determined to have a
21 characterizing flavor solely because of the use of additives or



1 flavorings or the provision of ingredient information in the
2 absence of a 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" has the same meaning as defined
16 in section 712-1258(7).

17 "Entity" means one or more individuals, a limited liability
18 company, corporation, a partnership, an association, or any
19 other type of business.

20 "Flavored tobacco product" means any tobacco product that
21 contains a constituent that imparts a characterizing flavor.



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

3 "Packaging" means a pack, box, carton, or container of any
4 kind, or if no other container, any wrapping, including
5 cellophane, in which a tobacco product is sold or offered for
6 sale to a consumer.

7 "Retailer" means an entity who sells, offers for sale, or
8 exchanges or offers to exchange tobacco products to consumers
9 for any form of consideration. "Retailer" includes the owner of
10 a tobacco retail location.

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

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

17 SECTION 3. Section 712-1258, Hawaii Revised Statutes, is
18 amended by amending subsection (7) to read as follows:

19 (7) For the purposes of this section:

20 "Electronic smoking device" means any electronic product,
21 or part thereof, whether for one-time use or reusable, that can



1 be used to [~~aerosolize and~~] deliver nicotine or [~~other~~
2 ~~substances~~] another substance to the person inhaling from the
3 device, including but not limited to an electronic cigarette,
4 electronic cigar, electronic cigarillo, [~~or~~] electronic pipe,
5 vaping pen, hookah pen, or any other similar device that relies
6 on vaporization or aerosolization, and any cartridge or other
7 component of the device or [~~related~~] product. "Electronic
8 smoking device" includes any liquid or gel capable of use in an
9 electronic smoking device that can be used by a person to
10 simulate smoking in the delivery of nicotine or any other
11 substance intended for human consumption through inhalation of
12 favor or aerosol from the product. "Electronic smoking device"
13 does not include cigarettes; drugs, devices, or combination
14 products approved for sale by the United States Food and Drug
15 Administration, as those terms are defined in the Federal Food,
16 Drug, and Cosmetic Act; or medical cannabis or manufactured
17 cannabis products under chapter 329D, including devices used to
18 aerosolize, inhale, or ingest manufactured cannabis products
19 manufactured or distributed in accordance with section 329D-
20 10(a).



1 "Tobacco product" means any product containing, made of, or
2 derived from tobacco [~~that contains~~] or nicotine [~~or other~~
3 ~~substances and~~] that is intended for human consumption or is
4 likely to be consumed, whether smoked, heated, chewed, absorbed,
5 dissolved, inhaled, or ingested by other means. "Tobacco
6 product" includes but is not limited to a cigarette, cigar, pipe
7 tobacco, chewing tobacco, snuff, snus, or an electronic smoking
8 device. "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 SECTION 4. Section 328J-11.5, Hawaii Revised Statutes, is
13 repealed.

14 [~~"§328J-11.5] Statewide concern. (a) Sales of~~
15 ~~cigarettes, tobacco products, and electronic smoking devices are~~
16 ~~a statewide concern. It is the intent of the legislature to~~
17 ~~regulate the sale of cigarettes, tobacco products, and~~
18 ~~electronic smoking devices in a uniform and exclusive manner.~~

19 ~~(b) All local ordinances or regulations that regulate the~~
20 ~~sale of cigarettes, tobacco products, and electronic smoking~~



1 ~~devices are preempted, and existing local laws and regulations~~
2 ~~conflicting with this chapter are null and void.~~

3 ~~(e) Nothing in this chapter shall be construed to limit a~~
4 ~~county's authority under section 328J-15."]~~

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

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

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on January 1, 2023.

17

INTRODUCED BY:

Jana Acasio



S.B. NO. 2563

Report Title:

Flavored Tobacco Products; Sale; Ban

Description:

Prohibits the sale of all flavored tobacco products.
Establishes fines and penalties for violations. Effective
01/01/2023.

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