
A BILL FOR AN ACT

RELATING TO HEALTH.

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. In Hawaii, tobacco use accounts for one thousand four
4 hundred annual deaths and \$526,000,000 in annual health care
5 costs directly attributed to smoking related diseases, according
6 to the Centers for Disease Control and Prevention's 2014 "Best
7 Practices for Comprehensive Tobacco Control Programs" guide.
8 Tobacco use is a serious public health problem in terms of the
9 human suffering and loss of life it causes, and is a financial
10 burden on society and our health care system.

11 The legislature further finds that eighty-one per cent of
12 youth who have ever used a tobacco product report that the first
13 tobacco product they used was flavored. Flavored tobacco
14 products promote youth initiation of tobacco use and help young
15 occasional smokers become daily smokers by reducing or masking
16 the natural harshness and taste of tobacco smoke, thereby
17 increasing the appeal of tobacco products.



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

14 Furthermore, delays in the United States Food and Drug
15 Administration regulatory process of e-cigarettes have allowed
16 the tobacco and electronic smoking device industries to
17 significantly increase the marketing and production of
18 electronic vaping devices. According to a 2018 study published
19 in the Journal of Medical Internet Research, the count of
20 flavored tobacco products went from 7,764 in 2014 to 15,586 in
21 2017, a one hundred per cent increase. Every year that passes



1 youth become more exposed to the predatory practices of tobacco
2 companies seeking a market for nicotine addiction. Hawaii has
3 experienced the heightened promotion of vape products that offer
4 candy and local flavors designed to appeal to the State's youth,
5 such as POG, apple mui, luau punch, rainbow candy, lava burst
6 ice, Shaka strawberry, lychee ice, Molokai Hot Bread, and
7 lilikoi lychee. Additionally, many of the packages are designed
8 to look like candies popular with children, such as Jolly
9 Ranchers and Sour Patch Kids.

10 The legislature also finds that young people and people of
11 color have high rates of use of flavored tobacco products,
12 including menthol. According to the 2023 Hawaii Youth Risk
13 Behavior Surveillance System, among public high school students
14 who are current cigarette smokers, an average of 14.1 per cent
15 smoke menthol, and among public middle school students who are
16 current cigarette smokers, an average of 7.1 smoke menthol.
17 According to the 2022 Behavioral Risk Factor Surveillance
18 System, 63.7 per cent of adult smokers in Hawaii usually smoke
19 menthol cigarettes.

20 Furthermore, the 2022 Behavioral Risk Factor Surveillance
21 System shows that prevalence is high among specific ethnic



1 groups with 70.8 per cent of Filipinos, 80.7 per cent of Native
2 Hawaiians, and 66.9 per cent of Japanese usually smoking menthol
3 cigarettes. The 2021 National Youth Tobacco Survey report,
4 estimates that ending the sale of flavored tobacco in Hawaii
5 would save the State at least \$48,000,000 in long-term health
6 care costs, prevent seven hundred premature smoking-related
7 deaths, prompt over three thousand menthol cigarette smokers to
8 quit, and prevent youth from initiating smoking with menthol
9 cigarettes.

10 Given the significant threat to public health posed by
11 flavored tobacco products, including those with menthol, seven
12 states – California, Maryland, Massachusetts, New Jersey, New
13 York, Rhode Island, and Utah – and over three hundred ninety
14 localities have enacted policies to end the sale of flavored
15 tobacco products to some extent. These laws now protect over
16 twenty-five per cent of the United States' population. Hawaii
17 must also take steps to regulate these products to address the
18 youth vaping epidemic and reduce tobacco-related health
19 disparities.

20 Of additional concern is the increased use of tobacco- and
21 smoke-free oral nicotine pouches that come in different flavors



1 and strengths. These products are easier to conceal than
2 cigarettes or vape products and may be used by youth who
3 mistakenly believe that the lack of tobacco and smoke makes the
4 product safer for consumption. Furthermore, because these
5 products do not contain tobacco, they can fall through the
6 regulatory cracks, requiring a broader approach to addressing
7 youth nicotine addiction.

8 Accordingly, the purpose of this Act is to prohibit the
9 sale of, offer for sale, or possess with the intent to sell or
10 offer to sell, all flavored nicotine products and nicotine
11 product flavor enhancers, including products with menthol, and
12 prohibit the mislabeling of e-liquid products as nicotine-free.

13 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 **"PART . SALE OF FLAVORED NICOTINE PRODUCTS PROHIBITED**

17 **§321-A Definitions.** As used in this part, unless the
18 context otherwise requires:

19 "Cigarette" has the same meaning as in section 245-1.

20 "Department" means the department of health.

21 "Director" means the director of health.



1 "Distinguishable" means perceivable to the sense of smell,
2 taste, or touch, or more than one or all of these.

3 "Electronic smoking device" means any device that may be
4 used to deliver any aerosolized or vaporized substance to the
5 person inhaling from the device, including but not limited to an
6 electronic cigar, electronic cigarette, electronic hookah,
7 electronic pipe, or vape pen. "Electronic smoking device"
8 includes any component, part, or accessory of the device, and
9 any substance that may be aerosolized or vaporized by such
10 device, whether or not the substance contains nicotine.

11 "Electronic smoking device" does not include drugs, devices, or
12 combination products authorized for sale by the United States
13 Food and Drug Administration, as those terms are defined in the
14 Federal Food, Drug, and Cosmetic Act, or medical devices used to
15 aerosolize, inhale, or ingest prescription drugs, including
16 manufactured cannabis products manufactured or distributed in
17 accordance with section 329D-10(a).

18 "E-liquid" means any liquid or like substance, which may or
19 may not contain nicotine, that is designed or intended to be
20 used in an electronic smoking device, whether or not packaged in
21 a cartridge or other container. "E-liquid" does not include



1 prescription drugs, cannabis for medical use pursuant to chapter
2 329, or manufactured cannabis products pursuant to chapter 329D.

3 "Entity" has the same meaning as in section 245-1.

4 "Flavored nicotine product" means any nicotine product that
5 imparts:

6 (1) A taste or odor distinguishable by an average
7 consumer, other than the taste or odor of tobacco,
8 before, during, or after the consumption of the
9 nicotine product, or more than one or all of these,
10 including but not limited to any tastes or odors
11 relating to alcoholic beverage, candy, chocolate,
12 cocoa, dessert, fruit, herb, honey, menthol, mint,
13 spice, vanilla, or wintergreen; or

14 (2) A cooling or numbing sensation distinguishable by an
15 average consumer before, during, or after the
16 consumption of the nicotine product, or more than one
17 or all of these.

18 "Inspector" means a person appointed, commissioned, or
19 contracted by the department for the enforcement of this part
20 pursuant to section 321-C.



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

3 "Nicotine" means any form of the chemical nicotine,
4 including any salt or complex, regardless of whether the
5 chemical is naturally or synthetically derived, and includes
6 nicotinic alkaloids and nicotine analogs.

7 "Nicotine product" means:

- 8 (1) Any product containing, made of, or derived from
9 nicotine that is intended for human consumption or is
10 likely to be consumed, whether inhaled, absorbed, or
11 ingested by any other means, including but not limited
12 to a cigarette, a cigar, pipe tobacco, chewing
13 tobacco, snuff, a pouch, lozenges, or snus;
- 14 (2) Any electronic smoking device and any substances that
15 may be aerosolized or vaporized by such device,
16 whether or not the substance contains nicotine; or
- 17 (3) Any component, part, or accessory of any item
18 described in paragraph (1) or (2), whether or not any
19 of these contains tobacco or nicotine, including but
20 not limited to filters, hookahs, mouthpieces, pipes,
21 rolling papers, and blunt or hemp wraps.



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

5 "Nicotine product flavor enhancer" means a product
6 designed, manufactured, produced, marketed, or sold to produce a
7 distinguishable flavor other than that of tobacco or to impart a
8 cooling, tingling, or numbing sensation when added to a nicotine
9 product.

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

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

19 "Retailer" means an entity that sells, offers for sale, or
20 exchanges or offers to exchange nicotine products to consumers



1 for any form of consideration. "Retailer" includes an owner or
2 agent of a nicotine product retail location.

3 **§321-B Sale of flavored nicotine products and nicotine**
4 **product flavor enhancers; mislabeling as nicotine-free. (a)**

5 Beginning January 1, 2026, it shall be unlawful for any retailer
6 to:

7 (1) Sell, offer for sale, or possess with the intent to
8 sell or offer for sale, a flavored nicotine product or
9 nicotine product flavor enhancer; or

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

13 (b) A statement or claim, including but not limited to
14 text, color, or images, on the nicotine product's labeling or
15 packaging that is used to explicitly or implicitly communicate
16 that the nicotine product has a flavor other than tobacco, or
17 that the nicotine product imparts a cooling or numbing
18 sensation, made by a manufacturer, importer, or retailer, or an
19 agent or employee of a manufacturer, importer, or retailer, and
20 directed to consumers or the public shall be prima facie
21 evidence that the nicotine product is a flavored nicotine



1 product. This includes but is not limited to public statements
2 that a product has a minty or cooling effect, such as describing
3 the product as "chill", "ice", "fresh", "arctic", or "frost".

4 (c) Any flavored nicotine product found in a retailer's
5 possession that is in violation of this part may be considered
6 contraband, be seized by an inspector, or be subject to
7 immediate destruction or disposal by the retailer in accordance
8 with rules adopted by the department pursuant to section 321-D.
9 The cost of proper disposal of electronic smoking devices and e-
10 liquids as hazardous waste pursuant to rules adopted in
11 accordance with section 342J-4 shall be borne by the retailer.

12 (d) Any retailer that violates this part shall be subject
13 to a fine no less than \$100 and no more than \$1,000 for each
14 separate offense. Each day of each violation shall constitute a
15 separate offense. Any fines collected by the department shall
16 be deposited to the credit of the general fund.

17 (e) Notwithstanding any other law to the contrary, any
18 county may adopt a rule or an ordinance that places greater
19 restrictions on the access to flavored nicotine products than
20 the restrictions provided in this part. In the case of a
21 conflict between the restrictions in this part and any county



1 rule or ordinance regarding access to flavored nicotine
2 products, the more stringent restrictions shall prevail.

3 **§321-C Inspectors; authority and access to records.** (a)

4 The director may appoint, commission, or contract for services
5 of a third party one or more inspectors as the exigencies of the
6 enforcement of this part may require. Persons appointed,
7 commissioned, or contracted for services under this part shall
8 have and may exercise all the powers and authority outlined in
9 the rules adopted pursuant to section 321-D.

10 (b) Information necessary to investigate violations of
11 this part shall be made available to the department and any
12 appointed, commissioned, or contracted inspectors of the
13 department.

14 **§321-D Administrative rules.** (a) The department may
15 adopt rules pursuant to chapter 91 to effectuate the purposes of
16 this part.

17 (b) No later than June 30, 2026, the department shall
18 adopt interim rules, which shall be exempt from chapters 91 and
19 201M, to effectuate the purposes of this part; provided that the
20 interim rules shall remain in effect until January 1, 2032, or



1 until rules are adopted pursuant to subsection (a), whichever
2 occurs sooner.

3 (c) The department may amend the interim rules adopted
4 pursuant to subsection (b), exempt from chapter 201M and the
5 public notice and public hearing requirements of chapter 91;
6 provided that any amended interim rules shall remain in effect
7 until January 1, 2032, or until rules are adopted pursuant to
8 subsection (a), whichever occurs sooner.

9 **§321-E Contract for services.** Subject to section 26-38,
10 the department may contract the services of a third party in
11 accordance with chapter 103D for enforcement, inspections, or
12 any other services needed to administer this part."

13 SECTION 3. There is established full-time equivalent
14 (FTE) program specialist positions to review, process, and
15 initiate inspections under the authority of the department of
16 health and full-time equivalent (FTE) hearings officer
17 position to preside over administrative hearings and other
18 related hearings duties as required under section 2 of this Act.

19 SECTION 4. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2025-2026 and



1 the same sum or so much thereof as may be necessary for fiscal
2 year 2026-2027 to carry out the purposes of this Act, including
3 the hiring of necessary staff, including full-time
4 equivalent (FTE) program specialist positions
5 and full-time equivalent (FTE) hearings officer
6 position.

7 The sums appropriated shall be expended by the department
8 of health for the purposes of this Act.

9 SECTION 5. 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 6. 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 7. In codifying the new sections added by section
19 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 8. This Act shall take effect on July 1, 3000;
2 provide that section 4 shall take effect on July 1, 2025.



Report Title:

Keiki Caucus; Prohibition; Sale; Labeling; Flavored Nicotine Products; Nicotine Product Flavor Enhancers; E-Liquids; Penalties; Appropriation

Description:

Prohibits the sale of flavored nicotine products and nicotine product flavor enhancers and the mislabeling of e-liquids as nicotine free. Establishes penalties for violations. Authorizes the Department of Health to appoint, commission, or contract for services of inspectors. Establishes positions. Appropriates funds. Effective 7/1/3000. (HD2)

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