

JAN 17 2025

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 healthcare 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 or distribution of all flavored nicotine products,
10 including products with menthol, and prohibit the mislabeling of
11 products as nicotine-free.

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

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

16 **§321-A Definitions.** As used in this part, unless the
17 context otherwise requires:

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

19 "Department" means the department of health.

20 "Director" means the director of health.



1 "Distinguishable" means perceivable by either the sense of
2 smell or taste.

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 cigarette, electronic cigar, electronic pipe, vape
7 pen, or electronic hookah. "Electronic smoking device" includes
8 any component, part, or accessory of the device, and any
9 substance that may be aerosolized or vaporized by such device,
10 whether or not the substance contains nicotine. "Electronic
11 smoking device" does not include drugs, devices, or combination
12 products authorized for sale by the United States Food and Drug
13 Administration, as those terms are defined in the Federal Food,
14 Drug, and Cosmetic Act.

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



1 prescription drugs, including manufactured cannabis products
2 manufactured or distributed in accordance with section 329D-
3 10(a).

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

5 "Flavored nicotine product" means any nicotine product that
6 contains a taste or smell, other than the taste or smell of
7 tobacco, that is distinguishable by an ordinary consumer either
8 prior to or during the consumption of a nicotine product,
9 including but not limited to any taste or smell relating to
10 fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla,
11 honey, molasses, or any candy, dessert, alcoholic beverage,
12 herb, or spice.

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

15 "Nicotine product" means:

16 (1) Any product that:

17 (A) Contains, is made of, or is derived from
18 nicotine; or

19 (B) Has been determined to be addictive by the
20 director and has a similar molecular structure to
21 nicotine, but is not itself nicotine,



1 that is intended for human consumption or is likely to
2 be consumed, whether inhaled, absorbed, or ingested by
3 any other means, including but not limited to a
4 cigarette, a cigar, pipe tobacco, chewing tobacco,
5 snuff, or snus;

6 (2) Any electronic smoking device and any substances that
7 may be aerosolized or vaporized by such device,
8 whether or not the substance contains nicotine; or

9 (3) Any component, part, or accessory of any item
10 described in paragraph (1) or (2), whether or not any
11 of these contains tobacco or nicotine, including but
12 not limited to filters, rolling papers, blunt or hemp
13 wraps, hookahs, mouthpieces, and pipes.

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

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



1 "Retailer" means an entity that sells, offers for sale, or
2 exchanges or offers to exchange nicotine products to consumers
3 for any form of consideration. "Retailer" includes an owner,
4 agent, or employee of a nicotine retail location.

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

10 **§321-B Sale of flavored nicotine products; mislabeling as**
11 **nicotine-free.** (a) Beginning January 1, 2026, it shall be
12 unlawful for any retailer to:

13 (1) Sell, offer for sale, or possess with the intent to
14 sell or offer for sale, a flavored nicotine product;
15 or

16 (2) Mislabel as nicotine-free, or sell or market for sale
17 as nicotine-free, any e-liquid product that contains
18 nicotine.

19 (b) A statement or claim, including but not limited to
20 text, color, or images on the nicotine product's labeling or
21 packaging that is used to explicitly or implicitly communicate



1 that the nicotine product has a flavor other than tobacco, made
2 by a manufacturer or an agent or employee of a manufacturer, and
3 directed to consumers or the public shall be prima facie
4 evidence that the nicotine product is a flavored nicotine
5 product.

6 (c) Any flavored nicotine product found in a retailer's
7 possession that is in violation of this part may be considered
8 contraband, be seized by an inspector, or be subject to
9 immediate destruction or disposal by the retailer in accordance
10 with rules adopted by the department pursuant to section 321-D.
11 The cost of proper disposal of electronic smoking devices and e-
12 liquids as hazardous waste pursuant to chapter 11-266.1, Hawaii
13 Administrative Rules, shall be borne by the retailer.

14 (d) Any retailer that violates this part shall be subject
15 to a fine no less than \$100 nor more than \$1,000 for each
16 separate offense. Each day of each violation shall constitute a
17 separate offense. Any fines collected by the department shall
18 be deposited to the credit of the general fund.

19 (e) Notwithstanding any other law to the contrary, any
20 county may adopt a rule or an ordinance that places greater
21 restrictions on the access to flavored nicotine products than



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

5 **§321-C Inspectors; authority and access to records.** (a)

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

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

16 **§321-D Administrative rules.** (a) The department may

17 adopt rules pursuant to chapter 91 to effectuate the purposes of
18 this part.

19 (b) No later than June 30, 2026, the department shall
20 adopt interim rules, which shall be exempt from chapters 91 and
21 201M, to effectuate the purposes of this part; provided that the



1 interim rules shall remain in effect until January 1, 2032, or
2 until rules are adopted pursuant to subsection (a), whichever
3 occurs sooner.

4 **§321-E Contract for services.** The department may contract
5 the services of a third party in accordance with chapter 103D
6 for enforcement, inspections, or any other services needed to
7 administer this part."

8 SECTION 3. There is established two full-time equivalent
9 (2.0 FTE) program specialist positions to review, process, and
10 initiate inspections under the authority of the department of
11 health and one full-time equivalent (1.0 FTE) hearings officer
12 position to preside over administrative hearings and other
13 related hearings duties as required under section 2 of this Act.

14 SECTION 4. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2025-2026 and
17 the same sum or so much thereof as may be necessary for fiscal
18 year 2026-2027 to carry out the purposes of this Act, including
19 the hiring of necessary staff, including two full-time
20 equivalent (2.0 FTE) program specialist positions and one full-
21 time equivalent (1.0 FTE) hearings officer position.



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

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

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

12 SECTION 7. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 8. This Act shall take effect on January 1, 2026;
17 provide that section 4 shall take effect on July 1, 2025.

18
INTRODUCED BY: _____



S.B. NO. 972

Report Title:

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

Description:

Prohibits the sale of flavored nicotine products 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 two full-time equivalent program specialist positions and one full-time equivalent hearing officer position. Appropriates funds. Effective 1/1/2026.

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