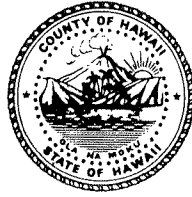


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 102
(DRAFT 2)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 14 OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY ADDING A NEW ARTICLE RELATING TO THE PROHIBITION OF FLAVORED TOBACCO PRODUCTS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 14 of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by adding a new article to be appropriately designated and to read as follows:

“Article ___. Prohibition of Flavored Tobacco Products.

Section 14-___. Definitions.

As used in this article, unless the context requires otherwise:

“Department” means the Hawai'i police department.

“E-liquid” means any liquid or like substance, which may or may not contain nicotine, that is designed or intended to be used in an electronic smoking device, whether or not packaged in a cartridge or other container. The term does not include prescription drugs; cannabis for medical use pursuant to chapter 329 of the Hawai'i Revised Statutes or manufactured cannabis products pursuant to chapter 329D of the Hawai'i Revised Statutes.

“Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, vape pen, or electronic hookah. The term includes any component, part, or accessory of the device, and also includes any e-liquid that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

“Flavored tobacco product” means any tobacco product that imparts:

- (1) A taste or smell, or both, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the

consumption of a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice; or

- (2) A cooling or numbing sensation distinguishable by an ordinary consumer during consumption of such tobacco product.

“Labeling” means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

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

“Retailer” means an entity that sells, offers for sale, exchanges or offers to exchange tobacco products to consumers for any form of consideration. The term includes an owner or agent of a tobacco retail location.

"Tobacco product" means:

- (1) Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; or
- (2) Any electronic smoking device and any e-liquid that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- (3) Any component, part, or accessory of subdivision (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes.

The term does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

“Tobacco retail location” means any premises where tobacco products are sold or distributed to a consumer, including but not limited to any store, bar, lounge, café, stand, outlet, vehicle, cart, location, vending machine, or structure.

Section 14-___. Prohibition.

- (a) It shall be unlawful for any retailer to:
 - (1) Sell or offer for sale a flavored tobacco product;
 - (2) Display, market, or advertise for sale a flavored tobacco product; or

- (3) Mislabel as nicotine-free, or sell or market for sale as nicotine-free, an e-liquid product that contains nicotine.
- (b) Presumption of flavor. Any communication by or on behalf of the manufacturer or retailer of a tobacco product that such product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a cooling or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer:
- (1) Has made or makes a public statement or claim that the tobacco product is a flavored tobacco product;
 - (2) Has used or uses text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product has a flavor other than tobacco, to make a public statement, or claim that the tobacco product is a flavored tobacco product;
 - (3) Has taken or takes action directed at consumers that would be reasonably expected to cause consumers to believe the tobacco product is a flavored tobacco product; or
 - (4) Has made or makes a public statement or claim that a product has a minty, numbing, or cooling effect, such as describing the product as "chill," "ice," "fresh," "arctic," or "frost".
- (c) Any flavored tobacco product found in a retailer's possession that violates this section may be considered contraband and subject to immediate destruction or disposal by the retailer in accordance with the Hawai'i Administrative Rules, Chapter 11-266.1. The cost of proper disposal of electronic smoking devices and e-liquids as hazardous waste pursuant to the Hawai'i Administrative Rules shall be borne by the retailer.

Section 14-___. Penalty.

Any retailer found to violate this article shall be subject to the following:

- (1) For the initial violation.
 - (A) The retailer shall pay an administrative fine of \$1,000; and
 - (B) The retailer shall pay an administrative fine of \$2,000 for each day in which the violation persists beyond the date of the initial violation.

- (2) For a recurring violation.
 - (A) The retailer shall pay an administrative fine of \$2,000; and
 - (B) The retailer shall pay an administrative fine of \$5,000 for each day in which the violation persists beyond the date of the recurring violation.

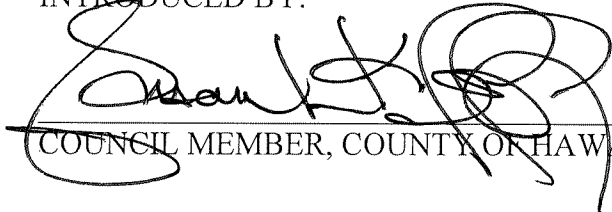
Section 14-___. Enforcement.

The department or its authorized delegates may conduct random, unannounced inspections at locations where tobacco products are distributed to test and ensure compliance with this article and shall generally enforce the provisions of this article. This article shall not apply to controlled purchases as part of a law enforcement activity, or a study authorized by the State department of health under the supervision of law enforcement.”

SECTION 2. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall take effect 42 calendar days after the day on which the State of Hawai‘i preemption of county ordinances on the sale of tobacco products is officially repealed or suspended; provided that if the 42nd day after the day of the repeal or suspension of the preemption occurs on a weekend or holiday, then this ordinance takes effect on the next business day following the 42nd day.

INTRODUCED BY:



 COUNCIL MEMBER, COUNTY OF HAWAI‘I

_____, Hawai‘i
 Date of Introduction:
 Date of 1st Reading:
 Date of 2nd Reading:
 Effective Date:

REFERENCE Comm. 593.4