

ORDINANCE NO. _____

BILL NO. 156 (2024)

A BILL FOR AN ORDINANCE AMENDING TITLE 8, MAUI COUNTY CODE,
TO PROHIBIT RETAILERS FROM SELLING OR MARKETING FLAVORED
TOBACCO PRODUCTS AND MISLABELING PRODUCTS AS NICOTINE-FREE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. This Ordinance’s purpose is to prohibit retailers from selling or marketing flavored tobacco products—including products with menthol and products that produce cooling sensations—and mislabeling products as nicotine-free. Under Section 328J-11.5(b), Hawai‘i Revised Statutes, county councils are preempted from enacting ordinances “that regulate the sale of cigarettes, tobacco products, and electronic smoking devices.” However, the Council is concerned that the escalating use of electronic smoking devices has led to a significant rise in youth nicotine addiction. According to the American Academy of Pediatrics, flavors are one of the main reasons young people initiate tobacco use. Because of these products’ detrimental health effects and addictive nature, this Ordinance is intended to ban flavored tobacco products if Section 328J-11.5(b), Hawai‘i Revised Statutes, or any other relevant statute preempting county ordinances is repealed.

SECTION 2. Title 8, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 8.22

FLAVORED TOBACCO PRODUCTS

Sections:

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| 8.22.010 | Definitions. |
| 8.22.020 | Presumptions. |
| 8.22.030 | Prohibitions. |
| 8.22.040 | Enforcement. |
| 8.22.050 | Exceptions. |
| 8.22.060 | Penalties. |

8.22.010 Definitions. In this chapter, unless the context requires otherwise:

“Distinguishable” means perceptible to the sense of smell, taste, or touch.

“E-liquid” means any liquid or similar substance, which may or may not contain nicotine, that is designed or intended to be used in an electronic smoking device, irrespective of whether it is packaged in a cartridge or other container. “E-liquid” does not include prescription drugs; cannabis for medical use under chapter 329, Hawai‘i Revised Statutes; or manufactured cannabis products under chapter 329D, 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 an electronic cigarette, electronic cigar, electronic pipe, vape pen, or electronic hookah. “Electronic smoking device” includes any component, part, or accessory of the device and any e-liquid that may be aerosolized or vaporized by the device, irrespective of whether 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.

“Flavored tobacco product” means a 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 before, during, or after the consumption of a tobacco product, including 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 the tobacco product.

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

“Packaging” means a pack, box, carton, or container of any kind or 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. “Retailer” includes an owner, agent, or employee of a tobacco retail location.

“Tobacco product” does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration. “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 other means, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. Any electronic smoking device and any e-liquid that may be aerosolized or vaporized by the device, irrespective of whether the substance contains nicotine; or
3. Any component, part, or accessory listed in this definition’s numbered paragraphs 1 or 2, including filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes.

“Tobacco retail location” means any premises where tobacco products are sold or distributed to a consumer, including any store, bar, lounge, café, stand, outlet, vehicle, cart, location, vending machine, or structure.

8.22.020 Presumptions. A. A rebuttable presumption exists that a tobacco product is a flavored tobacco product when:

1. Any communication is made by or on behalf of the manufacturer or retailer of a tobacco product that the product imparts a taste or odor other than the taste or odor of tobacco; or
2. Any communication is made by or on behalf of the manufacturer or retailer that the tobacco product imparts a cooling or numbing sensation.

B. A rebuttable presumption exists that a tobacco product is a flavored tobacco product when a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:

1. Made or makes a public statement or claim that the tobacco product is a flavored tobacco product or that the tobacco product has a minty, numbing, or cooling effect, including by describing the product as “chill,” “ice,” “fresh,” “arctic,” or “frost”;
2. Used or uses text or images, or both, on the tobacco product’s labeling or packaging that indicates or

implies that the tobacco product has a flavor other than tobacco; or

3. Taken or takes action directed at consumers that would reasonably be expected to cause consumers to believe the tobacco product is a flavored tobacco product.

8.22.030 Prohibitions. No retailer may:

A. Sell, offer for sale, or possess with the intent to sell or offer for sale a flavored tobacco product;

B. Display, market, or advertise for sale a flavored tobacco product; or

C. Mislabel as nicotine-free or sell or market for sale as nicotine-free an e-liquid product that contains nicotine.

8.22.040 Enforcement. A. The department of police must enforce the provisions of this chapter.

B. The department of police may conduct random, unannounced inspections at locations where tobacco products are distributed to test for and ensure compliance with this chapter.

8.22.050 Exceptions. This chapter does not apply to controlled purchases that are a part of a law-enforcement activity or a study authorized by the department of health under law-enforcement supervision

8.22.060 Penalties. A retailer found to violate this chapter must pay administrative fines as follows.

A. For the first violation:

1. \$1,000 for the first day of the violation.

2. \$2,000 for each day the violation continues beyond the first day.

B. For a second or subsequent violation:

1. \$2,000 for the first day of the violation.

2. \$5,000 for each day the violation continues beyond the first day.”

SECTION 3. If any provision of this Ordinance or the application of this Ordinance to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 4. This Ordinance takes effect 42 days after the day on which Section 328J-11.5, Hawai'i Revised Statutes, or any other state statute preempting county ordinances on the sale of tobacco products is repealed.

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INTRODUCED BY:

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