

ASSEMBLY, No. 3704

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MAY 19, 2016

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Prohibits the sale or distribution of flavored electronic smoking devices.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/27/2016)

1 AN ACT concerning electronic smoking devices and amending
2 P.L.2008, c.91.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2008, c.91 (C.2A:170-51.5) is amended to
8 read as follows:

9 1. The Legislature finds and declares that:

10 a. There has been a proliferation of flavored cigarettes and
11 flavored electronic smoking devices in recent years, and many of
12 these products have fruit, chocolate, or other flavors that are
13 particularly attractive to children;

14 b. According to public health experts, the existence of these
15 products increases the incidence of tobacco use among children;

16 c. The earlier a person begins using tobacco, the more likely
17 the person will become addicted to tobacco products and continue
18 to smoke throughout that person's life;

19 d. As a result, flavored cigarettes and flavored electronic
20 smoking devices lead to increased tobacco use and addiction, higher
21 health care costs, and a greater incidence of smoking-related illness
22 and death; and

23 e. Therefore, flavored cigarettes and flavored electronic
24 devices pose a significant threat to the health of the general public,
25 and the protection of the public health warrants that the sale and
26 distribution of these products be prohibited in this State.

27 (cf: P.L.2008, c.91, s.1)

28

29 2. Section 2 of P.L.2008, c.91 (C.2A:170-51.6) is amended to
30 read as follows:

31 2. a. No person, either directly or indirectly by an agent or
32 employee, or by a vending machine owned by the person or located
33 in the person's establishment, shall sell, offer for sale, distribute for
34 commercial purpose at no cost or minimal cost or with coupons or
35 rebate offers, give or furnish, to a person;

36 (1) a cigarette, or any component part thereof, which contains a
37 natural or artificial constituent or additive that causes the cigarette
38 or any smoke emanating from that product to have a characterizing
39 flavor other than tobacco, clove, or menthol; or

40 (2) any electronic smoking device or any cartridge or other
41 component of the device or other related product, including a liquid
42 refill, that has a characterizing flavor other than tobacco, clove, or
43 menthol.

44 In no event shall a cigarette, electronic smoking device, or any
45 cartridge or any component part thereof or other related product,
46 including a liquid refill, be construed to have a characterizing flavor

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 based solely on the use of additives or flavorings, or the provision
2 of an ingredient list made available by any means.

3 As used in this section:

4 (1) "characterizing flavor other than tobacco, clove or menthol"
5 means that: the cigarette, electronic smoking device or any
6 cartridge or other component of the device or other related product,
7 including liquid refills, or any smoke or vapor emanating from that
8 product or device, imparts a distinguishable flavor, taste₂ or aroma
9 other than tobacco, clove₂ or menthol prior to or during
10 consumption, including, but not limited to, any fruit, chocolate,
11 vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb₂ or
12 spice flavoring; or the cigarette **[or]**, any component part thereof, or
13 the electronic smoking device or any cartridge or other component
14 of the device or other related product, including a liquid refill, is
15 advertised or marketed as having or producing any such flavor,
16 taste₂ or aroma;

17 (2) "cigarette" means (a) any roll of tobacco wrapped in paper or
18 in any substance not containing tobacco, and (b) any roll of tobacco
19 wrapped in any substance containing tobacco which, because of its
20 appearance, the type of tobacco used in the filler, or its packaging
21 and labeling, is likely to be offered to, or purchased by, consumers
22 as a cigarette as described in subparagraph (a) of this paragraph (2);
23 and (3)"component part thereof" includes, but is not limited to, the
24 tobacco, paper, roll₂ or filter, or any other matter or substance which
25 can be smoked;

26 (3) "electronic smoking device" means an electronic device that
27 can be used to deliver nicotine or other substances to the person
28 inhaling from the device, including, but not limited to, an electronic
29 cigarette, cigar, cigarillo, or pipe.

30 b. A person who violates the provisions of subsection a. of this
31 section shall be liable to a civil penalty of not less than \$250 for the
32 first violation, not less than \$500 for the second violation, and
33 \$1,000 for the third and each subsequent violation. The civil
34 penalty shall be collected pursuant to the "Penalty Enforcement
35 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary
36 proceeding before the municipal court having jurisdiction. An
37 official authorized by statute or ordinance to enforce the State or
38 local health codes or a law enforcement officer having enforcement
39 authority in that municipality **[may]** shall issue a summons for a
40 violation of the provisions of subsection a. of this section, and
41 **[may]** shall serve and execute all process with respect to the
42 enforcement of this section consistent with the Rules of Court. A
43 penalty recovered under the provisions of this subsection shall be
44 recovered by and in the name of the State by the local health
45 agency. The penalty shall be paid into the treasury of the
46 municipality in which the violation occurred for the general uses of
47 the municipality.

1 c. In addition to the provisions of subsection b. of this section,
2 upon the recommendation of the municipality, following a hearing
3 by the municipality, the Division of Taxation in the Department of
4 the Treasury **【may】** shall suspend or, after a second or subsequent
5 violation of the provisions of subsection a. of this section, revoke
6 the license of a retail dealer issued under section 202 of P.L.1948,
7 c.65 (C.54:40A-4). The licensee shall be subject to administrative
8 charges, based on a schedule issued by the Director of the Division
9 of Taxation, which may provide for a monetary penalty in lieu of a
10 suspension.

11 (cf: P.L.2008, c.91, s.2)

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13 3. This act shall take effect immediately.

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STATEMENT

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18 This bill expands the prohibition on the sale or distribution of
19 flavored cigarettes to include flavored electronic smoking devices.

20 Specifically, the bill amends the legislative findings and
21 declarations of P.L.2008, c.91 (C.2A:170-51.5 et seq.) to include
22 information on the health risks associated with flavored electronic
23 smoking devices. The bill further amends the legislative findings
24 and declarations of the law to clarify that the sale or distribution of
25 flavored electronic smoking devices poses a significant threat to the
26 health of the general public, and the protection of the public health
27 warrants the sale or distribution of these devices to be prohibited.

28 Under current law, the legislative findings and declarations
29 highlight the health risks associated with, and specifies the reasons
30 for the prohibition on the sale or distribution of, flavored cigarettes,
31 but do not include information on the dangers posed by, or call for a
32 prohibition on the sale or distribution of, electronic smoking
33 devices.

34 The bill amends section 2 of P.L.2008, c.91 (C.2A:170-51.6) to
35 expand the prohibition on the sale or distribution of flavored
36 cigarettes to include flavored electronic smoking devices or any
37 cartridges or other components of the devices or other related
38 products, including liquid refills.

39 Current law prohibits the sale or distribution of cigarettes that
40 have a characterizing flavor other than tobacco, clove, or menthol.
41 The law does not prohibit the sale or distribution of electronic
42 smoking devices or any cartridges or other components of the
43 devices or other related products, including liquid refills, that have
44 a characterizing flavor other than those currently allowed.

45 As defined in the bill, "electronic smoking device" means an
46 electronic device that can be used to deliver nicotine or other
47 substances to the person inhaling from the device, including, but not
48 limited to, an electronic cigarette, cigar, cigarillo, or pipe.

1 The bill also amends section 2 of P.L.2008, c.91 (C.2A:170-
2 51.6) to expand the definition of "characterizing flavor other than
3 tobacco, clove or menthol" to include electronic smoking devices or
4 any cartridges or other components of the devices or other related
5 products, including liquid refills. Under current law, the definition
6 refers to flavored cigarettes and not to electronic smoking devices
7 or any cartridges or other components of the devices or other
8 related products, including liquid refills.

9 The bill amends the penalty section of the law to clarify that law
10 enforcement officers or officials authorized to enforce State or local
11 are required to issue summonses for violations of the law, and are
12 required to enforce the penalty provisions specified by law. The bill
13 also clarifies that upon recommendation of a municipality, and
14 following a hearing, the Division of Taxation in the Department of
15 the Treasury is required to suspend or revoke a retailer's license
16 after two or more violations of the law.

17 Currently, issuing a summons for a violation or suspending or
18 revoking a retailer's license is at the discretion of code enforcement
19 officials, law enforcement officers, or the division, as applicable,
20 and is not required under the law's provisions.