[First Reprint]

ASSEMBLY, No. 3178

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 8, 2018

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SYNOPSIS

Prohibits sale of menthol cigarettes and sale or distribution of flavored electronic smoking devices and related products.

CURRENT VERSION OF TEXT

As reported by the Assembly Health and Senior Services Committee on November 14, 2019, with amendments.

(Sponsorship Updated As Of: 12/13/2019)

AN ACT concerning electronic smoking devices [1]and tobacco products,[1] and [1]amending P.L.2008, c.91 and[1] supplementing Title 2A of the New Jersey Statutes.

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

1. a. No [1]**[**person**]** retailer[1], either directly or indirectly by an agent or employee, or by a vending machine owned by the [1]**[**person**]** retailer[1] or located in the [1]**[**person's**]** retailer's[1] establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person any electronic smoking device or any cartridge or other component of the device or other related product, including liquid nicotine, that has a characterizing flavor.

b. A [1]**[**person**]** retailer[1] who violates the provisions of subsection a. of this section shall be liable to a civil penalty of not less than [1]**[**$250**]** $500[1] for the first violation, not less than [1]**[**$500**]** $750[1] for the second violation, [1]**[**and**]** not less than[1] $1,000 for the third [1]**[**and each subsequent violation**]** , and for the fourth and each subsequent violation, not less than $1,000 and a three-year suspension of the person's retail dealer licensee issued pursuant to P.L.1948, c.65 C.54:40A-1 et seq[1]. The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes or a law enforcement officer having enforcement authority in that municipality shall issue a summons for a violation of the provisions of subsection a. of this section, and shall serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

c. As used in this section:

"Characterizing flavor" means a distinguishable flavor, taste, or aroma, including, but not limited to, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, [1]mint, menthol,[1] or spice flavoring, that is imparted, prior to or during consumption, by an electronic smoking device or any cartridge or other component of the device or other related product, including liquid nicotine, or any smoke or vapor emanating from that device or product. An electronic smoking device or any cartridge or other

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.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly AHE committee amendments adopted November 14, 2019.

component of the device or other related product, including liquid nicotine, shall be deemed to have a characterizing flavor if the device, cartridge, component, or related product is advertised or marketed as having or producing any such distinguishable flavor, taste, or aroma. [1]"Characterizing flavor" does not include a naturally occurring flavor that has not been added to an electronic smoking device or any cartridge or other component of the device or other related product during the manufacture or distribution of the electronic smoking device or any cartridge or other component of the device or other related product.[1]

"Electronic smoking device" means [1]**[**an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, hookah, or pipe**]** any device that can be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, and any substance that may be aerosolized or vaporized by the device, whether or not the substance contains nicotine. "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the federal Food and Drug Administration under the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. s.301 et seq[1].

"Liquid nicotine" means any solution containing nicotine which is designed or sold for use with an electronic smoking device.

[1]2. Section 2 of P.L.2008, c.91 (C.2A:170-51.6) is amended to read as follows:

2. a. No **[**person**]** retailer, either directly or indirectly by an agent or employee, or by a vending machine owned by the **[**person**]** retailer or located in the **[**person's**]** retailer's establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person a cigarette, or any component part thereof, which contains a natural or artificial constituent or additive that causes the cigarette or any smoke emanating from that product to have a characterizing flavor other than tobacco**[**, clove or menthol**]**. In no event shall a cigarette or any component part thereof be construed to have a characterizing flavor based solely on the use of additives or flavorings, or the provision of an ingredient list made available by any means.

As used in this section:

(1) "characterizing flavor other than tobacco**[**, clove or menthol**]**" means that: the cigarette, or any smoke emanating from that product, imparts a distinguishable flavor, taste or aroma other than tobacco**[**, clove or menthol**]** prior to or during consumption, excluding a naturally occurring flavor that has not been added to the

cigarette or any component part thereof during the manufacture or distribution of the cigarette or any component part thereof, and including, but not limited to, any menthol, mint, wintergreen, clove, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice flavoring; or the cigarette or any component part thereof is advertised or marketed as having or producing any such flavor, taste or aroma;

(2) "cigarette" means (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in subparagraph (a) of this paragraph (2); and

(3) "component part thereof" includes, but is not limited to, the tobacco, paper, roll or filter, or any other matter or substance which can be smoked.

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

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

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

[1]**[**2.**]** 3.[1] This act shall take effect immediately.