

ASSEMBLY, No. 964

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 7 (Burlington)

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District 35 (Bergen and Passaic)

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SYNOPSIS

Prohibits sale of menthol cigarettes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

3

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

6

7 1. (New section) The Legislature finds and declares that:

8 a. Cigarette smoking is the leading preventable cause of death
9 in the United States. The health risks associated with smoking
10 include lung and other cancers, chronic obstructive pulmonary
11 disease, arteriosclerosis, coronary disease, stroke, emphysema,
12 chronic bronchitis, and birth defects.

13 b. Although it is a common misperception that menthol
14 cigarettes are a “safer” alternative to non-menthol cigarettes, studies
15 have found that menthol cigarettes have the same negative health
16 consequences as do non-menthol cigarettes.

17 c. Because menthol has cooling, desensitizing, and
18 proanalgesic effects, it can dull and mask the bitter and irritating
19 effects of tobacco smoke. As a result, menthol cigarettes are
20 particularly attractive to first-time smokers and are associated with
21 increased rates of smoking initiation and progression to regular
22 cigarette smoking. Consequently, younger populations have the
23 highest rate of menthol cigarette use in the country.

24 d. Because menthol cigarettes are more comfortable to smoke,
25 smokers inhale more often, inhale more deeply, and hold the smoke
26 in longer, increasing lung exposure to the chemicals found in
27 tobacco smoke.

28 e. Studies have found that menthol cigarette smokers are more
29 likely to smoke their first cigarette within five minutes of waking,
30 are more likely to wake in the middle of the night for a cigarette,
31 and have increased cravings for cigarettes than do smokers of non-
32 menthol cigarettes. Menthol smokers have been found to be more
33 nicotine dependent and less successful with smoking cessation
34 efforts when compared with other smokers.

35 f. Historically, the marketing and promotion of menthol
36 cigarettes has heavily targeted the African American community,
37 and menthol products are given increased shelf space in retail
38 outlets within African American and other minority neighborhoods.
39 Consequently, nearly 90 percent of African American smokers
40 prefer menthol cigarettes, and other ethnic minorities similarly use
41 menthol cigarettes at disproportionately higher rates. Menthol
42 cigarette use is also more common among women and in
43 communities with lower socioeconomic status.

44 g. A 2011 final report issued by the Tobacco Products
45 Scientific Advisory Committee of the federal Food and Drug

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 Administration (FDA) concluded that “removal of menthol
2 cigarettes from the marketplace would benefit public health in the
3 United States.” An independent scientific review by the FDA
4 concluded “that menthol cigarettes pose a public health risk above
5 that seen with non-menthol cigarettes.”

6 h. In 2013, the FDA issued an Advanced Notice of Proposed
7 Rule Making to take public input on the regulatory options
8 regarding menthol cigarettes. However, the FDA has taken no
9 subsequent action since that time to remove menthol cigarettes from
10 the marketplace. On August 22, 2017, a group of eight U.S.
11 Senators submitted a letter to the FDA requesting further action to
12 address the risk of menthol cigarettes.

13 i. In 2008, New Jersey acted to ban the sale of flavored
14 cigarettes, primarily out of a concern that flavored cigarettes play a
15 primary role in young people taking up smoking. The 2008 ban
16 provided an exception for menthol and clove flavorings. In 2009,
17 Congress similarly acted to ban flavored cigarettes, which ban
18 included clove-flavored cigarettes but provided an exception for
19 menthol cigarettes.

20 j. Because menthol cigarettes present an increased health risk,
21 increased addiction potential, increased difficulty quitting,
22 increased prevalence of smoking initiation and progression to
23 regular tobacco use, and disproportionately increased use
24 prevalence among young people and individuals in minority
25 communities, it is therefore fitting and appropriate, and in the best
26 interests of the public health and the health of the citizens of this
27 State, that New Jersey ban all sales of menthol cigarettes.

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 a cigarette, or any
36 component part thereof, which contains a natural or artificial
37 constituent or additive that causes the cigarette or any smoke
38 emanating from that product to have a characterizing flavor other
39 than tobacco~~], clove or menthol]~~. In no event shall a cigarette or
40 any component part thereof be construed to have a characterizing
41 flavor based solely on the use of additives or flavorings, or the
42 provision of an ingredient list made available by any means.

43 As used in this section:

44 (1) "characterizing flavor other than tobacco~~], clove or~~
45 menthol~~]~~" means that: the cigarette, or any smoke emanating from
46 that product, imparts a distinguishable flavor, taste or aroma other

1 than tobacco[, clove or menthol] prior to or during consumption,
2 including, but not limited to, any menthol, mint, wintergreen, clove,
3 fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
4 beverage, herb or spice flavoring; or the cigarette or any component
5 part thereof is advertised or marketed as having or producing any
6 such flavor, taste or aroma;

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

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

17 b. A person who violates the provisions of subsection a. of this
18 section shall be liable to a civil penalty of not less than \$250 for the
19 first violation, not less than \$500 for the second violation, and
20 \$1,000 for the third and each subsequent violation. The civil
21 penalty shall be collected pursuant to the "Penalty Enforcement
22 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary
23 proceeding before the municipal court having jurisdiction. An
24 official authorized by statute or ordinance to enforce the State or
25 local health codes or a law enforcement officer having enforcement
26 authority in that municipality may issue a summons for a violation
27 of the provisions of subsection a. of this section, and may serve and
28 execute all process with respect to the enforcement of this section
29 consistent with the Rules of Court. A penalty recovered under the
30 provisions of this subsection shall be recovered by and in the name
31 of the State by the local health agency. The penalty shall be paid
32 into the treasury of the municipality in which the violation occurred
33 for the general uses of the municipality.

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

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

45
46 3. This act shall take effect on the 60th day after enactment.

STATEMENT

This bill includes menthol and clove cigarettes in the current prohibition against the sale and distribution of flavored cigarettes.

Current State law provides that no person may 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 that imparts a “characterizing flavor other than tobacco, clove or menthol.”

The ban applies to the cigarette, any smoke emanating from the cigarette, and any component part of the cigarette, including the tobacco, paper, roll or filter, or any other matter or substance that can be smoked. A series of monetary penalties and adverse licensure actions may be imposed for violations of the ban.

The current State law was enacted in 2008; in 2009, a federal ban on the sale of flavored cigarettes was enacted and codified at 21 U.S.C.S. s.387g. The federal law includes clove flavorings in the ban, but provides an exception for tobacco and menthol flavors.

This bill updates the current State law to reflect the federal ban on clove-flavored cigarettes, and additionally prohibits sales of menthol-flavored cigarettes. Menthol cigarettes are associated with increased health risks, increased addiction potential, increased difficulty quitting, increased rates of young people starting smoking and progressing to regular tobacco use, and disproportionately high use rates among young people, women, communities with lower socioeconomic status, and African American and other minority communities.