SENATE, No. 514

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)
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District 30 (Monmouth and Ocean)
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District 31 (Hudson)

Co-Sponsored by:
Senators Turner and Pou

SYNOPSIS

Prohibits sale of menthol cigarettes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 8/27/2020)

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

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

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

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

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

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

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

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

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

g. A 2011 final report issued by the Tobacco Products Scientific Advisory Committee of the federal Food and Drug Administration (FDA) concluded that "removal of menthol cigarettes from the marketplace would benefit public health in the United States." An

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 <u>thus</u> is new matter.

independent scientific review by the FDA concluded "that menthol cigarettes pose a public health risk above that seen with non-menthol cigarettes."

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

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

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

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

2. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person'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, including, but not limited to, any <u>menthol, mint, wintergreen, clove,</u> 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 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.

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

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.