

ASSEMBLY, No. 1989

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

**Assemblywoman Reynolds-Jackson, Assemblymen Benson, DePhillips,
Assemblywomen Jimenez and Mosquera**

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/2/2022)

1 AN ACT concerning electronic smoking devices and tobacco
2 products, and amending P.L.2008, c.91 and supplementing Title
3 2A of the New Jersey Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

16 b. A retailer who violates the provisions of subsection a. of this
17 section shall be liable to a civil penalty of not less than \$500 for the
18 first violation, not less than \$750 for the second violation, not less
19 than \$1,000 for the third, and for the fourth and each subsequent
20 violation, not less than \$1,000 and a three-year suspension of the
21 person's retail dealer licensee issued pursuant to P.L.1948, c.65
22 C.54:40A-1 et seq. The civil penalty shall be collected pursuant to
23 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
24 10 et seq.), in a summary proceeding before the municipal court
25 having jurisdiction. An official authorized by statute or ordinance
26 to enforce the State or local health codes or a law enforcement
27 officer having enforcement authority in that municipality shall issue
28 a summons for a violation of the provisions of subsection a. of this
29 section, and shall serve and execute all process with respect to the
30 enforcement of this section consistent with the Rules of Court. A
31 penalty recovered under the provisions of this subsection shall be
32 recovered by and in the name of the State by the local health
33 agency. The penalty shall be paid into the treasury of the
34 municipality in which the violation occurred for the general uses of
35 the municipality.

36 c. As used in this section:

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

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 nicotine, shall be deemed to have a characterizing flavor if the
2 device, cartridge, component, or related product is advertised or
3 marketed as having or producing any such distinguishable flavor,
4 taste, or aroma. "Characterizing flavor" does not include a
5 naturally occurring flavor that has not been added to an electronic
6 smoking device or any cartridge or other component of the device
7 or other related product during the manufacture or distribution of
8 the electronic smoking device or any cartridge or other component
9 of the device or other related product.

10 "Electronic smoking device" means any device that can be used
11 to deliver any aerosolized or vaporized substance to the person
12 inhaling from the device, including, but not limited to, an e-
13 cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic
14 smoking device" includes any component, part, or accessory of the
15 device, and any substance that may be aerosolized or vaporized by
16 the device, whether or not the substance contains nicotine.
17 "Electronic smoking device" does not include drugs, devices, or
18 combination products authorized for sale by the federal Food and
19 Drug Administration under the "Federal Food, Drug, and Cosmetic
20 Act," 21 U.S.C. s.301 et seq.

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

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

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

39 As used in this section:

40 (1) "characterizing flavor other than tobacco**, clove or**
41 **menthol**" means that: the cigarette, or any smoke emanating from
42 that product, imparts a distinguishable flavor, taste or aroma other
43 than tobacco**, clove or menthol** prior to or during consumption,
44 excluding a naturally occurring flavor that has not been added to the
45 cigarette or any component part thereof during the manufacture or
46 distribution of the cigarette or any component part thereof, and
47 including, but not limited to, any menthol, mint, wintergreen, clove,

1 fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
2 beverage, herb or spice flavoring; or the cigarette or any component
3 part thereof is advertised or marketed as having or producing any
4 such flavor, taste or aroma;

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

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

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

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

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

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45 3. This act shall take effect immediately.

STATEMENT

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This bill prohibits the sale, offer for sale, and distribution of electronic smoking devices and related products and cigarettes that have a characterizing flavor.

As used in the bill with regard to electronic smoking devices, “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, mint, menthol, 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. “Characterizing flavor” does not mean a naturally occurring flavor that has not been added to during the manufacture or distribution of the electronic smoking device or any cartridge or other component of the device or other related product.

“Electronic smoking device” means 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.

A retailer who violates the provision of the bill pertaining to electronic smoking devices is to be liable to a civil penalty of not less than \$500 for the first violation, not less than \$750 for the second violation, not less than \$1,000 for the third, 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.

Under the bill, no retailer is to sell or distribute cigarettes, which contain 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. As used in the bill with regard to cigarettes, “characterizing flavor other than tobacco” means that: the cigarette, or any smoke emanating from that product, imparts a distinguishable flavor, taste or aroma other than tobacco prior to or during consumption, excluding a naturally occurring flavor that has not been added to the cigarette during the manufacture or distribution of the cigarette, 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. The bill provides that a

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1 retailer who violates this provision of the bill pertaining to cigarettes is
2 to be liable to a civil penalty of not less than \$250 for the first
3 violation, not less than \$500 for the second violation, and \$1,000 for
4 the third and each subsequent violation.