

# SENATE, No. 298

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Prohibits the sale or distribution of flavored electronic smoking devices.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/17/2016)**

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,

**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 including a liquid refill, be construed to have a characterizing flavor  
2 based solely on the use of additives or flavorings, or the provision  
3 of an ingredient list made available by any means.

4 As used in this section:

5 (1) "characterizing flavor other than tobacco, clove or menthol"  
6 means that: the cigarette, electronic smoking device or any  
7 cartridge or other component of the device or other related product,  
8 including liquid refills, or any smoke or vapor emanating from that  
9 product or device, imparts a distinguishable flavor, taste<sub>2</sub> or aroma  
10 other than tobacco, clove<sub>2</sub> or menthol prior to or during  
11 consumption, including, but not limited to, any fruit, chocolate,  
12 vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb<sub>2</sub> or  
13 spice flavoring; or the cigarette **[or]**<sub>1</sub> any component part thereof, or  
14 the electronic smoking device or any cartridge or other component  
15 of the device or other related product, including a liquid refill, is  
16 advertised or marketed as having or producing any such flavor,  
17 taste<sub>2</sub> or aroma;

18 (2) "cigarette" means (a) any roll of tobacco wrapped in paper or  
19 in any substance not containing tobacco, and (b) any roll of tobacco  
20 wrapped in any substance containing tobacco which, because of its  
21 appearance, the type of tobacco used in the filler, or its packaging  
22 and labeling, is likely to be offered to, or purchased by, consumers  
23 as a cigarette as described in subparagraph (a) of this paragraph (2);  
24 and (3)"component part thereof" includes, but is not limited to, the  
25 tobacco, paper, roll<sub>1</sub> or filter, or any other matter or substance which  
26 can be smoked;

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

31 b. A person who violates the provisions of subsection a. of this  
32 section shall be liable to a civil penalty of not less than \$250 for the  
33 first violation, not less than \$500 for the second violation, and  
34 \$1,000 for the third and each subsequent violation. The civil  
35 penalty shall be collected pursuant to the "Penalty Enforcement  
36 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary  
37 proceeding before the municipal court having jurisdiction. An  
38 official authorized by statute or ordinance to enforce the State or  
39 local health codes or a law enforcement officer having enforcement  
40 authority in that municipality **[may]** shall issue a summons for a  
41 violation of the provisions of subsection a. of this section, and  
42 **[may]** shall serve and execute all process with respect to the  
43 enforcement of this section consistent with the Rules of Court. A  
44 penalty recovered under the provisions of this subsection shall be  
45 recovered by and in the name of the State by the local health  
46 agency. The penalty shall be paid into the treasury of the  
47 municipality in which the violation occurred for the general uses of  
48 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)

12

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.