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)
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SYNOPSIS
Prohibits the sale or distribution of flavored electronic smoking devices.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning electronic smoking devices and amending
P.L.2008, c.91.

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

1. Section 1 of P.L.2008, c.91 (C.2A:170-51.5) is amended to
read as follows:

1. The Legislature finds and declares that:
   a. There has been a proliferation of flavored cigarettes and
      flavored electronic smoking devices in recent years, and many of
      these products have fruit, chocolate, or other flavors that are
      particularly attractive to children;
   b. According to public health experts, the existence of these
      products increases the incidence of tobacco use among children;
   c. The earlier a person begins using tobacco, the more likely
      the person will become addicted to tobacco products and continue
      to smoke throughout that person's life;
   d. As a result, flavored cigarettes and flavored electronic
      smoking devices lead to increased tobacco use and addiction, higher
      health care costs, and a greater incidence of smoking-related illness
      and death; and
   e. Therefore, flavored cigarettes and flavored electronic
      devices pose a significant threat to the health of the general public,
      and the protection of the public health warrants that the sale and
      distribution of these products be prohibited in this State.

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

   (1) 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; or
   (2) any electronic smoking device or any cartridge or other
    component of the device or other related product, including a liquid
    refill, that has a characterizing flavor other than tobacco, clove, or
    menthol.

   In no event shall a cigarette, electronic smoking device, or any
   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.
including a liquid refill, 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, electronic smoking device or any
cartridge or other component of the device or other related product,
including liquid refills, or any smoke or vapor emanating from that
product or device, imparts a distinguishable flavor, taste, or aroma
other than tobacco, clove, or menthol prior to or during
consumption, including, but not limited to, any fruit, chocolate,
vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or
spice flavoring; or the cigarette, any component part thereof, or
the electronic smoking device or any cartridge or other component
of the device or other related product, including a liquid refill, 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;
(3) "electronic smoking device" means 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, or pipe.
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
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 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. 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] shall 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 immediately.

STATEMENT

This bill expands the prohibition on the sale or distribution of flavored cigarettes to include flavored electronic smoking devices. Specifically, the bill amends the legislative findings and declarations of P.L.2008, c.91 (C.2A:170-51.5 et seq.) to include information on the health risks associated with flavored electronic smoking devices. The bill further amends the legislative findings and declarations of the law to clarify that the sale or distribution of flavored electronic smoking devices poses a significant threat to the health of the general public, and the protection of the public health warrants the sale or distribution of these devices to be prohibited.

Under current law, the legislative findings and declarations highlight the health risks associated with, and specifies the reasons for the prohibition on the sale or distribution of, flavored cigarettes, but do not include information on the dangers posed by, or call for a prohibition on the sale or distribution of, electronic smoking devices.

The bill amends section 2 of P.L.2008, c.91 (C.2A:170-51.6) to expand the prohibition on the sale or distribution of flavored cigarettes to include flavored electronic smoking devices or any cartridges or other components of the devices or other related products, including liquid refills.

Current law prohibits the sale or distribution of cigarettes that have a characterizing flavor other than tobacco, clove, or menthol. The law does not prohibit the sale or distribution of electronic smoking devices or any cartridges or other components of the devices or other related products, including liquid refills, that have a characterizing flavor other than those currently allowed.

As defined in the bill, "electronic smoking device" means 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, or pipe.
The bill also amends section 2 of P.L.2008, c.91 (C.2A:170-51.6) to expand the definition of "characterizing flavor other than tobacco, clove or menthol" to include electronic smoking devices or any cartridges or other components of the devices or other related products, including liquid refills. Under current law, the definition refers to flavored cigarettes and not to electronic smoking devices or any cartridges or other components of the devices or other related products, including liquid refills.

The bill amends the penalty section of the law to clarify that law enforcement officers or officials authorized to enforce State or local are required to issue summonses for violations of the law, and are required to enforce the penalty provisions specified by law. The bill also clarifies that upon recommendation of a municipality, and following a hearing, the Division of Taxation in the Department of the Treasury is required to suspend or revoke a retailer's license after two or more violations of the law.

Currently, issuing a summons for a violation or suspending or revoking a retailer's license is at the discretion of code enforcement officials, law enforcement officers, or the division, as applicable, and is not required under the law's provisions.