

ASSEMBLY, No. 966

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

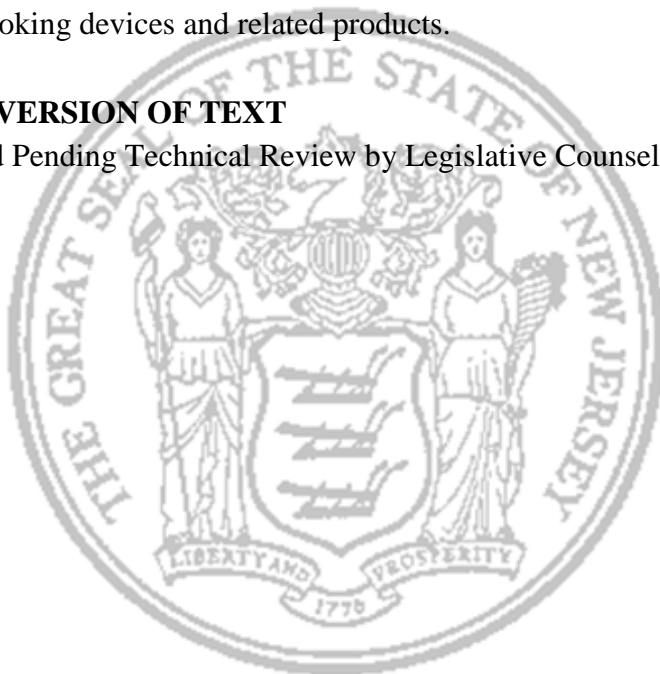
**Assemblywoman Reynolds-Jackson, Assemblyman Houghtaling,
Assemblywoman Downey, Assemblymen Benson, S.Kean, DePhillips,
Assemblywoman Jimenez, Assemblyman Holley and Assemblywoman
Mosquera**

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.



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
46 nicotine, shall be deemed to have a characterizing flavor if the
47 device, cartridge, component, or related product is advertised or

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

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

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

21
22 2. Section 2 of P.L.2008, c.91 (C.2A:170-51.6) is amended to
23 read as follows:

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

37 As used in this section:

38 (1) "characterizing flavor other than tobacco**[, clove or**
39 **menthol]**" means that: the cigarette, or any smoke emanating from
40 that product, imparts a distinguishable flavor, taste or aroma other
41 than tobacco**[, clove or menthol]** prior to or during consumption,
42 excluding a naturally occurring flavor that has not been added to the
43 cigarette or any component part thereof during the manufacture or
44 distribution of the cigarette or any component part thereof, and
45 including, but not limited to, any menthol, mint, wintergreen, clove,
46 fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
47 beverage, herb or spice flavoring; or the cigarette or any component
48 part thereof is advertised or marketed as having or producing any
49 such flavor, taste or aroma;

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

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

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

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

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

40
41 3. This act shall take effect immediately.
42
43

44 STATEMENT 45

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

1 As used in the bill with regard to electronic smoking devices,
2 “characterizing flavor” means a distinguishable flavor, taste, or
3 aroma, including, but not limited to, any fruit, chocolate, vanilla,
4 honey, candy, cocoa, dessert, alcoholic beverage, herb, mint, menthol,
5 or spice flavoring, that is imparted, prior to or during consumption, by
6 an electronic smoking device or any cartridge or other component of
7 the device or other related product, including liquid nicotine, or any
8 smoke or vapor emanating from that device or product.
9 “Characterizing flavor” does not mean a naturally occurring flavor that
10 has not been added to during the manufacture or distribution of the
11 electronic smoking device or any cartridge or other component of the
12 device or other related product.

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

23 A retailer who violates the provision of the bill pertaining to
24 electronic smoking devices is to be liable to a civil penalty of not
25 less than \$500 for the first violation, not less than \$750 for the second
26 violation, not less than \$1,000 for the third, and for the fourth and each
27 subsequent violation, not less than \$1,000 and a three-year suspension
28 of the person’s retail dealer licensee issued pursuant to P.L.1948, c.65
29 C.54:40A-1 et seq.

30 Under the bill, no retailer is to sell or distribute cigarettes, which
31 contain a natural or artificial constituent or additive that causes the
32 cigarette or any smoke emanating from that product to have a
33 characterizing flavor other than tobacco. As used in the bill with
34 regard to cigarettes, “characterizing flavor other than tobacco” means
35 that: the cigarette, or any smoke emanating from that product, imparts
36 a distinguishable flavor, taste or aroma other than tobacco prior to or
37 during consumption, excluding a naturally occurring flavor that has
38 not been added to the cigarette during the manufacture or distribution
39 of the cigarette, and including, but not limited to, any menthol, mint,
40 wintergreen, clove, fruit, chocolate, vanilla, honey, candy, cocoa,
41 dessert, alcoholic beverage, herb or spice flavoring; or the cigarette or
42 any component part thereof is advertised or marketed as having or
43 producing any such flavor, taste or aroma. The bill provides that a
44 retailer who violates this provision of the bill pertaining to cigarettes is
45 to be liable to a civil penalty of not less than \$250 for the first
46 violation, not less than \$500 for the second violation, and \$1,000 for
47 the third and each subsequent violation.