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An Act To Make Maine's Laws Consistent with the Federal Family Smoking Prevention and Tobacco Control Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1560-D, as amended by PL 2007, c. 612, §1, is further amended to read:

§ 1560-D. Flavored cigars

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Characterizing flavor" means a distinguishable taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is imparted to tobacco or tobacco smoke either prior to or during consumption, ~~other than a taste or aroma from tobacco, menthol, clove, coffee, nuts or peppers.~~ "Characterizing flavor" does not include a taste or aroma from tobacco. A cigar is deemed to have a characterizing flavor if the cigar is advertised or marketed as having or producing the taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink.

B. "Component part" includes but is not limited to the tobacco, filter and paper in a ~~cigarette or~~ cigar.

C. "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to the tobacco, paper or filter of a ~~cigarette or~~ cigar during the processing, manufacture or packing of the ~~cigarette or~~ cigar. "Constituent" includes a smoke constituent.

D. "Flavored cigar" means a cigar or any component part ~~thereof~~ of the cigar that contains a constituent that imparts a characterizing flavor.

E. ~~"Flavored cigarette" means a cigarette or any component part thereof that contains a constituent that imparts a characterizing flavor.~~

E-1. "Premium cigar" means a cigar that weighs more than 3 pounds per 1,000 cigars and is wrapped in whole tobacco leaf.

F. "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the ~~cigarette or~~ cigar to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

2. Prohibition on sale or distribution of flavored cigars. ~~Beginning July 1, 2009~~ Except as provided in subsection 5-A, a person may not sell or distribute or offer to sell or distribute in this State any ~~flavored cigarette or~~ flavored cigar unless: the cigar is a premium cigar.

A. ~~The flavored cigarette or flavored cigar was first on the market prior to January 1, 1985, based on a statement to that effect filed with the Attorney General by the current manufacturer and verified by the Attorney General.~~

B. ~~The flavored cigarette or flavored cigar is exempt under subsection 5; or~~

C. ~~The sale is allowed under the transition provisions of subsection 7.~~

3. Violation. A person who violates this section commits a civil violation for which fines may be imposed under subsection 4.

4. Fines. The fines that apply to violations of this section are as set out in this subsection.

A. A person who violates subsection 2 ~~or 6~~ commits a civil violation for which a fine of \$1,000 may be adjudged.

B. A person who violates subsection 2 ~~or 6~~ after having previously been convicted of a violation of the ~~same~~that subsection commits a civil violation for which a fine of \$5,000 may be adjudged.

5. Exemptions. ~~For flavored cigarettes and flavored cigars that were first on the market after January 1, 1985, the Attorney General shall establish and administer a process by rule for granting exemptions based on a determination by the Attorney General that the characterizing flavor is not one known to appeal or likely to appeal to youth.~~

A. ~~After an exemption has been granted for a flavored cigarette or flavored cigar under this subsection, a person or entity to whom an exemption has been granted has an affirmative duty to inform the Attorney General at the time that a material change is made in the characterizing flavor of the flavored cigarette or flavored cigar. A violation of the duty to inform imposed by this paragraph constitutes a civil violation for which a fine of not more than \$10,000 may be adjudged.~~

B. ~~The Attorney General may revoke an exemption granted under this subsection if the Attorney General determines that a material change has been made to the product's characterizing flavor.~~

5-A. Exemptions. Any flavored cigar that the Attorney General determined had no characterizing flavor or was otherwise exempt under former subsection 5 is exempt from the prohibition on flavored nonpremium cigars in subsection 2 so long as no material change is made to the cigar's flavoring, packaging or labeling subsequent to the Attorney General's determination.

6. Tobacco distributors. ~~Beginning on July 1, 2009, a tobacco distributor may not purchase or accept for sale new stock of flavored cigarettes and flavored cigars except for flavored cigarettes or flavored cigars that are exempt under subsection 5.~~

7. Transition. ~~Notwithstanding the prohibitions of subsection 2, from July 1, 2009 to December 31, 2009, a tobacco distributor or retailer may sell flavored cigarettes and flavored cigars that the distributor or retailer held in stock prior to July 1, 2009.~~

8. Website information. To the extent that resources permit, the Attorney General shall maintain on a publicly accessible website a list of ~~flavored cigarettes and flavored cigars~~ that are exempt from the prohibition under subsection 5-A and authorized for distribution and sale in the State.

9. Rulemaking. ~~No later than January 15, 2008, the Attorney General shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.~~

10. Transfers of funds. Notwithstanding any other provision of law, for fiscal years beginning on or after July 1, 2009 the State Controller shall transfer \$92,660 no later than June 30, 2010 and \$145,147 no later than June 30, 2011 from the Fund for a Healthy Maine to General Fund undedicated revenue.

For fiscal years beginning on or after July 1, 2011 the State Controller in consultation with the State Tax Assessor shall determine the General Fund revenue loss resulting from this section and transfer that amount at least annually from the Fund for a Healthy Maine to General Fund undedicated revenue.

Sec. 2. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 22, chapter 262-A, subchapter 5, in the subchapter headnote, the words "flavored cigarettes and flavored cigars" are amended to read "flavored cigars" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Effective 90 days following adjournment of the 124th
Legislature, Second Regular Session, unless otherwise indicated.