

# MAINE STATE LEGISLATURE

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Majority

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1086, L.D. 1542, Bill, "An Act To Make Maine's Laws Consistent with the Federal Family Smoking Prevention and Tobacco Control Act"

Amend the bill by striking out all of section 1 and inserting the following:

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.

COMMITTEE AMENDMENT

R. 2/3

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

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

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

11 ~~A. The flavored cigarette or flavored cigar was first on the market prior to January 1,~~  
12 ~~1985, based on a statement to that effect filed with the Attorney General by the~~  
13 ~~current manufacturer and verified by the Attorney General.~~

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

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

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

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

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

22 B. A person who violates subsection 2 or 6 after having previously been convicted of  
23 a violation of the same that subsection commits a civil violation for which a fine of  
24 \$5,000 may be adjudged.

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

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

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

39 **5-A. Exemptions.** Any flavored cigar that the Attorney General determined had no  
40 characterizing flavor or was otherwise exempt under former subsection 5 is exempt from  
41 the prohibition on flavored nonpremium cigars in subsection 2 so long as no material

1 change is made to the cigar's flavoring, packaging or labeling subsequent to the Attorney  
2 General's determination.

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

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

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

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

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

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

24 Amend the bill in section 2 in the 4th line (page 3, line 15 in L.D.) by striking out the  
25 following: "and flavored tobacco wrappers"

## 26 SUMMARY

27 This amendment is the majority report of the committee. This amendment revises the  
28 bill, which amends existing prohibitions on the sale of flavored tobacco products to make  
29 Maine law consistent with the new federal Family Smoking Prevention and Tobacco  
30 Control Act. The amendment retains the prohibition on selling flavored nonpremium  
31 cigars, while exempting cigars previously exempted by the Attorney General. The  
32 amendment deletes the bill's repeal of portions of the current law regarding an Attorney  
33 General website and transfer of funds to restore lost revenues to the General Fund.

FISCAL NOTE REQUIRED  
(See attached)



# 124th MAINE LEGISLATURE

LD 1542

LR 2379(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

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### Fiscal Note

Minor revenue impact - General Fund

#### Correctional and Judicial Impact Statements

Increases civil violations.

The collection of additional fines may also increase General Fund revenue by minor amounts.

#### Fiscal Detail and Notes

Removing the Attorney General's authority to exempt certain new flavored tobacco products from a ban on such sale will result in a minor reduction of future sales tax revenue, which is a minor revenue decrease to the General Fund.