

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1542

H.P. 1086

House of Representatives, December 21, 2009

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

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.
Received by the Clerk of the House on December 17, 2009. Referred to the Committee on
Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint
Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PERRY of Calais.
Cosponsored by Senator BRANNIGAN of Cumberland and
Representatives: EVES of North Berwick, JONES of Mount Vernon, PETERSON of Rumford,
SANBORN of Gorham, STUCKEY of Portland, Senator: MILLS of Somerset.

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

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

4 **§1560-D. Flavored cigars and flavored tobacco wrappers**

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

7 A. "Characterizing flavor" means a distinguishable taste or aroma other than a taste
8 or aroma from tobacco that is imparted to tobacco or tobacco smoke either prior to or
9 during consumption, ~~other than a taste or aroma from tobacco, menthol, clove, coffee,~~
10 ~~nuts or peppers.~~ A cigar or flavored tobacco wrapper is deemed to have a
11 characterizing flavor if the product is advertised or marketed as having or producing a
12 flavor, taste or aroma.

13 B. "Component part" includes but is not limited to the tobacco, filter, wrapper and
14 paper in a ~~cigarette or cigar~~ or any part of a flavored tobacco wrapper.

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

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

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

24 E-1. "Flavored tobacco wrapper" means a product sold or used to wrap or contain
25 loose tobacco, including blunt wraps, cigarette rolling papers and cigarette tubes, that
26 contains a constituent that imparts a characterizing flavor.

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

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

33 **2. Prohibition on sale or distribution of flavored cigars.** ~~Beginning July 1, 2009,~~
34 ~~a~~ A person may not sell or distribute or offer to sell or distribute in this State any flavored
35 ~~cigarette or flavored cigar~~ unless the cigar is a premium cigar.

36 ~~A. The flavored cigarette or flavored cigar was first on the market prior to January 1,~~
37 ~~1985, based on a statement to that effect filed with the Attorney General by the~~
38 ~~current manufacturer and verified by the Attorney General.~~

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

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

2 **2-A. Prohibition on sale or distribution of flavored tobacco wrappers.** A person
3 may not sell or distribute or offer to sell or distribute in this State any flavored tobacco
4 wrapper.

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

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

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

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

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

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

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

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

31 **7. Transition.** ~~Notwithstanding the prohibitions of subsection 2, from July 1, 2009~~
32 ~~to December 31, 2009, To the extent permissible pursuant to federal law, a tobacco~~
33 ~~distributor or retailer may sell flavored cigarettes and flavored cigars exempted under~~
34 ~~former subsection 5 and any flavored tobacco wrappers that the distributor or retailer held~~
35 ~~has in stock prior to July 1, 2009 until October 31, 2010.~~

36 ~~8. Website information. To the extent that resources permit, the Attorney General~~
37 ~~shall maintain on a publicly accessible website a list of flavored cigarettes and flavored~~
38 ~~cigars that are authorized for distribution and sale in the State.~~

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

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

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

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

17 **SUMMARY**

18 This bill revises existing prohibitions on the sale of flavored tobacco products to
19 make Maine law consistent with the new federal Family Smoking Prevention and
20 Tobacco Control Act, which bans the sale of flavored cigarettes. This bill also simplifies
21 enforcement of the ban on flavored tobacco products.