

MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

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STATE OF MAINE

SENATE

129TH LEGISLATURE

FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "B" to S.P. 364, L.D. 1190, Bill, "An Act To Prohibit the Sale and Distribution of Flavored Tobacco Products"

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Amend the bill by striking out the title and substituting the following:

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'An Act To Prohibit the Sale and Distribution of Flavored Tobacco Products and To Prohibit the Furnishing of Tobacco Products to Minors'

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Amend the bill by inserting after the enacting clause and before section 1 the following:

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'Sec. 1. 17-A MRSA §554, sub-§1, ¶B, as amended by PL 2015, c. 358, §3, is further amended to read:

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B. Knowingly sells, furnishes, gives away or offers to sell, furnish or give away to a child under 16 years of age any intoxicating liquor, ~~cigarettes~~, tobacco product as defined in Title 22, section 1551, subsection 3, air rifles, gunpowder, smokeless powder or ammunition for firearms. Violation of this paragraph is a Class D crime;

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Sec. 2. 17-A MRSA §554, sub-§2, ¶A, as amended by PL 2015, c. 358, §3, is further amended to read:

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A. The defendant was the parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of the child under 16 years of age who furnished the child ~~cigarettes~~, any tobacco product as defined in Title 22, section 1551, subsection 3 or a reasonable amount of intoxicating liquor in the actor's home and presence;

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Sec. 3. 22 MRSA §1541, sub-§1-A, as enacted by PL 2015, c. 318, §1, is amended to read:

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1-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-

COMMITTEE AMENDMENT

1 called vape pen. "Electronic smoking device" includes any component, part or accessory
2 of such a device, whether or not sold separately, and includes any substance intended to
3 be aerosolized or vaporized during the use of the device. "Electronic smoking device"
4 does not include drugs, devices or combination products authorized for sale by the United
5 States Food and Drug Administration, as those terms are defined in the Federal Food,
6 Drug, and Cosmetic Act.'

7 Amend the bill in section 1 in §1560-D in subsection 1 by striking out all of
8 paragraph A (page 1, lines 7 to 19 in L.D.) and inserting the following:

9 'A. "Characterizing flavor" means a distinguishable taste or aroma of candy,
10 chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is
11 imparted to tobacco or tobacco smoke either prior to or during consumption.
12 "Characterizing flavor" does not include a taste or aroma from tobacco. A cigar is
13 deemed to have a characterizing flavor if the cigar is advertised or marketed as
14 having or producing the taste or aroma of candy, chocolate, vanilla, fruit, berry, nut,
15 herb, spice, honey or an alcoholic drink, other than the taste or aroma of tobacco,
16 menthol, mint or wintergreen, imparted either prior to or during consumption of a
17 tobacco product or component part thereof, including, but not limited to, tastes or
18 aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert,
19 alcoholic beverage, herb or spice; however, a tobacco product may not be considered
20 to have a characterizing flavor solely because of the use of additives or flavorings or
21 the provision of ingredient information.'

22 Amend the bill in section 1 in §1560-D in subsection 1 by striking out all of
23 paragraph C-1 (page 1, lines 28 to 38 in L.D.) and inserting the following:

24 'C-1. "Electronic smoking device" has the same meaning as in section 1541,
25 subsection 1-A.'

26 Amend the bill by inserting after section 1 the following:

27 'Sec. 2. 22 MRSA §1580-F is enacted to read:

28 **§1580-F. Furnishing or allowing consumption of tobacco products by certain**
29 **persons prohibited**

30 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
31 following terms have the following meanings.

32 A. "Minor" means a person who has not reached the age of 21 years, unless the
33 person has attained 18 years of age as of July 1, 2018.

34 B. "Tobacco product" has the same meaning as in section 1551, subsection 3.

35 **2. Offense.** Except as provided in subsection 3, a person who is 21 years of age or
36 older may not knowingly:

37 A. Procure, or in any way aid or assist in procuring, furnish, give, sell or deliver a
38 tobacco product for or to a minor. The following penalties apply to violations of this
39 paragraph.

40 (1) A person who violates this paragraph commits a Class D crime.

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1 (2) A person who violates this paragraph commits a Class D crime for which a
2 fine of not less than \$500 may be imposed, none of which may be suspended, if
3 the violation involves a minor who is less than 18 years of age.

4 (3) A person who violates this paragraph after having been previously convicted
5 of violating this paragraph or paragraph B within a 6-year period commits a Class
6 D crime for which a fine of not less than \$1,000 may be imposed, none of which
7 may be suspended.

8 (4) A person who violates this paragraph after having been previously convicted
9 of violating this paragraph or paragraph B 2 or more times within a 6-year period
10 commits a Class D crime for which a fine of not less than \$1,500 may be
11 imposed, none of which may be suspended; or

12 B. Allow a minor under that person's control or in a place under that person's control
13 to possess or consume a tobacco product. The following penalties apply to violations
14 of this paragraph.

15 (1) A person who violates this paragraph commits a Class D crime.

16 (2) A person who violates this paragraph commits a Class D crime for which a
17 fine of not less than \$1,000 may be imposed, none of which may be suspended, if
18 the violation involves a minor who is less than 18 years of age.

19 (3) A person who violates this paragraph after having been previously convicted
20 of violating this paragraph or paragraph A within a 6-year period commits a
21 Class D crime for which a fine of not less than \$2,000 may be imposed, none of
22 which may be suspended.

23 3. Exceptions. This section does not apply to a licensee under chapter 262-A or an
24 agent of that licensee in the scope of employment.'

25 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
26 section number to read consecutively.

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SUMMARY

28 This amendment amends the bill by removing the flavors of menthol, mint and
29 wintergreen from the list of flavors prohibited in the bill. It makes the definition of
30 "electronic smoking device" in the bill consistent with the definition of "electronic
31 smoking device" in the Maine Revised Statutes, Title 22.

32 It also provides that it is a Class D crime for a person who is 21 years of age or older
33 to procure, furnish, give, sell or deliver a tobacco product to a minor or allow a minor
34 under that person's control or in a place under that person's control to possess or consume
35 a tobacco product. It is an exception to this provision if the person provides a tobacco
36 product to a minor in a home in the presence of the minor's parent, guardian or custodian.
37 This provision does not apply to a licensee under the Maine Revised Statutes, Title 22,
38 chapter 262-A or agents of that licensee in the scope of employment. Current law
39 provides that a person is guilty of endangering the welfare of a child if the person
40 knowingly sells, furnishes, gives away or offers to sell, furnish or give away cigarettes to

COMMITTEE AMENDMENT " to S.P. 364, L.D. 1190 (5-239)

12/2/03

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a child under 16 years of age. This amendment instead makes the same conduct illegal with respect to a tobacco product.

FISCAL NOTE REQUIRED

(See attached)



129th MAINE LEGISLATURE

LD 1190

LR 143(03)

An Act To Prohibit the Sale and Distribution of Flavored Tobacco Products

Fiscal Note for Bill as Amended by Committee Amendment "B" (S-239)
 Committee: Health and Human Services
 Fiscal Note Required: Yes

Fiscal Note

Future biennium revenue decrease - Fund for a Healthy Maine

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$3,094,000	\$4,125,000	\$4,084,000	\$4,043,000
Revenue				
General Fund	(\$3,094,000)	(\$4,125,000)	(\$4,084,000)	(\$4,043,000)

Correctional and Judicial Impact Statements

Establishes new Class D crimes

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional fine revenue will increase General Fund and dedicated revenue by minor amounts.

Fiscal Detail and Notes

Prohibiting the sale and distribution of certain flavored tobacco products will reduce General Fund revenue by \$3,094,000 in fiscal year 2019-20 and \$4,125,000 in fiscal year 2020-21.

Except for some cigars and electronic smoking devices, the tobacco products that are prohibited by this bill are included in the overall revenue that is used in the calculation of the Master Settlement Agreement (Tobacco Settlement) payments. Therefore, there would also be a decrease in Fund for a Healthy Maine (FHM) revenue in the future. However, it is not known how much of the FHM payment received annually is from the flavored products, so no estimate of the revenue decrease is made at this time.