

**New Jersey Department of Health and Senior Services Guidance to Local Health Officers and Local Enforcement Officers for Implementation of P.L. 2008, c. 91, “An Act Banning the Sale of Certain Flavored Cigarettes.”**

**The following information is a summary of the above referenced new law, which is effective November 30, 2008. It is hoped that this information is useful to Health Officers and Law Enforcement in the enforcement of the law which prohibits the sale of certain flavored cigarettes:**

**Summary**

On October 1, 2008, Governor Corzine approved P.L. 2008, c. 91, An Act Banning the Sale of Certain Flavored Cigarettes codified at N.J.S.A. 2A: 170-51.5 to take effect November 30, 2008.

**Background**

In enacting this legislation, the Legislature declared that there has been a proliferation of flavored cigarettes in recent years, and many of these products have fruit, chocolate or other flavors that are particularly attractive to children. According to public health experts, the existence of these products increases the incidence of tobacco use among children. The earlier a person begins using tobacco, the more likely the person will become addicted to tobacco products and continue to smoke throughout that person's life. As a result, flavored cigarettes lead to increased tobacco use and addiction, higher health care costs, and a greater incidence of smoking-related illness and death. Therefore, flavored cigarettes pose a significant threat to the health of the general public, and the protection of the public health warrants that the sale and distribution of these products be prohibited in this state. N.J.S.A. 2A:170-51.5.

**Provisions of the Law**

**Authority: N.J.S.A. 2A:170-51.5 et seq.**

The law states that:

Certain flavored cigarettes pose a significant threat to the health of the general public and the protection of the public health warrants that the sale and distribution of these products be prohibited in this state.

A flavored cigarette is one which contains flavors other than tobacco, clove or menthol, such that the cigarette or any smoke emanating from that product imparts a distinguishable flavor, taste or aroma prior to or during consumption, including, but not limited to, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage,

herb or spice flavoring; or the cigarette or any component thereof, is advertised or marketed as having or producing any such flavor, taste or aroma.

The prohibition does not apply to little cigars, small cigars, cigarillos, large cigars, pipe tobacco or smokeless tobacco.

### **Enforcement**

1. A health or law enforcement officer having enforcement authority in a municipality may issue a summons for a violation of the law to a retailer.
2. To enforce the statute, the health or law enforcement officer may:
  - Arrive at site location;
  - Enter into the retail establishment and verify the address;
  - Ask retail merchant if he has any flavored cigarettes, since they may not be immediately visible;
3. If the retail merchant offers to sell or produce flavored cigarettes, inform the merchant he or she has violated the law, and pursuant to the “Penalty Enforcement Law of 1999,” P.L. 1999, c.274 (C. 2A:58-10 et seq.) a summons may be issued. A retail merchant who is issued a summons will be required to appear in court before a Judge in his local jurisdiction. The merchant shall be liable to a civil penalty for the violation:
  - 1<sup>st</sup> offense - not less than \$250.00
  - 2<sup>nd</sup> offense - not less than \$500.00
  - 3<sup>rd</sup> offense and each subsequent violation - \$1,000.00
4. Additionally, after a second or subsequent offense, upon recommendation of the municipality, following a hearing by the municipality, the Department of Treasury may suspend or revoke the license of the violating retail merchant.

These penalties shall be recovered by and in the name of the State by the local health agency, and paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

5. Inspections for flavored cigarettes may take place while conducting routine inspections of retail food establishments pursuant to N.J.S.A. 26:1A-15, N.J.S.A. 26:1A-20, and N.J.S.A. 26:3-31, if the establishment sells tobacco products. (Note: identify other enforcement agencies such as local health departments, etc.) Example: In addition to a visual inspection of all cigarette displays, Registered Environmental Health Specialist (REHS) to inspect a few packs of cigarettes, to ensure that they are

not flavored. (REHS currently inspects a few packs of cigarettes to ensure the tax stamp displays a NJ stamp and not another state, or none at all.)

### **Specific Suggestions for Local Health Departments**

1. Provide prior Notice about the new law to tobacco retail establishments in the community. The local health department may mail a letter to each tobacco retail sale establishment in the community, informing them that effective November 30, 2008, flavored cigarettes (except menthol and clove) are banned for sale, distribution, etc. A copy of the law should be attached to the letter. The definitions of flavored cigarette should be included in the body of the letter, along with the penalty fines for violations.
2. Provide prior notice to the general public in the community. The local health department may publish notices in the local newspaper on the new law and its effective date.
3. Provide prior notice to retail food licensed establishments. The local health department may mail a notice letter and copy of the new law to the retail food license establishments licensed by the local health department. Information may also be provided with license renewals.
4. The local health department may contact the local police department and DARE officer prior to the law taking effect on November 30, 2008. A cover letter with a copy of the law and any educational information may be shared with the police department.

### **Questions and Inquiries**

Questions and Inquiries should be directed to:

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