



Rep. John Connor

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1 AMENDMENT TO SENATE BILL 222

2 AMENDMENT NO. _____. Amend Senate Bill 222 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Flavored Tobacco Ban Act.

6 Section 5. Definitions. In this Act:

7 "Alternative nicotine product" means a product or device
8 not consisting of or containing tobacco that provides for the
9 ingestion into the body of nicotine, whether by chewing,
10 smoking, absorbing, dissolving, inhaling, snorting, sniffing,
11 or by any other means. "Alternative nicotine product" does not
12 include: cigarettes as defined in Section 1 of the Cigarette
13 Tax Act and tobacco products as defined in Section 10-5 of the
14 Tobacco Products Tax Act of 1995; tobacco product and
15 electronic cigarette as defined in this Section; or any product
16 approved by the United States Food and Drug Administration for

1 sale as a tobacco cessation product, as a tobacco dependence
2 product, or for other medical purposes, and is being marketed
3 and sold solely for that approved purpose.

4 "Characterizing flavor" means a distinguishable taste or
5 aroma, including, but not limited to, any fruit, chocolate,
6 vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
7 herb or spice flavoring, not including tobacco, menthol, mint,
8 or wintergreen. In no event shall a tobacco product, related
9 tobacco product, alternative nicotine product, or solution or
10 substance intended for use with electronic cigarettes or any
11 component part of a tobacco product, related tobacco product,
12 alternative nicotine product, or solution or substance
13 intended for use with electronic cigarettes be construed to
14 have a characterizing flavor based solely on the use of trace
15 additives or flavorings or the provision of ingredient
16 information.

17 "Electronic cigarette" means:

18 (1) any device that employs a battery or other
19 mechanism to heat a solution or substance to produce a
20 vapor or aerosol intended for inhalation;

21 (2) any cartridge or container of a solution or
22 substance intended to be used with or in the device or to
23 refill the device; or

24 (3) any solution or substance, whether or not it
25 contains nicotine intended for use in the device.

26 "Electronic cigarette" includes, but is not limited to, any

1 electronic nicotine delivery system, electronic cigar,
2 electronic cigarillo, electronic pipe, electronic hookah, vape
3 pen, or similar product or device, and any components or parts
4 that can be used to build the product or device. "Electronic
5 cigarette" does not include: cigarettes as defined in Section 1
6 of the Cigarette Tax Act and tobacco products as defined in
7 Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco
8 product, related tobacco product, and alternative nicotine
9 product as defined in this Section; any product approved by the
10 United States Food and Drug Administration for sale as a
11 tobacco cessation product, as a tobacco dependence product, or
12 for other medical purposes, and is being marketed and sold
13 solely for that approved purpose; any asthma inhaler prescribed
14 by a physician for that condition and is being marketed and
15 sold solely for that approved purpose; or any therapeutic
16 product approved for use under the Compassionate Use of Medical
17 Cannabis Pilot Program Act.

18 "Flavored alternative nicotine product" means any
19 alternative nicotine product that contains a natural or
20 artificial constituent or additive that imparts a
21 characterizing flavor.

22 "Flavored related tobacco product" means any related
23 tobacco product that contains a natural or artificial
24 constituent or additive that imparts a characterizing flavor.

25 "Flavored solution or substance intended for use with
26 electronic cigarettes" means any solution or substance

1 intended for use with electronic cigarettes that contains a
2 natural or artificial constituent or additive that imparts a
3 characterizing flavor.

4 "Flavored tobacco product" means any tobacco product that
5 contains a natural or artificial constituent or additive that
6 imparts a characterizing flavor.

7 "Labeling" means written, printed, pictorial, or graphic
8 matter upon a tobacco product, related tobacco product,
9 alternative nicotine product, or solution or substance
10 intended for use with electronic cigarettes or any of its
11 packaging.

12 "Packaging" or "package" means a pack, box, carton, or
13 container of any kind, or, if no other container, any wrapping,
14 including cellophane, in which a tobacco product, related
15 tobacco product, alternative nicotine product, or solution or
16 substance intended for use with electronic cigarettes is sold
17 or offered for sale to a consumer.

18 "Related tobacco product" means any product intended for or
19 traditionally used with tobacco, including, but not limited to,
20 papers, wraps, tubes, or filters. A product of a type that has
21 in the past been used in conjunction with tobacco or nicotine
22 use will be deemed a "related tobacco product" regardless of
23 any labeling or descriptive language on such product stating
24 that the product is not intended for use with tobacco or for
25 non-tobacco use only or other similar language.

26 "Retail location" means: (1) a building from which tobacco

1 products, related tobacco products, alternative nicotine
2 products, or solutions or substances intended for use with
3 electronic cigarettes are sold at retail; or (2) a vending
4 machine.

5 "Tobacco product" means any product containing or made from
6 tobacco that is intended for human consumption, whether smoked,
7 heated, chewed, absorbed, dissolved, inhaled, snorted,
8 sniffed, or ingested by any other means, including, but not
9 limited to, cigarettes, cigars, little cigars, chewing
10 tobacco, pipe tobacco, snuff, snus, and any other smokeless
11 tobacco product that contains tobacco that is finely cut,
12 ground, powdered, or leaf and intended to be placed in the oral
13 cavity. "Tobacco product" includes any component, part, or
14 accessory of a tobacco product, whether or not sold separately.
15 "Tobacco product" does not include: an electronic cigarette and
16 alternative nicotine product as defined in this Section; or any
17 product that has been approved by the United States Food and
18 Drug Administration for sale as a tobacco cessation product, as
19 a tobacco dependence product, or for other medical purposes,
20 and is being marketed and sold solely for that approved
21 purpose.

22 "Tobacco retailer" means a person who engages in this State
23 in the sale of tobacco products, related tobacco products,
24 alternative nicotine products, or solutions or substances
25 intended for use with electronic cigarettes directly to the
26 public from a retail location, including a person who operates

1 vending machines from which tobacco products, related tobacco
2 products, alternative nicotine products, or solutions or
3 substances intended for use with electronic cigarettes are sold
4 in this State.

5 Section 10. Prohibition; penalties.

6 (a) A tobacco retailer or any of the tobacco retailer's
7 agents or employees may not sell, offer for sale, or possess
8 with the intent to sell or offer for sale, a flavored tobacco
9 product, flavored related tobacco product, flavored
10 alternative nicotine product, or flavored solution or
11 substance intended for use with electronic cigarettes. There is
12 a presumption that a tobacco product, related tobacco product,
13 alternative nicotine product, or solution or substance
14 intended for use with electronic cigarettes is a flavored
15 tobacco product, flavored related tobacco product, flavored
16 alternative nicotine product, or flavored solution or
17 substance intended for use with electronic cigarettes if the
18 tobacco product, related tobacco product, alternative nicotine
19 product, or solution or substance intended for use with
20 electronic cigarettes has or produces a characterizing flavor,
21 including, but not limited to, text, color, or images on the
22 product's labeling or packaging that are used to explicitly or
23 implicitly communicate or suggest that the tobacco product,
24 related tobacco product, alternative nicotine product, or
25 solution or substance intended for use with electronic

1 cigarettes has a characterizing flavor. A product with labeling
2 or packaging that suggests the presence of a characterizing
3 flavor or uses a concept flavor is presumed to be a flavored
4 tobacco product, flavored related tobacco product, flavored
5 alternative nicotine product, or flavored solution or
6 substance intended for use with electronic cigarettes.

7 (b) Any person, other than a manufacturer or distributor,
8 who violates subsection (a) is guilty of a petty offense and
9 shall be fined an amount as follows:

10 (1) For the first offense, the offender shall be fined
11 an amount of \$100 for each individual package of tobacco
12 product, related tobacco product, alternative nicotine
13 product, or solution or substance intended for use with
14 electronic cigarettes sold or offered for sale.

15 (2) For a second offense within a 2-year period, the
16 offender shall be fined \$250 for each individual package of
17 tobacco product, related tobacco product, alternative
18 nicotine product, or solution or substance intended for use
19 with electronic cigarettes sold or offered for sale.

20 (3) For a third or subsequent offense within a 2-year
21 period, the offender shall be fined \$500 for each
22 individual package of tobacco product, related tobacco
23 product, alternative nicotine product, or solution or
24 substance intended for use with electronic cigarettes sold
25 or offered for sale.

26 (c) A manufacturer or distributor shall be subject to a

1 civil penalty not to exceed \$50,000 for each brand or style of
2 the manufacturer's or distributor's tobacco products, related
3 tobacco products, alternative nicotine products, or solutions
4 or substances intended for use with electronic cigarettes that
5 is found to have been sold or offered for sale in violation of
6 this Act on more than one occasion during any 30-day period.
7 With respect to a manufacturer or distributor, it is an
8 affirmative defense to a finding of a violation under this Act
9 that the sale or offer for sale, occurred without the
10 knowledge, consent, authorization or involvement, direct or
11 indirect, of the manufacturer or distributor.

12 (d) Moneys received as fines and civil penalties under this
13 Act shall be remitted to the State Treasurer to be used as
14 provided in paragraphs (1) and (2) of this subsection. All
15 moneys collected as fines and civil penalties for violations of
16 this Act shall be distributed in the following manner:

17 (1) one-half of each fine and civil penalty shall be
18 distributed to the State agency or unit of local government
19 that successfully prosecuted the offender; and

20 (2) one-half of each fine and civil penalty shall be
21 remitted to the Department of Revenue to be used for
22 enforcing this Act and the Prevention of Tobacco Use by
23 Persons under 21 Years of Age and Sale and Distribution of
24 Tobacco Products Act.

25 Section 15. Local preemption. This Act does not preempt or

1 otherwise prohibit the adoption of a local standard that
2 imposes greater restrictions on the access to tobacco products,
3 related tobacco products, alternative nicotine products, or
4 solutions or substances intended for use with electronic
5 cigarettes than the restrictions imposed by this Act. To the
6 extent that there is an inconsistency between this Act and a
7 local standard that imposes greater restrictions on the access
8 to tobacco products, related tobacco products, alternative
9 nicotine products, or solutions or substances intended for use
10 with electronic cigarettes, the greater restriction on the
11 access to tobacco products, related tobacco products,
12 alternative nicotine product, or solution or substance
13 intended for use with electronic cigarettes in the local
14 standard shall prevail.".