



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1190

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S.P. 364

In Senate, March 12, 2019

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

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator MILLETT of Cumberland.  
Cosponsored by Representative GROHOSKI of Ellsworth and  
Senators: BREEN of Cumberland, CLAXTON of Androscoggin, MOORE of Washington,  
SANBORN, L. of Cumberland, Representatives: KORNFELD of Bangor, McCREA of Fort  
Fairfield, MORALES of South Portland.

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 2011, c. 380, Pt. II, §2, is further  
3 amended to read:

4 **§1560-D. Flavored tobacco products**

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

20 B. ~~"Component part" includes but is not limited to the tobacco, filter and paper in a~~  
21 ~~cigar means any element of a tobacco product, including, but not limited to, the~~  
22 ~~tobacco, filter and paper, but not including any constituent.~~

23 C. ~~"Constituent" means any ingredient, substance, chemical or compound, other than~~  
24 ~~tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to the~~  
25 ~~tobacco, paper or filter of a cigar a tobacco product during the processing,~~  
26 ~~manufacture or packaging packaging of the cigar tobacco product. "Constituent"~~  
27 ~~includes a smoke constituent.~~

28 C-1. "Electronic smoking device" means a device used to deliver nicotine or any  
29 other substance intended for human consumption that may be used by a person to  
30 simulate smoking through inhalation of vapor or aerosol from the device, including,  
31 without limitation, a device manufactured, distributed, marketed or sold as an  
32 electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called  
33 vape pen. "Electronic smoking device" includes any component, part or accessory of  
34 such a device, whether or not sold separately, and includes any substance intended to  
35 be aerosolized or vaporized during the use of the device. "Electronic smoking  
36 device" does not include drugs, devices or combination products authorized for sale  
37 by the United States Food and Drug Administration, as those terms are defined in the  
38 Federal Food, Drug, and Cosmetic Act.

39 D. ~~"Flavored cigar tobacco product" means a cigar or any component part of the~~  
40 ~~cigar that contains a constituent that imparts a characterizing flavor tobacco product~~  
41 ~~or a component part of a tobacco product that contains a constituent that imparts a~~  
42 ~~characterizing flavor.~~

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 part of the cigar  
5 tobacco product to the smoke or that is formed by the combustion or heating of  
6 tobacco, additives or other component of the tobacco product.

7 **2. Prohibition on sale or distribution of flavored tobacco products.** ~~Except as~~  
8 ~~provided in subsection 5-A, a~~ A person may not sell or distribute or offer to sell or  
9 distribute in this State any flavored cigar ~~unless the cigar is a premium cigar~~ tobacco  
10 product.

11 A public statement or claim made or disseminated by the manufacturer of a tobacco  
12 product, or by a person authorized or permitted by the manufacturer to make or  
13 disseminate public statements concerning a tobacco product, that a tobacco product has or  
14 produces a characterizing flavor constitutes presumptive evidence that the tobacco  
15 product is a flavored tobacco product.

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 commits a civil violation for which a fine of  
21 \$1,000 may be adjudged.

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

25 ~~**5-A. Exemptions.** Any flavored cigar that the Attorney General determined had no~~  
26 ~~characterizing flavor or was otherwise exempt under former subsection 5 is exempt from~~  
27 ~~the prohibition on flavored nonpremium cigars in subsection 2 so long as no material~~  
28 ~~change is made to the cigar's flavoring, packaging or labeling subsequent to the Attorney~~  
29 ~~General's determination.~~

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

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

38 **Sec. 2. Maine Revised Statutes headnote amended; revision clause.** In the  
39 Maine Revised Statutes, Title 22, chapter 262-A, subchapter 5, in the subchapter  
40 headnote, the words "flavored cigars" are amended to read "flavored tobacco products"

1 and the Revisor of Statutes shall implement this revision when updating, publishing or  
2 republishing the statutes.

3

### **SUMMARY**

4 This bill prohibits the sale and distribution of flavored tobacco products, including  
5 flavored cigars.