



**County  
Health Officials  
of New York**  
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# SUPPORTS

**With Recommendations**

**A3499/S84 (Bichotte Hermelyn/Hoylman)**

## **AN ACT to amend the public health law, in relation to prohibiting the retail sale of flavored tobacco products and accessories**

The New York State Association of County Health Officials (NYSACHO) supports, with recommendations, prohibiting the sale and distribution of flavored tobacco products and accessories, including mint and menthol flavors. NYSACHO strongly recommends that the proposed bill be amended to state that violators shall be subject to penalties pursuant to section 1399-ee of Article 1399-F of the public health law. This will make the fines for violating the prohibition of sale of flavored tobacco products consistent to those levied as part of enforcement under Sections 1399-ee and 1399-ff of the public health law. We believe this is a critical component to enforcement because the flavored additives are particularly effective in enticing children and adolescents to use these products.

Flavor additives have long been used in cigarettes to mask the smell or taste of tobacco smoke, but there is increasing recognition of the harms associated with these additives. More than 19.5 million people are current smokers of menthol cigarettes, include a disproportionate number of minorities and young people.<sup>1</sup> Approximately, 85.8 percent of African American smokers, 46 percent of Hispanic smokers, and 39 percent of Asian smokers use menthol cigarettes, compared to 28.7 percent of white smokers. Moreover, 7 out of 10 African American youth ages 12-17 years smoke use menthol cigarettes. The high proportion of menthol use among African Americans follows decades of culturally directed marketing and promotion by tobacco industries.<sup>2</sup>

In addition, menthol is a proven factor in youth initiation of tobacco use. Menthol masks the bitter, astringent flavor of unflavored tobacco products and cools and numbs the throat, thus reducing the harsher aspects of tobacco use that deter use. In recognition of this growing public health concern, particularly the impact of menthol use on health disparities related to tobacco use, the U.S. Food and Drug Administration is currently considering a ban on menthol products. While current Federal administrative actions are important, but NYSACHO believes it is in the best interest of New Yorkers, to move forward with strong state laws prohibiting the use of these products.

To assure the proposed statute achieves its goals, the fines for the sale of flavored products must be consistent with existing effective penalties. While the current proposed fine of \$500 somewhat addresses earlier concerns regarding the need for stronger fines to assure compliance, in local health departments'

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<sup>1</sup> <https://www.fda.gov/tobacco-products/products-ingredients-components/menthol-and-other-flavors-tobacco-products>

<sup>2</sup> <https://www.cdc.gov/tobacco/disparities/african-americans/index.htm>

field experiences, the best and most consistent approach would be to use the existing ATUPA graduated fine structure. Local health departments have found that these current statutory penalties function as an appropriate deterrent to potential violators of tobacco-related laws. This approach assures that regulated retailers are already familiar with the potential consequences to their business.

Section 1399-ee provides that a fine for a first violation be a minimum of \$300, not to exceed \$1000, and that a fine of a minimum of \$500, not to exceed \$1500 be set for subsequent violations. Using the existing statutory language for penalties also allows for the imposition of an escalating point system based on number of violations, which can lead to a revocation of the retailer's license by the NYS Department of Tax and Finance for repeat violators. The loss of the retail license can also cause the revocation of state liquor or lottery licenses resulting in a significant loss of revenue for repeat non-compliers. This is a powerful incentive for retailers to fully support and obey the law. Combined, the existing penalties serve as a strong deterrent and NYSACHO believes they are warranted given the profound negative impact flavored products have had in addicting adolescents and children to these harmful products.

Enforcement of tobacco control related statutes are under the jurisdiction of local health departments, or in some counties, the state department of health. Enforcement activities are conducted through spot checks of registered retailers, or because of complaints received regarding potential non-compliance by retailers. Enforcement actions and any civil penalties are against the seller, and typically also involve additional education and information to assure that the retailer is aware of their legal compliance obligations. Under current law and in this proposal, there is no enforcement or penalties targeted at those who use or try to purchase regulated tobacco products. Public health activities regarding tobacco use focuses on education of children, adolescents and adults regarding the harm caused by these products and outreach to those who use tobacco products to encourage quitting and facilitate linkages to cessation services.

We also recommend that the law ban flavored additives to any cannabis product that would be subject to the same restrictions as defined in Public Health Law 1399-n. New York recently passed bills to legalize adult-use cannabis (S. 854-A/A. 1248-A); Unfortunately, this legislation failed to extend existing prohibitions on flavored additives to smoked cannabis products. NYSACHO recommends that A3499 prohibit the use of flavors not derived from the cannabis plant or other natural botanical sources that can be used to deliver cannabis to a person in aerosolized or vaporized form. It is important that the law contain such a provision from the onset to prevent the same pitfalls associated with the use of flavored additives in the tobacco industry.

For the reasons stated above, NYSACHO supports this legislation and recommends it be enacted into law with amendments to reflect the adoption of the existing penalties in section 1399-ee of Article 13-F.

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