

5008

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting the sale of flavored tobacco products

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature hereby finds and
2 declares that there has been a proliferation of flavored tobacco
3 products in recent years. Many of these products have fruit, chocolate
4 or other flavors that are particularly attractive to children. According
5 to public health experts, children are more likely to choose flavored
6 tobacco products when they start using tobacco, and thus the existence
7 of these products increases the incidence of tobacco use among children.
8 Moreover, the earlier that an individual begins using tobacco, the more
9 likely he or she will become addicted to tobacco products and will
10 continue to use them throughout his or her lifetime. As a result,
11 flavored tobacco products result in increased tobacco use, increased
12 addiction, a greater incidence of tobacco-related illnesses, increased
13 health care costs, and more tobacco-related deaths. In 2009, the United
14 States Congress enacted legislation prohibiting the sale of flavored
15 cigarettes, but such action does not apply to other tobacco products.
16 The legislature, therefore, finds and declares that flavored tobacco
17 products, like flavored cigarettes, present a significant threat to
18 public health, and that the sale of flavored tobacco products must be
19 prohibited.

20 S 2. Article 13-F of the public health law is amended by adding a new
21 section 1399-aaa to read as follows:

22 S 1399-AAA. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED. 1. NO PERSON
23 SHALL SELL OR OFFER FOR SALE IN THIS STATE ANY TOBACCO PRODUCT, AS
24 DEFINED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED SEVENTY OF THE TAX
25 LAW, OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO, THE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 TOBACCO, PAPER, ROLL OR FILTER, WHICH CONTAINS A NATURAL OR ARTIFICIAL
2 CONSTITUENT OR ADDITIVE THAT CAUSES SUCH TOBACCO PRODUCT OR ITS SMOKE TO
3 HAVE A CHARACTERIZING FLAVOR EXCEPT FOR PIPE TOBACCO AND HAND-MADE
4 CIGARS AS DEFINED IN SUBDIVISION TWO OF THIS SECTION.

5 2. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE
6 THE FOLLOWING MEANINGS:

7 (A) "PIPE TOBACCO" SHALL MEAN TOBACCO THAT IS NO SMALLER THAN TWENTY
8 CUTS PER INCH AND HAS A MOISTURE CONTENT OF AT LEAST FIFTEEN PERCENT.

9 (B) "HAND-MADE CIGARS" SHALL MEAN CIGARS THAT ARE MADE ENTIRELY BY
10 HAND OF A TOBACCO LEAF WRAPPER, HAND CONSTRUCTED AND HAND WRAPPED,
11 WHOLESALING FOR TWO DOLLARS OR MORE, AND WEIGHING MORE THAN THREE POUNDS
12 PER ONE THOUSAND CIGARS.

13 3. FOR THE PURPOSES OF THIS SECTION, THE PHRASE "CHARACTERIZING
14 FLAVOR" SHALL MEAN A DISTINGUISHABLE TASTE OR AROMA, INCLUDING BUT NOT
15 LIMITED TO ANY FRUIT, CHOCOLATE, VANILLA, HONEY, CANDY, COCOA, DESSERT,
16 ALCOHOLIC BEVERAGE, HERB OR SPICE FLAVORING, BUT SHALL NOT INCLUDE
17 TOBACCO, MENTHOL, MINT, OR WINTERGREEN. IN NO EVENT SHALL A TOBACCO
18 PRODUCT OR ANY COMPONENT PART THEREOF, INCLUDING, BUT NOT LIMITED TO,
19 THE TOBACCO, PAPER, ROLL OR FILTER BE CONSTRUED TO HAVE A CHARACTERIZING
20 FLAVOR BASED SOLELY ON THE USE OF ADDITIVES OR FLAVORINGS, OR THE
21 PROVISION OF AN INGREDIENT LIST MADE AVAILABLE BY ANY MEANS.

22 4. ANY PERSON OTHER THAN A MANUFACTURER WHO VIOLATES THE PROVISIONS OF
23 THIS SECTION SHALL BE SUBJECT TO A FINE OF NOT MORE THAN ONE HUNDRED
24 DOLLARS FOR EACH INDIVIDUAL PACKAGE OF TOBACCO PRODUCT SOLD OR OFFERED
25 FOR SALE. A MANUFACTURER MAY BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED
26 FIFTY THOUSAND DOLLARS FOR EACH BRAND OR STYLE OF THAT MANUFACTURER'S
27 TOBACCO PRODUCTS THAT IS FOUND TO HAVE BEEN SOLD OR OFFERED FOR SALE IN
28 VIOLATION OF THIS SECTION ON MORE THAN ONE OCCASION DURING ANY THIRTY
29 DAY PERIOD. VIOLATIONS OF THIS SECTION SHALL BE ENFORCED PURSUANT TO
30 SECTION THIRTEEN HUNDRED NINETY-NINE-FF OF THIS ARTICLE, EXCEPT THAT ANY
31 PERSON MAY SUBMIT A COMPLAINT TO AN ENFORCEMENT OFFICER THAT A VIOLATION
32 OF THIS SECTION HAS OCCURRED.

33 5. THE PROHIBITIONS CONTAINED IN SUBDIVISION ONE OF THIS SECTION SHALL
34 NOT APPLY TO A RETAIL TOBACCO BUSINESS AS DEFINED IN SUBDIVISION SEVEN
35 OF SECTION THIRTEEN HUNDRED NINETY-NINE-N OF THIS CHAPTER, PROVIDED SUCH
36 BUSINESS DOES NOT ADMIT ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS OLD.

37 S 3. This act shall take effect on the one hundred fiftieth day after
38 it shall have become a law.