S T A T E O F N E W Y O R K

1179--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. PAULIN, GALEF, GUNTHER, JAFFEE, SCARBOROUGH, RYAN, ROSENTHAL -- Multi-Sponsored by -- M. of A. WEISENBERG -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

LBD01425-02-3

S 1399-AAA. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED. 1. NO PERSON SHALL SELL OR OFFER FOR SALE IN THIS STATE ANY TOBACCO PRODUCT, AS DEFINED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED SEVENTY OF THE TAX LAW, OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO, THE TOBACCO, PAPER, ROLL OR FILTER, WHICH CONTAINS A NATURAL OR ARTIFICIAL CONSTITUENT OR ADDITIVE THAT CAUSES SUCH TOBACCO PRODUCT OR ITS SMOKE TO HAVE A CHARACTERIZING FLAVOR EXCEPT FOR PIPE TOBACCO AND HAND-MADE CIGARS AS DEFINED IN SUBDIVISION TWO OF THIS SECTION.

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

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

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

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

4. ANY PERSON OTHER THAN A MANUFACTURER WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS FOR EACH INDIVIDUAL PACKAGE OF TOBACCO PRODUCT SOLD OR OFFERED FOR SALE. A MANUFACTURER MAY BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIFTY THOUSAND DOLLARS FOR EACH BRAND OR STYLE OF SUCH MANUFACTURER'S TOBACCO PRODUCTS THAT IS FOUND TO HAVE BEEN SOLD OR OFFERED FOR SALE IN VIOLATION OF THIS SECTION ON MORE THAN ONE OCCASION DURING ANY THIRTY DAY PERIOD, PROVIDED, HOWEVER, THAT WITH RESPECT TO A MANUFACTURER, IT SHALL BE AN AFFIRMATIVE DEFENSE TO A FINDING OF VIOLATION PURSUANT TO THIS SECTION THAT SUCH SALE OR OFFER OF SALE, AS APPLICABLE, OCCURRED WITHOUT THE KNOWLEDGE, CONSENT, AUTHORIZATION AND INVOLVEMENT, DIRECT OR INDIRECT, OF SUCH MANUFACTURER. VIOLATIONS OF THIS SECTION SHALL BE ENFORCED PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-NINE-FF OF THIS ARTICLE, EXCEPT THAT ANY PERSON MAY SUBMIT A COMPLAINT TO AN ENFORCEMENT OFFICER THAT A VIOLATION OF THIS SECTION HAS OCCURRED.

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

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