

5686

2013-2014 Regular Sessions

I N   S E N A T E

June 4, 2013

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Introduced by Sen. RITCHIE -- 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.

LBD01425-03-3

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 SUCH 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, PROVIDED, HOWEVER, THAT WITH RESPECT TO A MANUFACTURER, IT  
30 SHALL BE AN AFFIRMATIVE DEFENSE TO A FINDING OF VIOLATION PURSUANT TO  
31 THIS SECTION THAT SUCH SALE OR OFFER OF SALE, AS APPLICABLE, OCCURRED  
32 WITHOUT THE KNOWLEDGE, CONSENT, AUTHORIZATION AND INVOLVEMENT, DIRECT OR  
33 INDIRECT, OF SUCH MANUFACTURER. VIOLATIONS OF THIS SECTION SHALL BE  
34 ENFORCED PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-NINE-FF OF THIS  
35 ARTICLE, EXCEPT THAT ANY PERSON MAY SUBMIT A COMPLAINT TO AN ENFORCEMENT  
36 OFFICER THAT A VIOLATION OF THIS SECTION HAS OCCURRED.

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

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