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I N  A S S E M B L Y

March 4, 2014

Introduced by M. of A. GALEF, GOTTFRIED, RYAN, GOODELL -- Multi-Sponsored by -- M. of A. DUPREY, PERRY, RIVERA, SCHIMEL -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the tax law, in relation to the prohibition of the sale of flavored little cigars

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

Section 1. The public health law is amended by adding a new section 1399-cc-1 to read as follows:

S 1399-CC-1. SALE OF FLAVORED LITTLE CIGARS AND CIGARILLOS PROHIBITED. 1. NO PERSON SHALL KNOWINGLY SELL OR PROVIDE TO ANY OTHER PERSON UNDER EIGHTEEN YEARS OF AGE ANY LITTLE CIGAR, AS DEFINED IN SUBDIVISION TWO-B OF SECTION FOUR HUNDRED SEVENTY OF THE TAX LAW, OR CIGARILLO, AS DEFINED IN SUBDIVISION TWO-C OF SECTION FOUR HUNDRED SEVENTY OF THE TAX LAW, WHICH CONTAINS A NATURAL OR ARTIFICIAL CONSTITUENT OR ADDITIVE THAT CAUSES SUCH LITTLE CIGAR OR CIGARILLO OR ITS SMOKE TO HAVE A CHARACTERIZING FLAVOR. NO OTHER PROVISION OF LAW AUTHORIZING THE SALE OF TOBACCO PRODUCTS, OTHER THAN SUBDIVISION THREE OF THIS SECTION, SHALL AUTHORIZE THE SALE OF FLAVORED LITTLE CIGARS OR CIGARILLOS. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS.

2. 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. A LITTLE CIGAR OR CIGARILLO WILL BE DEEMED TO HAVE A CHARACTERIZING FLAVOR IF IT OR ANY COMPONENT PART THEREOF IS ADVERTISED OR MARKETED AS HAVING OR PRODUCING A FLAVOR, TASTE OR AROMA OTHER THAN TOBACCO, MENTHOL, MINT OR WINTERGREEN.

3. (A) THE PROVISIONS OF 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.

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

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(B) ANY PERSON OPERATING A RETAIL TOBACCO BUSINESS WHEREIN FLAVORED LITTLE CIGARS OR CIGARILLOS ARE SOLD OR OFFERED FOR SALE IS PROHIBITED FROM SELLING SUCH FLAVORED LITTLE CIGARS OR CIGARILLOS TO INDIVIDUALS UNDER EIGHTEEN YEARS OF AGE, AND SHALL POST IN A CONSPICUOUS PLACE A SIGN UPON WHICH THERE SHALL BE IMPRINTED THE FOLLOWING STATEMENT, "SALE OF FLAVORED LITTLE CIGARS OR CIGARILLOS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." SUCH SIGN SHALL BE PRINTED ON A WHITE CARD IN RED LETTERS AT LEAST ONE-HALF INCH IN HEIGHT.

(C) SALES OF FLAVORED LITTLE CIGARS OR CIGARILLOS BY A RETAIL TOBACCO BUSINESS SHALL BE MADE ONLY TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH A DRIVER'S LICENSE OR OTHER PHOTOGRAPHIC IDENTIFICATION CARD ISSUED BY A GOVERNMENT ENTITY OR EDUCATIONAL INSTITUTION INDICATING THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY APPEARS TO BE AT LEAST TWENTY-FIVE YEARS OF AGE, PROVIDED, HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING ALLEGING THE SALE OF A TOBACCO PRODUCT TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

(D)(I) ANY PERSON OPERATING A RETAIL TOBACCO BUSINESS WHEREIN FLAVORED LITTLE CIGARS OR CIGARILLOS ARE SOLD OR OFFERED FOR SALE MAY PERFORM A TRANSACTION SCAN AS A PRECONDITION FOR SUCH PURCHASES.

(II) IN ANY INSTANCE WHERE THE INFORMATION DECIPHERED BY THE TRANSACTION SCAN FAILS TO MATCH THE INFORMATION PRINTED ON THE DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION CARD, OR IF THE TRANSACTION SCAN INDICATES THAT THE INFORMATION IS FALSE OR FRAUDULENT, THE ATTEMPTED TRANSACTION SHALL BE DENIED.

(III) IN ANY PROCEEDING PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-NINE-EE OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT SUCH PERSON HAD PRODUCED A DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENTAL ENTITY, SUCCESSFULLY COMPLETED THAT TRANSACTION SCAN, AND THAT THE FLAVORED LITTLE CIGAR OR CIGARILLO HAD BEEN SOLD, DELIVERED OR GIVEN TO SUCH PERSON IN REASONABLE RELIANCE UPON SUCH IDENTIFICATION AND TRANSACTION SCAN. IN EVALUATING THE APPLICABILITY OF SUCH AFFIRMATIVE DEFENSE THE COMMISSIONER SHALL TAKE INTO CONSIDERATION ANY WRITTEN POLICY ADOPTED AND IMPLEMENTED BY THE SELLER TO EFFECTUATE THE PROVISIONS OF THIS CHAPTER. USE OF A TRANSACTION SCAN SHALL NOT EXCUSE ANY PERSON OPERATING A RETAIL TOBACCO BUSINESS WHEREIN FLAVORED LITTLE CIGARS OR CIGARILLOS ARE SOLD, OR THE AGENT OR EMPLOYEE OF SUCH PERSON, FROM THE EXERCISE OF REASONABLE DILIGENCE OTHERWISE REQUIRED BY THIS CHAPTER. NOTWITHSTANDING THE ABOVE PROVISIONS, ANY SUCH AFFIRMATIVE DEFENSE SHALL NOT BE APPLICABLE IN ANY CIVIL OR CRIMINAL PROCEEDING, OR IN ANY OTHER FORUM.

(E) A RETAIL TOBACCO BUSINESS OR AGENT OR EMPLOYEE OF SUCH BUSINESS SHALL ONLY USE A DEVICE CAPABLE OF DECIPHERING ANY ELECTRONICALLY READABLE FORMAT, AND SHALL ONLY USE THE INFORMATION RECORDED AND MAINTAINED THROUGH THE USE OF SUCH DEVICES, FOR THE PURPOSES CONTAINED IN PARAGRAPH (D) OF THIS SUBDIVISION. NO RETAIL TOBACCO BUSINESS OR AGENT OR EMPLOYEE OF SUCH BUSINESS SHALL RESELL OR DISSEMINATE THE INFORMATION RECORDED DURING SUCH A SCAN TO ANY THIRD PERSON. SUCH PROHIBITED RESALE OR DISSEMINATION INCLUDES BUT IS NOT LIMITED TO ANY ADVERTISING, MARKETING OR PROMOTIONAL ACTIVITIES. NOTWITHSTANDING THE RESTRICTIONS IMPOSED BY THIS PARAGRAPH, SUCH RECORDS MAY BE RELEASED PURSUANT TO A COURT ORDERED SUBPOENA OR PURSUANT TO ANY OTHER STATUTE THAT SPECIFICALLY AUTHORIZES THE RELEASE OF SUCH INFORMATION. EACH VIOLATION OF THIS PARAGRAPH SHALL BE PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS.

(F) A RETAIL TOBACCO BUSINESS OR AGENT OR EMPLOYEE OF SUCH BUSINESS MAY ELECTRONICALLY OR MECHANICALLY RECORD AND MAINTAIN ONLY THE INFORMA-

TION FROM A TRANSACTION SCAN NECESSARY TO EFFECTUATE THIS SECTION. SUCH INFORMATION SHALL BE LIMITED TO THE FOLLOWING: (I) NAME, (II) DATE OF BIRTH, (III) DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION NUMBER, AND (IV) EXPIRATION DATE.

(G) AS USED IN THIS SUBDIVISION, "A DEVICE CAPABLE OF DECIPHERING ANY ELECTRONICALLY READABLE FORMAT", "CARD HOLDER" AND "TRANSACTION SCAN" SHALL HAVE THE SAME MEANINGS AS ARE ASCRIBED TO SUCH TERMS BY SECTION THIRTEEN HUNDRED NINETY-NINE-CC OF THIS ARTICLE.

S 2. Subdivision 2 of section 470 of the tax law, as amended by section 15 of part D of chapter 134 of the laws of 2010, is amended and a new subdivision 2-c is added to read as follows:

2. "Tobacco products." Any cigar, including a little cigar OR CIGARILLO, or tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff.

2-C. "CIGARILLO." ANY ROLL FOR SMOKING MADE WHOLLY OR IN PART OF TOBACCO IF SUCH PRODUCT IS WRAPPED IN ANY SUBSTANCE CONTAINING TOBACCO, OTHER THAN NATURAL LEAF TOBACCO WRAPPER, AND WEIGHING NOT MORE THAN SEVEN POUNDS PER THOUSAND, REGARDLESS IF SUCH PRODUCT CONTAINS A CELLULOSE ACETATE OR OTHER INTEGRATED FILTER, OR AN ADDED TIP OF ANY OTHER MATERIAL.

S 3. Subdivision 19 of section 470 of the tax law, as amended by section 17 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

19. "Cigar." Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in subdivision one of this section). "Cigar" shall include, except where expressly excluded, any little cigar OR CIGARILLO.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.