

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. PAULIN, GALEF, GUNTHER, JAFFEE, SCARBOROUGH,
RYAN, ROSENTHAL, MOSLEY, WEPRIN, SKOUFIS, CLARK -- read once and
referred 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 ASSEM-
BLY, 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

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

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1 DEFINED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED SEVENTY OF THE TAX
2 LAW, OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO, THE
3 TOBACCO, PAPER, ROLL OR FILTER, WHICH CONTAINS A NATURAL OR ARTIFICIAL
4 CONSTITUENT OR ADDITIVE THAT CAUSES SUCH TOBACCO PRODUCT OR ITS SMOKE TO
5 HAVE A CHARACTERIZING FLAVOR EXCEPT FOR PIPE TOBACCO AND HAND-MADE
6 CIGARS AS DEFINED IN SUBDIVISION TWO OF THIS SECTION.

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

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

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

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

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

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

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