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

5221--A

2015-2016 Regular Sessions

I N S E N A T E

May 7, 2015

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- 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 use of coupons or use of a "price reduction instrument" to lower the price of certain 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 finds that tobacco use is a leading cause of preventable premature death in the United States and the state of New York. Given the substantial human and economic costs associated with tobacco use, New York state has taken numerous steps to reduce tobacco use among adults and to prevent minors from taking up cigarette smoking or using other tobacco products. However, the legislature finds that the state should take further action to discourage adults and young adults from taking up and continuing to smoke cigarettes, use e-cigarettes, or use other tobacco products.

Despite New York state's laws which prohibit the sale of cigarettes and e-cigarettes to children under age 18, tobacco use among young adults persists. According to recent findings, nine out of ten smokers first tried cigarettes by age eighteen, and ninety-nine percent first tried cigarettes by age twenty-six. In addition, a recent report issued by the Centers for Disease Control and Prevention and the U.S. Food and Drug Administration's Center for Tobacco Products noted that while cigarette use among high school students has declined, it still is a substantial share (9.2%) of the most commonly used tobacco products by these students. Of particular importance, the report notes that e-cigarette use tripled among middle and high school students from 2013-2014

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

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and that e-cigarette use has surpassed the current use of every other tobacco product overall.

The legislature finds that the use of price reduction promotions, especially coupons targeted in mailing, design and marketing to young adults, results in additional and unwanted incentives for tobacco use. By encouraging purchase by price reduction, these youth-directed promotions unquestionably encourage youth use of tobacco products, and should be disallowed.

The legislature hereby declares that enactment of this act is necessary to address the persistent availability of low-priced cigarettes and tobacco products targeted to young people in New York state. This act will ban the redemption of coupons and other price reduction instruments in the sale of cigarettes and tobacco products to consumers. Such actions are necessary to discourage the use of tobacco products by younger people in New York state.

S 2. The public health law is amended by adding a new section 1399-bb-1 to read as follows:

S 1399-BB-1. PROHIBITION ON THE SALE OF DISCOUNTED CIGARETTES AND TOBACCO PRODUCTS. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "CIGAR" MEANS ANY ROLL OF TOBACCO FOR SMOKING THAT IS WRAPPED IN LEAF TOBACCO OR IN ANY SUBSTANCE CONTAINING TOBACCO, WITH OR WITHOUT A TIP OR MOUTHPIECE. CIGAR DOES NOT INCLUDE A LITTLE CIGAR AS DEFINED IN THIS SECTION.

(B) "CIGARETTE" MEANS ANY ROLL FOR SMOKING MADE WHOLLY OR IN PART OF TOBACCO OR ANY OTHER SUBSTANCE, IRRESPECTIVE OF SIZE OR SHAPE AND WHETHER OR NOT SUCH TOBACCO OR SUBSTANCE IS FLAVORED, ADULTERATED OR MIXED WITH ANY OTHER INGREDIENT, THE WRAPPER OR COVER OF WHICH IS MADE OF PAPER OR ANY OTHER SUBSTANCE OR MATERIAL BUT IS NOT MADE IN WHOLE OR IN PART OF TOBACCO.

(C) "ELECTRONIC CIGARETTE" MEANS AN ELECTRONIC DEVICE THAT DELIVERS VAPOR FOR INHALATION. ELECTRONIC CIGARETTE SHALL INCLUDE ANY REFILL, CARTRIDGE, AND ANY OTHER COMPONENT OF AN ELECTRONIC CIGARETTE. THE TERM INCLUDES ANY SUCH DEVICE, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH OR VAPE PEN, OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR. ELECTRONIC CIGARETTE SHALL NOT INCLUDE ANY PRODUCT APPROVED BY THE FOOD AND DRUG ADMINISTRATION FOR SALE AS A DRUG OR MEDICAL DEVICE.

(D) "LITTLE CIGAR" MEANS ANY ROLL OF TOBACCO FOR SMOKING THAT IS WRAPPED IN LEAF TOBACCO OR IN ANY SUBSTANCE CONTAINING TOBACCO AND THAT WEIGHS NO MORE THAN FOUR POUNDS PER THOUSAND OR HAS A CELLULOSE ACETATE OR OTHER INTEGRATED FILTER.

(E) "LISTED PRICE" MEANS THE PRICE LISTED FOR CIGARETTES OR TOBACCO PRODUCTS ON THEIR PACKAGES OR ON ANY RELATED SHELVING, POSTING, ADVERTISING OR DISPLAY AT THE PLACE WHERE THE CIGARETTES OR TOBACCO PRODUCTS ARE SOLD OR OFFERED FOR SALE, INCLUDING ALL APPLICABLE TAXES.

(F) "PERSON" MEANS ANY NATURAL PERSON, CORPORATION, PARTNERSHIP, FIRM, ORGANIZATION OR OTHER LEGAL ENTITY.

(G) "PRICE REDUCTION INSTRUMENT" MEANS ANY COUPON, VOUCHER, REBATE, CARD, PAPER, NOTE, FORM, STATEMENT, TICKET, IMAGE, OR OTHER ISSUE, WHETHER IN PAPER, DIGITAL, OR ANY OTHER FORM, USED FOR COMMERCIAL PURPOSES TO RECEIVE AN ARTICLE, PRODUCT, SERVICE, OR ACCOMMODATION WITHOUT CHARGE OR AT A DISCOUNTED PRICE.

(H) "TOBACCO PRODUCT" MEANS ANY PRODUCT WHICH CONTAINS TOBACCO THAT IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING ANY COMPONENT, PART, OR ACCESSORY OF SUCH PRODUCT. TOBACCO PRODUCT SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY CIGAR, LITTLE CIGAR, CHEWING TOBACCO, PIPE TOBACCO,

ROLL-YOUR-OWN TOBACCO, SNUS, BIDI, SNUFF, TOBACCO-CONTAINING SHISHA, OR DISSOLVABLE TOBACCO PRODUCT. TOBACCO PRODUCT SHALL NOT INCLUDE CIGARETTES OR ANY PRODUCT THAT HAS BEEN APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION FOR SALE AS A TOBACCO USE CESSATION PRODUCT OR FOR OTHER MEDICAL PURPOSES AND THAT IS BEING MARKETED AND SOLD SOLELY FOR SUCH PURPOSES.

2. PROHIBITION ON THE SALE OF CIGARETTES FOR LESS THAN THE LISTED PRICE. NO PERSON SHALL:

(A) HONOR OR ACCEPT A COUPON OR OTHER PRICE REDUCTION INSTRUMENT IN ANY TRANSACTION RELATED TO THE SALE OF CIGARETTES TO A CONSUMER;

(B) SELL OR OFFER FOR SALE CIGARETTES TO A CONSUMER THROUGH ANY MULTI-PACKAGE DISCOUNT OR OTHERWISE PROVIDE TO A CONSUMER ANY CIGARETTES FOR LESS THAN THE LISTED PRICE IN EXCHANGE FOR THE PURCHASE OF ANY OTHER CIGARETTES BY THE CONSUMER;

(C) SELL, OFFER FOR SALE, OR OTHERWISE PROVIDE ANY PRODUCT OTHER THAN CIGARETTES TO A CONSUMER FOR LESS THAN THE LISTED PRICE IN EXCHANGE FOR THE PURCHASER OF CIGARETTES BY THE CONSUMER; OR

(D) SELL, OFFER FOR SALE, OR OTHERWISE PROVIDE CIGARETTES TO A CONSUMER FOR LESS THAN THE LISTED PRICE.

3. PROHIBITION ON THE SALE OF TOBACCO PRODUCTS FOR LESS THAN THE LISTED PRICE. NO PERSON SHALL:

(A) HONOR OR ACCEPT A COUPON OR OTHER PRICE REDUCTION INSTRUMENT IN ANY TRANSACTION RELATED TO THE SALE OF TOBACCO PRODUCTS TO A CONSUMER;

(B) SELL OR OFFER FOR SALE TOBACCO PRODUCTS TO A CONSUMER THROUGH ANY MULTI-PACKAGE DISCOUNT OR OTHERWISE PROVIDE TO A CONSUMER ANY TOBACCO PRODUCT FOR LESS THAN THE LISTED PRICE IN EXCHANGE FOR THE PURCHASE OF ANY OTHER TOBACCO PRODUCT BY THE CONSUMER;

(C) SELL, OFFER FOR SALE, OR OTHERWISE PROVIDE ANY PRODUCT OTHER THAN A TOBACCO PRODUCT TO A CONSUMER FOR LESS THAN THE LISTED PRICE IN EXCHANGE FOR THE PURCHASE OF A TOBACCO PRODUCT BY THE CONSUMER; OR

(D) SELL, OFFER FOR SALE, OR OTHERWISE PROVIDE TOBACCO PRODUCTS TO A CONSUMER FOR LESS THAN THE LISTED PRICE.

4. PROHIBITION ON THE SALE OF ELECTRONIC CIGARETTES FOR LESS THAN THE LISTED PRICE. NO PERSON SHALL:

(A) HONOR OR ACCEPT A COUPON OR OTHER PRICE REDUCTION INSTRUMENT IN ANY TRANSACTION RELATED TO THE SALE OF AN ELECTRONIC CIGARETTE TO A CONSUMER;

(B) SELL OR OFFER FOR SALE ELECTRONIC CIGARETTES TO A CONSUMER THROUGH ANY MULTI-PACKAGE DISCOUNT OR OTHERWISE PROVIDE TO A CONSUMER ANY TOBACCO PRODUCT FOR LESS THAN THE LISTED PRICE IN EXCHANGE FOR THE PURCHASE OF ANY OTHER ELECTRONIC CIGARETTES BY THE CONSUMER;

(C) SELL, OFFER FOR SALE, OR OTHERWISE PROVIDE ANY PRODUCT OTHER THAN AN ELECTRONIC CIGARETTE TO A CONSUMER FOR LESS THAN THE LISTED PRICE IN EXCHANGE FOR THE PURCHASE OF AN ELECTRONIC CIGARETTE BY THE CONSUMER; OR

(D) SELL, OFFER FOR SALE, OR OTHERWISE PROVIDE ELECTRONIC CIGARETTES TO A CONSUMER FOR LESS THAN THE LISTED PRICE.

5. RULES. THE COMMISSIONER OR HIS OR HER DELEGATE SHALL PROMULGATE ANY RULES AS MAY BE NECESSARY OR DESIRABLE FOR THE PURPOSE OF CARRYING OUT THIS SECTION.

6. ENFORCEMENT AND PENALTIES. (A) WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK, TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN

FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY IN THE FOLLOWING AMOUNTS:

(1) UP TO ONE THOUSAND DOLLARS FOR A FIRST VIOLATION WITHIN A FIVE-YEAR PERIOD;

(2) UP TO TWO THOUSAND DOLLARS FOR A SECOND VIOLATION WITHIN A FIVE-YEAR PERIOD; AND

(3) UP TO FIVE THOUSAND DOLLARS FOR A THIRD VIOLATION WITHIN A FIVE-YEAR PERIOD.

(B) NO PERSON SHALL BE LIABLE UNDER THIS SECTION FOR MORE THAN ONE VIOLATION OF ANY OF SUBDIVISIONS TWO OR THREE OF THIS SECTION DURING A SINGLE DAY.

(C) IN CONNECTION WITH ANY APPLICATION AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

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