

# STATE OF NEW YORK

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277--A

2017-2018 Regular Sessions

## IN ASSEMBLY

January 5, 2017

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Introduced by M. of A. PAULIN, GALEF, GUNTHER, JAFFEE, RYAN, L. ROSENTHAL, MOSLEY, WEPRIN, SKOUFIS, ABINANTI, DINOWITZ, PERRY, BUCHWALD, SIMON, SEAWRIGHT -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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:

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.

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

LBD01065-04-8

1     § 2. Article 13-F of the public health law is amended by adding a new  
2 section 1399-aa-1 to read as follows:

3     § 1399-aa-1. Sale of flavored tobacco products prohibited. 1. No  
4 person shall sell or offer for sale in this state any tobacco product,  
5 as defined in subdivision two of section four hundred seventy of the tax  
6 law, or any component part thereof, including but not limited to, the  
7 tobacco, paper, roll or filter, which contains a natural or artificial  
8 constituent or additive that causes such tobacco product or its smoke to  
9 have a characterizing flavor.

10     2. For the purposes of this section, the phrase "characterizing  
11 flavor" shall mean a distinguishable taste or aroma, including but not  
12 limited to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert,  
13 alcoholic beverage, herb or spice flavoring, but shall not include  
14 tobacco, menthol, mint, or wintergreen. In no event shall a tobacco  
15 product or any component part thereof, including, but not limited to,  
16 the tobacco, paper, roll or filter be construed to have a characterizing  
17 flavor based solely on the use of additives or flavorings, or the  
18 provision of an ingredient list made available by any means.

19     3. Any person other than a manufacturer who violates the provisions of  
20 this section shall be subject to a fine of not more than one hundred  
21 dollars for each individual package of tobacco product sold or offered  
22 for sale. A manufacturer may be subject to a civil penalty not to exceed  
23 fifty thousand dollars for each brand or style of such manufacturer's  
24 tobacco products that is found to have been sold or offered for sale in  
25 violation of this section on more than one occasion during any thirty  
26 day period, provided, however, that with respect to a manufacturer, it  
27 shall be an affirmative defense to a finding of violation pursuant to  
28 this section that such sale or offer of sale, as applicable, occurred  
29 without the knowledge, consent, authorization and involvement, direct or  
30 indirect, of such manufacturer. Violations of this section shall be  
31 enforced pursuant to section thirteen hundred ninety-nine-ff of this  
32 article, except that any person may submit a complaint to an enforcement  
33 officer that a violation of this section has occurred. The provisions  
34 of this section shall not be construed to restrict local jurisdictions  
35 from enacting more stringent laws, rules or regulations regarding the  
36 subject matter referenced in this section.

37     4. The prohibitions contained in subdivision one of this section shall  
38 not apply to a cigar bar as defined in subdivision five of section thir-  
39 teen hundred ninety-nine-q of this chapter, provided such business does  
40 not admit any person under the age of eighteen years old.

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