

# STATE OF NEW YORK

4576

2017-2018 Regular Sessions

## IN SENATE

February 17, 2017

Introduced by Sen. CARLUCCI -- 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 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:

1 Section 1. Legislative findings. The legislature finds that tobacco  
2 use is a leading cause of preventable premature death in the United  
3 States and the state of New York. Given the substantial human and  
4 economic costs associated with tobacco use, New York state has taken  
5 numerous steps to reduce tobacco use among adults and to prevent minors  
6 from taking up cigarette smoking or using other tobacco products. Howev-  
7 er, the legislature finds that the state should take further action to  
8 discourage adults and young adults from taking up and continuing to  
9 smoke cigarettes, use e-cigarettes, or use other tobacco products.

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

23 The legislature finds that the use of price reduction promotions,  
24 especially coupons targeted in mailing, design and marketing to young

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

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1 adults, results in additional and unwanted incentives for tobacco use.  
2 By encouraging purchase by price reduction, these youth-directed  
3 promotions unquestionably encourage youth use of tobacco products, and  
4 should be disallowed.

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

12 § 2. The public health law is amended by adding a new section  
13 1399-bb-1 to read as follows:

14 § 1399-bb-1. Prohibition on the sale of discounted cigarettes and  
15 tobacco products. 1. Definitions. As used in this section:

16 (a) "Cigar" means any roll of tobacco for smoking that is wrapped in  
17 leaf tobacco or in any substance containing tobacco, with or without a  
18 tip or mouthpiece. Cigar does not include a little cigar as defined in  
19 this section.

20 (b) "Cigarette" means any roll for smoking made wholly or in part of  
21 tobacco or any other substance, irrespective of size or shape and wheth-  
22 er or not such tobacco or substance is flavored, adulterated or mixed  
23 with any other ingredient, the wrapper or cover of which is made of  
24 paper or any other substance or material but is not made in whole or in  
25 part of tobacco.

26 (c) "Electronic cigarette" means an electronic device that delivers  
27 vapor for inhalation. Electronic cigarette shall include any refill,  
28 cartridge, and any other component of an electronic cigarette. The term  
29 includes any such device, whether manufactured, distributed, marketed or  
30 sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape pen, or under  
31 any other product name or descriptor. Electronic cigarette shall not  
32 include any product approved by the food and drug administration for  
33 sale as a drug or medical device.

34 (d) "Little cigar" means any roll of tobacco for smoking that is  
35 wrapped in leaf tobacco or in any substance containing tobacco and that  
36 weighs no more than four pounds per thousand or has a cellulose acetate  
37 or other integrated filter.

38 (e) "Listed price" means the price listed for cigarettes or tobacco  
39 products on their packages or on any related shelving, posting, adver-  
40 tising or display at the place where the cigarettes or tobacco products  
41 are sold or offered for sale, including all applicable taxes.

42 (f) "Person" means any natural person, corporation, partnership, firm,  
43 organization or other legal entity.

44 (g) "Price reduction instrument" means any coupon, voucher, rebate,  
45 card, paper, note, form, statement, ticket, image, or other issue,  
46 whether in paper, digital, or any other form, used for commercial  
47 purposes to receive an article, product, service, or accommodation with-  
48 out charge or at a discounted price.

49 (h) "Tobacco product" means any product which contains tobacco that is  
50 intended for human consumption, including any component, part, or acces-  
51 sory of such product. Tobacco product shall include, but not be limited  
52 to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-  
53 own tobacco, snus, bidi, snuff, tobacco-containing shisha, or dissolv-  
54 able tobacco product. Tobacco product shall not include cigarettes or  
55 any product that has been approved by the United States food and drug  
56 administration for sale as a tobacco use cessation product or for other

1 medical purposes and that is being marketed and sold solely for such  
2 purposes.

3 2. Prohibition on the sale of cigarettes for less than the listed  
4 price. No person shall:

5 (a) honor or accept a coupon or other price reduction instrument in  
6 any transaction related to the sale of cigarettes to a consumer;

7 (b) sell or offer for sale cigarettes to a consumer through any  
8 multi-package discount or otherwise provide to a consumer any cigarettes  
9 for less than the listed price in exchange for the purchase of any other  
10 cigarettes by the consumer;

11 (c) sell, offer for sale, or otherwise provide any product other than  
12 cigarettes to a consumer for less than the listed price in exchange for  
13 the purchaser of cigarettes by the consumer; or

14 (d) sell, offer for sale, or otherwise provide cigarettes to a consum-  
15 er for less than the listed price.

16 3. Prohibition on the sale of tobacco products for less than the list-  
17 ed price. No person shall:

18 (a) honor or accept a coupon or other price reduction instrument in  
19 any transaction related to the sale of tobacco products to a consumer;

20 (b) sell or offer for sale tobacco products to a consumer through any  
21 multi-package discount or otherwise provide to a consumer any tobacco  
22 product for less than the listed price in exchange for the purchase of  
23 any other tobacco product by the consumer;

24 (c) sell, offer for sale, or otherwise provide any product other than  
25 a tobacco product to a consumer for less than the listed price in  
26 exchange for the purchase of a tobacco product by the consumer; or

27 (d) sell, offer for sale, or otherwise provide tobacco products to a  
28 consumer for less than the listed price.

29 4. Prohibition on the sale of electronic cigarettes for less than the  
30 listed price. No person shall:

31 (a) honor or accept a coupon or other price reduction instrument in  
32 any transaction related to the sale of an electronic cigarette to a  
33 consumer;

34 (b) sell or offer for sale electronic cigarettes to a consumer through  
35 any multi-package discount or otherwise provide to a consumer any tobac-  
36 co product for less than the listed price in exchange for the purchase  
37 of any other electronic cigarettes by the consumer;

38 (c) sell, offer for sale, or otherwise provide any product other than  
39 an electronic cigarette to a consumer for less than the listed price in  
40 exchange for the purchase of an electronic cigarette by the consumer; or

41 (d) sell, offer for sale, or otherwise provide electronic cigarettes  
42 to a consumer for less than the listed price.

43 5. Rules. The commissioner or his or her delegate shall promulgate  
44 any rules as may be necessary or desirable for the purpose of carrying  
45 out this section.

46 6. Enforcement and penalties. (a) Whenever there shall be a violation  
47 of this section, an application may be made by the attorney general in  
48 the name of the people of the state of New York, to a court or justice  
49 having jurisdiction by a special proceeding to issue an injunction, and  
50 upon notice to the defendant of not less than five days, to enjoin and  
51 restrain the continuance of such violation; and if it shall appear to  
52 the satisfaction of the court or justice that the defendant has, in  
53 fact, violated this section, an injunction may be issued by the court or  
54 justice, enjoining and restraining any further violations, without  
55 requiring proof that any person has, in fact, been injured or damaged  
56 thereby. In any such proceeding, the court may make allowances to the

1 attorney general as provided in paragraph six of subdivision (a) of  
2 section eighty-three hundred three of the civil practice law and rules,  
3 and direct restitution. Whenever the court shall determine that a  
4 violation of this section has occurred, the court may impose a civil  
5 penalty in the following amounts:

6 (1) up to one thousand dollars for a first violation within a five-  
7 year period;

8 (2) up to two thousand dollars for a second violation within a five-  
9 year period; and

10 (3) up to five thousand dollars for a third violation within a five-  
11 year period.

12 (b) No person shall be liable under this section for more than one  
13 violation of any of subdivisions two or three of this section during a  
14 single day.

15 (c) In connection with any application as described in paragraph (a)  
16 of this subdivision, the attorney general is authorized to take proof  
17 and make a determination of the relevant facts and to issue subpoenas in  
18 accordance with the civil practice law and rules.

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