STATE OF NEW YORK

9573

IN ASSEMBLY

January 24, 2020

Introduced by M. of A. JAFFEE -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the tobacco product waste reduction act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "tobacco product waste reduction act".

§ 2. Legislative findings. The legislature finds and declares the following:

1. The use of tobacco products causes death and disease and continues to be an urgent public health challenge. The United States Department of Health and Human Services and the New York State Department of Health have reported the following:

a. Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 480,000 deaths each year, including 28,200 New York adults.

b. Annually in New York State, 10,600 youth become new daily smokers and an estimated 280,000 New York youth now alive will die early from smoking.

c. Tobacco use can cause chronic lung disease, diabetes, eye disease, rheumatoid arthritis, coronary heart disease, stroke, ectopic pregnancy, and infertility, in addition to leukemia and cancer of the lungs, larynx, colon, liver, esophagus, pancreas, kidney, cervix, bladder, stomach, and mouth.

d. Tobacco-related health care annually costs New Yorkers $10.4 billion, including $3.3 billion in Medicaid expenses.

2. Cigarette filters, also known as butts, do not improve the safety or healthfulness of cigarettes or other tobacco products, and research indicates that they likely increase the negative public health effects of tobacco products.

a. According to a 2014 Surgeon General's report, "evidence suggests that ventilated filters may have contributed to higher risks of lung

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

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cancer by enabling smokers to inhale more vigorously, thereby drawing carcinogens contained in cigarette smoke more deeply into lung tissue."

b. The perception that filtered cigarettes are safer encourages smoking and leads to increased public harm. In 2010, the United States joined Canada and the EU in prohibiting the use of tobacco packaging or advertising using terms like "light," "mild," or "low," which convey the false impression that filters reduce risk.

c. A 2017 study from the National Cancer Institute recommended that "the FDA should consider regulating {filter use}, up to and including a ban."

3. Electronic cigarettes and similar products pose health hazards and may contribute to youth smoking and reduced smoking cessation, regardless of nicotine content.

a. These products contain or produce chemicals other than nicotine known to be toxic, carcinogenic and causative of respiratory and heart distress.

b. Emissions from these products may contain particulate matter, harmful to those exposed, including bystanders involuntarily exposed. The United States Food and Drug Administration (FDA) has presented evidence of nicotine and other toxicants in exhaled electronic cigarette aerosol and stated exposure should be limited.

c. Nicotine-containing electronic cigarettes are the most common nicotine products used by students, with three million middle and high school students using them since 2015, according to a study published in Morbidity and Mortality Weekly Report.

d. The FDA has expressed concern that use of these products, whether or not they contain nicotine, will provide visual cues to youth and will renormalize cigarette smoking and use of tobacco products, undermining tobacco control effort and contributing to smoking initiation and reduced cessation, particularly among youth.

4. Cigarette butts are a plastic product that significantly contributes to pollution in soil, waterways, and beaches, and impacts the health of fish and other wildlife, as well as the safety of the food supply for humans.

a. Cigarette butts are the most collected item internationally in beach and waterway cleanup programs. It is estimated that 5.6 trillion cigarette butts end up as litter annually worldwide, totaling 845,000 tons of waste. Plastic cigar tips, commonly sold and used with cigarillos and small cigars, are also among the world's most littered objects.

b. Cigarette butts have been described as "the last socially accepted form of litter." A 2012 survey of cigarette smokers published in the International Journal of Environmental Research and Public Health found that 55.7 percent reported littering cigarette butts in the past month.

c. Nearly all cigarette filters are made of cellulose acetate, a king of plastic. They are not biodegradable. Instead, they break down into small particles that end up in waterways, in the bodies of fish and other animals, and eventually in our food supply.

d. Even if filters could be made of biodegradable materials, they would still be rendered hazardous due to toxins accumulated in the smoking process, including arsenic, cadmium, toluene, nicotine, and ethylphenol, as well as bio-accumulated toxins from the environment.

e. Single-use electronic cigarettes and cartridges contain components such as lithium-ion batteries, as well as toxic chemicals and liquid nicotine that together qualify them as electronic, toxic, and hazardous waste. A single user could discard hundreds of single-use e-cigarettes

every year. Such waste is inappropriate for standard municipal collection.

f. The cost to individual municipalities of cleaning up cigarette butts and single-use electronic cigarettes can run into the tens of millions of dollars.

5. Littered cigarette filters and liquid nicotine from single-use electronic cigarettes and cartridges pose a health threat to young children.

a. In 2013, the American Association of Poison Control Centers reported receiving over 8,500 reports of children under age 13 poisoned by cigarettes, cigarette butts, and other tobacco products.

b. Children poisoned by cigarette butts or liquid nicotine can experience vomiting, nausea, lethargy, eye irritation, and gagging.

c. Calls to American poison control centers concerning liquid nicotine exposures increased from one in February 2010 to 2,015 in February 2014, most of which involved children under the age of five, according to a study published in Morbidity and Mortality Weekly Report.

6. Efforts to prevent litter of cigarette filters or single-use electronic cigarettes by educating consumers have failed.

7. By banning the sale of cigarettes with single-use filters, New York State will mitigate a source of plastic pollution while having a positive impact on public health.

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

§ 1399-mm-1. Prohibition on cigarettes utilizing single-use filters and single-use electronic cigarettes. 1. As used in this section:

(a) "cigarette" means a cigarette as defined in section four hundred seventy of the tax law;

(b) "filter" means a porous article, mass, or device through which tobacco smoke or other related tobacco by-products pass for the purpose of removing or appearing to remove tar, nicotine, or other toxins;

(c) "single-use" means designed or generally recognized by the public as being designed for one-time use;

(d) "person" includes an individual, copartnership, limited liability company, society, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary; and

(e) "tobacco products dealer" means any person operating a place of business wherein tobacco products, herbal cigarettes, or electronic cigarettes are sold or offered for sale, including any wholesale dealer or retailer dealer as defined in section four hundred seventy of the tax law, and any vapor products dealer as defined in section eleven hundred eighty of the tax law.

2. No tobacco products dealer shall sell, permit to be sold, offer for sale or display to another person in this state, whether in person or by means of any public or private method of shipment or delivery to an address in this state, any of the following:

(a) a cigarette utilizing a single-use filter made of any material, including cellulose acetate, any other fibrous plastic material, or any organic or biodegradable material;

(b) an attachable and single-use device made of any material meant to facilitate manual manipulation or filtration of a cigarette or tobacco product; or

(c) a single-use electronic cigarette.

For the purposes of this section, electronic cigarette shall not include any product approved by the United States food and drug adminis-

tration as a drug or medical device, or manufactured and dispensed pursuant to title five-A of article thirty-three of this chapter.

3. Any person who violates any provision of this section shall be liable for a civil penalty of five hundred dollars for the first violation, one thousand dollars for the second violation, and one thousand five hundred dollars for any subsequent violation in the same calendar year. For purposes of this section, the sale of one to twenty items specified in paragraph (a), (b) or (c) of subdivision two of this section constitutes a single violation.

§ 4. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 5. This act shall take effect on the first of January, 2022. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.