

STATE OF NEW YORK

5088

2019-2020 Regular Sessions

IN ASSEMBLY

February 7, 2019

Introduced by M. of A. ABINANTI, PAULIN -- 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 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.

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

22 § 1399-aa-1. Sale of flavored tobacco products prohibited. 1. No
23 person shall sell or offer for sale in this state any tobacco product,
24 as defined in subdivision two of section four hundred seventy of the tax
25 law, or any component part thereof, including but not limited to, the

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

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1 tobacco, paper, roll or filter, which contains a natural or artificial
2 constituent or additive that causes such tobacco product or its smoke to
3 have a characterizing flavor.

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

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

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

35 § 3. This act shall take effect on the one hundred fiftieth day after
36 it shall have become a law. Effective immediately the addition, amend-
37 ment and/or repeal of any rule or regulation necessary for the implemen-
38 tation of this act on its effective date are authorized to be made and
39 completed on or before such date.