



NEW YORK STATE SENATOR

Charles J. Fuschillo Jr.

Senate Approves Legislation to Strengthen Enforcement of Cigarette Shipping Law

CHARLES J. FUSCHILLO JR. June 21, 2013

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Senator Charles J. Fuschillo, Jr. (R-Merrick) announced that the New York State Senate gave final legislative passage to legislation he sponsored to strengthen enforcement of New York State's law against shipping cigarettes. The legislation would close a loophole in the current law which could allow individuals caught illegally shipping cigarettes through a law enforcement "sting" operation to avoid legal penalties.

"New York State prohibits the shipping of cigarettes to prevent underage smoking and protect law abiding businesses. However, a legal loophole could allow offenders caught illegally selling and shipping cigarettes to undercover law enforcement officers to escape any penalties for breaking the law. This would close that loophole, enhance the penalties for those who break the law, and strengthen New York's efforts to keep cigarettes out of the hands of young children," said Senator Fuschillo.

Current law prohibits shipments of cigarettes to anyone in New York State who is not a licensed cigarette dealer. The law was enacted to help prevent underage children from being able to purchase cigarettes over the Internet, as well as curb the sale of untaxed cigarettes which harm law abiding New York businesses. Offenders face a maximum fine of up to \$5,000 per violation.

However, the law has a clause which allows the shipment of cigarettes to a government employee acting in accordance with their official duties. This creates the possibility of an offender, who is caught illegally shipping cigarettes as part of an undercover law enforcement “sting” operation being able to avoid prosecution by claiming that the undercover officer purchased the cigarettes as a government agent in accordance with their official duties.

Senator Fuschillo’s legislation (S5215A) would close this loophole by clarifying that the exemption applies only to a government agent acting in the performance of his or her duties who identifies themselves as such. Additionally, it enhances the penalties so that offenders would be subject to a maximum fine of \$5,000 or \$100 per pack of illegally shipped cigarettes, whichever is greater. The New York State Attorney General would be allowed to bring legal action against offenders to recover the fines.

The Medical Society of the State of New York, in a memo supporting the legislation, noted that “this measure will enhance New York State’s ability to prevent shipment of tobacco products to underage people and will reduce the sale of untaxed cigarettes, protecting public health while, at the same time, increasing tax collections.”