

STATE OF NEW YORK

5266

2017-2018 Regular Sessions

IN SENATE

March 17, 2017

Introduced by Sens. HOYLMAN, KAMINSKY, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend public health law, in relation to the sale of flavored electronic cigarettes at low or no cost

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

1 Section 1. Section 1399-aa of the public health law is amended by
2 adding two new subdivisions 14 and 15 to read as follows:

3 14. "Flavored electronic cigarette" or "flavored e-cigarette" means an
4 electronic cigarette or e-cigarette, as defined in subdivision thirteen
5 of this section that contains a characterizing flavor in any of its
6 component parts.

7 15. "Characterizing flavor" shall mean a distinguishable taste or
8 aroma, including but not limited to: any fruit; chocolate; vanilla;
9 honey; candy; cocoa; dessert; alcoholic beverage; herb; or spice flavor-
10 ing, but shall not include: tobacco; clove; or menthol.

11 § 2. Section 1399-bb of the public health law, as amended by chapter
12 508 of the laws of 2000, subdivision 2 as amended by chapter 13 of the
13 laws of 2003, is amended to read as follows:

14 § 1399-bb. Distribution of tobacco products [~~or~~], herbal cigarettes or
15 flavored electronic cigarettes without charge. 1. No person engaged in
16 the business of selling or otherwise distributing tobacco products or
17 herbal cigarettes for commercial purposes, or any agent or employee of
18 such person, shall knowingly, in furtherance of such business:

19 (a) distribute without charge any tobacco products or herbal ciga-
20 rettes to any individual, provided that the distribution of a package
21 containing tobacco products or herbal cigarettes in violation of this
22 subdivision shall constitute a single violation without regard to the
23 number of items in the package; or

24 (b) distribute coupons which are redeemable for tobacco products or
25 herbal cigarettes to any individual, provided that this subdivision

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

LBD10591-01-7

1 shall not apply to coupons contained in newspapers, magazines or other
2 types of publications, coupons obtained through the purchase of tobacco
3 products or herbal cigarettes or obtained at locations which sell tobacco
4 products or herbal cigarettes provided that such distribution is
5 confined to a designated area or to coupons sent through the mail.

6 2. The prohibitions contained in subdivision one of this section shall
7 not apply to the following locations:

8 (a) private social functions when seating arrangements are under the
9 control of the sponsor of the function and not the owner, operator,
10 manager or person in charge of such indoor area;

11 (b) conventions and trade shows; provided that the distribution is
12 confined to designated areas generally accessible only to persons over
13 the age of eighteen;

14 (c) events sponsored by tobacco or herbal cigarette manufacturers
15 provided that the distribution is confined to designated areas generally
16 accessible only to persons over the age of eighteen;

17 (d) bars as defined in subdivision one of section thirteen hundred
18 ninety-nine-n of this chapter;

19 (e) tobacco businesses as defined in subdivision eight of section
20 thirteen hundred ninety-nine-aa of this article;

21 (f) factories as defined in subdivision nine of section thirteen
22 hundred ninety-nine-aa of this article and construction sites; provided
23 that the distribution is confined to designated areas generally accessi-
24 ble only to persons over the age of eighteen.

25 3. No person shall distribute tobacco products or herbal cigarettes at
26 the locations set forth in paragraphs (b), (c) and (f) of subdivision
27 two of this section unless such person gives five days written notice to
28 the enforcement officer.

29 4. The distribution of tobacco products or herbal cigarettes pursuant
30 to subdivision two of this section shall be made only to an individual
31 who demonstrates, through a driver's license or other photographic iden-
32 tification card issued by a government entity or educational institution
33 indicating that the individual is at least eighteen years of age. Such
34 identification need not be required of any individual who reasonably
35 appears to be at least twenty-five years of age; provided, however, that
36 such appearance shall not constitute a defense in any proceeding alleg-
37 ing the sale of a tobacco product or herbal cigarette to an individual.

38 5. No person, either directly or indirectly by an agent or employee of
39 such person, or by a vending machine owned by or located in an estab-
40 lishment owned by such person, shall sell, offer for sale, distribute
41 for commercial purposes at no cost or minimal cost or with coupons or
42 rebate offers, give or furnish, to a person in this state any flavored
43 electronic cigarette as defined in section thirteen hundred ninety-nine-
44 aa of this article.

45 6. Any person other than a manufacturer who violates the provisions of
46 subdivision five of this section shall be subject to penalties pursuant
47 to section thirteen hundred ninety-nine-ee of this article.

48 7. Violations of subdivision five of this section shall be enforced
49 pursuant to section thirteen hundred ninety-nine-ff of this article,
50 except that any person may submit a complaint to an enforcement officer
51 reporting that a violation of this section has occurred.

52 § 3. This act shall take effect on the one hundred eightieth day after
53 it shall have become a law.