STATE OF NEW YORK

2001

2019-2020 Regular Sessions

IN SENATE

January 18, 2019

Introduced by Sens. HOYLMAN, KAMINSKY, MAYER, PARKER, SERRANO, STAVISKY -- 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:

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

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

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

§ 2. Section 1399-bb of the public health law, as amended by chapter 508 of the laws of 2000, the section heading and subdivisions 4 and 5 as amended by chapter 4 of the laws of 2018, subdivision 2 as amended by chapter 13 of the laws of 2003, is amended to read as follows:

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

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

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

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(b) distribute coupons which are redeemable for tobacco products or herbal cigarettes to any individual, provided that this subdivision shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products or herbal cigarettes or obtained at locations which sell tobacco products or herbal cigarettes provided that such distribution is confined to a designated area or to coupons sent through the mail.

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

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

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

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

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

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

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

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

4. No person engaged in the business of selling or otherwise distributing electronic cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business, distribute without charge any electronic cigarettes to any individual under eighteen years of age.

5. The distribution of tobacco products or herbal cigarettes pursuant to subdivision two of this section or the distribution without charge of electronic cigarettes shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product, electronic cigarette or herbal cigarette or the distribution without charge of electronic cigarettes to an individual.

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

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

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

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