

STATE OF NEW YORK

6073

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the regulation of electronic distributors of vaping products

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

1 Section 1. The public health law is amended by adding a new section
2 1399-ddd to read as follows:

3 § 1399-ddd. Online sale of vaping products. 1. (a) For purposes of
4 this section, "vaping" or "vaping products" shall mean the use of an
5 electronic cigarette or any products associated with the use of such.

6 (b) "Electronic distributor" shall mean any licensed person or busi-
7 ness who advertises and sells vaping products to the public online
8 through a website, where an individual is able to purchase such products
9 and have them delivered directly.

10 2. All electronic distributors of vaping products shall ensure that
11 the outside of each shipping container used to ship such vaping product
12 directly to a New York resident or any resident outside of the state is
13 clearly and conspicuously labeled with the words: "CONTAINS TOBACCO
14 PRODUCTS-SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY - NOT
15 FOR RESALE" or with other language specifically approved by the depart-
16 ment.

17 3. (a) All electronic distributors shall clearly and conspicuously
18 provide notice on their website that a purchaser shall be twenty-one
19 years of age in order to purchase such vaping products. Electronic
20 distributors shall be responsible for taking the necessary steps and
21 exercising due diligence in preventing minors from having access to
22 purchase vaping products from their websites.

23 (b) The department of health shall have the authority to conduct an
24 investigation, where necessary, into any electronic distributor and
25 their website to determine if such distributor has sufficient

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

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1 restrictions in place to prevent the unauthorized sale of vaping
2 products to minors. If the department shall make a determination that
3 such current restrictions are insufficient, the department shall be
4 authorized to suspend the license of such electronic distributor until
5 sufficient restrictions have been added or current restrictions have
6 been improved and the department has deemed such restrictions to be
7 satisfactory.

8 4. The electronic distribution of vaping products shall be made only
9 to a purchaser who:

10 (a) demonstrates he or she is at least twenty-one years of age by
11 providing a valid form of photographic identification authorized by
12 subdivision three of section thirteen hundred ninety-nine-cc of this
13 article and digitally uploads such photographic identification to the
14 website of the electronic distributor conducting such sale, in a format
15 that allows the electronic distributor to conduct a transaction scan and
16 efficiently determine the age of such purchaser; and

17 (b) signs an electronic or paper form or other acknowledgment of
18 receipt as approved by the department.

19 5. An electronic distributor shall refuse sale and delivery of vaping
20 products to purchasers who have failed to comply with the requirements
21 of subdivision four of this section.

22 6. For any violation of this section that results in the unlawful sale
23 of vaping products to a minor, the following penalties shall be imposed
24 upon an electronic distributor who is responsible for such unlawful
25 sale:

26 (a) a civil penalty of between five thousand and twenty-five thousand
27 dollars and a suspension of license for up to six months for the first
28 violation;

29 (b) a civil penalty of between ten thousand and thirty thousand
30 dollars and a suspension of license for up to three years for a second
31 violation within a three year period; and

32 (c) a suspension of license for up to five years for a third violation
33 within a five year period.

34 7. (a) A committee shall be established by the department of health
35 for the purpose of monitoring, regulating, inspecting and grading elec-
36 tronic distributors of vaping products. The members and amount of
37 members who shall make up such committee shall be chosen by the depart-
38 ment as it deems necessary.

39 (b) Such committee shall have access to all places where vaping
40 products are stored and maintained in order to effectively monitor,
41 regulate, inspect and grade each electronic distributor, as well as
42 access to any platform used by an electronic distributor in the course
43 of selling vaping products.

44 (c) Such committee shall report back to the department and commission-
45 er with their findings on an annual basis, and shall make recommenda-
46 tions as to courses of action that should be taken, where appropriate.

47 § 2. This act shall take effect on the ninetieth day after it shall
48 have become a law.