STATE OF NEW YORK

8746

2019-2020 Regular Sessions

IN ASSEMBLY

November 25, 2019

Introduced by M. of A. FALL -- read once and referred to the Committee on Health

AN ACT to amend the general business law and the public health law, in relation to packaging requirements for e-liquid products; to amend the tax law, in relation to taxes imposed for the sale of vaping products, and the disbursement of such taxes; and to amend the state finance law, in relation to establishing a "tobacco and vaping cessation fund"

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

Section 1. Section 399-gg of the general business law, as added by chapter 542 of the laws of 2014, is amended to read as follows:

§ 399-gg. Packaging of electronic liquid. 1. No person, firm or corporation shall sell or offer for sale any electronic liquid, as defined in paragraph (e) of subdivision one of section thirteen hundred ninety-nine-cc of the public health law, unless [~~the~~] **such** electronic liquid is sold or offered for sale in a child resistant bottle which is designed to prevent accidental exposure of children to electronic liquids.

2. **Upon receipt of notification from the commissioner of health made pursuant to subdivision four of section thirteen hundred ninety-nine-gg-one of the public health law, a seller under this section shall have ninety days to become compliant with section thirteen hundred ninety-nine-gg-one of the public health law. After such date, no person, firm or corporation shall sell or offer for sale any electronic liquid, unless the packaging of such electronic liquid is in compliance with such section.**

3. Any violation of this section shall be punishable by a civil penalty not to exceed one thousand dollars.

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

§ 1399-gg-1. Verification of manufacturers of e-liquids. 1. For the purposes of this section, "e-liquid" shall have the same meaning as

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

LBD14062-01-9

provided by paragraph (e) of subdivision one of section thirteen hundred ninety-nine-cc of this article.

2. For the purposes of this section, "smart device" shall mean a cellular radio telephone or other mobile voice communications handset device that includes the following features:

(a) utilizes a mobile operating system;

(b) possesses the capability to utilize mobile software applications, access and browse the internet, utilize text messaging, utilize digital voice service, and send and receive email;

(c) has wireless network connectivity; and

(d) is capable of operating on a long-term evolution network or successor wireless data network communication standards.

3. Within one hundred twenty days of the effective date of this section, the commissioner shall:

(a) cause to be created a webpage on the department's internet website which lists all e-liquid manufacturers who are in compliance with both federal and state regulations; and

(b) create and make available to manufacturers of e-liquids a code which, when scanned with a smart device, shall open on such device the internet webpage created pursuant to paragraph (a) of this subdivision.

4. Upon completion of the requirements of subdivision three of this section, the commissioner shall notify sellers of e-liquids of such completion, and of the obligations of sellers of e-liquids provided by section three hundred ninety-nine-gg of the general business law.

§ 3. Section 1181 of the tax law, as added by section 1 of part UU of chapter 59 of the laws of 2019, is amended to read as follows:

§ 1181. Imposition of Tax. In addition to any other tax imposed by this chapter or other law, there is hereby imposed a tax of [~~twenty~~] forty-one percent on receipts from the retail sale of vapor products sold in this state. The tax is imposed on the purchaser and collected by the vapor products dealer as defined in subdivision (b) of section eleven hundred eighty of this article, in trust for and on account of the state.

§ 4. Section 1186 of the tax law, as added by section 1 of part UU of chapter 59 of the laws of 2019, is amended to read as follows:

§ 1186. Deposit and disposition of revenue. The taxes, interest, and penalties imposed by this article and collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller, with twenty-one percent of such revenues deposited in the tobacco and vaping cessation fund established by section ninety-seven-bbbbb of the state finance law to be distributed by the commissioner of health in accordance with such section, and the remaining amount being deposited in trust for the tobacco control and insurance initiatives pool established by section ninety-two-dd of the state finance law and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. Provided, however that the commissioner is authorized and directed to deduct from the amounts he or she receives from the registration fees under section eleven hundred eighty-three of this article, before deposit into the tobacco control and insurance

initiatives pool, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect and distribute the taxes imposed by this article.

§ 5. The state finance law is amended by adding a new section 97-bbbbb to read as follows:

§ 97-bbbbb. Tobacco and vaping cessation fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a fund to be known as the "tobacco and vaping cessation fund".

2. Such fund shall consist of all moneys required to be deposited in the tobacco and vaping cessation fund pursuant to the provisions of section eleven hundred eighty-six of the tax law, and the amounts of moneys received and deposited into the fund from grants, gifts and bequests during the preceding calendar year, as certified by the comptroller. Nothing contained herein shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. The moneys in such fund shall be kept separate and shall not be commingled with any other moneys in the custody of the comptroller.

4. On or before the first day of February each year, the comptroller shall certify to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee and the chair of the assembly ways and means committee, the amount of moneys deposited in the tobacco and vaping cessation fund during the preceding calendar year as the result of revenue derived pursuant to section eleven hundred eighty-one of the tax law, and from grants, gifts and bequests.

5. On or before the first day of February each year, commencing with the first day of February one year after the effective date of this section, the commissioner of health shall provide a written report to the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate committee on health, the chair of the assembly health committee, the state comptroller and the public. Such report shall include how the moneys of the fund were utilized during the preceding calendar year, and shall include:

(i) the amount of moneys disbursed from the fund;

(ii) recipients of disbursements from the fund;

(iii) the amount disbursed to each recipient;

(iv) the purposes for which such disbursements were granted; and

(v) a summary financial plan for such moneys which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal year, along with the actual results from the prior fiscal year.

6. Moneys of the fund shall be expended only for tobacco and vaping cessation research and educational projects or programs designed to encourage cessation of tobacco and vaping product use. As used in this section, "tobacco and vaping cessation research and educational projects" means scientific research or educational projects which, pursuant to section twenty-four hundred eleven of the public health law, are approved by the department of health, upon the recommendation of the health research science board. As used in this section, "programs designed to encourage cessation of tobacco and vaping product use" shall mean programs designed to help users of tobacco or vaping products cease their use of such products, including but not limited to the tobacco use

prevention and control program established pursuant to section thirteen hundred ninety-nine-ii of the public health law.

7. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of health.

8. To the extent practicable, the commissioner of health shall ensure that all moneys received during a fiscal year are expended prior to the end of that fiscal year.

§ 6. This act shall take effect immediately; provided however that sections three, four and five of this act shall take effect on the same date and in the same manner as section 1 of part UU of chapter 59 of the laws of 2019, takes effect. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.