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:

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

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

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

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

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

(b) The department of health shall have the authority to conduct an investigation, where necessary, into any electronic distributor and 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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restrictions in place to prevent the unauthorized sale of vaping products to minors. If the department shall make a determination that such current restrictions are insufficient, the department shall be authorized to suspend the license of such electronic distributor until sufficient restrictions have been added or current restrictions have been improved and the department has deemed such restrictions to be satisfactory.

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

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

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

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

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

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

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

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

7. (a) A committee shall be established by the department of health for the purpose of monitoring, regulating, inspecting and grading electronic distributors of vaping products. The members and amount of members who shall make up such committee shall be chosen by the department as it deems necessary.

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

(c) Such committee shall report back to the department and commissioner with their findings on an annual basis, and shall make recommendations as to courses of action that should be taken, where appropriate.

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