

STATE OF NEW YORK

2609

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. FALL, TAYLOR, NIOU, COOK, GRIFFIN -- 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 Assem-
bly, do enact as follows:

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

3 § 399-gg. Packaging of electronic liquid. 1. No person, firm or corpo-
4 ration shall sell or offer for sale any electronic liquid, as defined in
5 paragraph (e) of subdivision one of section thirteen hundred ninety-
6 nine-cc of the public health law, unless [~~the~~] such electronic liquid is
7 sold or offered for sale in a child resistant bottle which is designed
8 to prevent accidental exposure of children to electronic liquids.

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

17 3. Any violation of this section shall be punishable by a civil penal-
18 ty not to exceed one thousand dollars.

19 § 2. The public health law is amended by adding a new section
20 1399-gg-1 to read as follows:

21 § 1399-gg-1. Verification of manufacturers of e-liquids. 1. For the
22 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.

LBD06083-01-1

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

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

6 (a) utilizes a mobile operating system;

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

10 (c) has wireless network connectivity; and

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

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

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

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

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

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

27 § 1181. Imposition of Tax. In addition to any other tax imposed by
28 this chapter or other law, there is hereby imposed a tax of [~~twenty~~]
29 forty-one percent on receipts from the retail sale of vapor products
30 sold in this state. The tax is imposed on the purchaser and collected by
31 the vapor products dealer as defined in subdivision (b) of section eleven
32 hundred eighty of this article, in trust for and on account of the
33 state.

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

36 § 1186. Deposit and disposition of revenue. The taxes, interest, and
37 penalties imposed by this article and collected or received by the
38 commissioner shall be deposited daily with such responsible banks, bank-
39 ing houses or trust companies, as may be designated by the comptroller,
40 to the credit of the comptroller, with twenty-one percent of such reven-
41 ues deposited in the tobacco and vaping cessation fund established by
42 section ninety-seven-bbbbbb of the state finance law to be distributed by
43 the commissioner of health in accordance with such section, and the
44 remaining amount being deposited in trust for the tobacco control and
45 insurance initiatives pool established by section ninety-two-dd of the
46 state finance law and distributed by the commissioner of health in
47 accordance with section twenty-eight hundred seven-v of the public
48 health law. Such deposits will be kept separate and apart from all other
49 money in the possession of the comptroller. The comptroller shall
50 require adequate security from all such depositories. Of the total
51 revenue collected or received under this article, the comptroller shall
52 retain such amount as the commissioner may determine to be necessary for
53 refunds under this article. Provided, however that the commissioner is
54 authorized and directed to deduct from the amounts he or she receives
55 from the registration fees under section eleven hundred eighty-three of
56 this article, before deposit into the tobacco control and insurance

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

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

7 § 97-bbbbbb. Tobacco and vaping cessation fund. 1. There is hereby
8 established in the joint custody of the state comptroller and the
9 commissioner of taxation and finance a fund to be known as the "tobacco
10 and vaping cessation fund".

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

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

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

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

38 (i) the amount of moneys disbursed from the fund;
39 (ii) recipients of disbursements from the fund;
40 (iii) the amount disbursed to each recipient;
41 (iv) the purposes for which such disbursements were granted; and
42 (v) a summary financial plan for such moneys which shall include esti-
43 mates of all receipts and all disbursements for the current and succeed-
44 ing fiscal year, along with the actual results from the prior fiscal
45 year.

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

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

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

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

9 § 6. This act shall take effect immediately.