

# STATE OF NEW YORK

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679

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

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

AN ACT to amend the public health law, in relation to prohibiting the distribution without charge or sale of flavored nicotine pouches

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

1 Section 1. Section 1399-aa of the public health law is amended by  
2 adding a new subdivision 19 to read as follows:

3 19. "Nicotine pouch" shall mean a smokeless pre-portioned pouch  
4 containing nicotine but no tobacco, in which the user puts the pouch  
5 between his or her lip and gum and leaves it there while the nicotine  
6 and taste is being released.

7 § 2. Section 1399-bb of the public health law, as amended by section 4  
8 of part EE of chapter 56 of the laws of 2020, is amended to read as  
9 follows:

10 § 1399-bb. Distribution of tobacco products, nicotine pouches, vapor  
11 products, or herbal cigarettes without charge. 1. No retail dealer, or  
12 any agent or employee of a retail dealer engaged in the business of  
13 selling or otherwise distributing tobacco products, nicotine pouches,  
14 vapor products intended or reasonably expected to be used with or for  
15 the consumption of nicotine, or herbal cigarettes for commercial  
16 purposes, or any agent or employee of such retail dealer, or any agent  
17 or employee of a retail dealer, shall knowingly, in furtherance of such  
18 business:

19 (a) distribute without charge any tobacco products, nicotine pouches,  
20 vapor products intended or reasonably expected to be used with or for  
21 the consumption of nicotine, or herbal cigarettes to any individual,  
22 provided that the distribution of a package containing tobacco products,  
23 nicotine pouches, vapor products intended or reasonably expected to be  
24 used with or for the consumption of nicotine, or herbal cigarettes in

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

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violation of this subdivision shall constitute a single violation without regard to the number of items in the package; or

(b) distribute price reduction instruments which are redeemable for tobacco products, nicotine pouches, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, 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, nicotine pouches, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes or obtained at locations which sell tobacco products, nicotine pouches, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes provided that such distribution is confined to a designated area or to coupons sent through the mail.

1-a. No retail dealer engaged in the business of selling or otherwise distributing tobacco products, nicotine pouches, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine for commercial purposes, or any agent or employee of such retail dealer, shall knowingly, in furtherance of such business:

(a) honor or accept a price reduction instrument in any transaction related to the sale of tobacco products, nicotine pouches, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to a consumer;

(b) sell or offer for sale any tobacco products, nicotine pouches, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to a consumer through any multi-package discount or otherwise provide to a consumer any tobacco products, nicotine pouches, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine for less than the listed price or non-discounted price in exchange for the purchase of any other tobacco products, nicotine pouches, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine by such consumer;

(c) sell, offer for sale, or otherwise provide any product other than a tobacco product, nicotine pouch, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine to a consumer for less than the listed price or non-discounted price in exchange for the purchase of a tobacco product, nicotine pouch, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine by such consumer; or

(d) sell, offer for sale, or otherwise provide a tobacco product, nicotine pouch, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine to a consumer for less than the listed price or non-discounted price.

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 twenty-one;

(c) events sponsored by tobacco, nicotine pouch, vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarette manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of twenty-one;

(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 twenty-one.

3. No retail dealer shall distribute tobacco products, nicotine pouches, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, 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 retail dealer engaged in the business of selling or otherwise distributing electronic cigarettes, nicotine pouches, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business, distribute without charge any electronic cigarettes or nicotine pouches to any individual under twenty-one years of age.

5. The distribution of tobacco products, nicotine pouches, electronic cigarettes, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes pursuant to subdivision two of this section or the distribution without charge of electronic cigarettes, nicotine pouches, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, shall be made only to an individual who demonstrates, through (a) a driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth, or possession, the District of Columbia, a state government within the United States, or a provincial government of the dominion of Canada, (b) a valid passport issued by the United States government or the government of any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least twenty-one 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, nicotine pouch, vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarette or the distribution without charge of electronic cigarettes, nicotine pouches, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to an individual.

§ 3. The public health law is amended by adding a new section 1399-mm-4 to read as follows:

§ 1399-mm-4. Sale of flavored nicotine pouches prohibited. 1. For purposes of this section, "flavored" shall mean any product intended or reasonably expected to be used with or for the consumption of nicotine, with a distinguishable taste or aroma, other than the taste or aroma of

1 tobacco, imparted either prior to or during consumption of such product  
2 or a component part thereof, including but not limited to tastes or  
3 aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa,  
4 dessert, alcoholic beverage, mint, wintergreen, menthol, herb or spice,  
5 or any concept flavor that imparts a taste or aroma that is distinguish-  
6 able from tobacco flavor but may not relate to any particular known  
7 flavor. A product intended or reasonably expected to be used with or for  
8 the consumption of nicotine, shall be presumed to be flavored if a  
9 product's retailer, manufacturer, or a manufacturer's agent or employee  
10 has made a statement or claim directed to consumers or the public,  
11 whether expressed or implied, that such product or device has a distin-  
12 guishable taste or aroma other than the taste or aroma of tobacco.

13 2. No nicotine products dealer, or any agent or employee of a nicotine  
14 products dealer, shall sell or offer for sale at retail in the state any  
15 flavored nicotine pouch product.

16 3. Any nicotine products dealer, or any agent or employee of a nico-  
17 tine products dealer, who violates the provisions of this section shall  
18 be subject to a civil penalty of not more than one hundred dollars for  
19 each individual package of flavored nicotine pouches, provided, however,  
20 that with respect to a manufacturer, it shall be an affirmative defense  
21 to a finding of violation pursuant to this section that such sale or  
22 offer of sale, as applicable, occurred without the knowledge, consent,  
23 authorization, or involvement, direct or indirect, of such manufacturer.  
24 Violations of this section shall be enforced pursuant to section thir-  
25 teen hundred ninety-nine-ff of this article, except that any person may  
26 submit a complaint to an enforcement officer that a violation of this  
27 section has occurred.

28 § 4. Subdivision 1 of section 1399-ff of the public health law, as  
29 amended by chapter 100 of the laws of 2019, is amended to read as  
30 follows:

31 1. Where a civil penalty for a particular incident has not been  
32 imposed or an enforcement action regarding an alleged violation for a  
33 particular incident is not pending under section thirteen hundred nine-  
34 ty-nine-ee of this article, a parent or guardian of a person under twen-  
35 ty-one years of age to whom tobacco products, herbal cigarettes, nico-  
36 tine pouches or electronic cigarettes are sold or distributed in  
37 violation of this article may submit a complaint to an enforcement offi-  
38 cer setting forth the name and address of the alleged violator, the date  
39 of the alleged violation, the name and address of the complainant and  
40 the person under twenty-one years of age, and a brief statement describ-  
41 ing the alleged violation. The enforcement officer shall notify the  
42 alleged violator by certified or registered mail, return receipt  
43 requested, that a complaint has been submitted, and shall set a date, at  
44 least fifteen days after the mailing of such notice, for a hearing on  
45 the complaint. Such notice shall contain the information submitted by  
46 the complainant.

47 § 5. This act shall take effect immediately.