

STATE OF NEW YORK

679

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

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 Assem-
bly, 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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1 violation of this subdivision shall constitute a single violation with-
2 out regard to the number of items in the package; or

3 (b) distribute price reduction instruments which are redeemable for
4 tobacco products, nicotine pouches, vapor products intended or reason-
5 ably expected to be used with or for the consumption of nicotine, or
6 herbal cigarettes to any individual, provided that this subdivision
7 shall not apply to coupons contained in newspapers, magazines or other
8 types of publications, coupons obtained through the purchase of tobacco
9 products, nicotine pouches, vapor products intended or reasonably
10 expected to be used with or for the consumption of nicotine, or herbal
11 cigarettes or obtained at locations which sell tobacco products, nico-
12 tine pouches, vapor products intended or reasonably expected to be used
13 with or for the consumption of nicotine, or herbal cigarettes provided
14 that such distribution is confined to a designated area or to coupons
15 sent through the mail.

16 1-a. No retail dealer engaged in the business of selling or otherwise
17 distributing tobacco products, nicotine pouches, herbal cigarettes, or
18 vapor products intended or reasonably expected to be used with or for
19 the consumption of nicotine for commercial purposes, or any agent or
20 employee of such retail dealer, shall knowingly, in furtherance of such
21 business:

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

26 (b) sell or offer for sale any tobacco products, nicotine pouches,
27 herbal cigarettes, or vapor products intended or reasonably expected to
28 be used with or for the consumption of nicotine to a consumer through
29 any multi-package discount or otherwise provide to a consumer any tobac-
30 co products, nicotine pouches, herbal cigarettes, or vapor products
31 intended or reasonably expected to be used with or for the consumption
32 of nicotine for less than the listed price or non-discounted price in
33 exchange for the purchase of any other tobacco products, nicotine pouch-
34 es, herbal cigarettes, or vapor products intended or reasonably expected
35 to be used with or for the consumption of nicotine by such consumer;

36 (c) sell, offer for sale, or otherwise provide any product other than
37 a tobacco product, nicotine pouch, herbal cigarette, or vapor product
38 intended or reasonably expected to be used with or for the consumption
39 of nicotine to a consumer for less than the listed price or non-dis-
40 counted price in exchange for the purchase of a tobacco product, nico-
41 tine pouch, herbal cigarette, or vapor product intended or reasonably
42 expected to be used with or for the consumption of nicotine by such
43 consumer; or

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

48 2. The prohibitions contained in subdivision one of this section shall
49 not apply to the following locations:

50 (a) private social functions when seating arrangements are under the
51 control of the sponsor of the function and not the owner, operator,
52 manager or person in charge of such indoor area;

53 (b) conventions and trade shows; provided that the distribution is
54 confined to designated areas generally accessible only to persons over
55 the age of twenty-one;

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

6 (d) bars as defined in subdivision one of section thirteen hundred
7 ninety-nine-n of this chapter;

8 (e) tobacco businesses as defined in subdivision eight of section
9 thirteen hundred ninety-nine-aa of this article;

10 (f) factories as defined in subdivision nine of section thirteen
11 hundred ninety-nine-aa of this article and construction sites; provided
12 that the distribution is confined to designated areas generally accessi-
13 ble only to persons over the age of twenty-one.

14 3. No retail dealer shall distribute tobacco products, nicotine pouch-
15 es, vapor products intended or reasonably expected to be used with or
16 for the consumption of nicotine, or herbal cigarettes at the locations
17 set forth in paragraphs (b), (c) and (f) of subdivision two of this
18 section unless such person gives five days written notice to the
19 enforcement officer.

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

27 5. The distribution of tobacco products, nicotine pouches, electronic
28 cigarettes, vapor products intended or reasonably expected to be used
29 with or for the consumption of nicotine, or herbal cigarettes pursuant
30 to subdivision two of this section or the distribution without charge of
31 electronic cigarettes, nicotine pouches, or vapor products intended or
32 reasonably expected to be used with or for the consumption of nicotine,
33 shall be made only to an individual who demonstrates, through (a) a
34 driver's license or non-driver identification card issued by the commis-
35 sioner of motor vehicles, the federal government, any United States
36 territory, commonwealth, or possession, the District of Columbia, a
37 state government within the United States, or a provincial government of
38 the dominion of Canada, (b) a valid passport issued by the United States
39 government or the government of any other country, or (c) an identifica-
40 tion card issued by the armed forces of the United States, indicating
41 that the individual is at least twenty-one years of age. Such identifi-
42 cation need not be required of any individual who reasonably appears to
43 be at least twenty-five years of age; provided, however, that such
44 appearance shall not constitute a defense in any proceeding alleging the
45 sale of a tobacco product, electronic cigarette, nicotine pouch, vapor
46 product intended or reasonably expected to be used with or for the
47 consumption of nicotine, or herbal cigarette or the distribution without
48 charge of electronic cigarettes, nicotine pouches, or vapor products
49 intended or reasonably expected to be used with or for the consumption
50 of nicotine to an individual.

51 § 3. The public health law is amended by adding a new section
52 1399-mm-4 to read as follows:

53 § 1399-mm-4. Sale of flavored nicotine pouches prohibited. 1. For
54 purposes of this section, "flavored" shall mean any product intended or
55 reasonably expected to be used with or for the consumption of nicotine,
56 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.