

STATE OF NEW YORK

778

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to restricting advertisement and promotion of electronic cigarettes

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

1 Section 1. The general business law is amended by adding a new article
2 24-D to read as follows:

ARTICLE 24-D

ADVERTISEMENT AND PROMOTION OF ELECTRONIC CIGARETTES TO MINORS

Section 375. Definitions.

376. Advertising prohibitions.

377. Promotions prohibited.

378. Research; misrepresentations.

379. Penalties.

§ 375. Definitions. For purposes of this article:

1. "Electronic cigarette" or "e-cigarette" means an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such a device.

2. "School grounds" means: (a) in, on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within five hundred feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within five hundred feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public" shall mean

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

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1 sidewalks, streets, parking lots, parks, playgrounds, stores and restau-
2 rants.

3 § 376. Advertising prohibitions. 1. No person engaged in the business
4 of manufacturing, selling, advertising, marketing or otherwise distrib-
5 uting electronic cigarettes, or any agent or employee of such person,
6 shall advertise, market or promote electronic cigarettes or the purchase
7 or use thereof upon school grounds, billboards, public transit facili-
8 ties, arenas, stadiums, shopping malls or video arcades.

9 2. No manufacturer and no distributor of electronic cigarettes shall
10 advertise or otherwise promote electronic cigarettes in movies, tele-
11 vision or theater productions; music performances or video distributed
12 for public viewing.

13 § 377. Promotions prohibited. 1. No manufacturer and no distributor of
14 electronic cigarettes shall market, license, distribute, sell, or cause
15 to be marketed, licensed, distributed, or sold any item (other than
16 electronic cigarettes) or service, which bears the brand name (alone or
17 in conjunction with any other word), logo, symbol, motto, selling
18 message, recognizable color or pattern of colors, or any other indicia
19 of product identification identical or similar to, or identifiable with,
20 those used for any brand of electronic cigarette.

21 2. No manufacturer, distributor, or retailer may offer or cause to be
22 offered any gift or item to any person purchasing electronic cigarettes
23 in consideration of the purchase thereof, or to any person or consider-
24 ation of furnishing evidence, such as credits, proofs-of-purchase, or
25 coupons, of such a purchase.

26 3. No manufacturer, distributor, or retailer may sponsor or cause to
27 be sponsored any athletic, musical, artistic, or other social or
28 cultural event, or any entry or team in any event, in the brand name
29 (alone or in conjunction with any other word), logo, symbol, motto,
30 selling message, recognizable color or pattern of colors, or any other
31 indicia of product identification identical or similar to, or identifi-
32 able with, those used for any brand of electronic. Nothing in this
33 subdivision prevents a manufacturer, distributor, or retailer from spon-
34 soring or causing to be sponsored any athletic, musical, artistic, or
35 other social or cultural event, or team or entry, in the name of the
36 corporation which manufactures the electronic cigarettes, provided that
37 both the corporate name and the corporation were registered and in use
38 in the United States prior to January first, two thousand twenty-one,
39 and that the corporate name does not include any brand name (alone or in
40 conjunction with any other word), logo, symbol, motto, selling message,
41 recognizable color or pattern of colors, or any other indicia of product
42 identification identical or similar to, or identifiable with, those used
43 for any brand of electronic cigarettes.

44 § 378. Research; misrepresentations. 1. Any provision or restriction
45 in a contract or other agreement relating to the development of elec-
46 tronic cigarettes and products relating to their use including, but not
47 limited to components of such devices, heretofore or hereafter made or
48 entered into, which limits, restrains, prohibits or otherwise provides
49 for the suppression of research into the health consequences of the use
50 of electronic cigarettes, is hereby declared to be void as against
51 public policy and wholly unenforceable.

52 2. No manufacturer, distributor, or retailer engaged in the business
53 of manufacturing, selling, advertising, marketing or otherwise distrib-
54 uting electronic cigarettes shall misrepresent any facts regarding the
55 health consequences of the use of electronic cigarettes.

1 § 379. Penalties. Any person, firm, corporation, partnership, associ-
2 ation, limited liability company, or other entity that violates the
3 provisions of this article shall be subject to a civil penalty of not
4 more than five hundred dollars per violation, recoverable in an action
5 by the attorney general or by any enforcement authority designated by
6 any municipality or political subdivision.

7 § 2. This act shall take effect on the first of January next succeed-
8 ing the date on which it shall have become a law.