STATE OF NEW YORK

10377

IN ASSEMBLY

May 21, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Eachus) -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the labeling, marketing and safety requirements of vapor products and the sale of tobacco and vapor 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-bb-1 to read as follows:

§ 1399-bb-1. Labeling, marketing and safety requirements. 1. Manufacturers of vapor products shall comply with the following requirements:

(a) e-liquid bottles shall meet the child proof cap and child resistant effectiveness requirements set forth in the federal poison prevention packaging standards at 16 CFR 1700.15(b)(1).

(b) vapor products shall include the nicotine warning statement requirements set forth in 21 CFR 1143.3.

2. Manufacturers and retailers of vapor products shall not sell or offer for sale any vapor product that:

(a) uses, in the labeling or design of the product or its packaging, or in its marketing materials:

(i) the terms "candy", "candies", or variants in spelling such as "kandy" or "kandeez", (with the exception of use in the name of a licensee, including the licensee's doing business as name);

(ii) the terms "bubble gum", "cotton candy", "gummy bear", "lollipop", or other variants of these words (with the exception of use in the name of a licensee, including the licensee's doing business as name);

(iii) the terms "cake", "cupcake", "pie", or any other variation of these words, or any other term referencing types of "cakes", "cupcakes" or "pies" that do not include the foregoing words;

(iv) the terms "ice cream", "sherbet", "popsicle", "fudge bar", "bomb pop", or any other variation of these words;

(b) uses, in the labeling or design of the product or its packaging, or in its marketing materials, images of or references to cartoons, cartoon characters, superheroes, television shows, video games, or

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

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movies, or other similar characters or references, that have been commonly used to market products to minors;

(c) uses, in the labeling or design of the product or its packaging, or in its marketing materials, trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of food brands or products that have been commonly marketed to minors such as brands of breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops.

§ 2. Section 1399-cc of the public health law is amended by adding a new subdivision 8 to read as follows:

8. (a) No individual under twenty-one years of age shall present to any retailer or other person any form of identification that falsely represents the individual's appearance, identity or age.

(b) If an individual under twenty-one years of age violates paragraph (a) of this subdivision, he or she shall be guilty of a petty offense and the court may impose a sentence of twenty-five hours of community service and a fine of fifty dollars for a first violation. A second violation by a minor that occurs within twelve months after the first violation shall be punishable by fifty hours of community service and a fine of seventy-five dollars. A third or subsequent violation by a minor that occurs within twelve months after the first violation shall be punishable by fifty hours of community service and a fine of two hundred dollars and shall result in a suspension of the minor's driver's license for a period not to exceed six months, if applicable.

§ 3. Section 1399-dd-1 of the public health law is amended by adding a new subdivision 3 to read as follows:

3. Manufacturers and retailers of tobacco products or vapor products shall not advertise or market any tobacco product or vapor product unless the advertisements meet the following requirements:

(a) Advertisements placed in or on broadcast or cable television, radio, print, and digital communications, or any event marketing or sponsorships, shall only be made where at least eighty-five percent of the intended audience is reasonably expected to be twenty-one years of age or older, as determined by reliable, up-to-date audience composition demographic data or event organizer restrictions;

(b) Advertisements shall not be materially false or untrue and any statement contained therein shall be consistent with the tobacco product's or vapor product's labeling;

(c) Advertisements shall not contain any health, medicinal, or therapeutic claims;

(d) Advertisements on billboard signs shall not be within one thousand feet of a primary or secondary school, playground, or youth center; provided, however, that within the city of New York, such prohibitions shall only apply within five hundred feet of a primary or secondary school, playground or youth center; and

(e) Any spokespeople or models used in any advertising shall appear to be at least twenty-seven years of age.

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

19. "Adult-only store" means a retail store operated by a retail dealer or vapor products dealer to which admission is restricted to persons twenty-one years of age or older and which posts signage on the entrance to such store which states "MINORS UNDER 21 AND UNACCOMPANIED BY AN ADULT ARE NOT ALLOWED ON THE PREMISES."

§ 5. Section 1399-mm-1 of the public health law is amended by adding a new subdivision 5 to read as follows:

5. The provisions of this section shall not apply to any vapor products dealer, or any agent or employee of a vapor products dealer, who sells or offers for sale, or who possesses with intent to sell or offer for sale, any flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine in an adult-only store.

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

§ 1399-cc-1. Third-party sales prohibited. 1. Any person who sells a tobacco product or vapor product to a consumer without a proper license shall be subject to the following penalties:

(a) the first violation shall result in a minimum fine of one thousand dollars;

(b) the second violation shall result in a minimum fine of five thousand dollars;

(c) the third violation shall result in a fine of ten thousand dollars.

2. Any violation of this section that occurs on school property shall be considered an aggravating factor and shall at a minimum be considered a misdemeanor under the laws of this state.

3. It shall be unlawful to sell more than two electronic cigarette devices and more than five packages or bottles of e-liquid in one consumer transaction.

§ 7. This act shall take effect immediately.