

# 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 Assem-  
bly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section  
2 1399-bb-1 to read as follows:

3 § 1399-bb-1. Labeling, marketing and safety requirements. 1. Manufac-  
4 turers of vapor products shall comply with the following requirements:

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

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

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

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

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

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

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

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

25 (b) uses, in the labeling or design of the product or its packaging,  
26 or in its marketing materials, images of or references to cartoons,  
27 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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1 movies, or other similar characters or references, that have been  
2 commonly used to market products to minors;

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

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

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

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

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

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

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

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

39 (c) Advertisements shall not contain any health, medicinal, or thera-  
40 peutic claims;

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

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

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

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

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

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

7 § 6. The public health law is amended by adding a new section  
8 1399-cc-1 to read as follows:

9 § 1399-cc-1. Third-party sales prohibited. 1. Any person who sells a  
10 tobacco product or vapor product to a consumer without a proper license  
11 shall be subject to the following penalties:

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

14 (b) the second violation shall result in a minimum fine of five thou-  
15 sand dollars;

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

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

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

24 § 7. This act shall take effect immediately.