

STATE OF NEW YORK

93--A

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. L. ROSENTHAL, BICHOTTE HERMELYN -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to prohibiting the sale of oral 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" means a smokeless pre-portioned pouch containing
4 nicotine but no tobacco, in which the user puts the pouch between such
5 user's lip and gum and leaves it there while the nicotine and taste is
6 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,

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

LBD00683-02-4

1 provided that the distribution of a package containing tobacco products,
2 nicotine pouches, vapor products intended or reasonably expected to be
3 used with or for the consumption of nicotine, or herbal cigarettes in
4 violation of this subdivision shall constitute a single violation with-
5 out regard to the number of items in the package; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 § 3. Section 1399-mm-1 of the public health law, as added by section 1
55 of part EE of chapter 56 of the laws of 2020, is amended to read as
56 follows:

1 § 1399-mm-1. Sale of flavored products prohibited. 1. For the purposes
2 of this section "flavored" shall mean any vapor product or oral nicotine
3 pouch intended or reasonably expected to be used with or for the
4 consumption of nicotine, with a distinguishable taste or aroma, other
5 than the taste or aroma of tobacco, imparted either prior to or during
6 consumption of such product or a component part thereof, including but
7 not limited to tastes or aromas relating to any fruit, chocolate, vanil-
8 la, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen,
9 menthol, herb or spice, or any concept flavor that imparts a taste or
10 aroma that is distinguishable from tobacco flavor but may not relate to
11 any particular known flavor. A vapor product or oral nicotine pouch
12 intended or reasonably expected to be used with or for the consumption
13 of nicotine, shall be presumed to be flavored if a product's retailer,
14 manufacturer, or a manufacturer's agent or employee has made a statement
15 or claim directed to consumers or the public, whether expressed or
16 implied, that such product or device has a distinguishable taste or
17 aroma other than the taste or aroma of tobacco. For the purposes of
18 this section, oral nicotine pouch shall mean a pouch containing nicotine
19 derived from tobacco or synthetic nicotine and other ingredients which
20 may include cellulose, water, flavoring and sodium carbonate, and are
21 used or intended to be used orally.

22 2. No vapor products or oral nicotine pouches dealer, or any agent or
23 employee of a vapor products or oral nicotine pouches dealer, shall sell
24 or offer for sale at retail in the state any flavored vapor product
25 intended or reasonably expected to be used with or for the consumption
26 of nicotine.

27 3. Any vapor products or oral nicotine pouches dealer, or any agent or
28 employee of a vapor products or oral nicotine pouches dealer, who
29 violates the provisions of this section shall be subject to a civil
30 penalty of not more than one hundred dollars for each individual package
31 of flavored vapor product or oral nicotine pouch intended or reasonably
32 expected to be used with or for the consumption of nicotine sold or
33 offered for sale, provided, however, that with respect to a manufactur-
34 er, it shall be an affirmative defense to a finding of violation pursu-
35 ant to this section that such sale or offer of sale, as applicable,
36 occurred without the knowledge, consent, authorization, or involvement,
37 direct or indirect, of such manufacturer. Violations of this section
38 shall be enforced pursuant to section thirteen hundred ninety-nine-ff of
39 this article, except that any person may submit a complaint to an
40 enforcement officer that a violation of this section has occurred.

41 4. The provisions of this section shall not apply to any vapor
42 products or oral nicotine pouches dealer, or any agent or employee of a
43 vapor products or oral nicotine pouches dealer, who sells or offers for
44 sale, or who possess with intent to sell or offer for sale, any flavored
45 vapor product or oral nicotine pouch intended or reasonably expected to
46 be used with or for the consumption of nicotine that the U.S. Food and
47 Drug Administration has authorized to legally market as defined under 21
48 U.S.C. § 387j and that has received a premarket review approval order
49 under 21 U.S.C. § 387j(c) et seq.

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

53 1. Where a civil penalty for a particular incident has not been
54 imposed or an enforcement action regarding an alleged violation for a
55 particular incident is not pending under section thirteen hundred nine-
56 ty-nine-ee of this article, a parent or guardian of a person under twen-

1 ty-one years of age to whom tobacco products, herbal cigarettes, nico-
2 tine pouches or electronic cigarettes are sold or distributed in
3 violation of this article may submit a complaint to an enforcement offi-
4 cer setting forth the name and address of the alleged violator, the date
5 of the alleged violation, the name and address of the complainant and
6 the person under twenty-one years of age, and a brief statement describ-
7 ing the alleged violation. The enforcement officer shall notify the
8 alleged violator by certified or registered mail, return receipt
9 requested, that a complaint has been submitted, and shall set a date, at
10 least fifteen days after the mailing of such notice, for a hearing on
11 the complaint. Such notice shall contain the information submitted by
12 the complainant.

13 § 5. This act shall take effect on the ninetieth day after it shall
14 have become a law. Effective immediately, the addition, amendment and/or
15 repeal of any rule or regulation necessary for the implementation of
16 this act on its effective date are authorized to be made and completed
17 on or before such effective date.