

# STATE OF NEW YORK

2856

2023-2024 Regular Sessions

## IN SENATE

January 25, 2023

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to making it unlawful for a person under the age of twenty-one to possess tobacco and vaping products

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

1 Section 1. Article 13-F of the public health law is amended by adding  
2 a new section 1399-mm-4 to read as follows:

3 § 1399-mm-4. Unlawful possession of tobacco or vaping products by  
4 persons under the age of twenty-one years. 1. Except as otherwise  
5 provided in this section, no person under the age of twenty-one years  
6 shall possess any tobacco or vaping product.

7 2. Any person who unlawfully possesses a tobacco or vaping product may  
8 be summoned before and examined by a court having jurisdiction of that  
9 charge; provided, however, that nothing in this section shall authorize  
10 or be construed to authorize a peace officer, a police officer or an  
11 enforcement officer to arrest a person who unlawfully possesses a tobac-  
12 co or vaping product. If a determination is made sustaining such charge  
13 the court may impose a civil fine not exceeding fifty dollars and/or  
14 completion of a tobacco awareness program if such program is being  
15 offered and/or an appropriate amount of community service not to exceed  
16 thirty hours.

17 3. No such determination shall operate as a disqualification of any  
18 such person subsequently to hold public office, public employment or as  
19 a forfeiture of any right or privilege or to receive any license granted  
20 by public authority; and no such person shall be denominated a criminal  
21 by reason of such determination, nor shall such determination be deemed  
22 a conviction.

23 4. Whenever a peace officer, police officer or an enforcement officer  
24 shall observe a person under twenty-one years of age openly in

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

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1 possession of a tobacco or vaping product, such officer may seize the  
2 tobacco or vaping product and shall deliver it to the custody of his or  
3 her department.

4 5. Any tobacco or vaping product seized in violation of this section  
5 is hereby declared a nuisance. The official to whom the tobacco or  
6 vaping product has been delivered shall, no earlier than three days  
7 following the return date for initial appearance on the summons, dispose  
8 of or destroy the tobacco or vaping product seized or cause it to be  
9 disposed of or destroyed. Any person claiming ownership of a tobacco or  
10 vaping product seized under this section may, on the initial return date  
11 of the summons or earlier on five days notice to the official or depart-  
12 ment in possession of the tobacco or vaping product, apply to the court  
13 for an order preventing the destruction or disposal of the tobacco or  
14 vaping product seized and ordering the return of that tobacco or vaping  
15 product. The court may order the tobacco or vaping product returned if  
16 it is determined that return of the tobacco or vaping product would be  
17 in the interest of justice or that the tobacco or vaping product was  
18 improperly seized.

19 6. For purposes of this section, "vaping products" shall mean the use  
20 of an electronic cigarette or any products associated with the use of  
21 such.

22 § 2. This act shall take effect on the first of November next succeed-  
23 ing the date on which it shall have become a law.