

# STATE OF NEW YORK

2048

2023-2024 Regular Sessions

## IN ASSEMBLY

January 23, 2023

Introduced by M. of A. FALL -- read once and referred to the Committee on Health

AN ACT to amend the general business law and the public health law, in relation to packaging requirements for e-liquid products; to amend the tax law, in relation to taxes imposed for the sale of vaping products, and the disbursement of such taxes; and to amend the state finance law, in relation to establishing a "tobacco and vaping cessation fund"

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

1 Section 1. Section 399-gg of the general business law, as added by  
2 chapter 542 of the laws of 2014, is amended to read as follows:

3 § 399-gg. Packaging of electronic liquid. 1. No person, firm or corpo-  
4 ration shall sell or offer for sale any electronic liquid, as defined in  
5 paragraph (e) of subdivision one of section thirteen hundred ninety-  
6 nine-cc of the public health law, unless ~~[the]~~ such electronic liquid is  
7 sold or offered for sale in a child resistant bottle which is designed  
8 to prevent accidental exposure of children to electronic liquids.

9 2. Upon receipt of notification from the commissioner of health made  
10 pursuant to subdivision four of section thirteen hundred ninety-nine-gg-  
11 one of the public health law, a seller under this section shall have  
12 ninety days to become compliant with section thirteen hundred ninety-  
13 nine-gg-one of the public health law. After such date, no person, firm  
14 or corporation shall sell or offer for sale any electronic liquid,  
15 unless the packaging of such electronic liquid is in compliance with  
16 such section.

17 3. Any violation of this section shall be punishable by a civil penal-  
18 ty not to exceed one thousand dollars.

19 § 2. The public health law is amended by adding a new section  
20 1399-gg-1 to read as follows:

21 § 1399-gg-1. Verification of manufacturers of e-liquids. 1. For the  
22 purposes of this section, "e-liquid" shall have the same meaning as

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

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provided by paragraph (e) of subdivision one of section thirteen hundred ninety-nine-cc of this article.

2. For the purposes of this section, "smart device" shall mean a cellular radio telephone or other mobile voice communications handset device that includes the following features:

(a) utilizes a mobile operating system;

(b) possesses the capability to utilize mobile software applications, access and browse the internet, utilize text messaging, utilize digital voice service, and send and receive email;

(c) has wireless network connectivity; and

(d) is capable of operating on a long-term evolution network or successor wireless data network communication standards.

3. Within one hundred twenty days of the effective date of this section, the commissioner shall:

(a) cause to be created a webpage on the department's internet website which lists all e-liquid manufacturers who are in compliance with both federal and state regulations; and

(b) create and make available to manufacturers of e-liquids a code which, when scanned with a smart device, shall open on such device the internet webpage created pursuant to paragraph (a) of this subdivision.

4. Upon completion of the requirements of subdivision three of this section, the commissioner shall notify sellers of e-liquids of such completion, and of the obligations of sellers of e-liquids provided by section three hundred ninety-nine-gg of the general business law.

§ 3. Section 1181 of the tax law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

§ 1181. Imposition of tax. In addition to any other tax imposed by this chapter or other law, there is hereby imposed a tax of ~~twenty~~ forty-one percent on receipts from the retail sale of vapor products sold in this state. The tax is imposed on the purchaser and collected by the vapor products dealer as defined in subdivision (b) of section eleven hundred eighty of this article, in trust for and on account of the state. The taxes imposed under this section shall not apply to adult-use cannabis products subject to tax under article twenty-C of this chapter.

§ 4. Section 1186 of the tax law, as added by section 1 of part UU of chapter 59 of the laws of 2019, is amended to read as follows:

§ 1186. Deposit and disposition of revenue. The taxes, interest, and penalties imposed by this article and collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller, with twenty-one percent of such revenues deposited in the tobacco and vaping cessation fund established by section ninety-seven-bbbbbb of the state finance law to be distributed by the commissioner of health in accordance with such section, and the remaining amount being deposited in trust for the tobacco control and insurance initiatives pool established by section ninety-two-dd of the state finance law and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. Provided, however that the commissioner is authorized and directed to deduct from the amounts he or she receives from the registration fees under section eleven hundred eighty-three of

1 this article, before deposit into the tobacco control and insurance  
2 initiatives pool, a reasonable amount necessary to effectuate refunds of  
3 appropriations of the department to reimburse the department for the  
4 costs incurred to administer, collect and distribute the taxes imposed  
5 by this article.

6 § 5. The state finance law is amended by adding a new section 97-bbbbbb  
7 to read as follows:

8 § 97-bbbbbb. Tobacco and vaping cessation fund. 1. There is hereby  
9 established in the joint custody of the state comptroller and the  
10 commissioner of taxation and finance a fund to be known as the "tobacco  
11 and vaping cessation fund".

12 2. Such fund shall consist of all moneys required to be deposited in  
13 the tobacco and vaping cessation fund pursuant to the provisions of  
14 section eleven hundred eighty-six of the tax law, and the amounts of  
15 moneys received and deposited into the fund from grants, gifts and  
16 bequests during the preceding calendar year, as certified by the comp-  
17 troller. Nothing contained herein shall prevent the state from receiving  
18 grants, gifts or bequests for the purposes of the fund as defined in  
19 this section and depositing them into the fund according to law.

20 3. The moneys in such fund shall be kept separate and shall not be  
21 commingled with any other moneys in the custody of the comptroller.

22 4. On or before the first day of February each year, the comptroller  
23 shall certify to the governor, the temporary president of the senate,  
24 the speaker of the assembly, the chair of the senate finance committee  
25 and the chair of the assembly ways and means committee, the amount of  
26 moneys deposited in the tobacco and vaping cessation fund during the  
27 preceding calendar year as the result of revenue derived pursuant to  
28 section eleven hundred eighty-one of the tax law, and from grants, gifts  
29 and bequests.

30 5. On or before the first day of February each year, commencing with  
31 the first day of February one year after the effective date of this  
32 section, the commissioner of health shall provide a written report to  
33 the temporary president of the senate, the speaker of the assembly, the  
34 chair of the senate finance committee, the chair of the assembly ways  
35 and means committee, the chair of the senate committee on health, the  
36 chair of the assembly health committee, the state comptroller and the  
37 public. Such report shall include how the moneys of the fund were  
38 utilized during the preceding calendar year, and shall include:

39 (i) the amount of moneys disbursed from the fund;  
40 (ii) recipients of disbursements from the fund;  
41 (iii) the amount disbursed to each recipient;  
42 (iv) the purposes for which such disbursements were granted; and  
43 (v) a summary financial plan for such moneys which shall include esti-  
44 mates of all receipts and all disbursements for the current and succeed-  
45 ing fiscal year, along with the actual results from the prior fiscal  
46 year.

47 6. Moneys of the fund shall be expended only for tobacco and vaping  
48 cessation research and educational projects or programs designed to  
49 encourage cessation of tobacco and vaping product use. As used in this  
50 section, "tobacco and vaping cessation research and educational  
51 projects" means scientific research or educational projects which,  
52 pursuant to section twenty-four hundred eleven of the public health law,  
53 are approved by the department of health, upon the recommendation of the  
54 health research science board. As used in this section, "programs  
55 designed to encourage cessation of tobacco and vaping product use" shall  
56 mean programs designed to help users of tobacco or vaping products cease

1 their use of such products, including but not limited to the tobacco and  
2 vapor product use prevention and control program established pursuant to  
3 section thirteen hundred ninety-nine-ii of the public health law.

4 7. Moneys shall be payable from the fund on the audit and warrant of  
5 the comptroller on vouchers approved and certified by the commissioner  
6 of health.

7 8. To the extent practicable, the commissioner of health shall ensure  
8 that all moneys received during a fiscal year are expended prior to the  
9 end of that fiscal year.

10 § 6. This act shall take effect immediately.