

# STATE OF NEW YORK

3404

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

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

AN ACT to amend the public health law, in relation to the sale, manufacture, and distribution of vapor products

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

1 Section 1. Subdivisions 3 and 4 of section 1399-cc of the public  
2 health law, subdivision 3 as amended by chapter 100 of the laws of 2019  
3 and subdivision 4 as amended by chapter 542 of the laws of 2014, are  
4 amended to read as follows:

5 3. Sale of tobacco products, herbal cigarettes, liquid nicotine,  
6 shisha or electronic cigarettes in such places, [~~other than~~] including  
7 by a vending machine, shall be made only to an individual who demon-  
8 strates, through (a) a valid driver's license or non-driver's identifi-  
9 cation card issued by the commissioner of motor vehicles, the federal  
10 government, any United States territory, commonwealth or possession, the  
11 District of Columbia, a state government within the United States or a  
12 provincial government of the dominion of Canada, or (b) a valid passport  
13 issued by the United States government or any other country, or (c) an  
14 identification card issued by the armed forces of the United States,  
15 indicating that the individual is at least twenty-one years of age. Such  
16 identification need not be required of any individual who reasonably  
17 appears to be at least twenty-five years of age, provided, however, that  
18 such appearance shall not constitute a defense in any proceeding alleg-  
19 ing the sale of a tobacco product, herbal cigarettes, liquid nicotine,  
20 shisha or electronic cigarettes to an individual under twenty-one years  
21 of age.

22 4. (a) Any person operating a place of business wherein tobacco  
23 products, herbal cigarettes, liquid nicotine, shisha or electronic ciga-  
24 rettes are sold or offered for sale [~~may~~] shall perform a transaction  
25 scan as a precondition for such purchases.

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

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1 (b) In any instance where the information deciphered by the trans-  
2 action scan fails to match the information printed on the driver's  
3 license or non-driver identification card, or if the transaction scan  
4 indicates that the information is false or fraudulent, the attempted  
5 transaction shall be denied.

6 (c) In any proceeding pursuant to section thirteen hundred ninety-  
7 nine-ee of this article, it shall be an affirmative defense that such  
8 person had produced a driver's license or non-driver identification card  
9 apparently issued by a governmental entity, successfully completed that  
10 transaction scan, and that the tobacco product, herbal cigarettes or  
11 liquid nicotine had been sold, delivered or given to such person in  
12 reasonable reliance upon such identification and transaction scan. In  
13 evaluating the applicability of such affirmative defense the commission-  
14 er shall take into consideration any written policy adopted and imple-  
15 mented by the seller to effectuate the provisions of this chapter. Use  
16 of a transaction scan shall not excuse any person operating a place of  
17 business wherein tobacco products, herbal cigarettes, liquid nicotine,  
18 shisha or electronic cigarettes are sold, or the agent or employee of  
19 such person, from the exercise of reasonable diligence otherwise  
20 required by this chapter. Notwithstanding the above provisions, any such  
21 affirmative defense shall not be applicable in any civil or criminal  
22 proceeding, or in any other forum.

23 § 2. Section 1399-dd of the public health law, as amended by chapter  
24 448 of the laws of 2012 and subdivision (d) as amended by chapter 100 of  
25 the laws of 2019, is amended to read as follows:

26 § 1399-dd. Sale of tobacco products, herbal cigarettes or electronic  
27 cigarettes in vending machines. No person, firm, partnership, company or  
28 corporation shall operate a vending machine which dispenses tobacco  
29 products, herbal cigarettes or electronic cigarettes unless such machine  
30 is located: (a) in a bar as defined in subdivision one of section thir-  
31 teen hundred ninety-nine-n of this chapter, or the bar area of a food  
32 service establishment with a valid, on-premises full liquor license; (b)  
33 in a private club; (c) in a tobacco business as defined in subdivision  
34 eight of section thirteen hundred ninety-nine-aa of this article; or (d)  
35 in a place of employment which has an insignificant portion of its regu-  
36 lar workforce comprised of people under the age of twenty-one years and  
37 only in such locations that are not accessible to the general public;  
38 provided, however, that in such locations the vending machine is located  
39 in plain view and under the direct supervision and control of the person  
40 in charge of the location or his or her designated agent or employee;  
41 and provided further, that in such locations the vending machine shall  
42 not be operable until the person in charge of such location or his or  
43 her designated agent or employee has verified that the person seeking to  
44 operate such vending machine is over twenty-one years of age in accord-  
45 ance with the provisions of subdivisions three and four of section thir-  
46 teen hundred ninety-nine-cc of this article.

47 § 3. Section 1399-ll of the public health law, as amended by section 3  
48 of part EE of chapter 56 of the laws of 2020, is amended by adding three  
49 new subdivisions 1-b, 1-c and 1-d to read as follows:

50 1-b. (a) The commissioner shall establish a vapor product distributor  
51 permit to be issued to persons engaged in the business of shipping or  
52 causing to be shipped any vapor products intended or reasonably expected  
53 to be used with or for the consumption of nicotine to any person in this  
54 state. An application for a vapor product distributor permit shall  
55 include:

1 (i) the name, telephone number, and primary business address of the  
2 applicant;

3 (ii) the name, telephone number, and address of any of the applicant's  
4 distribution facilities in this state;

5 (iii) the name, telephone number, title, and address of any person  
6 responsible for any of the applicant's distribution facilities in this  
7 state;

8 (iv) written consent allowing the division of state police to conduct  
9 a state or national criminal history background check on any person  
10 listed on the application;

11 (v) a non-refundable initial application fee to be determined by the  
12 commissioner; and

13 (vi) any other information the commissioner shall deem relevant and  
14 appropriate.

15 (b) Every person who is engaged in the business of shipping or causing  
16 to be shipped any vapor products intended or reasonably expected to be  
17 used with or for the consumption of nicotine to any person in this state  
18 shall first obtain a vapor product distributor permit from the commis-  
19 sioner.

20 (c) A vapor product distributor permit shall be valid for one calendar  
21 year from the date of issuance unless earlier suspended or revoked. Upon  
22 the expiration of the term stated on the vapor product distributor  
23 permit, such permit shall be null and void. A vapor product distributor  
24 permit shall not be assignable or transferable and shall be destroyed  
25 immediately upon the holder of such permit ceasing to do business as  
26 specified in such permit.

27 (d) The department shall publish and maintain on its website a list of  
28 all holders of a vapor product distributor permit.

29 1-c. (a) The commissioner shall establish a vapor product manufacturer  
30 permit to be issued to persons engaged in the business of manufacturing  
31 any vapor products intended or reasonably expected to be used with or  
32 for the consumption of nicotine to any person in this state. An applica-  
33 tion for a vapor product manufacturer permit shall include:

34 (i) the name, telephone number, and primary business address of the  
35 applicant;

36 (ii) the name, telephone number, and address of any of the applicant's  
37 manufacturing facilities in this state;

38 (iii) the name, telephone number, title, and address of any person  
39 responsible for any of the applicant's manufacturing facilities in this  
40 state;

41 (iv) verification that the applicant's facilities in this state comply  
42 with applicable tobacco products good manufacturing practices promulgat-  
43 ed under 21 U.S.C. § 387f(e) of the federal Food, Drug, and Cosmetic  
44 Act;

45 (v) verification that the manufacturer is in compliance with the  
46 applicable ingredient listing required by 21 U.S.C. § 387d(a)(1) of the  
47 federal Food, Drug, and Cosmetic Act, and article seventeen of this  
48 chapter;

49 (vi) written consent allowing the division of state police to conduct  
50 a state or national criminal history background check on any person  
51 listed on the application;

52 (vii) a non-refundable initial application fee to be determined by the  
53 commissioner; and

54 (viii) any other information the commissioner shall deem relevant and  
55 appropriate.

1 (b) Every person who is engaged in the business of manufacturing any  
2 vapor products intended or reasonably expected to be used with or for  
3 the consumption of nicotine to any person in this state shall first  
4 obtain a vapor product manufacturer permit from the commissioner.

5 (c) A vapor product manufacturer permit shall be valid for five calen-  
6 dar years from the date of issuance unless earlier suspended or revoked.  
7 Upon the expiration of the term stated on the vapor product manufacturer  
8 permit, such permit shall be null and void. A vapor product manufacturer  
9 permit shall not be assignable or transferable and shall be destroyed  
10 immediately upon the holder of such permit ceasing to do business as  
11 specified in such permit.

12 (d) The department shall publish and maintain on its website a list of  
13 all holders of a vapor product manufacturer permit.

14 1-d. It shall be unlawful for a vapor products dealer under article  
15 twenty-eight-C of the tax law to purchase vapor products from anyone  
16 other than a holder of a vapor product distributor permit issued pursu-  
17 ant to subdivision one-b, or a holder of a vapor product manufacturer  
18 permit issued pursuant to subdivision one-c of this section.

19 § 4. The section heading and subdivision 5 of section 1399-11 of the  
20 public health law, as amended by section 3 of part EE of chapter 56 of  
21 the laws of 2020, are amended to read as follows:

22 § 1399-11. Unlawful shipment [~~or~~], transport, or manufacture of ciga-  
23 rattes and vapor products.

24 5. Any person who violates the provisions of subdivision one, subdivi-  
25 sion one-a, paragraph (b) of subdivision one-b, paragraph (b) of subdivi-  
26 sion one-c, subdivision one-d, or subdivision two of this section  
27 shall be guilty of a class A misdemeanor and for a second or subsequent  
28 violation shall be guilty of a class E felony. In addition to the crimi-  
29 nal penalty, any person who violates the provisions of subdivision one,  
30 subdivision one-a, paragraph (b) of subdivision one-b, paragraph (b) of  
31 subdivision one-c, subdivision one-d, or subdivision two or three of  
32 this section shall be subject to a civil penalty not to exceed the  
33 greater of (a) five thousand dollars for each such violation; (b) one  
34 hundred dollars for each pack of cigarettes shipped, caused to be  
35 shipped or transported in violation of such subdivision; or (c) one  
36 hundred dollars for each vapor product intended or reasonably expected  
37 to be used with or for the consumption of nicotine shipped, caused to be  
38 shipped or transported in violation of such subdivision or paragraph.

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

41 19. "Illicit vapor product" means any vapor product that:

42 (a) was not manufactured, prepared, compounded, or processed by a  
43 person or entity registered with the U.S. Food and Drug Administration  
44 pursuant to 21 U.S.C. § 387e;

45 (b) is not manufactured by the manufacturer indicated on the product  
46 packaging, label, or container; or

47 (c) is not on the state's vapor product registry pursuant to section  
48 thirteen hundred ninety-nine-kk-one of this article.

49 § 6. The public health law is amended by adding a new section  
50 1399-dd-2 to read as follows:

51 § 1399-dd-2. Sale of illicit vapor products. 1. It shall be unlawful  
52 for any person knowingly, directly or indirectly, to manufacture,  
53 distribute, sell, barter, or furnish in this state any illicit vapor  
54 product.

55 2. Any person who violates the provisions of subdivision one of this  
56 section shall be guilty of a class A misdemeanor for a first violation,

1 and for a second or subsequent violation shall be guilty of a class E  
2 felony.

3 § 7. The public health law is amended by adding a new section  
4 1399-kk-1 to read as follows:

5 § 1399-kk-1. Vapor product directory. 1. Beginning January first, two  
6 thousand twenty-four, every manufacturer of a vapor product that is sold  
7 or intended to be sold in this state, whether directly or through a  
8 distributor, or vapor products dealer, shall execute and deliver an  
9 attestation under the penalty of perjury to the attorney general certi-  
10 fying that, as of the date of such attestation:

11 (a) such vapor product was on the United States' markets as of August  
12 eighth, two thousand eighteen, and such manufacturer has applied for a  
13 marketing order for such vapor product by submitting a Premarket Tobacco  
14 Product Application to the U.S. Food and Drug Administration on or  
15 before September ninth, two thousand twenty-two; or

16 (b) such manufacturer has received a marketing order or other authori-  
17 zation under 21 U.S.C. § 387j for such vapor product from the U.S. Food  
18 and Drug Administration.

19 2. Every manufacturer of a vapor product that is sold or intended to  
20 be sold in this state, whether directly or through a distributor, or  
21 vapor products dealer, shall notify the attorney general within thirty  
22 days of any material change to an attestation submitted pursuant to  
23 subdivision one of this section, including if the U.S. Food and Drug  
24 Administration has issued a market order or other authorization, issued  
25 a no marketing order, or has ordered such manufacturer to remove such  
26 vapor product, either temporarily or permanently, from the U.S. market.

27 3. The attorney general shall develop a vapor product directory list-  
28 ing all manufacturers that have provided attestations in compliance with  
29 subdivision one of this section, and all vapor products that are listed  
30 in such attestations. The attorney general shall publish and maintain  
31 such vapor product directory on its website.

32 4. It shall be unlawful for any person knowingly, directly or indi-  
33 rectly, to manufacture, distribute, sell, barter, or furnish in this  
34 state any vapor product that is not included in the vapor product direc-  
35 tory established pursuant to this section.

36 § 8. This act shall take effect on the one hundred eightieth day after  
37 it shall have become a law.