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:

Section 1. Section 1399-aa of the public health law is amended by adding a new subdivision 19 to read as follows:

19. "Nicotine pouch" means a smokeless pre-portioned pouch containing nicotine but no tobacco, in which the user puts the pouch between such user's lip and gum and leaves it there while the nicotine and taste is being released.

§ 2. Section 1399-bb of the public health law, as amended by section 4 of part EE of chapter 56 of the laws of 2020, is amended to read as follows:

§ 1399-bb. Distribution of tobacco products, **nicotine pouches,** vapor products, or herbal cigarettes without charge. 1. No retail dealer, or any agent or employee of a retail dealer engaged in the business of selling or otherwise distributing tobacco products, **nicotine pouches,** vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes for commercial purposes, or any agent or employee of such retail dealer, or any agent or employee of a retail dealer, shall knowingly, in furtherance of such business:

(a) distribute without charge any tobacco products, **nicotine pouches,** vapor products intended or reasonably expected to be used with or for 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.

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provided that the distribution of a package containing tobacco products, **nicotine pouches,** vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes in violation of this subdivision shall constitute a single violation without regard to the number of items in the package; or

(b) distribute price reduction instruments which are redeemable for tobacco products, **nicotine pouches,** vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes to any individual, provided that this subdivision shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products, **nicotine pouches,** vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes or obtained at locations which sell tobacco products, **nicotine pouches,** vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes provided that such distribution is confined to a designated area or to coupons sent through the mail.

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

(a) honor or accept a price reduction instrument in any transaction related to the sale of tobacco products, **nicotine pouches,** herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to a consumer;

(b) sell or offer for sale any tobacco products, **nicotine pouches,** herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to a consumer through any multi-package discount or otherwise provide to a consumer any tobacco products, **nicotine pouches,** herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine for less than the listed price or non-discounted price in exchange for the purchase of any other tobacco products, **nicotine pouches,** herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine by such consumer;

(c) sell, offer for sale, or otherwise provide any product other than a tobacco product, **nicotine pouch,** herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine to a consumer for less than the listed price or non-discounted price in exchange for the purchase of a tobacco product, **nicotine pouch,** herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine by such consumer; or

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

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

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

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

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

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

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

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

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

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

5. The distribution of tobacco products, **nicotine pouches,** electronic cigarettes, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes pursuant to subdivision two of this section or the distribution without charge of electronic cigarettes, **nicotine pouches,** or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, shall be made only to an individual who demonstrates, through (a) a driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth, or possession, the District of Columbia, a state government within the United States, or a provincial government of the dominion of Canada, (b) a valid passport issued by the United States government or the government of any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product, electronic cigarette, **nicotine pouch,** vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarette or the distribution without charge of electronic cigarettes, **nicotine pouches,** or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to an individual.

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

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

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

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

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

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

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

ty-one years of age to whom tobacco products, herbal cigarettes**, nicotine pouches** or electronic cigarettes are sold or distributed in violation of this article may submit a complaint to an enforcement officer setting forth the name and address of the alleged violator, the date of the alleged violation, the name and address of the complainant and the person under twenty-one years of age, and a brief statement describing the alleged violation. The enforcement officer shall notify the alleged violator by certified or registered mail, return receipt requested, that a complaint has been submitted, and shall set a date, at least fifteen days after the mailing of such notice, for a hearing on the complaint. Such notice shall contain the information submitted by the complainant.

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