

STATE OF NEW YORK

9012

IN SENATE

April 9, 2024

Introduced by Sen. MARTINEZ -- 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 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.

26 (b) In any instance where the information deciphered by the trans-
27 action scan fails to match the information printed on the driver's
28 license or non-driver identification card, or if the transaction scan

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

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1 indicates that the information is false or fraudulent, the attempted
2 transaction shall be denied.

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

20 § 2. Section 1399-dd of the public health law, as amended by chapter
21 448 of the laws of 2012 and subdivision (d) as amended by chapter 100 of
22 the laws of 2019, is amended to read as follows:

23 § 1399-dd. Sale of tobacco products, herbal cigarettes or electronic
24 cigarettes in vending machines. No person, firm, partnership, company or
25 corporation shall operate a vending machine which dispenses tobacco
26 products, herbal cigarettes or electronic cigarettes unless such machine
27 is located: (a) in a bar as defined in subdivision one of section thir-
28 teen hundred ninety-nine-n of this chapter, or the bar area of a food
29 service establishment with a valid, on-premises full liquor license; (b)
30 in a private club; (c) in a tobacco business as defined in subdivision
31 eight of section thirteen hundred ninety-nine-aa of this article; or (d)
32 in a place of employment which has an insignificant portion of its regu-
33 lar workforce comprised of people under the age of twenty-one years and
34 only in such locations that are not accessible to the general public;
35 provided, however, that in such locations the vending machine is located
36 in plain view and under the direct supervision and control of the person
37 in charge of the location or his or her designated agent or employee;
38 and provided further, that in such locations the vending machine shall
39 not be operable until the person in charge of such location or his or
40 her designated agent or employee has verified that the person seeking to
41 operate such vending machine is over twenty-one years of age in accord-
42 ance with the provisions of subdivisions three and four of section thir-
43 teen hundred ninety-nine-cc of this article.

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

47 1-b. (a) The commissioner shall establish a vapor product distributor
48 permit to be issued to persons engaged in the business of shipping or
49 causing to be shipped any vapor products intended or reasonably expected
50 to be used with or for the consumption of nicotine to any person in this
51 state. An application for a vapor product distributor permit shall
52 include:

53 (i) the name, telephone number, and primary business address of the
54 applicant;

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

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

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

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

9 (vi) any other information the commissioner shall deem relevant and
10 appropriate.

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

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

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

25 1-c. (a) The commissioner shall establish a vapor product manufacturer
26 permit to be issued to persons engaged in the business of manufacturing
27 any vapor products intended or reasonably expected to be used with or
28 for the consumption of nicotine to any person in this state. An applica-
29 tion for a vapor product manufacturer permit shall include:

30 (i) the name, telephone number, and primary business address of the
31 applicant;

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

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

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

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

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

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

50 (viii) any other information the commissioner shall deem relevant and
51 appropriate.

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

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

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

10 1-d. It shall be unlawful for a vapor products dealer under article
 11 twenty-eight-C of the tax law to purchase vapor products from anyone
 12 other than a holder of a vapor product distributor permit issued pursu-
 13 ant to subdivision one-b, or a holder of a vapor product manufacturer
 14 permit issued pursuant to subdivision one-c of this section.

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

18 § 1399-11. Unlawful shipment [~~or~~], transport, or manufacture of ciga-
 19 rettes and vapor products.

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

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

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

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

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

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

45 § 6. The public health law is amended by adding a new section
 46 1399-dd-2 to read as follows:

47 § 1399-dd-2. Sale of illicit vapor products. 1. It shall be unlawful
 48 for any person knowingly, directly or indirectly, to manufacture,
 49 distribute, sell, barter, or furnish in this state any illicit vapor
 50 product.

51 2. Any person who violates the provisions of subdivision one of this
 52 section shall be guilty of a class A misdemeanor for a first violation,
 53 and for a second or subsequent violation shall be guilty of a class E
 54 felony.

55 § 7. The public health law is amended by adding a new section
 56 1399-kk-1 to read as follows:

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

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

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

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

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

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

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