

STATE OF NEW YORK

9150

IN SENATE

May 1, 2024

Introduced by Sen. HOYLMAN-SIGAL -- 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 prohibiting the sale of oral nicotine pouches

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

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

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

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

10 § 1399-bb. Distribution of tobacco products, nicotine pouches, vapor
11 products, or herbal cigarettes without charge. 1. No retail dealer, or
12 any agent or employee of a retail dealer engaged in the business of
13 selling or otherwise distributing tobacco products, nicotine pouches,
14 vapor products intended or reasonably expected to be used with or for
15 the consumption of nicotine, or herbal cigarettes for commercial
16 purposes, or any agent or employee of such retail dealer, or any agent
17 or employee of a retail dealer, shall knowingly, in furtherance of such
18 business:

19 (a) distribute without charge any tobacco products, nicotine pouches,
20 vapor products intended or reasonably expected to be used with or for
21 the consumption of nicotine, or herbal cigarettes to any individual,
22 provided that the distribution of a package containing tobacco products,
23 nicotine pouches, vapor products intended or reasonably expected to be
24 used with or for the consumption of nicotine, or herbal cigarettes in
25 violation of this subdivision shall constitute a single violation with-
26 out regard to the number of items in the package; or

27 (b) distribute price reduction instruments which are redeemable for
28 tobacco products, nicotine pouches, vapor products intended or reason-

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

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ably 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;

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

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

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

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

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

22 5. The distribution of tobacco products, nicotine pouches, electronic
23 cigarettes, vapor products intended or reasonably expected to be used
24 with or for the consumption of nicotine, or herbal cigarettes pursuant
25 to subdivision two of this section or the distribution without charge of
26 electronic cigarettes, nicotine pouches, or vapor products intended or
27 reasonably expected to be used with or for the consumption of nicotine,
28 shall be made only to an individual who demonstrates, through (a) a
29 driver's license or non-driver identification card issued by the commis-
30 sioner of motor vehicles, the federal government, any United States
31 territory, commonwealth, or possession, the District of Columbia, a
32 state government within the United States, or a provincial government of
33 the dominion of Canada, (b) a valid passport issued by the United States
34 government or the government of any other country, or (c) an identifica-
35 tion card issued by the armed forces of the United States, indicating
36 that the individual is at least twenty-one years of age. Such identifi-
37 cation need not be required of any individual who reasonably appears to
38 be at least twenty-five years of age; provided, however, that such
39 appearance shall not constitute a defense in any proceeding alleging the
40 sale of a tobacco product, electronic cigarette, nicotine pouch, vapor
41 product intended or reasonably expected to be used with or for the
42 consumption of nicotine, or herbal cigarette or the distribution without
43 charge of electronic cigarettes, nicotine pouches, or vapor products
44 intended or reasonably expected to be used with or for the consumption
45 of nicotine to an individual.

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

49 § 1399-mm-1. Sale of flavored products prohibited. 1. For the purposes
50 of this section "flavored" shall mean any vapor product or oral nicotine
51 pouch intended or reasonably expected to be used with or for the
52 consumption of nicotine, with a distinguishable taste or aroma, other
53 than the taste or aroma of tobacco, imparted either prior to or during
54 consumption of such product or a component part thereof, including but
55 not limited to tastes or aromas relating to any fruit, chocolate, vanil-
56 la, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen,

1 menthol, herb or spice, or any concept flavor that imparts a taste or
2 aroma that is distinguishable from tobacco flavor but may not relate to
3 any particular known flavor. A vapor product or oral nicotine pouch
4 intended or reasonably expected to be used with or for the consumption
5 of nicotine, shall be presumed to be flavored if a product's retailer,
6 manufacturer, or a manufacturer's agent or employee has made a statement
7 or claim directed to consumers or the public, whether expressed or
8 implied, that such product or device has a distinguishable taste or
9 aroma other than the taste or aroma of tobacco. For the purposes of
10 this section, oral nicotine pouch shall mean a pouch containing nicotine
11 derived from tobacco or synthetic nicotine and other ingredients which
12 may include cellulose, water, flavoring and sodium carbonate, and are
13 used or intended to be used orally.

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

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

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

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

45 1. Where a civil penalty for a particular incident has not been
46 imposed or an enforcement action regarding an alleged violation for a
47 particular incident is not pending under section thirteen hundred nine-
48 ty-nine-ee of this article, a parent or guardian of a person under twen-
49 ty-one years of age to whom tobacco products, herbal cigarettes, nico-
50 tine pouches or electronic cigarettes are sold or distributed in
51 violation of this article may submit a complaint to an enforcement offi-
52 cer setting forth the name and address of the alleged violator, the date
53 of the alleged violation, the name and address of the complainant and
54 the person under twenty-one years of age, and a brief statement describ-
55 ing the alleged violation. The enforcement officer shall notify the
56 alleged violator by certified or registered mail, return receipt

1 requested, that a complaint has been submitted, and shall set a date, at
2 least fifteen days after the mailing of such notice, for a hearing on
3 the complaint. Such notice shall contain the information submitted by
4 the complainant.

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