

# STATE OF NEW YORK

2128

2025-2026 Regular Sessions

## IN ASSEMBLY

January 15, 2025

Introduced by M. of A. ROSENTHAL, DAVILA, SIMON, STERN, ZINERMAN, GLICK, SHIMSKY, ALVAREZ, LUPARDO, DINOWITZ, STIRPE, COLTON, HEVESI, GONZALEZ-ROJAS, KELLES, REYES, SEAWRIGHT, WOERNER, TAYLOR, PAULIN, STECK, RAGA, SLATER -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the tax law, in relation to prohibiting the storage of flavored vapor products near where vapor or tobacco products are sold at retail or wholesale

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

1 Section 1. Subdivisions 1, 17 and 18 of section 1399-aa of the public  
2 health law, subdivision 1 as amended by chapter 13 of the laws of 2003,  
3 and subdivisions 17 and 18 as added by section 2 of part EE of chapter  
4 56 of the laws of 2020, are amended to read as follows:

5 1. "Enforcement officer" means the enforcement officer designated  
6 pursuant to article thirteen-E of this chapter to enforce such article  
7 and hold hearings pursuant thereto; provided that in a city with a popu-  
8 lation of more than one million it shall also mean an officer or employ-  
9 ee or any agency of such city that is authorized to enforce any local  
10 law of such city related to the regulation of the sale of cigarettes,  
11 tobacco products, or vapor products to minors.

12 17. "Vapor products" means any noncombustible liquid or gel, regard-  
13 less of the presence of nicotine therein, that is manufactured into a  
14 finished product for use in an electronic [~~cigarette, including any~~]  
15 device that delivers vapor which is inhaled, including any refill,  
16 cartridge, device, or component thereof, that contains or is intended  
17 to be used with such noncombustible liquid or gel. "Vapor product" shall  
18 not include any device, or any component thereof, that does not contain  
19 such noncombustible liquid or gel, or any product approved by the United  
20 States food and drug administration as a drug or medical device, as  
21 those terms are defined in the federal food, drug, and cosmetic act, or  
22 manufactured and dispensed pursuant to [~~title five-A~~] article three,

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

LBD05720-01-5

1 four, or five of [~~article thirty three of this chapter~~] the cannabis  
2 law.

3 18. "Vapor products dealer" means a person licensed by the commission-  
4 er of taxation and finance to sell vapor products [~~in this state~~], or a  
5 person or business required to obtain such license.

6 § 2. Subdivision 2 and paragraph (f) of subdivision 3 of section  
7 1399-ee of the public health law, as amended by section 6 of part EE  
8 of chapter 56 of the laws of 2020, are amended to read as follows:

9 2. If the enforcement officer determines after a hearing that a  
10 violation of this article has occurred, [~~he or she~~] or that a state or  
11 local health official was denied access to a retail store including all  
12 product display and storage areas, for the purpose of evaluating compli-  
13 ance with this article, they shall impose a civil penalty of a minimum  
14 of three hundred dollars, but not to exceed one thousand five hundred  
15 dollars for a first violation, and a minimum of one thousand dollars,  
16 but not to exceed two thousand five hundred dollars for each subsequent  
17 violation, unless a different penalty is otherwise provided in this  
18 article. The enforcement officer shall advise the retail dealer that  
19 upon the accumulation of three or more points pursuant to this section  
20 the department of taxation and finance shall suspend the dealer's regis-  
21 tration. If the enforcement officer determines after a hearing that a  
22 retail dealer was selling tobacco or vapor products while their regis-  
23 tration was suspended or permanently revoked pursuant to subdivision  
24 three or four of this section, [~~he or she~~] they shall impose a civil  
25 penalty of twenty-five hundred dollars.

26 (f) Surcharge. A [~~two~~] four hundred [~~fifty~~] dollar surcharge to be  
27 assessed for every violation will be made available to enforcement offi-  
28 cers and shall be used solely for compliance checks to be conducted to  
29 determine compliance with this section.

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

33 1. Where a civil penalty for a particular incident has not been  
34 imposed or an enforcement action regarding an alleged violation for a  
35 particular incident is not pending under section thirteen hundred nine-  
36 ty-nine-ee of this article, a parent or guardian of a person under twen-  
37 ty-one years of age to whom tobacco products, herbal cigarettes or  
38 [~~electronic cigarettes~~] vapor products are sold or distributed in  
39 violation of this article may submit a complaint to an enforcement offi-  
40 cer setting forth the name and address of the alleged violator, the date  
41 of the alleged violation, the name and address of the complainant and  
42 the person under twenty-one years of age, and a brief statement describ-  
43 ing the alleged violation. The enforcement officer shall notify the  
44 alleged violator by certified or registered mail, return receipt  
45 requested, that a complaint has been submitted, and shall set a date, at  
46 least fifteen days after the mailing of such notice, for a hearing on  
47 the complaint. Such notice shall contain the information submitted by  
48 the complainant.

49 § 4. Subdivision 1 of section 1399-gg of the public health law, as  
50 amended by chapter 513 of the laws of 2004, is amended to read as  
51 follows:

52 1. All tobacco cigarettes or vapor products sold or offered for sale  
53 by a retail dealer shall be sold or offered for sale in the package,  
54 box, carton or other container provided by the manufacturer, importer,  
55 or packager which bears all health warnings required by applicable law.

1 § 5. The opening paragraph and subdivisions 2 and 3 of section 1399-hh  
2 of the public health law, as amended by section 8 of part EE of chapter  
3 56 of the laws of 2020, are amended to read as follows:

4 The commissioner shall develop, plan and implement a comprehensive  
5 program to reduce the prevalence of tobacco [~~use,~~] and vapor product[~~,  
6 intended or reasonably expected to be used with or for the consumption  
7 of nicotine,~~] use, particularly among persons less than twenty-one years  
8 of age. This program shall include, but not be limited to, support for  
9 enforcement of this article.

10 2. The commissioner shall distribute such monies as are made available  
11 for such purpose to enforcement officers and, in so doing, consider the  
12 number of licensed vapor products dealers or sellers and retail  
13 locations registered to sell tobacco products within the jurisdiction of  
14 the enforcement officer and the level of proposed activities. For the  
15 purposes of this section, "seller" means a person, sole proprietorship,  
16 corporation, limited liability company, partnership or other enterprise  
17 that distributes, sells or offers to sell, whether through retail or  
18 wholesale, or exchanges or offers to exchange for any form of consider-  
19 ation, cigarettes, tobacco products, or vapor products. This definition  
20 is without regard to the quantity of cigarettes, tobacco products, or  
21 vapor products distributed, sold, offered for sale, exchanged, or  
22 offered for exchange.

23 3. Monies made available to enforcement officers pursuant to this  
24 section shall only be used for local tobacco and vapor product[~~,  
25 intended or reasonably expected to be used with or for the consumption  
26 of nicotine,~~] enforcement activities approved by the commissioner.

27 § 6. Subdivision 2 of section 1399-ii of the public health law, as  
28 amended by section 12 of part EE of chapter 56 of the laws of 2020, is  
29 amended to read as follows:

30 2. The department shall support tobacco and vapor product use  
31 prevention and control activities including, but not limited to:

32 (a) Community programs to prevent and reduce tobacco use through local  
33 involvement and partnerships;

34 (b) School-based programs to prevent and reduce tobacco use and use of  
35 vapor products;

36 (c) Marketing and advertising to discourage tobacco[~~,~~] and vapor prod-  
37 uct [~~and liquid nicotine~~] use, especially among consumers histor-  
38 ically targeted by tobacco and vapor product advertising and manufactur-  
39 ers;

40 (d) Nicotine cessation programs for youth and adults;

41 (e) Special projects to reduce the disparities in smoking prevalence  
42 among various populations;

43 (f) Restriction of youth access to tobacco products and vapor  
44 products;

45 (g) Surveillance of smoking and vaping rates; and

46 (h) Any other activities determined by the commissioner to be neces-  
47 sary to implement the provisions of this section.

48 Such programs shall be selected by the commissioner through an appli-  
49 cation process which takes into account whether a program utilizes meth-  
50 ods recognized as effective in reducing [~~nicotine~~] tobacco or vapor  
51 product use. Eligible applicants may include, but not be limited to, a  
52 health care provider, schools, a college or university, a local public  
53 health department, a public health organization, a health care provider  
54 organization, association or society, municipal corporation, or a  
55 professional education organization.

1 § 7. Section 1399-ii-1 of the public health law, as added by section  
2 11 of part EE of chapter 56 of the laws of 2020, is amended to read as  
3 follows:

4 § 1399-ii-1. [~~Electronic cigarette and vaping~~] Vapor product  
5 prevention, awareness and control program. The commissioner shall, in  
6 consultation and collaboration with the commissioner of education,  
7 establish and develop [~~an electronic cigarette and vaping~~] a vapor prod-  
8 uct prevention, control and awareness program within the department.  
9 Such program shall be designed to educate students, parents and school  
10 personnel about the health risks associated with vapor product use and  
11 control measures to reduce the prevalence of vaping, particularly among  
12 persons less than twenty-one years of age. Such program shall include,  
13 but not be limited to, the creation of age-appropriate instructional  
14 tools and materials that may be used by all schools, and marketing and  
15 advertising materials to discourage [~~electronic cigarette~~] vapor product  
16 use.

17 § 8. Subdivision 6 of section 1399-11 of the public health law, as  
18 amended by section 3 of part EE of chapter 56 of the laws of 2020, is  
19 amended to read as follows:

20 6. The attorney general may bring an action to recover the civil  
21 penalties provided by subdivision five of this section and for such  
22 other relief as may be deemed necessary. In addition, the corporation  
23 counsel of any political subdivision that imposes a tax on cigarettes or  
24 vapor products [~~intended or reasonably expected to used with or for the~~  
25 ~~consumption of nicotine~~] may bring an action to recover the civil penal-  
26 ties provided by subdivision five of this section and for such other  
27 relief as may be deemed necessary with respect to any cigarettes or  
28 vapor products [~~intended or reasonably expected to be used with or for~~  
29 ~~the consumption of nicotine~~] shipped, caused to be shipped or trans-  
30 ported in violation of this section to any person located within such  
31 political subdivision. All civil penalties obtained in any such action  
32 shall be retained by the state or political subdivision bringing such  
33 action[, ~~provided that no person shall be required to pay civil penal-~~  
34 ~~ties to both the state and a political subdivision with respect to the~~  
35 ~~same violation of this section~~].

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

39 § 1399-mm-1. Sale of flavored products prohibited. 1. For the purposes  
40 of this section "flavored" shall mean any vapor product [~~intended or~~  
41 ~~reasonably expected to be used with or for the consumption of nicotine,~~  
42 with a [~~distinguishable~~] taste, [~~or~~] aroma, or cooling or numbing sensa-  
43 tion, distinguishable by an ordinary customer, other than the taste or  
44 aroma of tobacco, imparted either prior to or during consumption of such  
45 product or a component part thereof, including but not limited to tastes  
46 or aromas relating to any fruit, chocolate, vanilla, honey, candy,  
47 cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb or  
48 spice, or any concept flavor that imparts a taste or aroma that is  
49 distinguishable from tobacco flavor but may not relate to any particular  
50 known flavor. A vapor product [~~intended or reasonably expected to be~~  
51 ~~used with or for the consumption of nicotine,~~] shall be presumed to be  
52 flavored if a product's retailer, manufacturer, or a manufacturer's  
53 agent or employee has made a statement or claim, or other action,  
54 directed to consumers or the public, whether expressed or implied, that  
55 such product or device has a [~~distinguishable~~] taste [~~or~~], aroma, or

1 cooling or numbing sensation, as distinguishable by the ordinary consum-  
2 er, other than the taste [~~ex~~], aroma, or sensation of tobacco.

3 2. No vapor products dealer, seller or any agent or employee of a  
4 vapor products dealer or seller, shall sell or offer for sale [~~at retail~~  
5 ~~in the state~~], or exchange or offer for exchange, for any form of  
6 consideration, any flavored vapor product [~~intended or reasonably~~  
7 ~~expected to be used with or for the consumption of nicotine~~], whether  
8 through retail or wholesale. For the purposes of this section, seller  
9 means a person, sole proprietorship, corporation, limited liability  
10 company, partnership or other enterprise that distributes, sells or  
11 offers to sell, whether through retail or wholesale, or exchanges or  
12 offers to exchange, for any form of consideration, vapor products. This  
13 definition is without regard to the quantity of vapor products distrib-  
14 uted, sold, offered for sale, exchanged, or offered for exchange.

15 3. No vapor products dealer or seller or any agent or employee of a  
16 vapor products dealer or seller, acting in the capacity thereof, shall  
17 keep in inventory, store, stow, warehouse, process, package, ship, or  
18 distribute flavored vapor or tobacco products anywhere in, adjacent to,  
19 or accessible to a place of business or premises where vapor products  
20 are sold, offered for sale, exchanged, or offered for exchange, for any  
21 form of consideration, at retail.

22 4. Any vapor products dealer or seller, or any agent or employee of a  
23 vapor products dealer or seller, who violates the provisions of this  
24 section shall be subject to a civil penalty of not more than [~~one~~] three  
25 hundred dollars for each individual package of flavored vapor product  
26 [~~intended or reasonably expected to be used with or for the consumption~~  
27 ~~of nicotine~~] sold or offered for sale, [~~provided, however, that with~~  
28 ~~respect to a manufacturer, it shall be an affirmative defense to a find-~~  
29 ~~ing of violation pursuant to this section that such sale~~] or [~~offer of~~  
30 ~~sale, as applicable, occurred without the knowledge, consent, authori-~~  
31 ~~zation, or involvement, direct~~] exchanged or [~~indirect,~~] offered for  
32 exchange, for any form of [~~such manufacturer~~] consideration, whether  
33 through retail or wholesale, or kept in inventory, stored, stowed, ware-  
34 housed, processed, packaged, shipped, or distributed anywhere in, or  
35 adjacent to, a place of business where vapor or tobacco products are  
36 sold, offered for sale, exchanged, or offered for exchange, for any form  
37 of consideration, at retail. Violations of the provisions of this  
38 section shall be enforced pursuant to [~~section~~] sections thirteen  
39 hundred ninety-nine-ee and thirteen hundred ninety-nine-ff of this arti-  
40 cle, [~~except~~]; provided, however, that [~~any~~] violations of the  
41 provisions of this section may also be enforced by the commissioner;  
42 provided, further, however, that any monies obtained in any such  
43 enforcement action taken by the commissioner shall be made available to  
44 support tobacco and vapor product enforcement programs operating pursu-  
45 ant to section thirteen hundred ninety-nine-hh of this article. Any  
46 person may submit a complaint to an enforcement officer that a violation  
47 of this section has occurred.

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

1 5. Nothing in this section shall be construed to penalize the  
2 purchase, use, or possession of a tobacco product or vapor product by  
3 any person not engaged as a vapor products dealer, retail dealer, tobac-  
4 co or vapor seller, or any agent or employee of a vapor products dealer,  
5 retail dealer, or tobacco or vapor seller.

6 § 10. Paragraph (e) of section 1183 of the tax law, as added by  
7 section 1 of part UU of chapter 59 of the laws of 2019, is amended to  
8 read as follows:

9 (e) (1) If a vapor products [~~dealer~~] dealer's certificate or registra-  
10 tion is suspended, cancelled or revoked and such vapor products dealer  
11 sells vapor products through more than one place of business in this  
12 state, the vapor products dealer's certificate of registration issued to  
13 that place of business, cart, stand, truck or other merchandising  
14 device, where such violation occurred, shall be suspended, revoked or  
15 cancelled. Provided, however, upon a vapor products dealer's third  
16 suspension, cancellation or revocation within a five-year period for any  
17 one or more businesses owned or operated by the vapor products dealer,  
18 such suspension, cancellation, or revocation of the vapor products deal-  
19 er's certificate of registration shall apply to all places of business  
20 where [~~he or she sells~~] they sell vapor products in this state.

21 (2) If a vapor products dealer does not possess a valid certificate of  
22 registration, either because it failed to obtain a registration or its  
23 registration is suspended or revoked and the commissioner or their  
24 designee, pursuant to their authority under this article, attempts to  
25 inspect such premises for a violation of this section and such vapor  
26 products dealer, including an agent thereof, is found, after notice and  
27 opportunity to be heard, to have refused such inspection, such vapor  
28 products dealer shall be subject to a penalty of up to four thousand  
29 dollars for a first refusal and up to eight thousand dollars for a  
30 second or subsequent refusal within three years of a prior refusal.

31 § 11. Section 1183 of the tax law is amended by adding two new subdivi-  
32 sions (i) and (j) to read as follows:

33 (i) At the time of delivering vapor products to any person, each vapor  
34 products dealer shall make a true duplicate invoice showing the date of  
35 delivery, the number of packages and number of vapor products contained  
36 therein, in each shipment of vapor products delivered, and the items and  
37 quantity and wholesale price of each item in each shipment of vapor  
38 products delivered, and the name of the purchaser to whom delivery is  
39 made, and shall retain such duplicate invoices for a period of three  
40 years subject to the use and inspection of the commissioner. Each vapor  
41 products dealer shall procure and retain invoices showing the number of  
42 packages and number of vapor products contained therein, in each ship-  
43 ment of vapor products received by them, and the items and quantity and  
44 wholesale price of each item in each shipment of vapor products received  
45 by them, the date thereof, and the name of the shipper, and shall retain  
46 such invoices for a period of three years subject to the use and  
47 inspection of the commissioner. The commissioner by regulation may  
48 provide that whenever vapor products are shipped into the state, the  
49 railroad company, express company, trucking company or other public  
50 carrier transporting any shipment thereof shall file with the commis-  
51 sioner a copy of the freight bill within ten days after the delivery in  
52 the state of each shipment. All vapor products dealers shall maintain  
53 and keep for a period of three years such other records of vapor  
54 products received, sold or delivered within the state, as may be  
55 required by the commissioner. The commissioner is hereby authorized to  
56 examine the books, papers, invoices and other records of any person in

1 possession, control or occupancy of any premises where vapor products  
2 are placed, stored, sold or offered for sale, and the equipment of any  
3 such person pertaining to the sale and delivery of vapor products taxa-  
4 ble under this article, as well as the stock of vapor products in any  
5 such premises or vehicle. To verify the accuracy of the tax imposed and  
6 assessed by this article, each such person is hereby directed and  
7 required to give to the commissioner or such commissioner's duly author-  
8 ized representatives, the means, facilities and opportunity for such  
9 examinations as are herein provided for and required.

10 (j) If a vapor products dealer, including an agent thereof, refuses to  
11 comply with the requirements of this section, its registration may be  
12 revoked (i) for a period of one year, (ii) for a second such violation  
13 within a period of five years, for up to three years, or (iii) for a  
14 third or subsequent violation within a period of seven years, for a  
15 period up to ten years. A vapor products dealer's registration shall be  
16 considered to be revoked pursuant to this subdivision immediately upon  
17 such dealer's receipt of written notice of revocation from the commis-  
18 sioner.

19 § 12. Severability. If any clause, sentence, paragraph, subdivision,  
20 section or part of this act shall be adjudged by any court of competent  
21 jurisdiction to be invalid, such judgment shall not affect, impair, or  
22 invalidate the remainder thereof, but shall be confined in its operation  
23 to the clause, sentence, paragraph, subdivision, section or part thereof  
24 directly involved in the controversy in which such judgment shall have  
25 been rendered. It is hereby declared to have been the intent of the  
26 legislature that this act would have been enacted even if such invalid  
27 provisions had not been included herein.

28 § 13. This act shall take effect on the ninetieth day after it shall  
29 have become a law.