STATE OF NEW YORK

4913

2025-2026 Regular Sessions

IN SENATE

February 14, 2025

Introduced by Sen. COMRIE -- 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 regulating vapor products; to amend the state finance law, in relation to establishing the vapor products compliance fund; and to repeal certain provisions of the public health law relating thereto

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

Section 1. Section 1399-mm-1 of the public health law is REPEALED.

§ 2. This act shall be known and may be cited as the "vapor products regulatory act of 2025".

§ 3. The public health law is amended by adding a new article 13-I to read as follows:

ARTICLE 13-I
VAPOR PRODUCTS REGULATORY ACT

Section 1399-xx. Purpose of article.
1399-yy. Definitions.
1399-zz. Manufacturing, labeling, marketing, and safety requirements.
1399-aaa. Penalties and suspension; enforcement.
1399-bbb. Exceptions.

§ 1399-xx. Purpose of article. The purpose of this article is to protect public health and safety by ensuring the safety and security of e-liquid and vapor products manufactured for sale in this state, ensuring that e-liquid and vapor products manufactured or sold in this state conform to appropriate standards related to labeling, marketing, and appearance, ensuring that e-liquid and vapor products are not contaminated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety, and ensuring that

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

LBD06693-02-5

e-liquid and vapor products manufactured or sold in this state are not targeted to appeal to minors.

§ 1399-yy. Definitions. As used in this article:

1. "Adult-only store" means a retail store operated by a retail dealer or vapor products dealer to which admission is restricted to persons twenty-one years of age or older and which posts signage on the entrance to such store which states "MINORS UNDER 21 AND UNACCOMPANIED BY AN ADULT ARE NOT ALLOWED ON THE PREMISES."

2. "Advertise" or "advertising" means the publication or dissemination of an advertisement.

3. "Advertisement" includes any written or verbal statement, illustration, or depiction which is calculated to induce sales of vapor products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any e-liquid or vapor product, or any individual covering, carton, or other wrapper of such bottle that constitutes a part of the labeling under provisions of this article.

(b) Any editorial or other reading material in any periodical or publication or newspaper for the publication of which now money or valuable consideration is paid or promised, directly or indirectly, by any licensee, and which is not written by or at the direction of the licensee.

4. "Distributor" means a person who has a permit that authorizes such person to:

(a) distribute, sell, barter, or exchange e-liquid or vapor products in this state for the purpose of resale; or

(b) purchase e-liquid or vapor products directly from a manufacturer or distributor for the purpose of resale in this state.

5. "E-liquid" means a solution that: (a) contains propylene glycol, vegetable glycerin, nicotine, nicotine salts and/or flavorings; and (b) is intended to be used in a vapor product. Provided, however, that e-liquid does not include cannabis, THC, CBD, or hemp as defined under the laws of this state.

6. "Health-related statement" means any statement related to health, including statements of a curative or therapeutic nature that, expressly or implicitly, suggest a relationship between the consumption of e-liquids or vapor products and health benefits or effects on health.

7. "Manufacturer" means a person located inside this state, including any re-packer and/or re-labeler, that is engaged in manufacturing e-liquids or vapor products.

8. "Manufacturing" means the process by which an e-liquid or vapor product is fabricated, assembled, packaged or labeled, and sealed in final packaging intended for customer use.

9. "Market" or "marketing" means any act or process of promoting or selling vapor products, including, but not limited to, sponsorship of sporting events, point-of-sale advertising, and promotions or products specifically designed to appeal to certain demographics.

10. "Minor" means an individual who is less than twenty-one years of age.

11. "Packaging" means any receptacle that contains a finished e-liquid or a vapor product.

12. "Retailer" means a person, other than a manufacturer or distributor, who in the ordinary course of the person's regular trade or business:

(a) acquires any form of e-liquid or vapor products for the purpose of resale to an end consumer; and

(b) sells an e-liquid or a vapor product to another person for money or other consideration.

13. "Sale" or "sell" means to exchange or otherwise furnish any e-liquid or vapor product to any individual of legal age for monetary value.

14. "Social media" or "social media platform" means an online forum, website or application that satisfies each of the following criteria:

(a) allows users to upload content or view the content or activity of other users;

(b) employs algorithms that analyze user data or information on users to select content for users; and

(c) has any of the following features:

(i) infinite scrolling;

(ii) push notifications or alerts sent by the online forum, website, or application to inform the user about specific activities or events related to the user's account;

(iii) displays personal interactive metrics that indicate the number of times other users have clicked a button to indicate their reaction to content or have shared or reposted the content;

(iv) auto-plays video or videos begin to play without the user first clicking on the video or play button to view such video; or

(v) has live-streaming functions that allow users or advertisers to broadcast live video content in real-time.

15. "Tamper-evident package" means a package having at least one indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

16. "Vapor product" means an electronic device that converts e-liquid to a vapor intended for inhalation that may or may not contain e-liquid.

§ 1399-zz. Manufacturing, labeling, marketing, and safety requirements. 1. Manufacturers, distributors, and retailers shall comply with the following requirements:

(a) E-liquid bottles must use a child proof cap that has the child resistant effectiveness set forth in the federal poison prevention packaging standards, 16 CFR 1700.15(b)(1), as amended from time to time.

(b) E-liquid bottles or vapor products that contain e-liquid must use a tamper-evident package. Such tamper-evident package shall be designed to remain intact when handled in a reasonable manner during the manufacture, distribution, and retail display of the e-liquid bottle.

(c) Labels on e-liquid bottles must meet the nicotine addictiveness warning statement requirements set forth in 21 CFR 1143.3, as amended from time to time.

(d) Packages containing an e-liquid bottle or vapor product must contain the name of the manufacturer or distributor and shall have the address of such manufacturer or distributor firmly affixed to or printed on the package for tracking purposes. A scannable bar code or QR code located on the package may meet this requirement.

2. A manufacturer, distributor, or retailer of e-liquids or vapor products shall not sell or offer for sale any e-liquid or vapor product that:

(a) Uses in the labeling or packaging of the product or in its marketing materials:

(i) the terms "candy", "candies", or variants in spelling, except for use in the name of a licensee, including the licensee's doing business as name;

(ii) the terms "bubble gum", "cotton candy", "gummy bear", "gummy worm", "lollipop", or variations of such terms, except for use in the name of a licensee, including the licensee's doing business as name;

(iii) any other terms or phrases which the department has, by regulation, determined has a disproportionate appeal to minors, provided that such regulation shall not apply to: (1) terms relating to the name of a type of fruit; (2) the term "mint" or terms that relate to a type of mint; (3) the terms "menthol" or "ice"; or (4) terms containing the word "tobacco";

(b) Uses, in the labeling or design of the product or its packaging, or in its marketing materials, images of or references to cartoons, cartoon characters, superheroes, television shows, video games, and movies, or other similar characters or references, that have been primarily used to market products to minors;

(c) Uses, in the labeling or design of the product, or its packaging, or in its marketing materials, trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of food brands or products that have been primarily marketed to minors, including but not limited to: brands of breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops; or

(d) Uses, in the labeling or design of the product or its packaging, or in such products marketing materials, trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of school supplies.

3. A manufacturer, distributor or retailer of e-liquids or vapor products shall not advertise or market any vapor product except in the following manner:

(a) Advertisements may not be materially false or untrue and any statement contained therein must be consistent with the e-liquid's or vapor product's labeling;

(b) Advertisements may not contain any health or therapeutic claims;

(c) Advertisements on billboard signs must not be within one thousand feet of a primary or secondary school, playground, or youth center;

(d) Advertisements for e-liquids or vapor products shall be prohibited on social media as defined in this article unless the recipient of the content has been age verified by a verified age gating process.

§ 1399-aaa. Penalties and suspension; enforcement. 1. The department may assess a civil penalty against a manufacturer, distributor, or retailer for a violation of this article in an amount not to exceed five thousand dollars. A civil penalty may be assessed in addition to other penalties authorized pursuant to this article.

2. The attorney general is authorized to investigate and enforce violations of subdivision two of section thirteen hundred ninety-nine-zz of this article. Upon determining that a manufacturer, distributor, or retailer has violated any provision of such subdivision, the attorney general may bring a civil action in any court of competent jurisdiction to: (a) seek injunctive relief restraining or enjoining any manufacturer, distributor, or retailer from continuing to engage in activities that violate subdivision two of section thirteen hundred ninety-nine-zz of this article; (b) recover civil penalties of up to ten thousand dollars per violation; or (c) obtain appropriate relief to protect the public interest.

3. Civil penalties collected under this section shall be deposited in the vapor products compliance fund established pursuant to section ninety-nine-ss of the state finance law.

§ 1399-bbb. Exceptions. The provisions of this article shall not apply to any vapor products dealer, or any agent or employee of a vapor products dealer, who sells or offers for sale, or who possesses with intent to sell or offer for sale, any flavored vapor product intended or reasonably expected to be used with or for consumption of nicotine in an adult-only store.

§ 4. The state finance law is amended by adding a new section 99-ss to read as follows:

§ 99-ss. Vapor products compliance fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a fund to be known as the "vapor products compliance fund".

2. Such fund shall consist of revenues received by the state pursuant to section thirteen hundred ninety-nine-aaa of the public health law and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law.

3. All moneys of the vapor products compliance fund, following appropriation by the legislature, shall be made available for the purposes of enforcement of the provisions of article thirteen-I of the public health law.

4. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of health.

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