

STATE OF NEW YORK

2128--A

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, NOVAKHOV, GRIFFIN, MEEKS, WIEDER, CUNNINGHAM, NORBER, KASSAY, LEVENBERG, CRUZ, EPSTEIN, ROMERO, SHRESTHA, K. BROWN -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 such noncombustible liquid or gel, or any product approved by the United
2 States food and drug administration as a drug or medical device, as
3 those terms are defined in the federal food, drug, and cosmetic act, or
4 manufactured and dispensed pursuant to [~~title five-A~~] article three,
5 four, or five of [~~article thirty-three of this chapter~~] the cannabis
6 law.

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

10 § 2. Subdivision 2 and paragraph (f) of subdivision 3 of section
11 1399-ee of the public health law, as amended by section 6 of part EE
12 of chapter 56 of the laws of 2020, are amended to read as follows:

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

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

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

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

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

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

5 § 5. The opening paragraph and subdivisions 2 and 3 of section 1399-hh
6 of the public health law, as amended by section 8 of part EE of chapter
7 56 of the laws of 2020, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

46 (f) Restriction of youth access to tobacco products and vapor
47 products;

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

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

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

1 organization, association or society, municipal corporation, or a
2 professional education organization.

3 § 7. Section 1399-ii-1 of the public health law, as added by section
4 11 of part EE of chapter 56 of the laws of 2020, is amended to read as
5 follows:

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

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

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

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

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

1 has a [~~distinguishable~~] taste [~~or~~], aroma, or cooling sensation, other
2 than the taste [~~or~~], 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~~] at retail.
8 For the purposes of this section, seller means a person, sole proprie-
9 torship, corporation, limited liability company, partnership or other
10 enterprise that sells or offers to sell, at retail, or exchanges or
11 offers to exchange, for any form of consideration, vapor products
12 through retail sales. This definition is without regard to the quantity
13 of vapor products, sold, offered for sale, exchanged, or offered for
14 exchange.

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

22 4. No vapor products wholesaler or any agent or employee of a vapor
23 products wholesaler acting in the capacity thereof, shall sell, process,
24 package, ship or distribute flavored vapor products to a vapor products
25 dealer or seller, or any agent or employee of a vapor products dealer or
26 seller acting in the capacity thereof, located in the state. Nothing in
27 this section shall prevent a vapor products wholesaler or any agent or
28 employee of a vapor products wholesaler acting in the capacity thereof,
29 from selling, processing, packaging, shipping or distributing flavored
30 vapor products to out-of-state retailers.

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

~~[4. The provisions of this section 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 possess with intent to sell or offer for sale, any flavored vapor product 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(e) et seq.]~~

6. Nothing in this section shall be construed to penalize the purchase, use, or possession of a tobacco product or vapor product by any person not engaged as a vapor products dealer, retail dealer, tobacco or vapor seller, or any agent or employee of a vapor products dealer, retail dealer, or tobacco or vapor seller.

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

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

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

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

(i) At the time of delivering vapor products to any person, each vapor products dealer shall make a true duplicate invoice showing the date of delivery, the number of packages and number of vapor products contained therein, in each shipment of vapor products delivered, and the items and quantity and wholesale price of each item in each shipment of vapor products delivered, and the name of the purchaser to whom delivery is made, and shall retain such duplicate invoices for a period of three years subject to the use and inspection of the commissioner. Each vapor products dealer shall procure and retain invoices showing the number of packages and number of vapor products contained therein, in each shipment of vapor products received by them, and the items and quantity and wholesale price of each item in each shipment of vapor products received by them, the date thereof, and the name of the shipper, and shall retain such invoices for a period of three years subject to the use and inspection of the commissioner. The commissioner by regulation may provide that whenever vapor products are shipped into the state, the

1 railroad company, express company, trucking company or other public
2 carrier transporting any shipment thereof shall file with the commis-
3 sioner a copy of the freight bill within ten days after the delivery in
4 the state of each shipment. All vapor products dealers shall maintain
5 and keep for a period of three years such other records of vapor
6 products received, sold or delivered within the state, as may be
7 required by the commissioner. The commissioner is hereby authorized to
8 examine the books, papers, invoices and other records of any person in
9 possession, control or occupancy of any premises where vapor products
10 are placed, stored, sold or offered for sale, and the equipment of any
11 such person pertaining to the sale and delivery of vapor products taxa-
12 ble under this article, as well as the stock of vapor products in any
13 such premises or vehicle. To verify the accuracy of the tax imposed and
14 assessed by this article, each such person is hereby directed and
15 required to give to the commissioner or such commissioner's duly author-
16 ized representatives, the means, facilities and opportunity for such
17 examinations as are herein provided for and required.

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

27 § 12. Severability. If any clause, sentence, paragraph, subdivision,
28 section or part of this act shall be adjudged by any court of competent
29 jurisdiction to be invalid, such judgment shall not affect, impair, or
30 invalidate the remainder thereof, but shall be confined in its operation
31 to the clause, sentence, paragraph, subdivision, section or part thereof
32 directly involved in the controversy in which such judgment shall have
33 been rendered. It is hereby declared to have been the intent of the
34 legislature that this act would have been enacted even if such invalid
35 provisions had not been included herein.

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