STATE OF NEW YORK

4527--A

2025-2026 Regular Sessions

IN SENATE

February 6, 2025

Introduced by Sens. COMRIE, FERNANDEZ, PARKER, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the taxation of vapor products

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

Section 1. Section 1180 of the tax law is amended by adding five new subdivisions (c), (d), (e), (f), and (g) to read as follows:

(c) "Flavored nicotine analogue product" means a flavored vapor product that contains a nicotine analogue.

(d) "Flavored vapor product" shall have the same meaning as described in section thirteen hundred ninety-nine-mm-1 of the public health law.

(e) "Nicotine analogue" means a substance:

(1) (A) The chemical structure of which is substantially similar to the chemical structure of nicotine; or

(B) Which has, purports to have, or is represented to have, an effect on the central nervous system that is similar to or greater than effect on the central nervous system of nicotine.

(2) Factors relevant to determining whether a substance is a nicotine analogue include, but are not limited to, the marketing, advertising and labeling of the substance, and whether the substance has been manufactured, formulated, sold, distributed, or marketed with the intent to avoid the provisions of this subdivision and other applicable provisions of law.

(f) "Vapor products distributor" means any person who imports or causes to be imported into this state any vapor products for sale, or who manufactures any vapor product in this state, and any person within or without the state who is authorized by the commissioner to make returns

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

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and pay the tax on vapor products sold, shipped, or delivered by such person to any person in the state.

(g) "Wholesale price" means the price at which a vapor products dealer purchases vapor products from a vapor products distributor.

§ 2. Section 1181 of the tax law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

§ 1181. Imposition of tax. (a) In addition to any other tax imposed by this chapter or other law, there is hereby imposed a tax of twenty percent on [~~receipts from the retail sale of vapor products sold~~] the wholesale price of vapor products sold by a vapor products distributor to a vapor products dealer in this state. The tax is imposed on the [~~purchaser~~] vapor products dealer and collected by the vapor products [~~dealer as defined in subdivision (b) of section eleven hundred eighty of this article~~] distributor, in trust for and on account of the state. The taxes imposed under this section shall not apply to adult-use cannabis products subject to tax under article twenty-C of this chapter.

(b) The vapor products distributor shall be liable for the payment of the tax on vapor products which the vapor products distributor imports or causes to be imported into the state, or which the vapor products distributor manufactures in the state, and every vapor products distributor authorized by the commissioner to make returns and pay the tax on tobacco products sold, shipped or delivered by the vapor products distributor to any person in the state shall be liable for the payment of the tax on all vapor products so sold, shipped or delivered.

(c) Every vapor products dealer shall be liable for the tax on all vapor products in the vapor products distributor's possession at any time, upon which tax has not been paid or assumed by a vapor products distributor appointed by the commissioner, and the failure of any vapor products dealer to produce and exhibit to the commissioner or the commissioner's authorized representative upon demand, an invoice by a vapor products distributor for any vapor products in the vapor products distributor's possession shall be presumptive evidence that the tax thereon has not been paid, and that such dealer is liable for the tax thereon unless evidence of such invoice, payment or assumption shall later be produced.

§ 3. The tax law is amended by adding two new sections 1183-a and 1183-b to read as follows:

§ 1183-a. Vapor products distributor license and renewal. (a) Every person who intends to be a vapor products distributor in this state must receive from the commissioner a license prior to engaging in business. In addition to the requirements of section eleven hundred eighty-three of this article, a vapor products dealer who purchases or receives vapor products from a manufacturer or out-of-state distributor shall be required to obtain a vapor products distributor license. The applicant for a vapor products distributor license must electronically submit a properly completed application for a license for each location at which the business shall be conducted in this state, on a form prescribed by the commissioner, and shall be accompanied by a non-refundable application fee of three hundred dollars.

(b) A vapor products distributor license shall be valid for the calendar year for which it is issued unless earlier suspended or revoked. Upon the expiration of the term stated on the license, such license shall be null and void. A license shall not be assignable or transferable and shall be destroyed immediately upon the vapor products distributor ceasing to do business as specified in such license or in the event that such business never commenced.

(c) Every vapor products distributor shall publicly display in the vapor products distributor's place of business a license from the department.

(d) (1) The commissioner shall refuse to issue a license to any applicant who does not possess a valid certificate of authority under section eleven hundred thirty-four of this chapter. In addition, the commissioner may refuse to issue a license, or suspend, cancel or revoke a license issued to any person who:

(A) has a past-due liability as that term is defined in section one hundred seventy-one-v of this chapter;

(B) has had a license under this article or any license or registration provided for in this chapter revoked within one year from the date on which such application was filed;

(C) has been convicted of a crime provided for in this chapter within one year from the date on which such application was filed;

(D) willfully fails to file a report or return required by this article;

(E) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required by this article which is false;

(F) willfully fails to collect or truthfully account for or pay over any tax imposed by this article; or

(G) whose place of business is at the same premises as that of a person whose vapor products distributor license has been revoked and where such revocation is still in effect, unless the applicant or vapor products distributor provides the commissioner with adequate documentation demonstrating that such applicant or vapor products distributor acquired the premises or business through an arm's length transaction as defined in paragraph (e) of subdivision one of section four hundred eighty-a of this chapter.

(2) In addition to the grounds provided in paragraph one of this subdivision, the commissioner shall refuse to issue a license and shall cancel or suspend a license as directed by an enforcement officer pursuant to article thirteen-F of the public health law. Notwithstanding any provision of law to the contrary, an applicant whose application for a license is refused or a vapor products distributor whose license is cancelled or suspended under this paragraph shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to such refusal, suspension or cancellation; provided, however, that nothing herein shall be construed to deny a vapor products distributor a hearing under article thirteen-F of the public health law or to prohibit vapor products distributors from commencing a court action or proceeding against an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law.

(e) If a vapor products distributor license is suspended, cancelled or revoked and such vapor products distributor distributes or sells vapor products through more than one place of business in this state, the vapor products distributor's license issued to that place of business where such violation occurred shall be suspended, revoked, or cancelled. Provided, however, upon a vapor products distributor's third suspension, cancellation, or revocation within a five-year period for any one or more businesses owned or operated by the vapor products distributor, such suspension, cancellation, or revocation of the vapor products distributor's license shall apply to all places of business where the

vapor products distributor distributes or sells vapor products in this state.

(f) Every holder of a license must notify the commissioner of changes to any of the information stated on the license or changes to any information contained in the application for the license. Such notification must be made on or before the last day of the month in which a change occurs and must be made electronically on a form prescribed by the commissioner.

(g) Every vapor products distributor who holds a license under this article shall be required to reapply for a license for the following calendar year on or before the twentieth day of September and such reapplication shall be subject to the same requirements and conditions, including grounds for refusal, as an initial license under this article, including but not limited to the payment of the three hundred dollar application fee for each business location.

(h) In addition to any other penalty imposed by this chapter, any vapor products distributor who violates the provisions of this section, (1) for a first violation is liable for a civil fine not less than five thousand dollars but not to exceed twenty-five thousand dollars and such license may be suspended for a period of not more than six months; and (2) for a second or subsequent violation within three years following a prior violation of this section, is liable for a civil fine not less than ten thousand dollars but not to exceed thirty-five thousand dollars and such license may be suspended for a period of up to thirty-six months; or (3) for a third violation within a period of five years, the license issued to each place of business owned or operated by the vapor products distributor in this state shall be revoked for a period of up to five years.

§ 1183-b. Restrictions on sale. No person, including a vapor products dealer or any agent or employee of a vapor products dealer, shall sell or offer for sale at retail in the state or to any person in the state any flavored nicotine analogue product.

§ 4. Section 1184 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:

§ 1184. Administrative provisions. (a) [~~Except as otherwise provided for in this article, the taxes imposed by this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of this chapter. In addition, except as otherwise provided in this article, all of the provisions of article twenty-eight of this chapter (except sections eleven hundred seven, eleven hundred eight, eleven hundred nine, and eleven hundred forty-eight) relating to or applicable to the administration, collection and review of the taxes imposed by such sections eleven hundred five and eleven hundred ten, including, but not limited to, the provisions relating to definitions, returns, exemptions, penalties, tax secrecy, personal liability for the tax, and collection of tax from the customer, shall apply to the taxes imposed by this article so far as such provisions can be made applicable to the taxes imposed by this article with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the taxes so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article.~~

~~(b) Notwithstanding the provisions of subdivision (a) of this section, the exemptions provided in paragraph ten of subdivision (a) of section eleven hundred fifteen of this chapter, and the provisions of section eleven hundred sixteen, except those provided in paragraphs one, two, three and six of subdivision (a) of such section, shall not apply to the taxes imposed by this article.~~] Every vapor products distributor authorized by the commissioner to make returns and pay the tax on vapor products sold, shipped, or delivered by the vapor products distributor to a person in the state shall file a return showing the quantity and wholesale price of all vapor products so sold, shipped, or delivered during the preceding calendar month. Provided, however, the commissioner may, if the commissioner deems it necessary in order to ensure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as the commissioner may deem necessary, and, by regulation, may permit the filing of returns on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a vapor products distributor for such time and upon such terms as the commissioner may deem proper if satisfied that no tax imposed by this article is or will be payable during the time for which returns are waived. Such returns shall contain such further information as the commissioner may require.

(b) Every vapor product distributor shall pay to the commissioner with the filing of such return the tax on vapor products for such month imposed under this article, less two percent, to cover the distributor's expense in the collection and remittance of the said tax.

(c) Notwithstanding the provisions of this section or section eleven hundred forty-six of this chapter, the commissioner may, in [~~his or her~~] the commissioner's discretion, permit the commissioner of health or [~~his or her~~] such commissioner's authorized representative to inspect any return related to the tax imposed by this article and may furnish to the commissioner of health any such return or supply [~~him or her~~] such commissioner with information concerning an item contained in any such return, or disclosed by any investigation of a liability under this article.

§ 5. The tax law is amended by adding three new sections 1184-a, 1184-b and 1184-c to read as follows:

§ 1184-a. Enforcement. (a) The commissioner or the commissioner's duly authorized representatives are hereby authorized:

(1) To enforce the provisions in this article and the provisions in section thirteen hundred ninety-nine-mm-1 of the public health law concerning flavored vapor products.

(2) To conduct regulatory inspections during normal business hours of any place of business, including a vehicle used for such business, where vapor products are distributed, placed, stored, sold, or offered for sale. For the purposes of this section, "place of business" shall not include a residence or other real property, or any personal vehicle on or about such property, not held out as open to the public or otherwise being utilized in a business or commercial manner, unless probable cause exists to believe that such residence, real property or vehicle is being used in such a business or commercial manner for the buying or selling of vapor products.

(3) To examine any vapor products and the books, papers, invoices, and other records of any place of business or vehicle where vapor products are distributed, placed, stored, sold or offered for sale. Any person in possession, control or occupancy of any such business is required to give to the commissioner or the commissioner's duly authorized represen-

tatives, the means, facilities, and opportunity for such examinations. For the purposes of this section, "place of business" shall not include a residence or other real property, or any personal vehicle on or about such property, not held out as open to the public or otherwise being utilized in a business or commercial manner, unless probable cause exists to believe that such residence, real property or vehicle is being used in such a business or commercial manner for the buying or selling of vapor products.

(b) If any person registered or who has obtained a license under this article, or their agents, refuses to give the commissioner, or the commissioner's duly authorized representatives, the means, facilities and opportunity for the inspections and examinations required by this section, the commissioner, after notice and an opportunity for a hearing, may revoke their license to distribute vapor products or to sell vapor products at retail:

(1) for a period of one year for the first such failure;

(2) for a period of up to three years for a second such failure within a period of three years; and

(3) for a period of up to seven years for a third such failure within five years.

(c) The commissioner or the commissioner's duly authorized representatives shall seize any non-tax-paid vapor products, flavored vapor products, or flavored nicotine analogue products found in any place of business or vehicle where vapor products are distributed, placed, stored, sold or offered for sale by any person who does not possess a license as described in section eleven hundred eighty-three-a of this article.

(d) All non-tax-paid vapor products, flavored vapor products, or flavored nicotine analogue products seized pursuant to the authority of this chapter or any other law of this state shall be turned over to the department or its authorized representative. Such seized non-tax-paid vapor products shall, after notice and an opportunity for a hearing, be forfeited to the state. If the department determines the non-tax-paid vapor products cannot be used for law enforcement purposes, it may, within a reasonable time after the forfeiture of such non-tax-paid vapor products, upon publication in the state registry, destroy such forfeited non-tax-paid vapor products.

(e) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to such officer's special duties, shall discover any flavored vapor products or flavored nicotine analogue products offered for retail sale in violation of the provisions in section thirteen hundred ninety-nine-mm-1 of the public health law or section eleven hundred eighty-three-b of this article, respectively, such police officer or peace officer is hereby authorized and empowered forthwith to seize and take possession of such flavored vapor products or flavored nicotine analogue products. Such flavored vapor products or flavored nicotine analogue products seized by a police officer or peace officer shall be turned over to the commissioner. Such seized flavored vapor products or flavored nicotine analogue products shall be forfeited to the state. If the department determines the vapor products or flavored nicotine analogue products cannot be used for law enforcement purposes, it may, within a reasonable time after the forfeiture of such vapor products or flavored nicotine analogue products, destroy such forfeited vapor products or flavored nicotine analogue products.

§ 1184-b. General powers of the tax commission. The powers conferred upon the tax commission by sections one hundred seventy-one and one hundred seventy-one-b of this chapter shall, so far as applicable, be exercisable with respect to the provisions of this article. Such commission may require returns to be filed with it at such times and containing such information as it may prescribe and in such event the fact that a person's name is signed to the return shall be prima facie evidence for all purposes that the return was actually signed by such person. Notwithstanding any other provision of this article, the tax commission may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by this article to provide for the joint administration, in whole or in part, of such taxes.

§ 1184-c. Directory of vapor products. (a) The commissioner shall establish and maintain on the commissioner's internet website a directory of vapor products that may be sold in this state.

(b) Every manufacturer and every importer of vapor products shall submit to the commissioner a list of all vapor products that they manufacture or import for retail sale or for sale to a consumer in this state. Any submission under this section shall be accompanied by a certification by the manufacturer or importer, under penalty of perjury, that does all of the following:

(1) separately lists each brand name, product name, category (e.g., disposable vapor product, power unit, device, e-liquid cartridge, e-liquid pod);

(2) describes for each vapor product if a formal authorization, approval, or order from the United States Food and Drug Administration under Section 387e(j) or 387j of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. Sec. 301 et seq.) has been sought and, if so, the status of any request for that authorization, approval, or order; and

(3) certifies that each vapor product is not a flavored vapor product or is a flavored vapor product 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(c) et seq.

(c) (1) Upon the request of the commissioner, a manufacturer or importer shall provide additional information and factual substantiation to confirm a vapor product is not a flavored vapor product, or information and documentation regarding the vapor product's packaging, labeling, and marketing authorization status.

(2) Information submitted to the commissioner by a manufacturer or importer pursuant to this subparagraph and designated as nonpublic shall be deemed exempt from public disclosure under section eighty-seven of the public officers law.

(d) The commissioner shall decline to include in, or may remove from, the directory any vapor product that the commissioner reasonably determines is a flavored vapor product that lacks a premarket review approval order under 21 U.S.C. § 387j(c) et seq.

(e) (1) The commissioner may not remove a vapor product from the directory until at least thirty days after the manufacturer or importer has been given notice of an intended action setting forth the reasons therefor. Notice shall be sufficient and be deemed immediately received by a manufacturer or importer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer or importer in its most recent certification filed under this section.

(2) The vapor product manufacturer shall have fifteen days from the date of service of the notice of the commissioner's intended action to cure the deficiencies or otherwise establish that the vapor product manufacturer or its products should be included in the directory.

(3) Retailers shall have thirty days following the removal of a vapor product from the directory to sell such products that were in the retailer's inventory as of the date of removal.

(4) After thirty days following removal from the directory, the vapor products identified in the notice of removal and intended for sale in this state or to a consumer in this state are subject to seizure from retailers, distributors, and wholesalers, forfeiture, and destruction or disposal, including by contracting with a licensed hazardous waste disposal facility, and may not be purchased or sold for retail sale or to a consumer in this state. The cost of such seizure, forfeiture, and destruction or disposal shall be borne by the person from whom the products are confiscated.

(f) Every manufacturer and every importer that has made a submission under this section shall submit updated information to the commissioner whenever it no longer manufactures or imports for sale or distribution in or into the state a vapor product listed in the directory or when there has been a material change to the vapor product, including as to marketing authorization status or flavor.

(g) Every manufacturer or importer that submits a brand style pursuant to this section shall also do all of the following:

(1) Consent to the jurisdiction of the courts of this state for the purpose of enforcement of this section and for enforcement of regulations adopted pursuant to this section.

(2) Appoint a registered agent for service of process in this state.

(3) Identify the registered agent to the commissioner.

(4) Waive any sovereign immunity defense that may apply in an action to enforce this section or to enforce regulations adopted pursuant to this section.

(h) (1) Every manufacturer and importer submission under this section shall be accompanied by an initial application fee of one thousand dollars per vapor product, and thereafter an annual renewal fee of five hundred dollars per vapor product.

(2) Application and renewal fees received under this section shall be used for the administration and enforcement of this section, including but not limited to contracting with a licensed hazardous waste disposal facility as needed.

(i) The commissioner shall publish the vapor product directory by December thirty-first, two thousand twenty-five.

(j) After sixty days following initial publication of the directory, vapor products not listed in the directory and intended for sale in this state or to a consumer in this state are subject to seizure, forfeiture, and destruction or disposal, and may not be purchased or sold for retail sale or to a consumer in this state. The cost of such seizure, forfeiture, and destruction or disposal shall be borne by the person from whom the products are confiscated.

(k) The following penalties shall apply to violations of this section:

(1) (i) A retailer, distributor, wholesaler, or importer who sells or offers for sale a vapor product for retail sale or to a consumer in this state that is not included in the directory shall be subject to a civil penalty of five hundred dollars for each individual vapor product offered for sale in violation of this section;

(ii) for a second violation of this type within a twelve-month period, the civil penalty shall be at least seven hundred fifty dollars but not more than one thousand dollars per product and a licensee's license shall be suspended for thirty days; and

(iii) for a third violation of this type within a twelve-month period, the civil penalty shall be at least one thousand dollars but not more than one thousand five hundred dollars per product and a licensee's license shall be revoked.

(2) A manufacturer whose vapor products are not listed in the directory and who causes the products that are not listed to be sold for retail sale in this state or to a consumer in this state, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of ten thousand dollars for each individual vapor product offered for sale in violation of this section. In addition, any manufacturer that falsely represents any information required by a certification form shall be guilty of a class B misdemeanor for each false representation.

(3) In an action to enforce this act, the state shall be entitled to recover costs, including the costs of investigation, expert witness fees and reasonable attorney fees.

(4) A second or subsequent violation of this section is a deceptive trade practice under section three hundred forty-nine of the general business law.

(m) The commissioner may adopt rules and regulations necessary to implement the purposes of this section.

§ 6. This act shall take effect immediately.