

STATE OF NEW YORK

902

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sen. MARTINEZ -- 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 the sale, manufacture, and distribution of vapor products

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

1 Section 1. Subdivisions 3 and 4 of section 1399-cc of the public
2 health law, subdivision 3 as amended by chapter 100 of the laws of 2019
3 and subdivision 4 as amended by chapter 542 of the laws of 2014, are
4 amended to read as follows:

5 3. Sale of tobacco products, herbal cigarettes, liquid nicotine,
6 shisha or electronic cigarettes in such places, [~~other than~~] including
7 by a vending machine, shall be made only to an individual who demon-
8 strates, through (a) a valid driver's license or non-driver's identifi-
9 cation card issued by the commissioner of motor vehicles, the federal
10 government, any United States territory, commonwealth or possession, the
11 District of Columbia, a state government within the United States or a
12 provincial government of the dominion of Canada, or (b) a valid passport
13 issued by the United States government or any other country, or (c) an
14 identification card issued by the armed forces of the United States,
15 indicating that the individual is at least twenty-one years of age. Such
16 identification need not be required of any individual who reasonably
17 appears to be at least twenty-five years of age, provided, however, that
18 such appearance shall not constitute a defense in any proceeding alleg-
19 ing the sale of a tobacco product, herbal cigarettes, liquid nicotine,
20 shisha or electronic cigarettes to an individual under twenty-one years
21 of age.

22 4. (a) Any person operating a place of business wherein tobacco
23 products, herbal cigarettes, liquid nicotine, shisha or electronic ciga-

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

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1 rettes are sold or offered for sale [~~may~~] shall perform a transaction
2 scan as a precondition for such purchases.

3 (b) In any instance where the information deciphered by the trans-
4 action scan fails to match the information printed on the driver's
5 license or non-driver identification card, or if the transaction scan
6 indicates that the information is false or fraudulent, the attempted
7 transaction shall be denied.

8 (c) In any proceeding pursuant to section thirteen hundred ninety-
9 nine-ee of this article, it shall be an affirmative defense that such
10 person had produced a driver's license or non-driver identification card
11 apparently issued by a governmental entity, successfully completed that
12 transaction scan, and that the tobacco product, herbal cigarettes or
13 liquid nicotine had been sold, delivered or given to such person in
14 reasonable reliance upon such identification and transaction scan. In
15 evaluating the applicability of such affirmative defense the commission-
16 er shall take into consideration any written policy adopted and imple-
17 mented by the seller to effectuate the provisions of this chapter. Use
18 of a transaction scan shall not excuse any person operating a place of
19 business wherein tobacco products, herbal cigarettes, liquid nicotine,
20 shisha or electronic cigarettes are sold, or the agent or employee of
21 such person, from the exercise of reasonable diligence otherwise
22 required by this chapter. Notwithstanding the above provisions, any such
23 affirmative defense shall not be applicable in any civil or criminal
24 proceeding, or in any other forum.

25 § 2. Section 1399-dd of the public health law, as amended by chapter
26 448 of the laws of 2012 and subdivision (d) as amended by chapter 100 of
27 the laws of 2019, is amended to read as follows:

28 § 1399-dd. Sale of tobacco products, herbal cigarettes or electronic
29 cigarettes in vending machines. No person, firm, partnership, company or
30 corporation shall operate a vending machine which dispenses tobacco
31 products, herbal cigarettes or electronic cigarettes unless such machine
32 is located: (a) in a bar as defined in subdivision one of section thir-
33 teen hundred ninety-nine-n of this chapter, or the bar area of a food
34 service establishment with a valid, on-premises full liquor license; (b)
35 in a private club; (c) in a tobacco business as defined in subdivision
36 eight of section thirteen hundred ninety-nine-aa of this article; or (d)
37 in a place of employment which has an insignificant portion of its regu-
38 lar workforce comprised of people under the age of twenty-one years and
39 only in such locations that are not accessible to the general public;
40 provided, however, that in such locations the vending machine is located
41 in plain view and under the direct supervision and control of the person
42 in charge of the location or [~~his or her~~] such person's designated agent
43 or employee; and provided further, that in such locations the vending
44 machine shall not be operable until the person in charge of such
45 location or such person's designated agent or employee has verified that
46 the person seeking to operate such vending machine is over twenty-one
47 years of age in accordance with the provisions of subdivisions three and
48 four of section thirteen hundred ninety-nine-cc of this article.

49 § 3. Section 1399-ll of the public health law, as amended by section 3
50 of part EE of chapter 56 of the laws of 2020, is amended by adding three
51 new subdivisions 1-b, 1-c and 1-d to read as follows:

52 1-b. (a) The commissioner shall establish a vapor product distributor
53 permit to be issued to persons engaged in the business of shipping or
54 causing to be shipped any vapor products intended or reasonably expected
55 to be used with or for the consumption of nicotine to any person in this

1 state. An application for a vapor product distributor permit shall
2 include:

3 (i) the name, telephone number, and primary business address of the
4 applicant;

5 (ii) the name, telephone number, and address of any of the applicant's
6 distribution facilities in this state;

7 (iii) the name, telephone number, title, and address of any person
8 responsible for any of the applicant's distribution facilities in this
9 state;

10 (iv) written consent allowing the division of state police to conduct
11 a state or national criminal history background check on any person
12 listed on the application;

13 (v) a non-refundable initial application fee to be determined by the
14 commissioner; and

15 (vi) any other information the commissioner shall deem relevant and
16 appropriate.

17 (b) Every person who is engaged in the business of shipping or causing
18 to be shipped any vapor products intended or reasonably expected to be
19 used with or for the consumption of nicotine to any person in this state
20 shall first obtain a vapor product distributor permit from the commis-
21 sioner.

22 (c) A vapor product distributor permit shall be valid for one calendar
23 year from the date of issuance unless earlier suspended or revoked. Upon
24 the expiration of the term stated on the vapor product distributor
25 permit, such permit shall be null and void. A vapor product distributor
26 permit shall not be assignable or transferable and shall be destroyed
27 immediately upon the holder of such permit ceasing to do business as
28 specified in such permit.

29 (d) The department shall publish and maintain on its website a list of
30 all holders of a vapor product distributor permit.

31 1-c. (a) The commissioner shall establish a vapor product manufacturer
32 permit to be issued to persons engaged in the business of manufacturing
33 any vapor products intended or reasonably expected to be used with or
34 for the consumption of nicotine to any person in this state. An applica-
35 tion for a vapor product manufacturer permit shall include:

36 (i) the name, telephone number, and primary business address of the
37 applicant;

38 (ii) the name, telephone number, and address of any of the applicant's
39 manufacturing facilities in this state;

40 (iii) the name, telephone number, title, and address of any person
41 responsible for any of the applicant's manufacturing facilities in this
42 state;

43 (iv) verification that the applicant's facilities in this state comply
44 with applicable tobacco products good manufacturing practices promulgat-
45 ed under 21 U.S.C. § 387f(e) of the federal Food, Drug, and Cosmetic
46 Act;

47 (v) verification that the manufacturer is in compliance with the
48 applicable ingredient listing required by 21 U.S.C. § 387d(a)(1) of the
49 federal Food, Drug, and Cosmetic Act, and article seventeen of this
50 chapter;

51 (vi) written consent allowing the division of state police to conduct
52 a state or national criminal history background check on any person
53 listed on the application;

54 (vii) a non-refundable initial application fee to be determined by the
55 commissioner; and

1 (viii) any other information the commissioner shall deem relevant and
2 appropriate.

3 (b) Every person who is engaged in the business of manufacturing any
4 vapor products intended or reasonably expected to be used with or for
5 the consumption of nicotine to any person in this state shall first
6 obtain a vapor product manufacturer permit from the commissioner.

7 (c) A vapor product manufacturer permit shall be valid for five calen-
8 dar years from the date of issuance unless earlier suspended or revoked.
9 Upon the expiration of the term stated on the vapor product manufacturer
10 permit, such permit shall be null and void. A vapor product manufacturer
11 permit shall not be assignable or transferable and shall be destroyed
12 immediately upon the holder of such permit ceasing to do business as
13 specified in such permit.

14 (d) The department shall publish and maintain on its website a list of
15 all holders of a vapor product manufacturer permit.

16 1-d. It shall be unlawful for a vapor products dealer under article
17 twenty-eight-C of the tax law to purchase vapor products from anyone
18 other than a holder of a vapor product distributor permit issued pursu-
19 ant to subdivision one-b, or a holder of a vapor product manufacturer
20 permit issued pursuant to subdivision one-c of this section.

21 § 4. The section heading and subdivision 5 of section 1399-11 of the
22 public health law, as amended by section 3 of part EE of chapter 56 of
23 the laws of 2020, are amended to read as follows:

24 § 1399-11. Unlawful shipment ~~[e]~~, transport, or manufacture of ciga-
25 rettes and vapor products.

26 5. Any person who violates the provisions of subdivision one, subdivi-
27 sion one-a, paragraph (b) of subdivision one-b, paragraph (b) of subdivi-
28 vision one-c, subdivision one-d, or subdivision two of this section
29 shall be guilty of a class A misdemeanor and for a second or subsequent
30 violation shall be guilty of a class E felony. In addition to the crimi-
31 nal penalty, any person who violates the provisions of subdivision one,
32 subdivision one-a, paragraph (b) of subdivision one-b, paragraph (b) of
33 subdivision one-c, subdivision one-d, or subdivision two or three of
34 this section shall be subject to a civil penalty not to exceed the
35 greater of (a) five thousand dollars for each such violation; (b) one
36 hundred dollars for each pack of cigarettes shipped, caused to be
37 shipped or transported in violation of such subdivision; or (c) one
38 hundred dollars for each vapor product intended or reasonably expected
39 to be used with or for the consumption of nicotine shipped, caused to be
40 shipped or transported in violation of such subdivision or paragraph.

41 § 5. Section 1399-aa of the public health law is amended by adding a
42 new subdivision 19 to read as follows:

43 19. "Illicit vapor product" means any vapor product that:

44 (a) was not manufactured, prepared, compounded, or processed by a
45 person or entity registered with the U.S. Food and Drug Administration
46 pursuant to 21 U.S.C. § 387e;

47 (b) is not manufactured by the manufacturer indicated on the product
48 packaging, label, or container; or

49 (c) is not on the state's vapor product registry pursuant to section
50 thirteen hundred ninety-nine-kk-one of this article.

51 § 6. The public health law is amended by adding a new section
52 1399-dd-2 to read as follows:

53 § 1399-dd-2. Sale of illicit vapor products. 1. It shall be unlawful
54 for any person knowingly, directly or indirectly, to manufacture,
55 distribute, sell, barter, or furnish in this state any illicit vapor
56 product.

1 2. Any person who violates the provisions of subdivision one of this
2 section shall be guilty of a class A misdemeanor for a first violation,
3 and for a second or subsequent violation shall be guilty of a class E
4 felony.

5 § 7. The public health law is amended by adding a new section
6 1399-kk-1 to read as follows:

7 § 1399-kk-1. Vapor product directory. 1. Beginning January first, two
8 thousand twenty-six, every manufacturer of a vapor product that is sold
9 or intended to be sold in this state, whether directly or through a
10 distributor, or vapor products dealer, shall execute and deliver an
11 attestation under the penalty of perjury to the attorney general certi-
12 fying that, as of the date of such attestation:

13 (a) such vapor product was on the United States' markets as of August
14 eighth, two thousand eighteen, and such manufacturer has applied for a
15 marketing order for such vapor product by submitting a Premarket Tobacco
16 Product Application to the U.S. Food and Drug Administration on or
17 before September ninth, two thousand twenty-two; or

18 (b) such manufacturer has received a marketing order or other authori-
19 zation under 21 U.S.C. § 387j for such vapor product from the U.S. Food
20 and Drug Administration.

21 2. Every manufacturer of a vapor product that is sold or intended to
22 be sold in this state, whether directly or through a distributor, or
23 vapor products dealer, shall notify the attorney general within thirty
24 days of any material change to an attestation submitted pursuant to
25 subdivision one of this section, including if the U.S. Food and Drug
26 Administration has issued a market order or other authorization, issued
27 a no marketing order, or has ordered such manufacturer to remove such
28 vapor product, either temporarily or permanently, from the U.S. market.

29 3. The attorney general shall develop a vapor product directory list-
30 ing all manufacturers that have provided attestations in compliance with
31 subdivision one of this section, and all vapor products that are listed
32 in such attestations. The attorney general shall publish and maintain
33 such vapor product directory on its website.

34 4. It shall be unlawful for any person knowingly, directly or indi-
35 rectly, to manufacture, distribute, sell, barter, or furnish in this
36 state any vapor product that is not included in the vapor product direc-
37 tory established pursuant to this section.

38 § 8. This act shall take effect on the one hundred eightieth day after
39 it shall have become a law.