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Health Officials
of New York

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SUPPORTS

With Recommendations

S.428-B (Hoylman)

AN ACT to amend the public health law, in relation prohibiting the sale and distribution of flavored e-liquid for use in e-cigarettes

The New York State Association of County Health Officials (NYSACHO) supports, with recommendations, prohibiting the sale and distribution of flavored e-liquid for use in e-cigarettes, including mint and menthol flavors. NYSACHO strongly recommends that the proposed bill be amended to state that violators shall be subject to penalties pursuant to section 1399-ee of Article 1399-F of the public health law. This will make the fines for violating the prohibition of sale of flavored liquids identical to those levied as part of enforcement under Sections 1399-ee and 1399-ff of the public health law. We believe this is a critical component to enforcement because the flavored e-liquids are particularly effective in enticing children and adolescents to use these products.

A U.S Department of Health and Human Service's 2014 report regarding tobacco use estimates that over 480,000 Americans die annually from tobacco-caused disease, making it *the* leading cause of preventable death. Tobacco products exact a high financial toll on New York taxpayers. Each year, New York spends an estimated \$10.4 billion on tobacco-related health care needs, of which Medicaid covers \$3.3 billion. An additional \$6 billion annually can be attributed to lost productivity from smoking. Additionally, there have been, as of January 10, 2019, 2602 cases of vaping related illness, and 57 deaths nationwide, with 230 reported cases to date. There have been two deaths of New York State residents as well, including one seventeen year old.

While conventional cigarette use had declined, electronic cigarette use continues to rise, especially among adolescents and young adults. These populations are more likely to used flavored e-cigarettes compared to older adults. According to surveys, youth noted that flavoring was one of their biggest draws to try electronic cigarettes, and a majority of youth who have tried e-cigarettes first used a flavored product. The tobacco companies use these flavored products to entice young people to begin smoking. This includes mint and menthol flavored products. According to the National Youth Tobacco Survey, *"Use of any flavored e-cigarette went up among current users from 60.9 percent to 67.8 percent, and menthol use increased from 42.3 percent to 51.2 percent among all current e-cigarette users—including those using multiple products—and from 21.4 percent to 38.1 percent among exclusive e-cigarette users."* In recognition of this growing public health concern, the U.S. Food and Drug Administration initiated steps to restrict youth access to flavored e-liquids. Current Federal and State administrative actions are important, but NYSACHO believes it is in the best interest of New Yorkers, to move forward with strong state laws prohibiting the use of these products completely.

To assure the proposed statute achieves its goals, the fines must be consistent with existing effective penalties. While the current proposed fine of \$500 somewhat addresses earlier concerns regarding the need for stronger fines to assure compliance, in local health departments' field experiences, the best and most consistent approach would be to use the existing ATUPA fine structure. Local health departments have found that these current statutory penalties function as an appropriate deterrent to potential violators of tobacco-related laws. This approach assures that regulated retailers are already familiar with the potential consequences to their business.

Section 1399-ee provides that a fine for a first violation be a minimum of \$300, not to exceed \$1000, and that a fine of a minimum of \$500, not to exceed \$1500 be set for subsequent violations. Using the existing statutory language for penalties also allows for the imposition of an escalating point system based on number of violations, which can lead to a revocation of the retailer's license by the NYS Department of Tax and Finance for repeat violators. The loss of the retail license can also cause the revocation of state liquor or lottery licenses resulting in a significant loss of revenue for repeat non-compliers. This is a powerful incentive for retailers to fully support and obey the law. Combined, the existing penalties serve as a strong deterrent and NYSACHO believes they are warranted given the profound negative impact flavored e-liquids have had in addicting adolescents and children to these harmful products.

Enforcement of tobacco control related statutes are under the jurisdiction of local health departments, or in some counties, the state department of health. Enforcement activities are conducted through spot checks of registered retailers, or as a result of complaints received regarding potential non-compliance by retailers. Enforcement actions and any civil penalties are against the seller, and typically also involve additional education and information to assure that the retailer is aware of their legal compliance obligations. Under current law and in this proposal, there is no enforcement or penalties targeted at those who use or try to purchase regulated tobacco products. Public health activities regarding tobacco use focuses on education of children, adolescents and adults regarding the harm caused by these products and outreach to those who use tobacco products to encourage quitting and facilitate linkages to cessation services.

For the reasons stated above, NYSACHO supports this legislation and recommends it be enacted into law with amendments to reflect the adoption of the existing penalties in section 1399-ee of Article 13-F.

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