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Tobacco Controls Enacted through the NYS Budget

Legislature delivers impactful changes to public health policy

New York State's FYI 2021 Budget was enacted by the legislature on April 2, 2020 and signed by the Governor on April 3, 2020. The budget legislation includes significant tobacco controls that will change the retail environment throughout the state. We can expect to see these important policies in place this summer, followed by public health gains in the years to come. While mindful of the potential for litigation to delay the implementation of any tobacco control, these public health successes reflect New York State's commitment to reducing overall tobacco use and addressing unacceptable health disparities attributable to tobacco use. We will soon update our webpages to reflect these changes.

The changes to state law recognize that tobacco companies use the retail environment to market their deadly products and drive tobacco use. Accordingly, the law responds with measures that minimize this harm. The budget legislation:

- **Restricts the use of discounts that reduce the price consumers pay for tobacco products.** By prohibiting retailers from accepting or honoring discounts for tobacco products or vapor products, this provision combats a common tactic used by tobacco companies to attract new users and maintain their existing customer base. The anti-discounting policy will help narrow disparities in tobacco use in New York State: Groups that use tobacco at disproportionately high rates are typically those most likely to reduce their tobacco use or quit

as a result of higher prices. See our [technical report](#) for more details on the potential public health impact of this new law. *Amends Public Health Law § 1399-bb, effective July 1, 2020.*

- **Ends the sale of tobacco products by pharmacies.** Building on local laws enacted in Rockland County, New York City, Albany County, Erie County, and Suffolk County, sales of tobacco products and vapor products will no longer be permissible in New York state-registered pharmacies. This law will be enforced by the local agencies that enforce ATUPA and will reduce overall tobacco retail density. Importantly, the [law will remove dangerous and incongruent health messaging](#) posed by pharmacy sales of tobacco, and aid addicted tobacco users who are attempting to quit. *Creates Public Health Law § 1399-mm(2), effective 45 days from April 3, 2020 (~May 18, 2020).*
- **Ends the sale of flavored vapor products that lack an FDA marketing order.** More than a quarter of youth in New York State reported current use of an e-cigarette in 2018, and [flavors are known to hook kids](#). The law prohibits the sale of any vapor product that is flavored, reasonably expected to be used with nicotine, and has not been authorized for sale through the FDA review process. The prohibition applies to sales of menthol-flavored products and allows the sale of those with tobacco flavor. This policy will play an important role in stemming the tide of youth e-cigarette use and nicotine addiction in New York by reducing the appeal of vapor products that contain nicotine. *Creates Public Health Law § 1399-mm(1), effective 45 days from April 3, 2020 (~May 18, 2020).*
- **Increases oversight of vapor products throughout the distribution chain.** Following a spate of acute vaping-related lung illnesses in 2019, New York State will perform more oversight of vapor products. A new law will require vapor product manufacturers to disclose product ingredients, including byproducts and heavy metals. Additionally, wholesale distributors of vapor products will become subject to state registration requirements. *Creates Article 17, effective July 1, 2020.* Further, the Legislature will authorize the Commissioner of Health to regulate harmful carrier oils in vapor products. *Creates Public Health Law § 1399-mm(3), effective 45 days from April 3, 2020 (~May 18, 2020).* Together with regulations that will be developed to implement the laws, these actions will reduce consumers' risk of acute illnesses from use of a vapor product.
- **Stops delivery of e-cigarettes and vapor products to private residences, thus ending online sales.** This amendment adds e-cigarettes and vapor products that are reasonably expected to be used with nicotine to the list of products that common carriers (such as UPS, DHL, and FedEx) may not ship to residential addresses in New York State. This list currently includes cigarettes, RYO cigarette tobacco, and smokeless tobacco. Stopping home delivery of these additional products—typically ordered online—will help to prevent illicit sales of vapor products, including sales to youth and sales of vapor products skirting FDA review. *Amends Public Health Law § 1399-ll, effective July 1, 2020.*

- **Prohibits the exterior display of tobacco products and tobacco product advertising near schools.** This law will prohibit the display of tobacco products, vapor products, smoking paraphernalia, and advertisements for these products in exterior windows or storefronts within 1,500 feet of a school (or 500 feet in New York City). Youth exposure to tobacco marketing is **known to drive experimentation with tobacco products and progression to regular use and eventual addiction**. Addicted consumers trying to quit also report that exposure to the products, including on displays, can trigger nicotine cravings and spur impulse purchases of tobacco products. *Creates Public Health Law § 1399-dd(1) and amends General Business Law § 396-aaa, effective July 1, 2020.*
- **Increases retailer penalties for tobacco control sales violations.** The law increases the penalties for illegally selling tobacco products to underage purchasers, or **other ATUPA violations**. The maximum amount charged for a first violation increases to \$1,500, a second and subsequent penalty increases to \$1,000 but not more than \$2,500, and accumulating 3 points now results in a one-year registration suspension. Finally, surcharges available to local enforcement agencies will increase from \$50 to \$250. *Amends Public Health Law §§ 1399-ee, effective July 1, 2020.*

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