

2926--B

2011-2012 Regular Sessions

I N   S E N A T E

February 3, 2011

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Introduced by Sens. JOHNSON, BONACIC, DeFRANCISCO, FUSCHILLO, LARKIN, RANZENHOFER, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to prohibiting the sale of electronic cigarettes to minors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The article heading of article 13-F of the public health  
2     law, as amended by chapter 508 of the laws of 2000, is amended to read  
3     as follows:

4                                 ARTICLE 13-F

5                 REGULATION OF TOBACCO PRODUCTS [AND], HERBAL  
6                 CIGARETTES AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

7     S 2. Section 1399-aa of the public health law is amended by adding a  
8     new subdivision 13 to read as follows:

9     13. "ELECTRONIC CIGARETTE" OR "E-CIGARETTE" MEANS A BATTERY-OPERATED  
10    DEVICE THAT CONTAINS CARTRIDGES FILLED WITH A COMBINATION OF NICOTINE,  
11    FLAVOR AND CHEMICALS THAT ARE TURNED INTO VAPOR WHICH IS INHALED BY THE  
12    USER.

13    S 3. Subdivisions 2, 3, 4 and 7 of section 1399-cc of the public  
14    health law, as amended by chapter 131 of the laws of 2011, are amended  
15    to read as follows:

16    2. Any person operating a place of business wherein tobacco products,  
17    herbal cigarettes [or], shisha OR ELECTRONIC CIGARETTES, are sold or  
18    offered for sale is prohibited from selling such products, herbal ciga-  
19    rettes, shisha, ELECTRONIC CIGARETTES or smoking paraphernalia to indi-  
20    viduals under eighteen years of age, and shall post in a conspicuous

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

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1 place a sign upon which there shall be imprinted the following state-  
2 ment, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO,  
3 SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC CIGA-  
4 RETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER EIGH-  
5 TEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a  
6 white card in red letters at least one-half inch in height.

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

23 4. (a) Any person operating a place of business wherein tobacco  
24 products, herbal cigarettes [or], shisha OR ELECTRONIC CIGARETTES are  
25 sold or offered for sale may perform a transaction scan as a precondition  
26 for such purchases.

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

32 (c) In any proceeding pursuant to section thirteen [hundred-ninety-  
33 nine-ee] HUNDRED NINETY-NINE-EE of this article, it shall be an affirma-  
34 tive defense that such person had produced a driver's license or non-  
35 driver identification card apparently issued by a governmental entity,  
36 successfully completed that transaction scan, and that the tobacco prod-  
37 uct or herbal cigarettes had been sold, delivered or given to such  
38 person in reasonable reliance upon such identification and transaction  
39 scan. In evaluating the applicability of such affirmative defense the  
40 commissioner shall take into consideration any written policy adopted  
41 and implemented by the seller to effectuate the provisions of this chap-  
42 ter. Use of a transaction scan shall not excuse any person operating a  
43 place of business wherein tobacco products, herbal cigarettes [or],  
44 shisha OR ELECTRONIC CIGARETTES are sold, or the agent or employee of  
45 such person, from the exercise of reasonable diligence otherwise  
46 required by this chapter. Notwithstanding the above provisions, any  
47 such affirmative defense shall not be applicable in any civil or crimi-  
48 nal proceeding, or in any other forum.

49 7. No person operating a place of business wherein tobacco products,  
50 herbal cigarettes [or], shisha OR ELECTRONIC CIGARETTES are sold or  
51 offered for sale shall sell, permit to be sold, offer for sale or  
52 display for sale any tobacco product, herbal cigarettes [or], shisha OR  
53 ELECTRONIC CIGARETTES in any manner, unless such products and cigarettes  
54 are stored for sale (a) behind a counter in an area accessible only to  
55 the personnel of such business, or (b) in a locked container; provided,  
56 however, such restriction shall not apply to tobacco businesses, as

1 defined in subdivision eight of section thirteen hundred ninety-nine-aa  
2 of this article, and to places to which admission is restricted to  
3 persons eighteen years of age or older.

4 S 4. Section 1399-dd of the public health law, as amended by chapter  
5 13 of the laws of 2003, is amended to read as follows:

6 S 1399-dd. Sale of tobacco products [or], herbal cigarettes OR ELEC-  
7 TRONIC CIGARETTES in vending machines. No person, firm, partnership,  
8 company or corporation shall operate a vending machine which dispenses  
9 tobacco products [or], herbal cigarettes OR ELECTRONIC CIGARETTES unless  
10 such machine is located: (a) in a bar as defined in subdivision one of  
11 section thirteen hundred ninety-nine-n of this chapter, or the bar area  
12 of a food service establishment with a valid, on-premises full liquor  
13 license; (b) in a private club; (c) in a tobacco business as defined in  
14 subdivision eight of section thirteen hundred ninety-nine-aa of this  
15 article; or (d) in a place of employment which has an insignificant  
16 portion of its regular workforce comprised of people under the age of  
17 eighteen years and only in such locations that are not accessible to the  
18 general public; provided, however, that in such locations the vending  
19 machine is located in plain view and under the direct supervision and  
20 control of the person in charge of the location or his or her designated  
21 agent or employee.

22 S 5. Subdivision 1 of section 1399-ff of the public health law, as  
23 amended by chapter 508 of the laws of 2000, is amended to read as  
24 follows:

25 1. Where a civil penalty for a particular incident has not been  
26 imposed or an enforcement action regarding an alleged violation for a  
27 particular incident is not pending under section thirteen hundred nine-  
28 ty-nine-ee of this article, a parent or guardian of a minor to whom  
29 tobacco products [or], herbal cigarettes OR ELECTRONIC CIGARETTES are  
30 sold or distributed in violation of this article may submit a complaint  
31 to an enforcement officer setting forth the name and address of the  
32 alleged violator, the date of the alleged violation, the name and  
33 address of the complainant and the minor, and a brief statement describ-  
34 ing the alleged violation. The enforcement officer shall notify the  
35 alleged violator by certified or registered mail, return receipt  
36 requested, that a complaint has been submitted, and shall set a date, at  
37 least fifteen days after the mailing of such notice, for a hearing on  
38 the complaint. Such notice shall contain the information submitted by  
39 the complainant.

40 S 6. This act shall take effect on the first day of January next  
41 succeeding the date on which it shall have become a law.