

3493

2013-2014 Regular Sessions

I N S E N A T E

February 4, 2013

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the alcoholic beverage control law, in relation to requiring the presentation of photographic identification for the purchase of tobacco products and alcoholic beverages

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

1 Section 1. Section 1399-cc of the public health law, as amended by
2 chapter 131 of the laws of 2011, subdivisions 2, 3, 4 and 7 as amended
3 by chapter 448 of the laws of 2012, is amended to read as follows:
4 S 1399-cc. Sale of tobacco products, herbal cigarettes, shisha, roll-
5 ing papers or smoking paraphernalia to minors prohibited. 1. As used in
6 this section:
7 (a) "A device capable of deciphering any electronically readable
8 format" or "device" shall mean any commercial device or combination of
9 devices used at a point of sale or entry that is capable of reading the
10 information encoded on the bar code or magnetic strip of a driver's
11 license or non-driver identification card issued by the state commis-
12 sioner of motor vehicles;
13 (b) "Card holder" means any person presenting a driver's license or
14 non-driver identification card to a licensee, or to the agent or employ-
15 ee of such licensee under this chapter;
16 (c) "Smoking paraphernalia" means any pipe, water pipe, hookah, roll-
17 ing papers, vaporizer or any other device, equipment or apparatus
18 designed for the inhalation of tobacco; and
19 (d) "Transaction scan" means the process involving an automated bar
20 code reader by which a licensee, or agent or employee of a licensee
21 under this chapter reviews a driver's license or non-driver identifica-
22 tion card presented as a precondition for the purchase of a tobacco

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

LBD08238-02-3

1 product or herbal cigarettes pursuant to subdivision three of this
2 section;

3 2. Any person operating a place of business wherein tobacco products,
4 herbal cigarettes, shisha or electronic cigarettes, are sold or offered
5 for sale is prohibited from selling such products, herbal cigarettes,
6 shisha, electronic cigarettes or smoking paraphernalia to individuals
7 under eighteen years of age, and shall post in a conspicuous place a
8 sign upon which there shall be imprinted the following statement, "SALE
9 OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR
10 OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC CIGARETTES, ROLL-
11 ING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER EIGHTEEN YEARS OF
12 AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in
13 red letters at least one-half inch in height.

14 3. Sale of tobacco products, herbal cigarettes, shisha or electronic
15 cigarettes in such places, other than by a vending machine, shall be
16 made only to an individual who demonstrates, through (a) a valid driv-
17 er's license or non-driver's identification card issued by the commis-
18 sioner of motor vehicles, the federal government, any United States
19 territory, commonwealth or possession, the District of Columbia, a state
20 government within the United States or a provincial government of the
21 dominion of Canada, or (b) a valid passport issued by the United States
22 government or any other country, or (c) an identification card issued by
23 the armed forces of the United States, indicating that the individual is
24 at least eighteen years of age. [Such identification need not be
25 required of any individual who reasonably appears to be at least twen-
26 ty-five years of age, provided, however, that such appearance shall not
27 constitute a defense in any proceeding alleging the sale of a tobacco
28 product, herbal cigarettes, shisha or electronic cigarettes to an indi-
29 vidual under eighteen years of age.]

30 4. IT SHALL BE THE RESPONSIBILITY OF ANY INDIVIDUAL SEEKING TO
31 PURCHASE CIGARETTES, POWDERED TOBACCO, HERBAL CIGARETTES, BIDIS, GUTKA,
32 SHISHA, ELECTRONIC CIGARETTES, OTHER TOBACCO PRODUCTS OR SMOKING
33 PARAPHERNALIA TO PRESENT TO THE SELLER, PRIOR TO PURCHASE, PHOTOGRAPHIC
34 IDENTIFICATION IN THE FORM OF: (A) A VALID DRIVE'S LICENSE OR
35 NON-DRIVER'S IDENTIFICATION CARD ISSUED BY THE COMMISSIONER OF MOTOR
36 VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMON-
37 WEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITH-
38 IN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANA-
39 DA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR
40 ANY OTHER COUNTRY, OR (C) AN IDENTIFICATION CARD ISSUED BY THE ARMED
41 FORCES OF THE UNITED STATES, INDICATING THAT THE PURCHASER IS AT LEAST
42 EIGHTEEN YEARS OF AGE.

43 5. A STATE OR LOCAL ENFORCEMENT AGENCY CONDUCTING AN INSPECTION TO
44 DETERMINE COMPLIANCE WITH SUBDIVISION TWO OF THIS SECTION SHALL, WITHIN
45 TEN DAYS OF THE DATE OF A VIOLATION, PROVIDE THE OPERATOR OF THE PREM-
46 ISSES WITH WRITTEN NOTICE OF THE VIOLATION.

47 6. (a) Any person operating a place of business wherein tobacco
48 products, herbal cigarettes, shisha or electronic cigarettes are sold or
49 offered for sale may perform a transaction scan as a precondition for
50 such purchases.

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

1 (c) In any proceeding pursuant to section thirteen hundred ninety-
2 nine-ee of this article, it shall be an affirmative defense that such
3 person had produced a driver's license or non-driver identification card
4 apparently issued by a governmental entity, successfully completed that
5 transaction scan, and that the tobacco product or herbal cigarettes had
6 been sold, delivered or given to such person in reasonable reliance upon
7 such identification and transaction scan. In evaluating the applicabil-
8 ity of such affirmative defense the commissioner shall take into consid-
9 eration any written policy adopted and implemented by the seller to
10 effectuate the provisions of this chapter. Use of a transaction scan
11 shall not excuse any person operating a place of business wherein tobac-
12 co products, herbal cigarettes, shisha or electronic cigarettes are
13 sold, or the agent or employee of such person, from the exercise of
14 reasonable diligence otherwise required by this chapter. Notwithstanding
15 the above provisions, any such affirmative defense shall not be applica-
16 ble in any civil or criminal proceeding, or in any other forum.

17 [5.] 7. A licensee or agent or employee of such licensee shall only
18 use a device capable of deciphering any electronically readable format,
19 and shall only use the information recorded and maintained through the
20 use of such devices, for the purposes contained in subdivision four of
21 this section. No licensee or agent or employee of a licensee shall
22 resell or disseminate the information recorded during such a scan to any
23 third person. Such prohibited resale or dissemination includes but is
24 not limited to any advertising, marketing or promotional activities.
25 Notwithstanding the restrictions imposed by this subdivision, such
26 records may be released pursuant to a court ordered subpoena or pursuant
27 to any other statute that specifically authorizes the release of such
28 information. Each violation of this subdivision shall be punishable by a
29 civil penalty of not more than one thousand dollars.

30 [6.] 8. A licensee or agent or employee of such a licensee may elec-
31 tronically or mechanically record and maintain only the information from
32 a transaction scan necessary to effectuate this section. Such informa-
33 tion shall be limited to the following: (a) name, (b) date of birth, (c)
34 driver's license or non-driver identification number, and (d) expiration
35 date. The commissioner and state commissioner of motor vehicles shall
36 jointly promulgate any regulations necessary to govern the recording and
37 maintenance of these records by a licensee under this chapter. The
38 commissioner and the state liquor authority shall jointly promulgate any
39 regulation necessary to ensure quality control in the use of the trans-
40 action scan devices under this chapter and article five of the alcoholic
41 beverage control law.

42 [7.] 9. No person operating a place of business wherein tobacco
43 products, herbal cigarettes, shisha or electronic cigarettes are sold or
44 offered for sale shall sell, permit to be sold, offer for sale or
45 display for sale any tobacco product, herbal cigarettes, shisha or elec-
46 tronic cigarettes in any manner, unless such products and cigarettes are
47 stored for sale (a) behind a counter in an area accessible only to the
48 personnel of such business, or (b) in a locked container; provided,
49 however, such restriction shall not apply to tobacco businesses, as
50 defined in subdivision eight of section thirteen hundred ninety-nine-aa
51 of this article, and to places to which admission is restricted to
52 persons eighteen years of age or older.

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

1 7. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY ADMINISTRATIVE ACTION
2 UNDER THIS SECTION THAT THE SALE WAS MADE TO AN INDIVIDUAL WHO WAS OR
3 REASONABLY APPEARED TO BE AT LEAST FORTY YEARS OF AGE.

4 S 3. Section 65 of the alcoholic beverage control law is amended by
5 adding three new subdivisions 8, 9 and 10 to read as follows:

6 8. IN ANY PROCEEDING PURSUANT TO SECTION ONE HUNDRED EIGHTEEN OF THIS
7 CHAPTER ARISING FROM A VIOLATION OF SUBDIVISION ONE OF THIS SECTION, FOR
8 A LICENSEE LICENSED UNDER SECTION FIFTY-FOUR OR FIFTY-FOUR-A OF THIS
9 CHAPTER, OR SECTION SIXTY-THREE OF THIS ARTICLE, IT SHALL BE AN AFFIRMA-
10 TIVE DEFENSE THAT THE SALE WAS MADE TO A PERSON WHO WAS OR REASONABLY
11 APPEARED TO BE AT LEAST FORTY YEARS OF AGE.

12 9. IT SHALL BE THE RESPONSIBILITY OF ANY PERSON SEEKING TO PURCHASE
13 ALCOHOLIC BEVERAGES FROM A LICENSEE LICENSED UNDER SECTION FIFTY-FOUR OR
14 FIFTY-FOUR-A OF THIS CHAPTER, OR SECTION SIXTY-THREE OF THIS ARTICLE TO
15 PRESENT TO THE LICENSEE OR AGENT OR EMPLOYEE OF SUCH LICENSEE, PRIOR TO
16 PURCHASE, PHOTOGRAPHIC IDENTIFICATION IN THE FORM OF: (A) A VALID DRIV-
17 ER'S LICENSE OR NON-DRIVER'S IDENTIFICATION CARD ISSUED BY THE COMMIS-
18 SIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES
19 TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE
20 GOVERNMENT WITHIN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE
21 DOMINION OF CANADA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES
22 GOVERNMENT OR ANY OTHER COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY
23 THE ARMED FORCES OF THE UNITED STATES.

24 10. THE STATE LIQUOR AUTHORITY SHALL, WITHIN TEN DAYS OF THE DATE OF
25 BECOMING AWARE OF A VIOLATION OF SUBDIVISION ONE OF THIS SECTION,
26 PROVIDE THE LICENSEE WITH WRITTEN NOTICE OF SUCH VIOLATION.

27 S 4. This act shall take effect immediately.