S T A T E O F N E W Y O R K

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I N S E N A T E

June 3, 2014

Introduced by Sens. STEWART-COUSINS, RIVERA -- 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 prohibiting the vaporization of nicotine within electronic cigarettes in certain areas; to amend the public health law, the penal law and the administrative code of the city of New York, in relation to increasing the purchasing age for tobacco products and electronic cigarettes from eighteen to twenty-one; and relating to directing the department of health to evaluate the health effects of electronic cigarettes on members of the public

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

Section 1. Subdivision 8 of section 1399-n of the public health law, as amended by chapter 13 of the laws of 2003, is amended to read as follows:

8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco OR THE VAPORIZATION OF NICOTINE OR OTHER CHEMICALS WITHIN AN ELECTRONIC CIGARETTE.

S 2. Subdivision 4 of section 1399-aa of the public health law, as added by chapter 799 of the laws of 1992, is amended to read as follows:

4. "Private club" means an organization with no more than an insignificant portion of its membership comprised of people under the age of [eighteen] TWENTY-ONE years that regularly receives dues and/or payments from its members for the use of space, facilities and services.

S 3. Paragraphs (b), (c) and (f) of subdivision 2 of section 1399-bb of the public health law, as amended by chapter 13 of the laws of 2003, are amended to read as follows:

(b) conventions and trade shows; provided that the distribution is confined to designated areas generally accessible only to persons over the age of [eighteen] TWENTY-ONE;

(c) events sponsored by tobacco [or], herbal cigarette OR ELECTRONIC CIGARETTE manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of [eighteen] TWENTY-ONE;

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

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(f) factories as defined in subdivision nine of section thirteen hundred ninety-nine-aa of this article and construction sites; provided that the distribution is confined to designated areas generally accessible only to persons over the age of [eighteen] TWENTY-ONE.

S 4. Subdivision 4 of section 1399-bb of the public health law, as amended by chapter 508 of the laws of 2000, is amended and a new subdivision 5 is added to read as follows:

4. The distribution of tobacco products [or], herbal cigarettes OR ELECTRONIC CIGARETTES pursuant to subdivision two of this section shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least [eighteen] TWENTY-ONE years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] THIRTY years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product [or], herbal cigarette OR ELECTRONIC CIGARETTE to an individual UNDER TWENTY-ONE YEARS OF AGE.

5. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION.

S 5. Subdivisions 2, 3 and 7 of section 1399-cc of the public health law, as amended by chapter 448 of the laws of 2012, are amended and a new subdivision 8 is added to read as follows:

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

3. Sale of tobacco products, herbal cigarettes, shisha or electronic cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through (a) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (b) a valid passport issued by the United States government or any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least [eighteen] TWENTY-ONE years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] THIRTY years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale

of a tobacco product, herbal cigarettes, shisha or electronic cigarettes to an individual under [eighteen] TWENTY-ONE years of age.

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

8. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION.

S 6. Section 1399-dd of the public health law, as amended by chapter 448 of the laws of 2012, is amended to read as follows:

S 1399-dd. 1. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines. No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products, herbal cigarettes or electronic cigarettes unless such machine is located: (a) in a bar as defined in subdivision one of section thirteen hundred ninety-nine-n of this chapter, or the bar area of a food service establishment with a valid, on-premises full liquor license; (b) in a private club; (c) in a tobacco business as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article; or (d) in a place of employment which has an insignificant portion of its regular workforce comprised of people under the age of [eighteen] TWENTY-ONE years and only in such locations that are not accessible to the general public; provided, however, that in such locations the vending machine is located in plain view and under the direct supervision and control of the person in charge of the location or his or her designated agent or employee.

2. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION.

S 7. Subdivision 1 of section 1399-ff of the public health law, as amended by chapter 448 of the laws of 2012, is amended and a new subdivision 4 is added to read as follows:

1. Where a civil penalty for a particular incident has not been imposed or an enforcement action regarding an alleged violation for a particular incident is not pending under section thirteen hundred ninety-nine-ee of this article, a parent or guardian of a [minor] PERSON

UNDER TWENTY-ONE YEARS OF AGE to whom tobacco products, herbal cigarettes or electronic cigarettes are sold or distributed in violation of this article may submit a complaint to an enforcement officer setting forth the name and address of the alleged violator, the date of the alleged violation, the name and address of the complainant and the [minor] PERSON UNDER TWENTY-ONE YEARS OF AGE, and a brief statement describing the alleged violation. The enforcement officer shall notify the alleged violator by certified or registered mail, return receipt requested, that a complaint has been submitted, and shall set a date, at least fifteen days after the mailing of such notice, for a hearing on the complaint. Such notice shall contain the information submitted by the complainant.

4. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION.

S 8. Paragraphs (b) and (c) of subdivision 2 of section 1399-ll of the public health law, as added by chapter 518 of the laws of 2000, are amended to read as follows:

(b) Any person operating a tobacco business wherein bidis is sold or offered for sale is prohibited from selling such bidis to individuals under [eighteen] TWENTY-ONE years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF BIDIS TO PERSONS UNDER [EIGHTEEN] TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

(c) Sales of bidis by a tobacco business shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least [eighteen] TWENTY-ONE years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] THIRTY years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under [eighteen] TWENTY-ONE years of age.

S 9. Subdivision 1 and paragraphs (b) and (c) of subdivision 2 of section 1399-mm of the public health law, as added by chapter 549 of the laws of 2003, are amended to read as follows:

1. No person shall knowingly sell or provide gutka to any other person under [eighteen] TWENTY-ONE years of age. No other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of gutka. Any person who violates the provisions of this subdivision shall be subject to a civil penalty of not more than five hundred dollars.

(b) Any person operating a tobacco business wherein gutka is sold or offered for sale is prohibited from selling such gutka to individuals under [eighteen] TWENTY-ONE years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF GUTKA TO PERSONS UNDER [EIGHTEEN] TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

(c) Sales of gutka by a tobacco business shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least [eighteen] TWENTY-ONE years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] THIRTY years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under [eighteen] TWENTY-ONE years of age.

S 10. Subdivision 3 of section 260.21 of the penal law, as added by chapter 362 of the laws of 1992, is amended to read as follows:

3. He OR SHE sells or causes to be sold tobacco in any form to a child less than [eighteen] TWENTY-ONE years old, HOWEVER NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SUBDIVISION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN THAT AMENDED THIS SUBDIVISION.

S 11. Section 17-714 of the administrative code of the city of New York, as amended by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

S 17-714 Sale of herbal cigarettes to minors prohibited. It shall be unlawful for any person to sell or offer for sale herbal cigarettes to an individual under [eighteen] TWENTY-ONE years of age.

S 12. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Electronic cigarette" shall have the same meaning as the term is defined in section 1399-aa of the public health law.

(b) "Refillable electronic cigarette" shall mean an electronic cigarette that is designed to allow for cartridges to be removed and replaced with new cartridges of liquid nicotine.

(c) "Non-refillable electronic cigarette" shall mean an electronic cigarette that is designed to have a finite number of uses and not intended to be refilled with liquid nicotine cartridges.

(d) "Liquid nicotine" shall mean a liquid composed of nicotine and other chemicals, which is sold as a product that may be used in an electronic cigarette.

2. Within sixty days of the effective date of this act, the department of health shall commence to examine and evaluate the effects of electronic cigarettes on the public health. Such study shall examine:

(a) the possible adverse health effects of the vapor released from electronic cigarettes;

(b) the effectiveness of electronic cigarettes as a smoking cessation tool;

(c) the occurrence of nicotine addiction when using an electronic cigarette as opposed to a cigarette or other tobacco products;

(d) the chemical composition of liquid nicotine used to refill electronic cigarettes and any threat to public health from such liquid nicotine;

(e) the possible adverse health effects from exposure to liquid nicotine that is sold to refill electronic cigarettes; and

(f) the different threats to public health from the use of refillable versus non-refillable electronic cigarette systems.

3. Within one year of the effective date of this act, the commissioner of health shall report to the governor and the legislature the department of health's findings and make any recommendations he or she shall deem necessary.

S 13. This act shall take effect immediately; provided however that sections one through eleven of this act shall take effect on the ninetieth day after it shall have become a law.