

4115--A

2015-2016 Regular Sessions

I N   S E N A T E

February 27, 2015

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Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to excluding patios and other outdoor areas on the premises of any entity licensed to operate a video lottery gaming facility from restrictions of the Clean Indoor Air act

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

1     Section 1. Section 1399-q of the public health law, as amended by  
2 chapter 13 of the laws of 2003, is amended to read as follows:  
3     S 1399-q. Smoking restrictions inapplicable. This article shall not  
4 apply to:  
5     1. Private homes, private residences and private automobiles;  
6     2. A hotel or motel room rented to one or more guests;  
7     3. Retail tobacco businesses;  
8     4. Membership associations; provided, however, that smoking shall only  
9 be allowed in membership associations in which all of the duties with  
10 respect to the operation of such association, including, but not limited  
11 to, the preparation of food and beverages, the service of food and  
12 beverages, reception and secretarial work, and the security services of  
13 the membership association are performed by members of such membership  
14 association who do not receive compensation of any kind from the member-  
15 ship association or any other entity for the performance of such duties;  
16     5. Cigar bars that, in the calendar year ending December thirty-first,  
17 two thousand two, generated ten percent or more of its total annual  
18 gross income from the on-site sale of tobacco products and the rental of  
19 on-site humidors, not including any sales from vending machines, and is  
20 registered with the appropriate enforcement officer, as defined in  
21 subdivision one of section thirteen hundred ninety-nine-t of this arti-

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

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cle. Such registration shall remain in effect for one year and shall be renewable only if: (a) in the preceding calendar year, the cigar bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (b) the cigar bar has not expanded its size or changed its location from its size or location since December thirty-first, two thousand two;

6. Outdoor dining areas of food service establishments with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous area designated for smoking so long as such area: (a) constitutes no more than twenty-five percent of the outdoor seating capacity of such food service establishment, (b) is at least three feet away from the outdoor area of such food service establishment not designated for smoking, and (c) is clearly designated with written signage as a smoking area; [and]

7. Enclosed rooms in food service establishments, bars, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities during the time such enclosed areas or rooms are being used exclusively for functions where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose, provided that the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts notice at the entrance of the facility and has provided notice of such function to the appropriate enforcement officer, as defined in subdivision one of section thirteen hundred ninety-nine-t of this article, at least two weeks prior to such function. The enforcement officer shall keep a record of all tobacco sampling events, and such record shall be made available for public inspection. No such facility shall permit smoking under this subdivision for more than two days in any calendar year[.]; AND

8. PATIOS AND OTHER OUTDOOR AREAS ON THE PREMISES OF ANY ENTITY LICENSED TO OPERATE A VIDEO LOTTERY GAMING FACILITY PURSUANT TO SECTION ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THE TAX LAW WHICH ARE COVERED BY A ROOF OR OTHER CEILING ENCLOSURE; PROVIDED THAT SUCH COVERED PATIO OR OTHER OUTDOOR AREA MUST BE CLEARLY DESIGNATED AS A SMOKING AREA, AND MUST EITHER (A) BE COMPLETELY OPEN ON AT LEAST ONE SIDE, WITH NO WALL ON ONE SIDE, OR (B) BE OPEN ON TWO OR MORE SIDES, WITH PARTIAL WALLS ON THE TWO OR MORE OPEN SIDES TO THE HEIGHT OF NOT MORE THAN FIFTY PERCENT OF THE DISTANCE BETWEEN THE FLOOR AND CEILING. AIR PERMEABLE MATERIALS WHICH FUNCTION AS A WEATHER BARRIER AND WHICH DO NOT PROVIDE A RIGID PARTITION SHALL BE DISREGARDED FOR PURPOSES OF DETERMINING WHETHER A COVERED PATIO OR OTHER OUTDOOR AREA IS OPEN ON ONE, TWO OR MORE SIDES. JURISDICTION IN ALL MATTERS PERTAINING TO A SMOKING AREA ON PATIOS AND OTHER OUTDOOR AREAS ON THE PREMISES OF ANY ENTITY LICENSED TO OPERATE A VIDEO LOTTERY GAMING FACILITY PURSUANT TO SECTION ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THE TAX LAW IN THIS STATE IS VESTED EXCLUSIVELY IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY RULE OR REGULATION PROMULGATED THERETO, GOVERNING OR PROHIBITING A SMOKING AREA ON PATIOS AND OTHER OUTDOOR AREAS ON THE PREMISES OF ANY ENTITY LICENSED TO OPERATE A VIDEO LOTTERY GAMING FACILITY PURSUANT TO SECTION ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THE TAX LAW IN THE STATE SHALL, UPON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH ADDED THIS SUBDIVISION, BE PREEMPTED.

S 2. This act shall take effect immediately.