

# STATE OF NEW YORK

516

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

Introduced by M. of A. ROSENTHAL, DINOWITZ, JAFFEE, ARROYO, HOOPER, ENGLEBRIGHT, FAHY, ZEBROWSKI, MOSLEY, MAGNARELLI, STIRPE, ABINANTI, BRINDISI, CAHILL, ORTIZ, GALEF, GOTTFRIED, SKOUFIS -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, GLICK, LOPEZ, PERRY, RIVERA -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to including electronic cigarettes within provisions regulating smoking in certain public areas

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 8 of section 1399-n of the public health law,  
2 as amended by chapter 13 of the laws of 2003, is amended and two new  
3 subdivisions 9 and 10 are added to read as follows:

4 8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or  
5 any other matter or substance which contains tobacco, and the use of an  
6 electronic cigarette.

7 9. "Electronic cigarette" or "e-cigarette" shall have the same meaning  
8 as in subdivision thirteen of section thirteen hundred ninety-nine-aa of  
9 this chapter.

10 10. "Retail electronic cigarette store" means a retail store devoted  
11 primarily to the sale of electronic cigarettes, and in which the sale of  
12 other products is merely incidental. The sale of such other products  
13 shall be considered incidental if such sales generate less than twenty-  
14 five percent of the total annual gross sales.

15 § 2. Subdivisions 6 and 7 of section 1399-q of the public health law,  
16 as added by chapter 13 of the laws of 2003, are amended and a new subdi-  
17 vision 8 is added to read as follows:

18 6. Outdoor dining areas of food service establishments with no roof or  
19 other ceiling enclosure; provided, however, that smoking may be permit-  
20 ted in a contiguous area designated for smoking so long as such area:  
21 (a) constitutes no more than twenty-five percent of the outdoor seating

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

LBD01779-01-7

1 capacity of such food service establishment, (b) is at least three feet  
2 away from the outdoor area of such food service establishment not desig-  
3 nated for smoking, and (c) is clearly designated with written signage as  
4 a smoking area; ~~and~~

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

21 8. Retail electronic cigarette stores, provided however, that such  
22 stores may only permit the use of electronic cigarettes.

23 § 3. This act shall take effect on the thirtieth day after it shall  
24 have become a law; provided, however, that effective immediately, the  
25 addition, amendment and/or repeal of any rule or regulation necessary  
26 for the implementation of section three of this act on its effective  
27 date is authorized and directed to be made and completed on or before  
28 such effective date.