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

January 20, 2010

Introduced by Sen. O. JOHNSON -- 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 electronic cigarette sales to minors

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

Section 1. Section 1399-aa of the public health law is amended by adding two new subdivisions 12 and 13 to read as follows:

12. "ELECTRONIC CIGARETTE" OR "E-CIGARETTE" MEANS ANY BATTERY OPERATED DEVICE DESIGNED TO EMIT A NICOTINE VAPOR UPON INHALATION WITHOUT BEING LIT. E-CIGARETTES ARE COMPOSED OF A BATTERY, A HEATING ELEMENT OR ATOMIZER, AND A CARTRIDGE.

13. "ELECTRONIC CIGARETTE CARTRIDGE" OR "E-CIGARETTE CARTRIDGE" MEANS A COMPONENT OF AN E-CIGARETTE THAT CONTAINS LIQUID NICOTINE.

S 2. The section heading and subdivisions 2, 3, 4 and 7 of section 1399-cc of the public health law, the section heading and subdivisions 2, 3 and 4 as amended by chapter 508 of the laws of 2000, subdivision 3 as separately amended by chapter 162 of the laws of 2002, and subdivision 7 as amended by chapter 13 of the laws of 2003, are amended to read as follows:

Sale of tobacco products, herbal cigarettes, ELECTRONIC CIGARETTES, rolling papers or pipes to minors prohibited.

2. Any person operating a place of business wherein tobacco products, ELECTRONIC CIGARETTES or herbal cigarettes are sold or offered for sale is prohibited from selling such products, herbal cigarettes, ELECTRONIC CIGARETTES, rolling papers or pipes to individuals under eighteen 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, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS UNDER EIGHTEEN 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, ELECTRONIC CIGARETTES or herbal cigarettes in such places, other than by a vending machine, shall be made

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

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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 years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five 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 cigarettes to an individual under eighteen years of age.

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

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

(c) In any proceeding pursuant to section thirteen hundred-ninety-nine-ee of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the tobacco product, ELECTRONIC CIGARETTES or herbal cigarettes had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a place of business wherein tobacco products, ELECTRONIC CIGARETTES or herbal cigarettes are sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

7. No person operating a place of business wherein tobacco products, ELECTRONIC CIGARETTES or herbal cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product, ELECTRONIC CIGARETTES or herbal 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 years of age or older.

S 3. This act shall take effect immediately.