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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 elec-
tronic cigarette sales to minors

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

1 Section 1. Section 1399-aa of the public health law is amended by
2 adding two new subdivisions 12 and 13 to read as follows:
3 12. "ELECTRONIC CIGARETTE" OR "E-CIGARETTE" MEANS ANY BATTERY OPERATED
4 DEVICE DESIGNED TO EMIT A NICOTINE VAPOR UPON INHALATION WITHOUT BEING
5 LIT. E-CIGARETTES ARE COMPOSED OF A BATTERY, A HEATING ELEMENT OR ATOM-
6 IZER, AND A CARTRIDGE.
7 13. "ELECTRONIC CIGARETTE CARTRIDGE" OR "E-CIGARETTE CARTRIDGE" MEANS
8 A COMPONENT OF AN E-CIGARETTE THAT CONTAINS LIQUID NICOTINE.
9 S 2. The section heading and subdivisions 2, 3, 4 and 7 of section
10 1399-cc of the public health law, the section heading and subdivisions
11 2, 3 and 4 as amended by chapter 508 of the laws of 2000, subdivision 3
12 as separately amended by chapter 162 of the laws of 2002, and subdivi-
13 sion 7 as amended by chapter 13 of the laws of 2003, are amended to read
14 as follows:
15 Sale of tobacco products, herbal cigarettes, ELECTRONIC CIGARETTES,
16 rolling papers or pipes to minors prohibited.
17 2. Any person operating a place of business wherein tobacco products,
18 ELECTRONIC CIGARETTES or herbal cigarettes are sold or offered for sale
19 is prohibited from selling such products, herbal cigarettes, ELECTRONIC
20 CIGARETTES, rolling papers or pipes to individuals under eighteen years
21 of age, and shall post in a conspicuous place a sign upon which there
22 shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS,
23 CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL
24 CIGARETTES, ELECTRONIC CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS
25 UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be
26 printed on a white card in red letters at least one-half inch in height.
27 3. Sale of tobacco products, ELECTRONIC CIGARETTES or herbal ciga-
28 rettes 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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1 only to an individual who demonstrates, through (a) a valid driver's
2 license or non-driver's identification card issued by the commissioner
3 of motor vehicles, the federal government, any United States territory,
4 commonwealth or possession, the District of Columbia, a state government
5 within the United States or a provincial government of the dominion of
6 Canada, or (b) a valid passport issued by the United States government
7 or any other country, or (c) an identification card issued by the armed
8 forces of the United States, indicating that the individual is at least
9 eighteen years of age. Such identification need not be required of any
10 individual who reasonably appears to be at least twenty-five years of
11 age, provided, however, that such appearance shall not constitute a
12 defense in any proceeding alleging the sale of a tobacco product or
13 herbal cigarettes to an individual under eighteen years of age.

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

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

23 (c) In any proceeding pursuant to section thirteen hundred-ninety-
24 nine-ee of this article, it shall be an affirmative defense that such
25 person had produced a driver's license or non-driver identification card
26 apparently issued by a governmental entity, successfully completed that
27 transaction scan, and that the tobacco product, ELECTRONIC CIGARETTES or
28 herbal cigarettes had been sold, delivered or given to such person in
29 reasonable reliance upon such identification and transaction scan. In
30 evaluating the applicability of such affirmative defense the commission-
31 er shall take into consideration any written policy adopted and imple-
32 mented by the seller to effectuate the provisions of this chapter. Use
33 of a transaction scan shall not excuse any person operating a place of
34 business wherein tobacco products, ELECTRONIC CIGARETTES or herbal ciga-
35 rettes are sold, or the agent or employee of such person, from the exer-
36 cise of reasonable diligence otherwise required by this chapter.
37 Notwithstanding the above provisions, any such affirmative defense shall
38 not be applicable in any civil or criminal proceeding, or in any other
39 forum.

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

51 S 3. This act shall take effect immediately.