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I N   S E N A T E

January 20, 2010

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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.