

6037

2011-2012 Regular Sessions

I N A S S E M B L Y

March 4, 2011

Introduced by M. of A. BROOK-KRASNY -- read once and referred to the
Committee on Health

AN ACT to amend the public health law, in relation to prohibiting the
sale of hookahs, shisha and water pipes 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-cc of the public health law, as amended by
2 chapter 508 of the laws of 2000, subdivision 3 as separately amended by
3 chapter 508 of the laws of 2000 and chapter 162 of the laws of 2002,
4 subdivision 7 as amended by chapter 13 of the laws of 2003, is amended
5 to read as follows:
6 S 1399-cc. Sale of tobacco products, herbal cigarettes, SHISHA, roll-
7 ing papers or [pipes] SMOKING PARAPHERNALIA to minors prohibited. 1. As
8 used in this section:
9 (a) "A device capable of deciphering any electronically readable
10 format" or "device" shall mean any commercial device or combination of
11 devices used at a point of sale or entry that is capable of reading the
12 information encoded on the bar code or magnetic strip of a driver's
13 license or non-driver identification card issued by the state commis-
14 sioner of motor vehicles;
15 (b) "Card holder" means any person presenting a driver's license or
16 non-driver identification card to a licensee, or to the agent or employ-
17 ee of such licensee under this chapter; [and]
18 (c) "SMOKING PARAPHERNALIA" MEANS ANY PIPE, WATER PIPE, HOOKAH, ROLL-
19 ING PAPERS, VAPORIZER OR ANY OTHER DEVICE, EQUIPMENT OR APPARATUS
20 DESIGNED FOR THE INHALATION OF TOBACCO; AND
21 (D) "Transaction scan" means the process involving an automated bar
22 code reader by which a licensee, or agent or employee of a licensee
23 under this chapter reviews a driver's license or non-driver identifica-
24 tion card presented as a precondition for the purchase of a tobacco

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

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1 product or herbal cigarettes pursuant to subdivision three of this
2 section;

3 2. Any person operating a place of business wherein tobacco products
4 [or], herbal cigarettes OR SHISHA, are sold or offered for sale is
5 prohibited from selling such products, herbal cigarettes, [rolling
6 papers or pipes] SHISHA OR SMOKING PARAPHERNALIA to individuals under
7 eighteen years of age, and shall post in a conspicuous place a sign upon
8 which there shall be imprinted the following statement, "SALE OF CIGA-
9 RETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER
10 TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR [PIPES] SMOKING
11 PARAPHERNALIA, TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY
12 LAW." Such sign shall be printed on a white card in red letters at
13 least one-half inch in height.

14 3. Sale of tobacco products [or], herbal cigarettes OR SHISHA in such
15 places, other than by a vending machine, shall be made only to an indi-
16 vidual who demonstrates, through (a) a valid driver's license or non-
17 driver's identification card issued by the commissioner of motor vehi-
18 cles, the federal government, any United States territory, commonwealth
19 or possession, the District of Columbia, a state government within the
20 United States or a provincial government of the dominion of Canada, or
21 (b) a valid passport issued by the United States government or any other
22 country, or (c) an identification card issued by the armed forces of the
23 United States, indicating that the individual is at least eighteen years
24 of age. Such identification need not be required of any individual who
25 reasonably appears to be at least twenty-five years of age, provided,
26 however, that such appearance shall not constitute a defense in any
27 proceeding alleging the sale of a tobacco product [or], herbal ciga-
28 rettes OR SHISHA to an individual under eighteen years of age.

29 4. (a) Any person operating a place of business wherein tobacco
30 products [or], herbal cigarettes OR SHISHA are sold or offered for sale
31 may perform a transaction scan as a precondition for such purchases.

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

37 (c) In any proceeding pursuant to section thirteen hundred-ninety-
38 nine-ee of this article, it shall be an affirmative defense that such
39 person had produced a driver's license or non-driver identification card
40 apparently issued by a governmental entity, successfully completed that
41 transaction scan, and that the tobacco product or herbal cigarettes had
42 been sold, delivered or given to such person in reasonable reliance upon
43 such identification and transaction scan. In evaluating the applicabil-
44 ity of such affirmative defense the commissioner shall take into consid-
45 eration any written policy adopted and implemented by the seller to
46 effectuate the provisions of this chapter. Use of a transaction scan
47 shall not excuse any person operating a place of business wherein tobac-
48 co products [or], herbal cigarettes OR SHISHA are sold, or the agent or
49 employee of such person, from the exercise of reasonable diligence
50 otherwise required by this chapter. Notwithstanding the above
51 provisions, any such affirmative defense shall not be applicable in any
52 civil or criminal proceeding, or in any other forum.

53 5. A licensee or agent or employee of such licensee shall only use a
54 device capable of deciphering any electronically readable format, and
55 shall only use the information recorded and maintained through the use
56 of such devices, for the purposes contained in subdivision four of this

1 section. No licensee or agent or employee of a licensee shall resell or
2 disseminate the information recorded during such a scan to any third
3 person. Such prohibited resale or dissemination includes but is not
4 limited to any advertising, marketing or promotional activities.
5 Notwithstanding the restrictions imposed by this subdivision, such
6 records may be released pursuant to a court ordered subpoena or pursuant
7 to any other statute that specifically authorizes the release of such
8 information. Each violation of this subdivision shall be punishable by a
9 civil penalty of not more than one thousand dollars.

10 6. A licensee or agent or employee of such a licensee may electron-
11 ically or mechanically record and maintain only the information from a
12 transaction scan necessary to effectuate this section. Such information
13 shall be limited to the following: (a) name, (b) date of birth, (c)
14 driver's license or non-driver identification number, and (d) expiration
15 date. The commissioner and state commissioner of motor vehicles shall
16 jointly promulgate any regulations necessary to govern the recording and
17 maintenance of these records by a licensee under this chapter. The
18 commissioner and the state liquor authority shall jointly promulgate any
19 regulation necessary to ensure quality control in the use of the trans-
20 action scan devices under this chapter and article five of the alcoholic
21 beverage control law.

22 7. No person operating a place of business wherein tobacco products
23 [or], herbal cigarettes OR SHISHA are sold or offered for sale shall
24 sell, permit to be sold, offer for sale or display for sale any tobacco
25 product [or], herbal cigarettes OR SHISHA in any manner, unless such
26 products and cigarettes are stored for sale (a) behind a counter in an
27 area accessible only to the personnel of such business, or (b) in a
28 locked container; provided, however, such restriction shall not apply to
29 tobacco businesses, as defined in subdivision eight of section thirteen
30 hundred ninety-nine-aa of this article, and to places to which admission
31 is restricted to persons eighteen years of age or older.

32 S 2. This act shall take effect immediately.