

(b) "Card holder" means any person presenting a driver's license or non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter; AND

(c) ["Smoking paraphernalia" means any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco; and

(d)] "Transaction scan" means the process involving an automated bar code reader by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of a tobacco product or herbal cigarettes pursuant to subdivision three of this section;

2. Any person operating a place of business wherein tobacco products, herbal cigarettes [or], shisha OR SMOKING PARAPHERNALIA, are sold or offered for sale is prohibited from selling such products, herbal cigarettes, shisha or smoking paraphernalia 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, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, 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, herbal cigarettes [or], shisha OR SMOKING PARAPHERNALIA in such places, other than by a vending machine, shall be made 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, herbal cigarettes [or], shisha OR SMOKING PARAPHERNALIA to an individual under eighteen years of age.

4. (a) Any person operating a place of business wherein tobacco products, herbal cigarettes [or], shisha OR SMOKING PARAPHERNALIA 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] 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 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

1 commissioner shall take into consideration any written policy adopted
2 and implemented by the seller to effectuate the provisions of this chap-
3 ter. Use of a transaction scan shall not excuse any person operating a
4 place of business wherein tobacco products, herbal cigarettes [or],
5 shisha OR SMOKING PARAPHERNALIA are sold, or the agent or employee of
6 such person, from the exercise of reasonable diligence otherwise
7 required by this chapter. Notwithstanding the above provisions, any
8 such affirmative defense shall not be applicable in any civil or crimi-
9 nal proceeding, or in any other forum.

10 7. No person operating a place of business wherein tobacco products,
11 herbal cigarettes [or], shisha OR SMOKING PARAPHERNALIA are sold or
12 offered for sale shall sell, permit to be sold, offer for sale or
13 display for sale any tobacco product, herbal cigarettes [or], shisha OR
14 SMOKING PARAPHERNALIA in any manner, unless such products and cigarettes
15 are stored for sale (a) behind a counter in an area accessible only to
16 the personnel of such business, or (b) in a locked container; provided,
17 however, such restriction shall not apply to tobacco businesses, as
18 defined in subdivision eight of section thirteen hundred ninety-nine-aa
19 of this article, and to places to which admission is restricted to
20 persons eighteen years of age or older.

21 S 4. Section 1399-dd of the public health law, as amended by chapter
22 13 of the laws of 2003, is amended to read as follows:

23 S 1399-dd. Sale of tobacco products [or], herbal cigarettes OR SMOKING
24 PARAPHERNALIA in vending machines. No person, firm, partnership, company
25 or corporation shall operate a vending machine which dispenses tobacco
26 products [or], herbal cigarettes OR SMOKING PARAPHERNALIA unless such
27 machine is located: (a) in a bar as defined in subdivision one of
28 section thirteen hundred ninety-nine-n of this chapter, or the bar area
29 of a food service establishment with a valid, on-premises full liquor
30 license; (b) in a private club; (c) in a tobacco business as defined in
31 subdivision eight of section thirteen hundred ninety-nine-aa of this
32 article; or (d) in a place of employment which has an insignificant
33 portion of its regular workforce comprised of people under the age of
34 eighteen years and only in such locations that are not accessible to the
35 general public; provided, however, that in such locations the vending
36 machine is located in plain view and under the direct supervision and
37 control of the person in charge of the location or his or her designated
38 agent or employee.

39 S 5. Subparagraph 1 of paragraph (b) of subdivision 6 of section
40 1399-ee of the public health law, as added by chapter 162 of the laws of
41 2002, is amended to read as follows:

42 (1) the health effects of tobacco AND SMOKING PARAPHERNALIA use, espe-
43 cially at a young age;

44 S 6. Subdivision 1 of section 1399-ff of the public health law, as
45 amended by chapter 508 of the laws of 2000, is amended to read as
46 follows:

47 1. Where a civil penalty for a particular incident has not been
48 imposed or an enforcement action regarding an alleged violation for a
49 particular incident is not pending under section thirteen hundred nine-
50 ty-nine-ee of this article, a parent or guardian of a minor to whom
51 tobacco products [or], herbal cigarettes OR SMOKING PARAPHERNALIA are
52 sold or distributed in violation of this article may submit a complaint
53 to an enforcement officer setting forth the name and address of the
54 alleged violator, the date of the alleged violation, the name and
55 address of the complainant and the minor, and a brief statement describ-
56 ing the alleged violation. The enforcement officer shall notify the

1 alleged violator by certified or registered mail, return receipt
2 requested, that a complaint has been submitted, and shall set a date, at
3 least fifteen days after the mailing of such notice, for a hearing on
4 the complaint. Such notice shall contain the information submitted by
5 the complainant.

6 S 7. Section 1399-hh of the public health law, as added by chapter 433
7 of the laws of 1997, is amended to read as follows:

8 S 1399-hh. Tobacco AND SMOKING PARAPHERNALIA enforcement. The commis-
9 sioner shall develop, plan and implement a comprehensive program to
10 reduce the prevalence of tobacco AND SMOKING PARAPHERNALIA use, partic-
11 ularly among persons less than eighteen years of age. This program shall
12 include, but not be limited to, support for enforcement of THIS article
13 [thirteen-F of this chapter].

14 1. An enforcement officer, as defined in section thirteen hundred
15 ninety-nine-t of this chapter, may annually, on such dates as shall be
16 fixed by the commissioner, submit an application for such monies as are
17 made available for such purpose. Such application shall be in such form
18 as prescribed by the commissioner and shall include, but not be limited
19 to, plans regarding random spot checks, including the number and types
20 of compliance checks that will be conducted, and other activities to
21 determine compliance with this article. Each such plan shall include an
22 agreement to report to the commissioner: the names and addresses of
23 tobacco retailers and vendors determined to be unlicensed, if any; the
24 number of complaints filed against licensed tobacco retail outlets; and
25 the names of tobacco retailers and vendors who have paid fines, or have
26 been otherwise penalized, due to enforcement actions.

27 2. The commissioner shall distribute such monies as are made avail-
28 able for such purpose to enforcement officers and, in so doing, consider
29 the number of retail locations registered to sell tobacco AND SMOKING
30 PARAPHERNALIA products within the jurisdiction of the enforcement offi-
31 cer and the level of proposed activities.

32 3. Monies made available to enforcement officers pursuant to this
33 section shall only be used for local tobacco AND SMOKING PARAPHERNALIA
34 enforcement activities approved by the commissioner.

35 S 8. This act shall take effect immediately.