

4269--B

2011-2012 Regular Sessions

I N S E N A T E

March 25, 2011

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1399-aa of the public health law is amended by
2 adding a new subdivision 12 to read as follows:
3 12. "SHISHA" MEANS ANY PRODUCT MADE PRIMARILY OF TOBACCO SMOKED OR
4 INTENDED TO BE SMOKED IN A HOOKAH OR WATER PIPE.
5 S 2. Section 1399-cc of the public health law, as amended by chapter
6 508 of the laws of 2000, subdivision 3 as separately amended by chapter
7 162 of the laws of 2002, subdivision 7 as amended by chapter 13 of the
8 laws of 2003, is amended to read as follows:
9 S 1399-cc. Sale of tobacco products, herbal cigarettes, SHISHA, roll-
10 ing papers or [pipes] SMOKING PARAPHERNALIA to minors prohibited. 1. As
11 used in this section:
12 (a) "A device capable of deciphering any electronically readable
13 format" or "device" shall mean any commercial device or combination of
14 devices used at a point of sale or entry that is capable of reading the
15 information encoded on the bar code or magnetic strip of a driver's
16 license or non-driver identification card issued by the state commis-
17 sioner of motor vehicles;
18 (b) "Card holder" means any person presenting a driver's license or
19 non-driver identification card to a licensee, or to the agent or employ-
20 ee of such licensee under this chapter; [and]

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

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(c) "SMOKING PARAPHERNALIA" MEANS ANY PIPE, WATER PIPE, HOOKAH, ROLL-
ING 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 identifica-
tion 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
[or], herbal cigarettes OR SHISHA, are sold or offered for sale is
prohibited from selling such products, herbal cigarettes, [rolling
papers or pipes] 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 CIGA-
RETES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER
TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR [PIPES] 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 [or], herbal cigarettes OR SHISHA in such
places, other than by a vending machine, shall be made only to an indi-
vidual who demonstrates, through (a) a valid driver's license or non-
driver's identification card issued by the commissioner of motor vehi-
cles, 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 ciga-
rettes OR SHISHA to an individual under eighteen years of age.

4. (a) Any person operating a place of business wherein tobacco
products [or], herbal cigarettes OR SHISHA 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 trans-
action 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 or herbal cigarettes had
been sold, delivered or given to such person in reasonable reliance upon
such identification and transaction scan. In evaluating the applicabil-
ity of such affirmative defense the commissioner shall take into consid-
eration 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 tobac-
co products [or], herbal cigarettes OR SHISHA are sold, or the agent or
employee of such person, from the exercise of reasonable diligence

1 otherwise required by this chapter. Notwithstanding the above
2 provisions, any such affirmative defense shall not be applicable in any
3 civil or criminal proceeding, or in any other forum.

4 5. A licensee or agent or employee of such licensee shall only use a
5 device capable of deciphering any electronically readable format, and
6 shall only use the information recorded and maintained through the use
7 of such devices, for the purposes contained in subdivision four of this
8 section. No licensee or agent or employee of a licensee shall resell or
9 disseminate the information recorded during such a scan to any third
10 person. Such prohibited resale or dissemination includes but is not
11 limited to any advertising, marketing or promotional activities.
12 Notwithstanding the restrictions imposed by this subdivision, such
13 records may be released pursuant to a court ordered subpoena or pursuant
14 to any other statute that specifically authorizes the release of such
15 information. Each violation of this subdivision shall be punishable by a
16 civil penalty of not more than one thousand dollars.

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

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

39 S 3. This act shall take effect on the first of January next succeed-
40 ing the date on which it shall have become a law.