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I N A S S E M B L Y

January 17, 2012

Introduced by M. of A. ROSENTHAL, TITONE, ENGLEBRIGHT, MAISEL, GALEF,
M. MILLER, CASTRO, JAFFEE -- Multi-Sponsored by -- M. of A. CAMARA,
CYMBROWITZ, GOTTFRIED, SWEENEY, TOBACCO -- read once and referred to
the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting the
sale of electronic cigarettes to minors

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

1 Section 1. The article heading of article 13-F of the public health
2 law, as amended by chapter 508 of the laws of 2000, is amended to read
3 as follows:

4 ARTICLE 13-F

5 REGULATION OF TOBACCO PRODUCTS [AND], HERBAL
6 CIGARETTES AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

7 S 2. Section 1399-aa of the public health law is amended by adding two
8 new subdivisions 13 and 14 to read as follows:

9 13. "SMOKING PARAPHERNALIA" MEANS ANY PIPE, WATER PIPE, HOOKAH, ROLL-
10 ING PAPERS, VAPORIZER OR ANY OTHER DEVICE, EQUIPMENT OR APPARATUS
11 DESIGNED FOR THE INHALATION OF NICOTINE, CHEMICALS OR TOBACCO, INCLUDING
12 BUT NOT LIMITED TO ELECTRONIC CIGARETTES.

13 14. "ELECTRONIC CIGARETTE" OR "E-CIGARETTE" MEANS A BATTERY-OPERATED
14 DEVICE THAT CONTAINS CARTRIDGES FILLED WITH NICOTINE, FLAVOR AND OTHER
15 CHEMICALS THAT ARE TURNED INTO VAPOR WHICH IS INHALED BY THE USER.

16 S 3. Paragraphs (b), (c) and (d) of subdivision 1 and subdivisions 2,
17 3, 4 and 7 of section 1399-cc of the public health law, as amended by
18 chapter 131 of the laws of 2011, are amended to read as follows:

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

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

25 (d)] "Transaction scan" means the process involving an automated bar
26 code reader by which a licensee, or agent or employee of a licensee

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

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1 under this chapter reviews a driver's license or non-driver identifica-
2 tion card presented as a precondition for the purchase of a tobacco
3 product or herbal cigarettes pursuant to subdivision three of this
4 section;

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

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

32 4. (a) Any person operating a place of business wherein tobacco
33 products, herbal cigarettes [or], shisha OR SMOKING PARAPHERNALIA are
34 sold or offered for sale may perform a transaction scan as a precondition
35 for such purchases.

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

41 (c) In any proceeding pursuant to section thirteen [hundred-ninety-
42 nine-ee] HUNDRED NINETY-NINE-EE of this article, it shall be an affirma-
43 tive defense that such person had produced a driver's license or non-
44 driver identification card apparently issued by a governmental entity,
45 successfully completed that transaction scan, and that the tobacco prod-
46 uct or herbal cigarettes had been sold, delivered or given to such
47 person in reasonable reliance upon such identification and transaction
48 scan. In evaluating the applicability of such affirmative defense the
49 commissioner shall take into consideration any written policy adopted
50 and implemented by the seller to effectuate the provisions of this chap-
51 ter. Use of a transaction scan shall not excuse any person operating a
52 place of business wherein tobacco products, herbal cigarettes [or],
53 shisha OR SMOKING PARAPHERNALIA are sold, or the agent or employee of
54 such person, from the exercise of reasonable diligence otherwise
55 required by this chapter. Notwithstanding the above provisions, any

1 such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

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

13 S 4. Section 1399-dd of the public health law, as amended by chapter
14 13 of the laws of 2003, is amended to read as follows:

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

31 S 5. Subparagraph 1 of paragraph (b) of subdivision 6 of section
32 1399-ee of the public health law, as added by chapter 162 of the laws of
33 2002, is amended to read as follows:

34 (1) the health effects of tobacco AND SMOKING PARAPHERNALIA use, especially at a young age;

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

38 1. Where a civil penalty for a particular incident has not been
39 imposed or an enforcement action regarding an alleged violation for a
40 particular incident is not pending under section thirteen hundred ninety-nine-ee of this article, a parent or guardian of a minor to whom
41 tobacco products [or], herbal cigarettes OR SMOKING PARAPHERNALIA are
42 sold or distributed in violation of this article may submit a complaint
43 to an enforcement officer setting forth the name and address of the
44 alleged violator, the date of the alleged violation, the name and
45 address of the complainant and the minor, and a brief statement describing the alleged violation. The enforcement officer shall notify the
46 alleged violator by certified or registered mail, return receipt
47 requested, that a complaint has been submitted, and shall set a date, at
48 least fifteen days after the mailing of such notice, for a hearing on
49 the complaint. Such notice shall contain the information submitted by
50 the complainant.

51 S 7. Section 1399-hh of the public health law, as added by chapter 433
52 of the laws of 1997, is amended to read as follows:
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1 S 1399-hh. Tobacco AND SMOKING PARAPHERNALIA enforcement. The commis-
2 sioner shall develop, plan and implement a comprehensive program to
3 reduce the prevalence of tobacco AND SMOKING PARAPHERNALIA use, partic-
4 ularly among persons less than eighteen years of age. This program shall
5 include, but not be limited to, support for enforcement of article thir-
6 teen-F of this chapter.

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

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

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

28 S 8. Section 1399-ii of the public health law, as added by chapter 1
29 of the laws of 1999, is amended to read as follows:

30 S 1399-ii. Tobacco AND SMOKING PARAPHERNALIA use prevention and
31 control program. 1. To improve the health, quality of life, and economic
32 well-being of all New York state citizens, there is hereby established
33 within the department a comprehensive statewide tobacco AND SMOKING
34 PARAPHERNALIA use prevention and control program.

35 2. The department shall support tobacco AND SMOKING PARAPHERNALIA use
36 prevention and control activities including, but not limited to:

37 (a) Community programs to prevent and reduce tobacco AND SMOKING
38 PARAPHERNALIA use through local involvement and partnerships;

39 (b) School-based programs to prevent and reduce tobacco AND SMOKING
40 PARAPHERNALIA use;

41 (c) Marketing and advertising to discourage tobacco AND SMOKING
42 PARAPHERNALIA use;

43 (d) Tobacco AND SMOKING PARAPHERNALIA cessation programs for youth and
44 adults;

45 (e) Special projects to reduce the disparities in smoking prevalence
46 among various populations;

47 (f) Restriction of youth access to tobacco AND SMOKING PARAPHERNALIA
48 products;

49 (g) Surveillance of smoking rates; and

50 (h) Any other activities determined by the commissioner to be neces-
51 sary to implement the provisions of this section.

52 Such programs shall be selected by the commissioner through an appli-
53 cation process which takes into account whether a program utilizes meth-
54 ods recognized as effective in reducing smoking and tobacco use. Eligi-
55 ble applicants may include, but not be limited to, a health care
56 provider, schools, a college or university, a local public health

1 department, a public health organization, a health care provider organ-
2 ization, association or society, or a professional education organiza-
3 tion.

4 3. (a) There shall be established a tobacco AND SMOKING PARAPHERNALIA
5 use prevention and control advisory board to advise the commissioner on
6 tobacco AND SMOKING PARAPHERNALIA use prevention and control issues,
7 including methods to prevent and reduce tobacco AND SMOKING PARAPHER-
8 NALIA use in the state.

9 (b) The board shall consist of seventeen members who shall be
10 appointed as follows: nine members by the governor; three members by the
11 speaker of the assembly; three members by the temporary president of the
12 senate and one member each by the minority leader of the senate and
13 minority leader of the assembly. Any vacancy or subsequent appointment
14 shall be filled in the same manner and by the same appointing authority
15 as the original appointment. The chairperson of the board shall be
16 designated by the governor from among the members of the board.

17 (c) The members shall serve for terms of two years commencing on the
18 effective date of this section. Members of the board shall receive no
19 compensation but shall be reimbursed for reasonable travel and other
20 expenses incurred in the performance of their duties hereunder.

21 (d) The board shall meet as often as it deems necessary, but no less
22 than four times a year. No nominee to the board shall have any past or
23 current affiliation with the tobacco industry or any industry, contrac-
24 tor, agent, or organization that engages in the manufacturing, market-
25 ing, distributing, or sale of tobacco products. The board shall be
26 appointed in full within ninety days of the effective date of this
27 section.

28 (e) The department shall prepare and submit to the board a spending
29 plan for the tobacco AND SMOKING PARAPHERNALIA use prevention and
30 control program authorized pursuant to the provisions of subdivision one
31 of this section no later than thirty days after the submission of the
32 budget to the legislature.

33 S 9. Section 1399-jj of the public health law, as amended by chapter 1
34 of the laws of 1999, is amended to read as follows:

35 S 1399-jj. Evaluation requirements. 1. The commissioner shall evaluate
36 the effectiveness of the efforts by state and local governments to
37 reduce the use of tobacco AND SMOKING PARAPHERNALIA products among
38 minors and adults. The principal measurements of effectiveness shall
39 include negative attitudes toward tobacco AND SMOKING PARAPHERNALIA use
40 and reduction of tobacco AND SMOKING PARAPHERNALIA use among the general
41 population, and given target populations.

42 2. The commissioner shall ensure that, to the extent practicable, the
43 most current research findings regarding mechanisms to reduce and change
44 attitudes toward tobacco AND SMOKING PARAPHERNALIA use are used in
45 tobacco education programs administered by the department.

46 3. To diminish tobacco AND SMOKING PARAPHERNALIA use among minors and
47 adults, the commissioner shall ensure that, to the extent practicable,
48 the following is achieved:

49 The department shall conduct an independent evaluation of the state-
50 wide tobacco AND SMOKING PARAPHERNALIA use prevention and control
51 program under section thirteen hundred ninety-nine-ii of this article.
52 The purpose of this evaluation is to direct the most efficient allo-
53 cation of state resources devoted to tobacco education and cessation to
54 accomplish the maximum prevention and reduction of tobacco AND SMOKING
55 PARAPHERNALIA use among minors and adults. Such evaluation shall be
56 provided to the governor, the majority leader of the senate and the

1 speaker of the assembly on or before September first, two thousand one,
2 and annually on or before such date thereafter. The comprehensive evalu-
3 ation design shall be guided by the following:

4 (a) sound evaluation principles including, to the extent feasible,
5 elements of controlled experimental methods;

6 (b) an evaluation of the comparative effectiveness of individual
7 program designs which shall be used in funding decisions and program
8 modifications; and

9 (c) an evaluation of other programs identified by state agencies,
10 local lead agencies, and federal agencies.

11 S 10. The opening paragraph, the opening paragraph of subdivision 2
12 and the closing paragraph of section 1399-kk of the public health law,
13 as added by chapter 433 of the laws of 1997, are amended to read as
14 follows:

15 The commissioner shall submit to the governor and the legislature an
16 interim tobacco control report and annual tobacco control reports which
17 shall describe the extent of the use of tobacco AND SMOKING PARAPHER-
18 NALIA products by minors in the state and document the progress state
19 and local governments have made in reducing such use among minors.

20 The commissioner shall submit to the governor and the legislature an
21 annual tobacco control report which shall describe the extent of the use
22 of tobacco AND SMOKING PARAPHERNALIA products by minors in the state and
23 document the progress state and local governments have made in reducing
24 such use among minors. The annual report shall be submitted to the
25 governor and the legislature on or before March thirty-first of each
26 year beginning on March thirty-first, nineteen hundred ninety-nine. The
27 annual report shall, to the extent practicable, include the following
28 information on a county by county basis:

29 The annual tobacco control report shall, to the extent practicable,
30 include the following information: (a) tobacco AND SMOKING PARAPHERNALIA
31 control efforts sponsored by state government agencies including money
32 spent to educate minors on the hazards of tobacco AND SMOKING PARAPHER-
33 NALIA use;

34 (b) recommendations for improving tobacco AND SMOKING PARAPHERNALIA
35 control efforts in the state; and

36 (c) such other information as the commissioner deems appropriate.

37 S 11. This act shall take effect immediately.