

2926--A

2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

Introduced by Sens. JOHNSON, BONACIC, DeFRANCISCO, FUSCHILLO, LARKIN, RANZENHOFER, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- 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 electronic cigarettes to minors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 REGULATION OF TOBACCO PRODUCTS [AND], HERBAL
5 CIGARETTES AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

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

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

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

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

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

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

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

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

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

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

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

1 place of business wherein tobacco products, herbal cigarettes [or],
2 shisha OR SMOKING PARAPHERNALIA are sold, or the agent or employee of
3 such person, from the exercise of reasonable diligence otherwise
4 required by this chapter. Notwithstanding the above provisions, any
5 such affirmative defense shall not be applicable in any civil or crimi-
6 nal proceeding, or in any other forum.

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

18 S 4. Section 1399-dd of the public health law, as amended by chapter
19 13 of the laws of 2003, is amended to read as follows:

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

36 S 5. Subparagraph 1 of paragraph (b) of subdivision 6 of section
37 1399-ee of the public health law, as added by chapter 162 of the laws of
38 2002, is amended to read as follows:

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

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

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

1 the complaint. Such notice shall contain the information submitted by
2 the complainant.

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

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

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

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

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

32 S 8. This act shall take effect immediately.