

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

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

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

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

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

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

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

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

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

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.