

9299

I N A S S E M B L Y

April 8, 2014

Introduced by M. of A. ROSENTHAL -- read once and referred to the
Committee on Health

AN ACT to amend the public health law and the administrative code of the
city of New York, in relation to prohibiting the sale of liquid nico-
tine to minors

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

1 Section 1. Section 1399-cc of the public health law, as amended by
2 chapter 131 of the laws of 2011, subdivisions 2, 3, 4 and 7 as amended
3 by chapter 448 of the laws of 2012, is amended to read as follows:
4 S 1399-cc. Sale of tobacco products, herbal cigarettes, LIQUID NICO-
5 TINE, shisha, rolling papers or smoking paraphernalia to minors prohib-
6 ited. 1. As used in this section:
7 (a) "A device capable of deciphering any electronically readable
8 format" or "device" shall mean any commercial device or combination of
9 devices used at a point of sale or entry that is capable of reading the
10 information encoded on the bar code or magnetic strip of a driver's
11 license or non-driver identification card issued by the state commis-
12 sioner of motor vehicles;
13 (b) "Card holder" means any person presenting a driver's license or
14 non-driver identification card to a licensee, or to the agent or employ-
15 ee of such licensee under this chapter;
16 (c) "Smoking paraphernalia" means any pipe, water pipe, hookah, roll-
17 ing papers, vaporizer or any other device, equipment or apparatus
18 designed for the inhalation of tobacco; [and]
19 (d) "Transaction scan" means the process involving an automated bar
20 code reader by which a licensee, or agent or employee of a licensee
21 under this chapter reviews a driver's license or non-driver identifica-
22 tion card presented as a precondition for the purchase of a tobacco
23 product or herbal cigarettes pursuant to subdivision three of this
24 section; AND
25 (E) "LIQUID NICOTINE" OR "E-LIQUID" MEANS ANY LIQUID PRODUCT COMPOSED
26 EITHER IN WHOLE OR IN PART OF PURE NICOTINE AND PROPYLENE GLYCOL AND
27 MANUFACTURED FOR USE WITH ELECTRONIC CIGARETTES OR OTHER SMOKING

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

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1 PARAPHERNALIA THAT MAY BE FLAVORED AND MAY HAVE ADDED COLORINGS OR CHEM-
2 ICALS.

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

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

31 4. (a) Any person operating a place of business wherein tobacco
32 products, herbal cigarettes, LIQUID NICOTINE, shisha or electronic ciga-
33 rettes are sold or offered for sale may perform a transaction scan as a
34 precondition for such purchases.

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

40 (c) In any proceeding pursuant to section thirteen hundred ninety-
41 nine-ee of this article, it shall be an affirmative defense that such
42 person had produced a driver's license or non-driver identification card
43 apparently issued by a governmental entity, successfully completed that
44 transaction scan, and that the tobacco product [or], herbal cigarettes
45 OR LIQUID NICOTINE had been sold, delivered or given to such person in
46 reasonable reliance upon such identification and transaction scan. In
47 evaluating the applicability of such affirmative defense the commission-
48 er shall take into consideration any written policy adopted and imple-
49 mented by the seller to effectuate the provisions of this chapter. Use
50 of a transaction scan shall not excuse any person operating a place of
51 business wherein tobacco products, herbal cigarettes, LIQUID NICOTINE,
52 shisha or electronic cigarettes are sold, or the agent or employee of
53 such person, from the exercise of reasonable diligence otherwise
54 required by this chapter. Notwithstanding the above provisions, any such
55 affirmative defense shall not be applicable in any civil or criminal
56 proceeding, or in any other forum.

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

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

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

37 S 2. Section 17-706 of the administrative code of the city of New
38 York, as amended by local law number 94 of the city of New York for the
39 year 2013, is amended to read as follows:

40 S 17-706 Sale of cigarettes, tobacco products, LIQUID NICOTINE, or
41 electronic cigarettes to minors and young adults prohibited.

42 a. Any person operating a place of business wherein cigarettes, tobac-
43 co products, LIQUID NICOTINE, or electronic cigarettes are sold or
44 offered for sale is prohibited from selling such cigarettes, tobacco
45 products, LIQUID NICOTINE, or electronic cigarettes to individuals under
46 twenty-one years of age. Sale of cigarettes, tobacco products, LIQUID
47 NICOTINE, or electronic cigarettes in such places shall be made only to
48 an individual who demonstrates, through a driver's license or other
49 photographic identification card issued by a government entity or educa-
50 tional institution, that the individual is at least twenty-one years of
51 age. Such identification need not be required of any individual who
52 reasonably appears to be at least thirty years of age, provided, howev-
53 er, that such appearance shall not constitute a defense in any proceed-
54 ing alleging the sale of cigarettes, tobacco products, LIQUID NICOTINE
55 or electronic cigarettes to an individual under twenty-one years of age.

1 b. Any person operating a place of business wherein non-tobacco
2 shisha, pipes, or rolling papers are sold or offered for sale is prohib-
3 ited from selling such non-tobacco shisha, pipes, or rolling papers to
4 individuals under eighteen years of age. Sale of non-tobacco shisha,
5 pipes, or rolling papers in such places shall be made only to an indi-
6 vidual who demonstrates, through a driver's license or other photograph-
7 ic identification card issued by a government entity or educational
8 institution, that the individual is at least eighteen years of age. Such
9 identification need not be required of any individual who reasonably
10 appears to be at least twenty-five years of age, provided, however, that
11 such appearance shall not constitute a defense in any proceeding alleg-
12 ing the sale of non-tobacco shisha, pipes, or rolling papers to an indi-
13 vidual under eighteen years of age.

14 c. Any person operating a place of business wherein cigarettes, tobac-
15 co products, LIQUID NICOTINE, electronic cigarettes, herbal cigarettes,
16 non-tobacco shisha, pipes, or rolling papers are sold or offered for
17 sale shall post in a conspicuous place a sign, in accordance with the
18 rules of the department, advising persons about the minimum age require-
19 ments for the purchase of such items.

20 S 3. This act shall take effect immediately; provided, however, that
21 if local law number 94 of the city of New York for the year 2013 shall
22 not have taken effect on or before such date then section two of this
23 act shall take effect on the same date and in the same manner as local
24 law number 94 of the city of New York for the year 2013, takes effect.