

9299--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 nicotine to minors; and to amend the general business law, in relation to the labeling and packaging of electronic liquid

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 TIME, 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

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

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(E) "LIQUID NICOTINE", "ELECTRONIC LIQUID" OR "E-LIQUID" MEANS A LIQUID COMPOSED OF NICOTINE AND OTHER CHEMICALS, AND WHICH IS SOLD AS A PRODUCT THAT MAY BE USED IN AN ELECTRONIC CIGARETTE.

2. Any person operating a place of business wherein tobacco products, herbal cigarettes, LIQUID NICOTINE, shisha or electronic cigarettes, are sold or offered for sale is prohibited from selling such products, herbal cigarettes, LIQUID NICOTINE, shisha, electronic cigarettes 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 CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR 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, herbal cigarettes, LIQUID NICOTINE, shisha or electronic cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through (a) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, 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, herbal cigarettes, LIQUID NICOTINE, shisha or electronic cigarettes to an individual under eighteen years of age.

4. (a) Any person operating a place of business wherein tobacco products, herbal cigarettes, LIQUID NICOTINE, shisha or electronic cigarettes 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 transaction 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 OR LIQUID NICOTINE had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration 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 tobacco products, herbal cigarettes, LIQUID NICOTINE, shisha or electronic cigarettes are sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such

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

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

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

28 7. No person operating a place of business wherein tobacco products,
29 herbal cigarettes, LIQUID NICOTINE, shisha or electronic cigarettes are
30 sold or offered for sale shall sell, permit to be sold, offer for sale
31 or display for sale any tobacco product, herbal cigarettes, LIQUID NICO-
32 TINE, shisha or electronic cigarettes 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 2. Section 17-706 of the administrative code of the city of New
40 York, as amended by local law number 94 of the city of New York for the
41 year 2013, is amended to read as follows:

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

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

ing alleging the sale of cigarettes, tobacco products, LIQUID NICOTINE or electronic cigarettes to an individual under twenty-one years of age.

b. Any person operating a place of business wherein non-tobacco shisha, pipes, or rolling papers are sold or offered for sale is prohibited from selling such non-tobacco shisha, pipes, or rolling papers to individuals under eighteen years of age. Sale of non-tobacco shisha, pipes, or rolling papers in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, 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 non-tobacco shisha, pipes, or rolling papers to an individual under eighteen years of age.

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

S 3. The general business law is amended by adding a new section 399-gg to read as follows:

S 399-GG. LABELING AND PACKAGING OF ELECTRONIC LIQUID. 1. NO PERSON, FIRM OR CORPORATION SHALL SELL OR OFFER FOR SALE ANY ELECTRONIC LIQUID, AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-CC OF THE PUBLIC HEALTH LAW, UNLESS THERE IS PRINTED ON THE PACKAGE IN WHICH SUCH ELECTRONIC LIQUID IS SOLD OR OFFERED FOR SALE A CONSPICUOUS NOTICE STATING:

(A) THE PERCENTAGE OF NICOTINE IN SUCH ELECTRONIC LIQUID; AND

(B) A LIST OF ANY OTHER INGREDIENTS IN SUCH ELECTRONIC LIQUID.

2. ANY ELECTRONIC LIQUID CONTAINING ANY PERCENTAGE OF NICOTINE SHALL CONTAIN A WARNING LABEL, PROMINENTLY DISPLAYED, WHICH STATES, "WARNING: THIS PRODUCT CONTAINS NICOTINE DERIVED FROM TOBACCO. NICOTINE IS AN ADDICTIVE CHEMICAL."

3. NO PERSON, FIRM OR CORPORATION SHALL SELL OR OFFER FOR SALE ANY ELECTRONIC LIQUID, AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-CC OF THE PUBLIC HEALTH LAW, UNLESS THE ELECTRONIC LIQUID IS SOLD OR OFFERED FOR SALE IN A CHILD RESISTANT BOTTLE WHICH IS DESIGNED TO PREVENT ACCIDENTAL EXPOSURE OF CHILDREN TO ELECTRONIC LIQUIDS.

4. ANY VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS.

S 4. This act shall take effect immediately; provided, however, that if local law number 94 of the city of New York for the year 2013 shall not have taken effect on or before such date then section two of this act shall take effect on the same date and in the same manner as local law number 94 of the city of New York for the year 2013, takes effect.