

S T A T E O F N E W Y O R K

4115--B

2015-2016 Regular Sessions

I N S E N A T E

February 27, 2015

Introduced by Sen. ORTT -- 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 -- 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 excluding patios and other outdoor areas on the premises of any entity licensed to operate a video lottery gaming facility from restrictions of the Clean Indoor Air act

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

1 Section 1. Section 1399-q of the public health law, as amended by
2 chapter 13 of the laws of 2003, is amended to read as follows:
3 S 1399-q. Smoking restrictions inapplicable. This article shall not
4 apply to:
5 1. Private homes, private residences and private automobiles;
6 2. A hotel or motel room rented to one or more guests;
7 3. Retail tobacco businesses;
8 4. Membership associations; provided, however, that smoking shall only
9 be allowed in membership associations in which all of the duties with
10 respect to the operation of such association, including, but not limited
11 to, the preparation of food and beverages, the service of food and
12 beverages, reception and secretarial work, and the security services of
13 the membership association are performed by members of such membership
14 association who do not receive compensation of any kind from the member-
15 ship association or any other entity for the performance of such duties;
16 5. Cigar bars that, in the calendar year ending December thirty-first,
17 two thousand two, generated ten percent or more of its total annual
18 gross income from the on-site sale of tobacco products and the rental of
19 on-site humidors, not including any sales from vending machines, and is

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

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1 registered with the appropriate enforcement officer, as defined in
2 subdivision one of section thirteen hundred ninety-nine-t of this arti-
3 cle. Such registration shall remain in effect for one year and shall be
4 renewable only if: (a) in the preceding calendar year, the cigar bar
5 generated ten percent or more of its total annual gross income from the
6 on-site sale of tobacco products and the rental of on-site humidors, and
7 (b) the cigar bar has not expanded its size or changed its location from
8 its size or location since December thirty-first, two thousand two;

9 6. Outdoor dining areas of food service establishments with no roof or
10 other ceiling enclosure; provided, however, that smoking may be permit-
11 ted in a contiguous area designated for smoking so long as such area:
12 (a) constitutes no more than twenty-five percent of the outdoor seating
13 capacity of such food service establishment, (b) is at least three feet
14 away from the outdoor area of such food service establishment not desig-
15 nated for smoking, and (c) is clearly designated with written signage as
16 a smoking area; [and]

17 7. Enclosed rooms in food service establishments, bars, catering
18 halls, convention halls, hotel and motel conference rooms, and other
19 such similar facilities during the time such enclosed areas or rooms are
20 being used exclusively for functions where the public is invited for the
21 primary purpose of promoting and sampling tobacco products, and the
22 service of food and drink is incidental to such purpose, provided that
23 the sponsor or organizer gives notice in any promotional material or
24 advertisements that smoking will not be restricted, and prominently
25 posts notice at the entrance of the facility and has provided notice of
26 such function to the appropriate enforcement officer, as defined in
27 subdivision one of section thirteen hundred ninety-nine-t of this arti-
28 cle, at least two weeks prior to such function. The enforcement officer
29 shall keep a record of all tobacco sampling events, and such record
30 shall be made available for public inspection. No such facility shall
31 permit smoking under this subdivision for more than two days in any
32 calendar year[.]; AND

33 8. PATIOS AND OTHER OUTDOOR AREAS ON THE PREMISES OF ANY ENTITY
34 LICENSED TO OPERATE A VIDEO LOTTERY GAMING FACILITY PURSUANT TO SECTION
35 ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THE TAX LAW WHICH ARE COVERED BY
36 A ROOF OR OTHER CEILING ENCLOSURE; PROVIDED THAT SUCH COVERED PATIO OR
37 OTHER OUTDOOR AREA MUST BE CLEARLY DESIGNATED AS A SMOKING AREA, AND
38 MUST EITHER (A) BE COMPLETELY OPEN ON AT LEAST ONE SIDE, WITH NO WALL ON
39 ONE SIDE, OR (B) BE OPEN ON TWO OR MORE SIDES, WITH PARTIAL WALLS ON THE
40 TWO OR MORE OPEN SIDES TO THE HEIGHT OF NOT MORE THAN FIFTY PERCENT OF
41 THE DISTANCE BETWEEN THE FLOOR AND CEILING. AIR PERMEABLE MATERIALS
42 WHICH FUNCTION AS A WEATHER BARRIER AND WHICH DO NOT PROVIDE A RIGID
43 PARTITION SHALL BE DISREGARDED FOR PURPOSES OF DETERMINING WHETHER A
44 COVERED PATIO OR OTHER OUTDOOR AREA IS OPEN ON ONE, TWO OR MORE SIDES.
45 JURISDICTION IN ALL MATTERS PERTAINING TO A SMOKING AREA ON PATIOS AND
46 OTHER OUTDOOR AREAS ON THE PREMISES OF ANY ENTITY LICENSED TO OPERATE A
47 VIDEO LOTTERY GAMING FACILITY PURSUANT TO SECTION ONE THOUSAND SIX
48 HUNDRED SEVENTEEN-A OF THE TAX LAW IN THIS STATE IS VESTED EXCLUSIVELY
49 IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY RULE
50 OR REGULATION PROMULGATED THERETO, GOVERNING OR PROHIBITING A SMOKING
51 AREA ON PATIOS AND OTHER OUTDOOR AREAS ON THE PREMISES OF ANY ENTITY
52 LICENSED TO OPERATE A VIDEO LOTTERY GAMING FACILITY PURSUANT TO SECTION
53 ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THE TAX LAW IN THE STATE SHALL,
54 UPON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND
55 SIXTEEN WHICH ADDED THIS SUBDIVISION, BE PREEMPTED.

56 S 2. This act shall take effect immediately.