

684

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the alcoholic beverage control law, in relation to requiring the presentation of photographic identification for the purchase of tobacco products and alcoholic beverages

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 542 of the laws of 2014, is amended to read as follows:
3 S 1399-cc. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha, rolling papers or smoking paraphernalia to minors prohibited. 1. As used in this section:
4 (a) "A device capable of deciphering any electronically readable
5 format" or "device" shall mean any commercial device or combination of
6 devices used at a point of sale or entry that is capable of reading the
7 information encoded on the bar code or magnetic strip of a driver's
8 license or non-driver identification card issued by the state commissioner of motor vehicles;
9 (b) "Card holder" means any person presenting a driver's license or
10 non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter;
11 (c) "Smoking paraphernalia" means any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco;
12 (d) "Transaction scan" means the process involving an automated bar code reader by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of a tobacco

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

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1 product or herbal cigarettes pursuant to subdivision three of this
2 section; and

3 (e) "Liquid nicotine", "electronic liquid" or "e-liquid" means a
4 liquid composed of nicotine and other chemicals, and which is sold as a
5 product that may be used in an electronic cigarette.

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

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

34 4. IT SHALL BE THE RESPONSIBILITY OF ANY INDIVIDUAL SEEKING TO
35 PURCHASE CIGARETTES, POWDERED TOBACCO, HERBAL CIGARETTES, BIDIS, GUTKA,
36 SHISHA, ELECTRONIC CIGARETTES, OTHER TOBACCO PRODUCTS OR SMOKING
37 PARAPHERNALIA TO PRESENT TO THE SELLER, PRIOR TO PURCHASE, PHOTOGRAPHIC
38 IDENTIFICATION IN THE FORM OF: (A) A VALID DRIVER'S LICENSE OR
39 NON-DRIVER'S IDENTIFICATION CARD ISSUED BY THE COMMISSIONER OF MOTOR
40 VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMON-
41 WEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITH-
42 IN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANA-
43 DA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR
44 ANY OTHER COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY THE ARMED
45 FORCES OF THE UNITED STATES, INDICATING THAT THE PURCHASER IS AT LEAST
46 EIGHTEEN YEARS OF AGE.

47 5. A STATE OR LOCAL ENFORCEMENT AGENCY CONDUCTING AN INSPECTION TO
48 DETERMINE COMPLIANCE WITH SUBDIVISION TWO OF THIS SECTION SHALL, WITHIN
49 TEN DAYS OF THE DATE OF A VIOLATION, PROVIDE THE OPERATOR OF THE PREM-
50 ISSES WITH WRITTEN NOTICE OF THE VIOLATION.

51 6. (a) Any person operating a place of business wherein tobacco
52 products, herbal cigarettes, liquid nicotine, shisha or electronic ciga-
53 rettes are sold or offered for sale may perform a transaction scan as a
54 precondition for such purchases.

55 (b) In any instance where the information deciphered by the trans-
56 action scan fails to match the information printed on the driver's

1 license or non-driver identification card, or if the transaction scan
2 indicates that the information is false or fraudulent, the attempted
3 transaction shall be denied.

4 (c) In any proceeding pursuant to section thirteen hundred ninety-
5 nine-ee of this article, it shall be an affirmative defense that such
6 person had produced a driver's license or non-driver identification card
7 apparently issued by a governmental entity, successfully completed that
8 transaction scan, and that the tobacco product, herbal cigarettes or
9 liquid nicotine had been sold, delivered or given to such person in
10 reasonable reliance upon such identification and transaction scan. In
11 evaluating the applicability of such affirmative defense the commission-
12 er shall take into consideration any written policy adopted and imple-
13 mented by the seller to effectuate the provisions of this chapter. Use
14 of a transaction scan shall not excuse any person operating a place of
15 business wherein tobacco products, herbal cigarettes, liquid nicotine,
16 shisha or electronic cigarettes are sold, or the agent or employee of
17 such person, from the exercise of reasonable diligence otherwise
18 required by this chapter. Notwithstanding the above provisions, any such
19 affirmative defense shall not be applicable in any civil or criminal
20 proceeding, or in any other forum.

21 [5.] 7. A licensee or agent or employee of such licensee shall only
22 use a device capable of deciphering any electronically readable format,
23 and shall only use the information recorded and maintained through the
24 use of such devices, for the purposes contained in subdivision four of
25 this section. No licensee or agent or employee of a licensee shall
26 resell or disseminate the information recorded during such a scan to any
27 third person. Such prohibited resale or dissemination includes but is
28 not limited to any advertising, marketing or promotional activities.
29 Notwithstanding the restrictions imposed by this subdivision, such
30 records may be released pursuant to a court ordered subpoena or pursuant
31 to any other statute that specifically authorizes the release of such
32 information. Each violation of this subdivision shall be punishable by a
33 civil penalty of not more than one thousand dollars.

34 [6.] 8. A licensee or agent or employee of such a licensee may elec-
35 tronically or mechanically record and maintain only the information from
36 a transaction scan necessary to effectuate this section. Such informa-
37 tion shall be limited to the following: (a) name, (b) date of birth, (c)
38 driver's license or non-driver identification number, and (d) expiration
39 date. The commissioner and state commissioner of motor vehicles shall
40 jointly promulgate any regulations necessary to govern the recording and
41 maintenance of these records by a licensee under this chapter. The
42 commissioner and the state liquor authority shall jointly promulgate any
43 regulation necessary to ensure quality control in the use of the trans-
44 action scan devices under this chapter and article five of the alcoholic
45 beverage control law.

46 [7.] 9. No person operating a place of business wherein tobacco
47 products, herbal cigarettes, liquid nicotine, shisha or electronic ciga-
48 rettes are sold or offered for sale shall sell, permit to be sold, offer
49 for sale or display for sale any tobacco product, herbal cigarettes,
50 liquid nicotine, shisha or electronic cigarettes in any manner, unless
51 such products and cigarettes are stored for sale (a) behind a counter in
52 an area accessible only to the personnel of such business, or (b) in a
53 locked container; provided, however, such restriction shall not apply to
54 tobacco businesses, as defined in subdivision eight of section thirteen
55 hundred ninety-nine-aa of this article, and to places to which admission
56 is restricted to persons eighteen years of age or older.

1 S 2. Section 1399-ee of the public health law is amended by adding a
2 new subdivision 7 to read as follows:

3 7. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY ADMINISTRATIVE ACTION
4 UNDER THIS SECTION THAT THE SALE WAS MADE TO AN INDIVIDUAL WHO WAS OR
5 REASONABLY APPEARED TO BE AT LEAST FORTY YEARS OF AGE.

6 S 3. Section 65 of the alcoholic beverage control law is amended by
7 adding three new subdivisions 8, 9 and 10 to read as follows:

8 8. IN ANY PROCEEDING PURSUANT TO SECTION ONE HUNDRED EIGHTEEN OF THIS
9 CHAPTER ARISING FROM A VIOLATION OF SUBDIVISION ONE OF THIS SECTION, FOR
10 A LICENSEE LICENSED UNDER SECTION FIFTY-FOUR OR FIFTY-FOUR-A OF THIS
11 CHAPTER, OR SECTION SIXTY-THREE OF THIS ARTICLE, IT SHALL BE AN AFFIRMA-
12 TIVE DEFENSE THAT THE SALE WAS MADE TO A PERSON WHO WAS OR REASONABLY
13 APPEARED TO BE AT LEAST FORTY YEARS OF AGE.

14 9. IT SHALL BE THE RESPONSIBILITY OF ANY PERSON SEEKING TO PURCHASE
15 ALCOHOLIC BEVERAGES FROM A LICENSEE LICENSED UNDER SECTION FIFTY-FOUR OR
16 FIFTY-FOUR-A OF THIS CHAPTER, OR SECTION SIXTY-THREE OF THIS ARTICLE TO
17 PRESENT TO THE LICENSEE OR AGENT OR EMPLOYEE OF SUCH LICENSEE, PRIOR TO
18 PURCHASE, PHOTOGRAPHIC IDENTIFICATION IN THE FORM OF: (A) A VALID DRIV-
19 ER'S LICENSE OR NON-DRIVER'S IDENTIFICATION CARD ISSUED BY THE COMMIS-
20 SIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES
21 TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE
22 GOVERNMENT WITHIN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE
23 DOMINION OF CANADA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES
24 GOVERNMENT OR ANY OTHER COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY
25 THE ARMED FORCES OF THE UNITED STATES.

26 10. THE STATE LIQUOR AUTHORITY SHALL, WITHIN TEN DAYS OF THE DATE OF
27 BECOMING AWARE OF A VIOLATION OF SUBDIVISION ONE OF THIS SECTION,
28 PROVIDE THE LICENSEE WITH WRITTEN NOTICE OF SUCH VIOLATION.

29 S 4. This act shall take effect immediately.