

# STATE OF NEW YORK

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4316

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

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

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 § 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  
20 registered with the appropriate enforcement officer, as defined in  
21 subdivision one of section thirteen hundred ninety-nine-t of this arti-  
22 cle. Such registration shall remain in effect for one year and shall be  
23 renewable only if: (a) in the preceding calendar year, the cigar bar

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

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1 generated ten percent or more of its total annual gross income from the  
2 on-site sale of tobacco products and the rental of on-site humidors, and  
3 (b) the cigar bar has not expanded its size or changed its location from  
4 its size or location since December thirty-first, two thousand two;

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

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

29 8. Patios and other outdoor areas on the premises of any entity  
30 licensed to operate a video lottery gaming facility pursuant to section  
31 one thousand six hundred seventeen-a of the tax law which are covered by  
32 a roof or other ceiling enclosure; provided that such covered patio or  
33 other outdoor area must be clearly designated as a smoking area, and  
34 must either (a) be completely open on at least one side, with no wall on  
35 one side, or (b) be open on two or more sides, with partial walls on the  
36 two or more open sides to the height of not more than fifty percent of  
37 the distance between the floor and ceiling. Air permeable materials  
38 which function as a weather barrier and which do not provide a rigid  
39 partition shall be disregarded for purposes of determining whether a  
40 covered patio or other outdoor area is open on one, two or more sides.  
41 Jurisdiction in all matters pertaining to a smoking area on patios and  
42 other outdoor areas on the premises of any entity licensed to operate a  
43 video lottery gaming facility pursuant to section one thousand six  
44 hundred seventeen-a of the tax law in this state is vested exclusively  
45 in the state. Any provision of any local law or ordinance, or any rule  
46 or regulation promulgated thereto, governing or prohibiting a smoking  
47 area on patios and other outdoor areas on the premises of any entity  
48 licensed to operate a video lottery gaming facility pursuant to section  
49 one thousand six hundred seventeen-a of the tax law in the state shall,  
50 upon the effective date of the chapter of the laws of two thousand  
51 sixteen which added this subdivision, be preempted.

52 § 2. This act shall take effect immediately.