STATE OF NEW YORK

729

2017-2018 Regular Sessions

IN SENATE

January 4, 2017

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

AN ACT to amend the public health law, in relation to including electronic cigarettes within provisions regulating smoking in certain public areas

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 8 of section 1399-n of the public health law, as amended by chapter 13 of the laws of 2003, is amended and two new subdivisions 9 and 10 are added to read as follows:

8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco**, and the use of an electronic cigarette**.

9. "Electronic cigarette" or "e-cigarette" shall have the same meaning as in subdivision thirteen of section thirteen hundred ninety-nine-aa of this chapter.

10. "Retail electronic cigarette store" means a retail store devoted primarily to the sale of electronic cigarettes, and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than twenty-five percent of the total annual gross sales.

§ 2. Subdivisions 6 and 7 of section 1399-q of the public health law, as added by chapter 13 of the laws of 2003, are amended and a new subdivision 8 is added to read as follows:

6. Outdoor dining areas of food service establishments with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous area designated for smoking so long as such area: (a) constitutes no more than twenty-five percent of the outdoor seating capacity of such food service establishment, (b) is at least three feet away from the outdoor area of such food service establishment not desig-

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

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nated for smoking, and (c) is clearly designated with written signage as a smoking area; [~~and~~]

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

8. Retail electronic cigarette stores, provided however, that such stores may only permit the use of electronic cigarettes.

§ 3. Subdivision 13 of section 1399-aa of the public health law, as amended by chapter 542 of the laws of 2014, is amended to read as follows:

13. "Electronic cigarette" or "e-cigarette" means an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such a device. **Electronic cigarette shall not include any product approved as a drug or medical device by the U.S. Food and Drug Administration (FDA)**.

§ 4. This act shall take effect on the thirtieth day after it shall have become a law.