STATE OF NEW YORK

736--A

2017-2018 Regular Sessions

IN SENATE

January 4, 2017

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

Section 1. Section 1399-q of the public health law, as amended by chapter 335 of the laws of 2017, is amended to read as follows:

§ 1399-q. Smoking and vaping restrictions inapplicable. This article shall not apply to:

1. Private homes, private residences and private automobiles;

2. A hotel or motel room rented to one or more guests;

3. Retail tobacco businesses;

4. Membership associations; provided, however, that smoking and vaping shall only be allowed in membership associations in which all of the duties with respect to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work, and the security services of the membership association are performed by members of such membership association who do not receive compensation of any kind from the membership association or any other entity for the performance of such duties;

5. Cigar bars that, in the calendar year ending December thirty-first, two thousand two, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the appropriate enforcement officer, as defined in subdivision one of section thirteen hundred ninety-nine-t of this article. Such registration shall remain in effect for one year and shall be

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

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renewable only if: (a) in the preceding calendar year, the cigar bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (b) the cigar bar has not expanded its size or changed its location from its size or location since December thirty-first, two thousand two;

6. Outdoor dining areas of food service establishments with no roof or other ceiling enclosure; provided, however, that smoking and vaping may be permitted in a contiguous area designated for smoking and vaping 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 designated for smoking and vaping, and (c) is clearly designated with written signage as a smoking and vaping area;

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 and vaping 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 and vaping 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**; and**

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

§ 2. This act shall take effect immediately.