

# STATE OF NEW YORK

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3764

2019-2020 Regular Sessions

## IN ASSEMBLY

January 31, 2019

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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 335 of the laws of 2017, is amended to read as follows:

3 § 1399-q. Smoking and vaping restrictions inapplicable. This article  
4 shall not 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 and vaping  
9 shall only be allowed in membership associations in which all of the  
10 duties with respect to the operation of such association, including, but  
11 not limited to, the preparation of food and beverages, the service of  
12 food and beverages, reception and secretarial work, and the security  
13 services of the membership association are performed by members of such  
14 membership association who do not receive compensation of any kind from  
15 the membership association or any other entity for the performance of  
16 such duties;

17 5. Cigar bars that, in the calendar year ending December thirty-first,  
18 two thousand two, generated ten percent or more of its total annual  
19 gross income from the on-site sale of tobacco products and the rental of  
20 on-site humidors, not including any sales from vending machines, and is  
21 registered with the appropriate enforcement officer, as defined in  
22 subdivision one of section thirteen hundred ninety-nine-t of this arti-  
23 cle. 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.

LBD02377-01-9

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

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

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

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

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

55 § 2. This act shall take effect immediately.