

STATE OF NEW YORK

8628

2019-2020 Regular Sessions

IN ASSEMBLY

October 2, 2019

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

AN ACT to amend the public health law, in relation to requiring a prescription from a licensed physician in order to obtain an electronic cigarette; and repealing certain provisions of such law relating thereto

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

1 Section 1. The public health law is amended by adding a new section
2 1399-ddd to read as follows:

3 § 1399-ddd. Prescription required for electronic cigarette use. 1. For
4 purposes of this section, "electronic cigarette" shall have the same
5 meaning as in subdivision thirteen of section thirteen hundred ninety-
6 nine-aa of this article.

7 2. (a) Electronic cigarettes shall be made available only to individ-
8 uals over the age of eighteen who have been prescribed to use such elec-
9 tronic cigarettes by a licensed physician authorized to issue such
10 prescriptions. Purchasing, obtaining or using electronic cigarettes
11 without a valid prescription from a licensed physician shall be prohib-
12 ited and be deemed a violation of this section.

13 (b) Electronic cigarettes shall only be made available through any
14 individual, firm, corporation or association who is licensed and regis-
15 tered to operate as a pharmacy pursuant to article one hundred thirty-
16 seven of the education law.

17 3. The commissioner is authorized to promulgate rules and regulations
18 to implement the provisions of this section.

19 § 2. Subdivision 11 of section 1399-n of the public health law is
20 REPEALED.

21 § 3. Subdivisions 7 and 8 of section 1399-q of the public health law,
22 as amended by chapter 335 of the laws of 2017, are amended to read as
23 follows:

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

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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[~~7~~ and

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

§ 4. The section heading and opening paragraph of section 1399-dd of the public health law, as amended by chapter 448 of the laws of 2012, are amended to read as follows:

Sale of tobacco products[~~7~~ or] or herbal cigarettes [~~or electronic cigarettes~~] in vending machines. No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products[~~7~~ or] or herbal cigarettes [~~or electronic cigarettes~~] unless such machine is located:

§ 5. The section heading and subdivisions 4 and 5 of section 1399-bb of the public health law, as amended by chapter 4 of the laws of 2018, are amended to read as follows

Distribution of tobacco products[~~7, electronic cigarettes~~] or herbal cigarettes without charge.

~~4. [No person engaged in the business of selling or otherwise distributing electronic cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business, distribute without charge any electronic cigarettes to any individual under eighteen years of age.~~

~~5.]~~ The distribution of tobacco products or herbal cigarettes pursuant to subdivision two of this section [~~or the distribution without charge of electronic cigarettes~~] shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product[~~7, electronic cigarette~~] or herbal cigarette [~~or the distribution without charge of electronic cigarettes to an individual~~].

§ 6. Subdivisions 4 and 5 of section 1399-bb of the public health law, as amended by chapter 100 of the laws of 2019, are amended to read as follows:

~~4. [No person engaged in the business of selling or otherwise distributing electronic cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business, distribute without charge any electronic cigarettes to any individual under twenty-one years of age.~~

1 ~~5.]~~ The distribution of tobacco products or herbal cigarettes pursuant
2 to subdivision two of this section [~~or the distribution without charge~~
3 ~~of electronic cigarettes~~] shall be made only to an individual who demon-
4 strates, through a driver's license or other photographic identification
5 card issued by a government entity or educational institution indicating
6 that the individual is at least twenty-one years of age. Such identifi-
7 cation need not be required of any individual who reasonably appears to
8 be at least twenty-five years of age; provided, however, that such
9 appearance shall not constitute a defense in any proceeding alleging the
10 sale of a tobacco product[, ~~electronic cigarette~~] or herbal cigarette
11 [~~or the distribution without charge of electronic cigarettes to an indi-~~
12 ~~vidual~~].

13 § 7. The section heading, paragraphs (c), (d) and (e) of subdivision 1
14 and subdivisions 2, 3, 4 and 7 of section 1399-cc of the public health
15 law, the section heading, paragraphs (c) and (d) of subdivision 1 and
16 subdivisions 2, 3, 4 and 7 as amended and paragraph (e) of subdivision 1
17 as added by chapter 542 of the laws of 2014, are amended to read as
18 follows:

19 Sale of tobacco products, herbal cigarettes, [~~liquid nicotine,~~
20 shisha, rolling papers or smoking paraphernalia to minors prohibited.

21 (c) "Smoking paraphernalia" means any pipe, water pipe, hookah, roll-
22 ing papers, vaporizer or any other device, equipment or apparatus
23 designed for the inhalation of tobacco; and

24 (d) "Transaction scan" means the process involving an automated bar
25 code reader by which a licensee, or agent or employee of a licensee
26 under this chapter reviews a driver's license or non-driver identifica-
27 tion card presented as a precondition for the purchase of a tobacco
28 product or herbal cigarettes pursuant to subdivision three of this
29 section[, and

30 ~~(e) "Liquid nicotine", "electronic liquid" or "e-liquid" means a~~
31 ~~liquid composed of nicotine and other chemicals, and which is sold as a~~
32 ~~product that may be used in an electronic cigarette~~].

33 2. Any person operating a place of business wherein tobacco products,
34 herbal cigarettes[, ~~liquid nicotine,~~] or shisha [~~or electronic ciga-~~
35 ~~rettes,~~] are sold or offered for sale is prohibited from selling such
36 products, herbal cigarettes, [~~liquid nicotine,~~] shisha[, ~~electronic~~
37 ~~cigarettes~~] or smoking paraphernalia to individuals under eighteen years
38 of age, and shall post in a conspicuous place a sign upon which there
39 shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS,
40 CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS,
41 HERBAL CIGARETTES, [~~LIQUID NICOTINE, ELECTRONIC CIGARETTES,~~] ROLLING
42 PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER EIGHTEEN YEARS OF AGE
43 IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red
44 letters at least one-half inch in height.

45 3. Sale of tobacco products, herbal cigarettes[, ~~liquid nicotine,~~] or
46 shisha [~~or electronic cigarettes~~] in such places, other than by a vend-
47 ing machine, shall be made only to an individual who demonstrates,
48 through (a) a valid driver's license or non-driver's identification card
49 issued by the commissioner of motor vehicles, the federal government,
50 any United States territory, commonwealth or possession, the District of
51 Columbia, a state government within the United States or a provincial
52 government of the dominion of Canada, or (b) a valid passport issued by
53 the United States government or any other country, or (c) an identifica-
54 tion card issued by the armed forces of the United States, indicating
55 that the individual is at least eighteen years of age. Such identifica-
56 tion need not be required of any individual who reasonably appears to be

1 at least twenty-five years of age, provided, however, that such appear-
2 ance shall not constitute a defense in any proceeding alleging the sale
3 of a tobacco product, herbal cigarettes[, ~~liquid nicotine,~~] ~~or~~ shisha
4 [~~or electronic cigarettes~~] to an individual under eighteen years of age.

5 4. (a) Any person operating a place of business wherein tobacco
6 products, herbal cigarettes[, ~~liquid nicotine,~~] ~~or~~ shisha [~~or electronic~~
7 ~~cigarettes~~] are sold or offered for sale may perform a transaction scan
8 as a precondition for such purchases.

9 (b) In any instance where the information deciphered by the trans-
10 action scan fails to match the information printed on the driver's
11 license or non-driver identification card, or if the transaction scan
12 indicates that the information is false or fraudulent, the attempted
13 transaction shall be denied.

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

31 7. No person operating a place of business wherein tobacco products,
32 herbal cigarettes[, ~~liquid nicotine,~~] ~~or~~ shisha [~~or electronic ciga-~~
33 ~~rettes~~] are sold or offered for sale shall sell, permit to be sold,
34 offer for sale or display for sale any tobacco product, herbal ciga-
35 rettes[, ~~liquid nicotine,~~] ~~or~~ shisha [~~or electronic cigarettes~~] in any
36 manner, unless such products and cigarettes are stored for sale (a)
37 behind a counter in an area accessible only to the personnel of such
38 business, or (b) in a locked container; provided, however, such
39 restriction shall not apply to tobacco businesses, as defined in subdi-
40 vision eight of section thirteen hundred ninety-nine-aa of this article,
41 and to places to which admission is restricted to persons eighteen years
42 of age or older.

43 § 8. Subdivisions 2, 3 and 7 of section 1399-cc of the public health
44 law, as amended by chapter 100 of the laws of 2019, are amended to read
45 as follows:

46 2. Any person operating a place of business wherein tobacco products,
47 herbal cigarettes[, ~~liquid nicotine,~~] ~~or~~ shisha [~~or electronic ciga-~~
48 ~~rettes,~~] are sold or offered for sale is prohibited from selling such
49 products, herbal cigarettes, [~~liquid nicotine,~~] shisha[, ~~electronic~~
50 ~~cigarettes~~] or smoking paraphernalia to individuals under twenty-one
51 years of age, and shall post in a conspicuous place a sign upon which
52 there shall be imprinted the following statement, "SALE OF CIGARETTES,
53 CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO
54 PRODUCTS, HERBAL CIGARETTES, [~~LIQUID NICOTINE, ELECTRONIC CIGARETTES,~~]
55 ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE

1 YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a
2 white card in red letters at least one-half inch in height.

3 3. Sale of tobacco products, herbal cigarettes[~~, liquid nicotine,~~ or
4 shisha [~~or electronic cigarettes~~] in such places, other than by a vend-
5 ing machine, shall be made only to an individual who demonstrates,
6 through (a) a valid driver's license or non-driver's identification card
7 issued by the commissioner of motor vehicles, the federal government,
8 any United States territory, commonwealth or possession, the District of
9 Columbia, a state government within the United States or a provincial
10 government of the dominion of Canada, or (b) a valid passport issued by
11 the United States government or any other country, or (c) an identifica-
12 tion card issued by the armed forces of the United States, indicating
13 that the individual is at least twenty-one years of age. Such identifi-
14 cation need not be required of any individual who reasonably appears to
15 be at least twenty-five years of age, provided, however, that such
16 appearance shall not constitute a defense in any proceeding alleging the
17 sale of a tobacco product, herbal cigarettes[~~, liquid nicotine,~~ or
18 shisha [~~or electronic cigarettes~~] to an individual under twenty-one
19 years of age.

20 7. No person operating a place of business wherein tobacco products,
21 herbal cigarettes[~~, liquid nicotine,~~ or shisha [~~or electronic ciga-~~
22 ~~rettes~~] are sold or offered for sale shall sell, permit to be sold,
23 offer for sale or display for sale any tobacco product, herbal ciga-
24 rettes[~~, liquid nicotine,~~ or shisha [~~or electronic cigarettes~~] in any
25 manner, unless such products and cigarettes are stored for sale (a)
26 behind a counter in an area accessible only to the personnel of such
27 business, or (b) in a locked container; provided, however, such
28 restriction shall not apply to tobacco businesses, as defined in subdi-
29 vision eight of section thirteen hundred ninety-nine-aa of this article,
30 and to places to which admission is restricted to persons twenty-one
31 years of age or older.

32 § 9. This act shall take effect immediately; provided, however, that
33 the amendments to subdivisions 4 and 5 of section 1399-bb of the public
34 health law made by section six of this act and the amendments to subdi-
35 visions 2, 3 and 7 of section 1399-cc of the public health law made by
36 section eight of this act shall take effect on the same date and same
37 manner as chapter 100 of the laws of 2019, takes effect.