STATE OF NEW YORK

10408

IN ASSEMBLY

May 13, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. K. Brown) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT in relation to constituting chapter 61 of the consolidated laws, in relation to establishing the tobacco, nicotine and vaping law; to amend the executive law, the public health law, the cannabis law, the alcoholic beverage control law, the mental hygiene law, the tax law, the general business law and the public officers law, in relation to establishing the adult-use substances authority; to amend the public health law, in relation to establishing tobacco use and vaping awareness and prevention programs; and to repeal certain provisions of the public health law relating to the regulation of tobacco products, herbal cigarettes, smoking paraphernalia, distribution to minors and tobacco escrow funds

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

Section 1. Chapter 61 of the consolidated laws is enacted, to read as follows:

CHAPTER 61 OF THE CONSOLIDATED LAWS
TOBACCO, NICOTINE AND VAPING LAW

ARTICLE 1
SHORT TITLE; DEFINITIONS

Section 1. Short title.
2. Definitions.

Section 1. Short title. This chapter shall be known and may be cited and referred to as the "tobacco, nicotine and vaping law".

§ 2. Definitions. Whenever used in this chapter, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the representative meanings hereinafter set forth or indicated:

1. "Bar" means any area, including outdoor seating areas, devoted to the sale and service of alcoholic beverages for on-premises consumption

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

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and where the service of food is only incidental to the consumption of such beverages.

2. "Employer" means any person, partnership, association, limited liability company, corporation or nonprofit entity which employs one or more persons, including the legislative, executive and judicial branches of state government and any political subdivision of the state.

3. "Food service establishment" means any area, including outdoor seating areas, or portion thereof in which the business is the sale of food for on-premises consumption.

4. "Membership association" means a not-for-profit entity which has been created or organized for a charitable, philanthropic, educational, political, social or other similar purpose.

5. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, and shall include, but not be limited to, offices, school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment or other office equipment used in common, and company vehicles.

6. "School grounds" means any building, structure, and surrounding outdoor grounds contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk's office, and any vehicles used to transport children or school personnel.

7. "Retail tobacco business" means a sole proprietorship, limited liability company, corporation, partnership or other enterprise in which the primary activity is the retail sale of tobacco products and accessories, and in which the sale of other products is merely incidental.

8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or cannabis as defined in section 222.00 of the penal law, or cannabinoid hemp as defined in section three of the cannabis law.

9. "Vaping" means the use of an electronic cigarette.

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.

11. "Enforcement officer" means the enforcement officer designated to enforce the provisions of this chapter and hold hearings pursuant thereto; provided that in a city with a population of more than one million it shall also mean an officer or employee or any agency of such city that is authorized to enforce any local law of such city related to the regulation of the sale of tobacco products to minors.

12. "Person" means a person, firm, company, corporation, partnership, sole proprietor, limited partnership or association.

13. "Private club" means an organization with no more than an insignificant portion of its membership comprised of people under the age of twenty-one years that regularly receives dues and/or payments from its members for the use of space, facilities and services.

14. "Tobacco products" means one or more cigarettes or cigars, bidis, chewing tobacco, powdered tobacco, nicotine water or any other tobacco products.

15. "Herbal cigarette" means any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a cigarette, cigar or pipe filler.

16. "Bidis" means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tendra leaf (diospyros exculpra), or any other product offered to consumers as "beedies" or "bidis".

17. "Tobacco business" means a sole proprietorship, corporation, limited liability company, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

18. "Factory" means any mill or other manufacturing establishment where one or more persons are employed in manufacturing including making, altering, repairing, finishing, bottling, canning, cleaning or laundering any article or thing.

19. "Gutka" means a product containing lime paste, spices, areca and tobacco.

20. "Nicotine water" means bottled water that is laced with nicotine.

21. "Shisha" means any product made primarily of tobacco or other leaf, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe.

22. "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.

23. "Price reduction instrument" means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

24. "Listed or non-discounted price" means the price listed for cigarettes, tobacco products, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, on their packages or any related shelving, posting, advertising or display at the location where the cigarettes, tobacco products, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, are sold or offered for sale, including all applicable taxes.

25. "Retail dealer" means a person licensed by the commissioner of taxation and finance to sell cigarettes, tobacco products, or vapor products in this state.

26. "Vapor products" means any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured into a finished product for use in an electronic cigarette, including any device that contains such noncombustible liquid or gel. "Vapor product" shall not include any device, or any component thereof, that does not contain such noncombustible liquid or gel, or any product approved by the United States food and drug administration as a drug or medical device, or manufactured and dispensed pursuant to title five-A of article thirty-three of the public health law.

27. "Vapor products dealer" means a person licensed by the commissioner of taxation and finance to sell vapor products in this state.

28. "Smoking paraphernalia" means any pipe, water pipe, hookah, rolling papers, electronic cigarette, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco or nicotine.

ARTICLE 2
TOBACCO, NICOTINE AND VAPING AUTHORITY

Section 10. Tobacco, nicotine and vaping authority.
11. Appointment of authority.
12. Expenses.
13. Removal.
14. Vacancies; quorum.
15. Officers; employees; offices.
16. Disqualification of members and employees of authority.
17. Powers and duties of the authority.
18. Powers and duties of the chairperson.
19. Oath of office.

§ 10. Tobacco, nicotine and vaping authority. There is hereby established, within the adult-use substances authority, the tobacco, nicotine and vaping authority, which shall have jurisdiction to exercise the powers and duties provided by this chapter. The authority shall exercise its powers by and through a chairperson. The terms "tobacco, nicotine and vaping authority" or "authority", wherever occurring in any of the provisions of this chapter shall hereafter mean and refer to the tobacco, nicotine and vaping authority provided for in this section.

§ 11. Appointment of authority. 1. The chairperson shall be nominated by the governor with the advice and consent of the senate, with one vote, and four other voting authority members as provided for in subdivision two of this section.

2. In addition to the chairperson, the governor shall have two direct appointments to the board, and the temporary president of the senate and the speaker of the assembly shall each have one direct appointment to the authority. Appointments shall be for a term of three years each. Board members shall be citizens and permanent residents of this state. The chairperson and the remaining members of such authority shall continue to serve as chairperson and members of the authority until the expiration of the respective terms for which they were appointed. Upon the expiration of such respective terms, the successors of such chairperson and members shall be appointed to serve for a term of three years each and until their successors have been appointed and qualified. The members, except for the chairperson, shall when performing the work of the authority, be compensated at a rate of two hundred sixty dollars per day, and together with an allowance for actual and necessary expenses incurred in the discharge of their duties. The chairperson shall receive an annual salary established in paragraph (c) of subdivision one of section one hundred sixty-nine of the executive law, and his or her expenses actually and necessarily incurred in the performance of his or her official duties, unless otherwise provided by the legislature. No member or member's spouse or minor child shall have any interest in an entity regulated by the authority.

§ 12. Expenses. Each member of the authority shall be entitled to his or her expenses actually and necessarily incurred by him or her in the performance of his or her duties.

§ 13. Removal. Any member of the authority may be removed by the governor for cause after an opportunity to be heard. A statement of the cause of his or her removal shall be filed by the governor in the office of the secretary of state.

§ 14. Vacancies; quorum. 1. In the event of a vacancy caused by the death, resignation, removal or disability of the chairperson, the vacancy shall be filled by the governor by and with the advice and consent of the senate for the unexpired term.

2. (a) Notwithstanding any other provision of law to the contrary, the governor shall designate one of the board members to serve as acting chairperson for a period not to exceed six months or until a successor chairperson has been confirmed by the senate, whichever comes first. Upon the expiration of the six-month term, if the governor has nominated a successor chairperson, but the senate has not acted upon the nomination, the acting chairperson can continue to serve as acting chairperson for an additional ninety days or until the governor's successor chairperson nomination is confirmed by the senate, whichever comes first.

(b) The governor shall provide immediate written notice to the temporary president of the senate of the designation of a chairperson as acting chairperson.

(c) If (i) the governor has not nominated a successor chairperson upon the expiration of the six-month term or (ii) the senate does not confirm the governor's successor nomination within the additional ninety days, the chairperson designated as acting chairperson shall no longer be able to serve as acting chairperson and the governor is prohibited from extending the powers of that acting chairperson or from designating another chairperson to serve as acting chairperson.

(d) The chairperson shall be deemed a state officer for purposes of section seventy-three of the public officers law.

3. A majority of the members of the authority shall constitute a quorum for the purpose of conducting the business thereof and a majority vote of all the members in office shall be necessary for action. Provided, however, that a chairperson designated as an acting chairperson pursuant to subdivision two of this section shall have only one vote for purposes of conducting the business of the authority.

§ 15. Officers; employees; offices. The authority shall have power to appoint any necessary deputies, counsels, assistants, investigators, and other employees within the limits provided by appropriation. Investigators so employed by the authority shall be deemed to be peace officers for the purpose of enforcing the provisions of the tobacco, nicotine and vaping law or judgments or orders obtained for violation thereof, with all the powers set forth in section 2.20 of the criminal procedure law. The counsel, secretary, chief executive officer, assistant chief executive officers, confidential secretaries to the chairperson and deputies shall be in the exempt class of the civil service. The other assistants, investigators and employees of the authority shall all be in the competitive class of the civil service. The authority shall have its principal office in the city of Albany, and may maintain a branch office in the cities of New York and Buffalo and such other places as it may deem necessary.

The authority shall establish appropriate procedures to ensure that hearing officers are shielded from ex parte communications with alleged violators and their attorneys and from other employees of the authority and shall take such other steps as it shall deem necessary and proper to shield its judicial processes from unwarranted and inappropriate communications and attempts to influence.

§ 16. Disqualification of members and employees of authority. No member of the authority or any officer, deputy, assistant, inspector or employee thereof shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien, or in any other manner, in or on any premises where tobacco, nicotine, or vaping products are manufactured or sold; nor shall he or she have any interest, direct or indirect, in any business wholly or partially devoted to

the manufacture, sale, transportation or storage of tobacco, nicotine or vaping products, or own any stock in any corporation which has any interest, proprietary or otherwise, direct or indirect, in any premises where tobacco, nicotine or vaping products are manufactured or sold, or in any business wholly or partially devoted to the manufacture, sale, transportation or storage of tobacco, nicotine or vaping products, or receive any commission or profit whatsoever, direct or indirect, from any person applying for or receiving any license or permit provided for in this chapter, or hold any other public office in the state or in any political subdivision except upon the written permission of the tobacco, nicotine and vaping authority, such member of the authority or officer, deputy, assistant, inspector or employee thereof may hold the public office of notary public or member of a community board of education in the city school district of the city of New York. Anyone who violates any of the provisions of this section shall be removed.

§ 17. Powers and duties of the authority. The authority shall have the following functions, powers and duties as provided for in this chapter:

1. Develop a registration and licensing procedure, in addition to the licensing requirements of section four hundred eighty of the tax law, for all tobacco businesses, retail tobacco businesses, retail dealers, vapor products dealers, retail electronic cigarette stores, or other person or entity engaged in the sale of tobacco, nicotine, or vaping products.

2. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action. Any preliminary determination by the chairperson shall take effect fourteen days after it has been issued by the chairperson.

3. Sole discretion to limit, or not to limit, the number of registrations, licenses and permits of each class to be issued within the state or any political subdivision thereof, in a manner that prioritizes social and economic equity applicants with the goal of fifty percent awarded to such applicants, and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

4. Sole discretion to revoke, cancel or suspend for cause any registration, license, or permit issued under this chapter and/or to impose a civil penalty for cause, after notice and an opportunity for a hearing, against any holder of a registration, license, or permit issued pursuant to this chapter.

5. To fix by rule and regulation the standards and requirements of cultivation, processing, packaging, marketing, and sale of tobacco, nicotine, and vaping products, including but not limited to, the ability to regulate excipients, and the types, forms, and concentration of products which may be manufactured and/or processed, in order to ensure the health and safety of the public and the use of proper ingredients and methods in the manufacture of all tobacco, nicotine, and vaping products to be sold or consumed in the state and to ensure that products are not packaged, marketed, or otherwise sold in a way which targets minors or promotes increased use.

6. To limit or prohibit, at any time of public emergency and without previous notice or advertisement, the cultivation, processing, distribution or sale of any or all tobacco, nicotine, and vaping products, for and during the period of such emergency.

7. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, to examine any person under oath and in connection therewith to require the production of any books or records relative to the inquiry. A subpoena issued under this section shall be regulated by the civil practice law and rules.

8. To appoint any necessary directors, deputies, counsels, assistants, investigators, and other employees within the limits provided by appropriation. Directors, deputies and counsels, including the chief equity officer, shall be in the exempt class of the civil service. The other assistants, investigators and employees of the authority shall all be in the competitive class of the civil service and shall be considered for purposes of article fourteen of the civil service law to be public employees of the state, and shall be assigned to the appropriate bargaining unit. Investigators so employed by the authority shall be deemed to be peace officers only for the purposes of enforcing the provisions of this chapter or judgments or orders obtained for violation thereof, with all the powers set forth in section 2.20 of the criminal procedure law. Employees transferred to the authority shall be transferred without further examination or qualification to the same or similar titles and shall remain in the same collective bargaining units and shall retain their respective civil service classifications, status and rights pursuant to their collective bargaining units and collective bargaining agreements. Employees serving in positions in newly created titles shall be assigned to the appropriate collective bargaining unit as they would have been assigned to were such titles created prior to the establishment of the tobacco, nicotine and vaping authority. Any action taken under this subdivision shall be subject to and in accordance with the civil service law.

9. To inspect or provide authorization for the inspection at any time of any premises where tobacco, nicotine, and vaping products are cultivated, processed, stored, distributed or sold.

10. To prescribe forms of applications for registrations, licenses and permits under this chapter and of all reports deemed necessary by the authority.

11. To appoint such advisory groups and committees as deemed necessary to carry out the purposes and objectives of this chapter.

12. To exercise the powers and perform the duties in relation to the administration of the authority as are necessary but not specifically vested by this chapter, including but not limited to budgetary and fiscal matters.

13. To develop and establish minimum criteria for certifying employees to work in the tobacco, nicotine, and vaping products industry in positions requiring advanced training and education.

14. To enter into contracts, memoranda of understanding, and agreements as deemed appropriate to effectuate the policy and purpose of this chapter.

15. If public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. In addition, the authority may be directed to order the administrative seizure of product, issue a stop order, or take any other action necessary to effectuate and enforce the policy and purpose of this chapter.

16. To draft and provide for public comment and issue regulations, declaratory rulings, guidance and industry advisories.

17. To draft and provide an annual report on the effectiveness of this chapter. The annual report shall be prepared, in consultation with the division of the budget, the urban development corporation, the department of taxation and finance, the department of health, the department of agriculture and markets, the office of addiction services and supports, the office of mental health, the New York state police, the department of motor vehicles and the division of criminal justice services. The report shall provide, but not be limited to, the following information:

(a) the number of registrations, licenses, and permits applied for by geographic region of the state; the number of registrations, licenses, and permits approved or denied by geographic region of the state;

(b) the economic and fiscal impacts associated with this chapter, including revenue from licensing or other fees, fines and taxation related to the cultivation, distribution and sale of cannabis for medical and adult-use and cannabinoid hemp and hemp extract in this state;

(c) specific programs and progress made by the authority in achieving the goals of the social and economic equity plan, and other social justice goals including, but not limited to, restorative justice, minority- and women-owned businesses, distressed farmers and service disabled veterans;

(d) demographic data on owners and employees in the tobacco, nicotine and vaping industry;

(e) impacts to public health and safety, including substance use disorder;

(f) impacts associated with public safety, including, but not limited to, traffic-related issues, law enforcement, under-age prevention in relation to accessing tobacco, nicotine, and vaping products, and efforts to eliminate the illegal market for tobacco, nicotine, and vaping products in New York;

(g) any other information or data deemed significant; and

(h) the authority shall make recommendations regarding the appropriate level of taxation of tobacco, nicotine, and vaping products, as well as changes necessary to: improve registration, licensing and permitting; promote and encourage social and economic equity applicants; improve and protect the public health and safety of New Yorkers; improve access and availability for substance abuse treatment programs; and any other recommendations deemed necessary and appropriate. Such report shall be published on the authority's website and the adult-use substance authority's website, and presented to the governor, the temporary president of the senate and the speaker of the assembly, no later than January first, two thousand twenty-three and annually thereafter.

18. When an administrative decision is appealed by an applicant, registered organization, licensee or permittee, issue a final determination.

19. Approve the opening of new license application periods, and when new or additional licenses are made available pursuant to this chapter, provided, however, that the initial adult-use cannabis retail dispensary license application period shall be opened for all applicants at the same time.

20. Set price quotas or price controls.

21. To enter into tribal-state compacts with the New York state Indian nations and tribes, as defined by section two of the Indian law, author-

izing such Indian nations or tribes to acquire, possess, manufacture, sell, deliver, transport, distribute or dispense tobacco, nicotine, and vaping products.

§ 18. Powers and duties of the chairperson. 1. The chairperson shall develop, plan and implement a comprehensive program to reduce the prevalence of tobacco use, and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, use particularly among persons less than twenty-one years of age. This program shall include, but not be limited to, support for enforcement of this article.

2. An enforcement officer may annually, on such dates as shall be fixed by the chairperson, submit an application for such monies as are made available for such purpose. Such application shall be in such form as prescribed by the chairperson and shall include, but not be limited to, plans regarding random spot checks, including the number and types of compliance checks that will be conducted, and other activities to determine compliance with this article. Each such plan shall include an agreement to report to the chairperson: the names and addresses of tobacco retailers and vendors and vapor products dealers determined to be unlicensed, if any; the number of complaints filed against licensed tobacco retail outlets and vapor products dealers; and the names of tobacco retailers and vendors and vapor products dealers who have paid fines, or have been otherwise penalized, due to enforcement actions.

3. The chairperson shall distribute such monies as are made available for such purpose to enforcement officers and, in so doing, consider the number of licensed vapor products dealers and retail locations registered to sell tobacco products within the jurisdiction of the enforcement officer and the level of proposed activities.

4. Monies made available to enforcement officers pursuant to this section shall only be used for local tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, enforcement activities approved by the chairperson.

5. The chairperson shall submit to the adult-use substances authority, the governor and the legislature annual tobacco control reports which shall describe the extent of the use of tobacco products and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, by those under twenty-one years of age in the state and document the progress state and local governments have made in reducing such use among those under twenty-one years of age.

6. The chairperson shall submit to the adult-use substances authority, the governor and the legislature an annual tobacco and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, a control report which shall describe the extent of the use of tobacco products and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, by those under twenty-one years of age in the state and document the progress state and local governments have made in reducing such use among those under twenty-one years of age. The annual report shall be submitted to the governor and the legislature on or before March thirty-first of each year. The annual report shall, to the extent practicable, include the following information on a county by county basis:

(a) the number of licensed and registered tobacco retailers and vendors and licensed vapor products dealers;

(b) the names and addresses of retailers and vendors who have paid fines, or have been otherwise penalized, due to enforcement actions;

(c) the number of complaints filed against licensed and registered tobacco retailers and licensed vapor products dealers;

(d) the number of fires caused or believed to be caused by tobacco products and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, and deaths and injuries resulting therefrom;

(e) the number and type of compliance checks conducted;

(f) a survey of attitudes and behaviors regarding tobacco use among those under twenty-one years of age. The initial such survey shall be deemed to constitute the baseline survey;

(g) the number of tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, users and estimated trends in tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, use among those under twenty-one years of age;

(h) annual tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, sales;

(i) tax revenue collected from the sale of tobacco products and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine;

(j) the number of licensed tobacco retail outlets and licensed vapor products dealers;

(k) the number of cigarette vending machines;

(l) the number and type of compliance checks;

(m) the names of entities that have paid fines due to enforcement actions; and

(n) the number of complaints filed against licensed tobacco retail outlets and licensed vapor products dealers.

7. The annual tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, control report shall, to the extent practicable, include the following information:

(a) tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, control efforts sponsored by state government agencies including money spent to educate those under twenty-one years of age on the hazards of tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, use;

(b) recommendations for improving tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, control efforts in the state; and

(c) such other information as the chairperson deems appropriate.

8. The chairperson shall evaluate the effectiveness of the efforts by state and local governments to reduce the use of tobacco products and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, among minors and adults. The principal measurements of effectiveness shall include negative attitudes toward tobacco and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, use and reduction of tobacco and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, use among the general population, and given target populations.

9. The chairperson shall ensure that, to the extent practicable, the most current research findings regarding mechanisms to reduce and change attitudes toward tobacco and vapor products, intended or reasonably expected to be used with or for the consumption of nicotine, use are used in tobacco and vapor product, intended or reasonably expected to be

used with or for the consumption of nicotine, education programs administered by the department of health.

10. To diminish tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, use among minors and adults, the chairperson shall ensure that, to the extent practicable, the authority shall conduct an independent evaluation of the tobacco and vapor use prevention and control program under section thirteen hundred ninety-nine-aa of the public health law. The purpose of this evaluation is to direct the most efficient allocation of state resources devoted to tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, education and cessation to accomplish the maximum prevention and reduction of tobacco and vapor product, intended or reasonably expected to be used with or for the consumption of nicotine, use among minors and adults. Such evaluation shall be provided to the governor, the temporary president of the senate and the speaker of the assembly on or before September first of each year. The comprehensive evaluation design shall be guided by the following:

(a) sound evaluation principles including, to the extent feasible, elements of controlled experimental methods;

(b) an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications; and

(c) an evaluation of other programs identified by state agencies, local lead agencies, and federal agencies.

§ 19. Oath of office. Each member of the authority shall, before entering upon his or her duties, take and file an oath of office as prescribed by section ten of the public officers law.

ARTICLE 3
REGULATION OF TOBACCO PRODUCTS, HERBAL CIGARETTES AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

Section 30. Distribution of tobacco products, vapor products, or herbal cigarettes without charge.
31. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha, rolling papers or smoking paraphernalia to minors prohibited.
32. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines.
33. Public display of tobacco product and electronic cigarette advertisements and smoking paraphernalia prohibited.
34. Hearings; penalties.
35. Enforcement.
36. Out-of-package sales and minimum package sizes.
37. Unlawful shipment or transport of cigarettes and vapor products.
38. Sale of bidis prohibited.
39. Sale of gutka prohibited.
40. Sale of flavored products prohibited.
41. Sale in pharmacies.
42. Carrier oils.

§ 30. Distribution of tobacco products, vapor products, or herbal cigarettes without charge. 1. No retail dealer, or any agent or employee of a retail dealer engaged in the business of selling or otherwise distributing tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal

cigarettes for commercial purposes, or any agent or employee of such retail dealer, or any agent or employee of a retail dealer, shall knowingly, in furtherance of such business:

(a) distribute without charge any tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes to any individual, provided that the distribution of a package containing tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes in violation of this subdivision shall constitute a single violation without regard to the number of items in the package; or

(b) distribute price reduction instruments which are redeemable for tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes to any individual, provided that this subdivision shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes or obtained at locations which sell tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes provided that such distribution is confined to a designated area or to coupons sent through the mail.

2. No retail dealer engaged in the business of selling or otherwise distributing tobacco products, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine for commercial purposes, or any agent or employee of such retail dealer, shall knowingly, in furtherance of such business:

(a) honor or accept a price reduction instrument in any transaction related to the sale of tobacco products, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to a consumer;

(b) sell or offer for sale any tobacco products, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to a consumer through any multi-package discount or otherwise provide to a consumer any tobacco products, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine for less than the listed price or non-discounted price in exchange for the purchase of any other tobacco products, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine by such consumer;

(c) sell, offer for sale, or otherwise provide any product other than a tobacco product, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine to a consumer for less than the listed price or non-discounted price in exchange for the purchase of a tobacco product, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine by such consumer; or

(d) sell, offer for sale, or otherwise provide a tobacco product, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine to a consumer for less than the listed price or non-discounted price.

3. The prohibitions contained in subdivision one of this section shall not apply to the following locations:

(a) private social functions when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such area;

(b) conventions and trade shows; provided that the distribution is confined to designated areas generally accessible only to persons over the age of twenty-one;

(c) events sponsored by tobacco product, vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarette manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of twenty-one;

(d) bars;

(e) tobacco businesses; and

(f) factories and construction sites; provided that the distribution is confined to designated areas generally accessible only to persons over the age of twenty-one.

4. No retail dealer shall distribute tobacco products, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes at the locations set forth in paragraphs (b), (c) and (f) of subdivision three of this section unless such person gives five days written notice to the enforcement officer.

5. No retail dealer engaged in the business of selling or otherwise distributing electronic cigarettes or vapor products intended or reasonably expected to be used with or for the consumption of nicotine 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.

6. The distribution of tobacco products, electronic cigarettes, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes pursuant to subdivision three of this section or the distribution without charge of electronic cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, shall be made only to an individual who demonstrates, through (a) a driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth, or possession, the District of Columbia, a state government within the United States, or a provincial government of the dominion of Canada, (b) a valid passport issued by the United States government or the government of any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least twenty-one 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, electronic cigarette, vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarette or the distribution without charge of electronic cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine to an individual.

§ 31. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or smoking paraphernalia to minors prohibited. 1. As used in this section:

(a) "Device capable of deciphering any electronically readable format" or "device" means any commercial device or combination of devices used

at a point of sale or entry that is capable of reading the information encoded on the bar code or magnetic strip of a driver's license or non-driver identification card issued by the state commissioner of motor vehicles;

(b) "Card holder" means any person presenting a driver's license or non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter;

(c) "Transaction scan" means the process involving an automated bar code reader by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of a tobacco product or herbal cigarettes pursuant to subdivision three of this section; and

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

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

3. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through (a) a valid driver license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (b) a valid passport issued by the United States government or any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least twenty-one 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, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes to an individual under twenty-one years of age.

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

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

(c) In any proceeding pursuant to section seventeen of this chapter, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a

governmental entity, successfully completed that transaction scan, and that the tobacco product, herbal cigarettes or liquid nicotine had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the chairperson shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

5. A licensee or agent or employee of such licensee shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in subdivision four of this section. No licensee or agent or employee of a licensee shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this subdivision, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this subdivision shall be punishable by a civil penalty of not more than one thousand dollars.

6. A licensee or agent or employee of such a licensee may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (a) name, (b) date of birth, (c) driver's license or non-driver identification number, and (d) expiration date. The chairperson and state commissioner of motor vehicles shall jointly promulgate any regulations necessary to govern the recording and maintenance of these records by a licensee under this chapter. The chairperson and the state liquor authority shall jointly promulgate any regulation necessary to ensure quality control in the use of the transaction scan devices under this chapter and article five of the alcoholic beverage control law.

7. No person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes in any manner, unless such products and cigarettes are stored for sale (a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container; provided, however, such restriction shall not apply to tobacco businesses and to places to which admission is restricted to persons twenty-one years of age or older.

§ 32. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines. No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products, herbal cigarettes or electronic cigarettes unless such machine is located: (a) in a bar, or the bar area of a food service establishment with a valid, on-premises full liquor license; (b) in a private club; (c) in a tobacco business; or (d) in a place of employment which

has an insignificant portion of its regular workforce comprised of people under the age of twenty-one years and only in such locations that are not accessible to the general public; provided, however, that in such locations the vending machine is located in plain view and under the direct supervision and control of the person in charge of the location or his or her designated agent or employee.

§ 33. Public display of tobacco product and electronic cigarette advertisements and smoking paraphernalia prohibited. 1. For purposes of this section "advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine, a trademark of a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine or a trade name associated exclusively with a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine or to promote the use or sale of a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine.

2. (a) No person, corporation, partnership, sole proprietor, limited partnership, association or any other business entity may place, cause to be placed, maintain or to cause to be maintained, smoking paraphernalia or tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine advertisements in a store front or exterior window or any door which is used for entry or egress by the public to the building or structure containing a place of business within one thousand five hundred feet of a school, provided that within New York city such prohibitions shall only apply within five hundred feet of a school.

(b) Any person, corporation, partnership, sole proprietor, limited partnership, association or any other business entity in violation of this section shall be subject to a civil penalty of not more than five hundred dollars for a first violation and not more than one thousand dollars for a second or subsequent violation.

§ 34. Hearings; penalties. 1. Hearings with respect to violation of this article shall be conducted in the same manner as hearings conducted under article thirteen-E of the public health law.

2. If an enforcement officer determines after a hearing that a violation of this article has occurred, he or she shall impose a civil penalty of a minimum of three hundred dollars, but not to exceed one thousand five hundred dollars for a first violation, and a minimum of one thousand dollars, but not to exceed two thousand five hundred dollars for each subsequent violation, unless a different penalty is otherwise provided in this article. An enforcement officer shall advise the retail dealer that upon the accumulation of three or more points pursuant to this section the department of taxation and finance shall suspend the dealer's registration. If an enforcement officer determines after a hearing that a retail dealer was selling tobacco products while their registration was suspended or permanently revoked pursuant to subdivision three or four of this section, he or she shall impose a civil penalty of twenty-five hundred dollars.

3. (a) Imposition of points. If the enforcement officer determines, after a hearing, that the retail dealer violated section thirty-one of

this article with respect to a prohibited sale to a minor, he or she shall, in addition to imposing any other penalty required or permitted pursuant to this section, assign two points to the retail dealer's record where the individual who committed the violation did not hold a certificate of completion from a state certified tobacco sales training program and one point where the retail dealer demonstrates that the person who committed the violation held a certificate of completion from a state certified tobacco sales training program.

(b) Revocation. If an enforcement officer determines, after a hearing, that a retail dealer has violated this article four times within a three-year time frame he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to revoke the dealer's registration for one year.

(c) Duration of points. Points assigned to a retail dealer's record shall be assessed for a period of thirty-six months beginning on the first day of the month following the assignment of points.

(d) Reinspection. Any retail dealer who is assigned points pursuant to paragraph (a) of this subdivision shall be reinspected at least two times a year by an enforcement officer until points assessed are removed from the retail dealer's record.

(e) Suspension. If the authority determines that a retail dealer has accumulated three points or more, the authority shall direct the commissioner of taxation and finance to suspend such dealer's registration for one year. The three points serving as the basis for a suspension shall be erased upon the completion of the one year penalty.

(f) Surcharge. A two hundred fifty dollar surcharge to be assessed for every violation will be made available to enforcement officers and shall be used solely for compliance checks to be conducted to determine compliance with this section.

4. (a) If an enforcement officer determines, after a hearing, that a retail dealer has violated this article while their registration was suspended pursuant to subdivision three of this section, he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to permanently revoke the dealer's registration and not permit the dealer to obtain a new registration.

(b) If an enforcement officer determines, after a hearing, that a vending machine operator has violated this article three times within a two-year period, or four or more times cumulatively he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to suspend the vendor's registration for one year and not permit the vendor to obtain a new registration for such period.

5. The authority shall publish a notification of the name and address of any retailer violating the provisions of this section and indicate the number of times the dealer has violated the provisions of this section. The notification shall be published in a newspaper of general circulation in the locality in which the retailer is located.

6. (a) In any proceeding pursuant to subdivision three of this section to assign points to a retail dealer's record, the retail dealer shall be assigned one point instead of two points where the retail dealer demonstrates that the person who committed the violation of section thirty-one of this article held a valid certificate of completion from a state certified tobacco sales training program.

(b) A state certified tobacco sales training program shall include instruction in the following elements:

(1) the health effects of tobacco use, especially at a young age;

(2) the legal purchase age and the additional requirements of section thirty-one of this article;

(3) legal forms of identification and the key features thereof;

(4) reliance upon legal forms of identification and the right to refuse sales when acting in good faith;

(5) means of identifying fraudulent identification of attempted underage purchasers;

(6) techniques used to refuse a sale;

(7) the penalties arising out of unlawful sales to underage individuals; and

(8) the significant disciplinary action or loss of employment that may be imposed by the retail dealer for a violation of the law or a deviation from the policies of the retail dealer in respect to compliance with such law.

(c) A tobacco sales training program may be given and administered by a retail dealer duly registered under section four hundred eighty-a of the tax law which operates five or more registered locations, by a trade association whose members are registered as retail dealers, by national and regional franchisors who have granted at least five franchises in the state to persons who are registered as such retail dealers by a cooperative corporation with five or more members who are registered as retail dealers and are operating in this state, and by a wholesaler supplying fifty or more retail dealers. A person or entity administering such training program shall issue certificates of completion to persons successfully completing such a training program. Such certificates shall be prima facie evidence of the completion of such a training program by the person named therein.

(d) A certificate of completion may be issued for a period of three years, however such certificate shall be invalidated by a change in employment.

(e) Entities authorized pursuant to paragraph (c) of this subdivision to give and administer a tobacco sales training program may submit a proposed curriculum, a facsimile of any training aids and materials, and a list of training locations to the authority for review. Training aids may include the use of video, computer based instruction, printed materials and other formats deemed acceptable to the authority. The authority shall certify programs which provide instruction in the elements set forth in paragraph (b) of this subdivision in a clear and meaningful fashion. Programs approved by the authority shall be certified for a period of three years at which time an entity may reapply for certification. A non-refundable fee in the amount of three hundred dollars shall be paid to the authority with each application.

§ 35. Enforcement. 1. Where a civil penalty for a particular incident has not been imposed or an enforcement action regarding an alleged violation for a particular incident is not pending under section thirty-four of this article, a parent or guardian of a person under twenty-one years of age to whom tobacco products, herbal cigarettes or electronic cigarettes are sold or distributed in violation of this article may submit a complaint to an enforcement officer setting forth the name and address of the alleged violator, the date of the alleged violation, the name and address of the complainant and the person under twenty-one years of age, and a brief statement describing the alleged violation. The enforcement officer shall notify the alleged violator by certified

or registered mail, return receipt requested, that a complaint has been submitted, and shall set a date, at least fifteen days after the mailing of such notice, for a hearing on the complaint. Such notice shall contain the information submitted by the complainant.

2. With respect to any penalty imposed resulting from a complaint under this section, an enforcement officer other than the authority shall use fifty percent of such penalty collected for educational efforts administered by the board or a local school district for the purposes of preventing adolescent tobacco use.

3. The enforcement officer shall promptly notify the commissioner of taxation and finance and the director of the division of the lottery of any determination, made after a hearing, that a violation of this article has occurred together with a direction to such commissioner and director with respect to any action to be taken concerning registration under section four hundred eighty-a of the tax law and licensing under section sixteen hundred seven of the tax law.

§ 36. Out-of-package sales and minimum package sizes. 1. All tobacco cigarettes sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer, or packager which bears all health warnings required by applicable law and shall adhere to the standards for fire safety for cigarettes promulgated by the office of fire prevention and control pursuant to section one hundred fifty-six-c of the executive law.

2. No person engaged in the business of manufacturing, selling or otherwise distributing tobacco products, herbal cigarettes, cigarette wrapping papers, wrapping leaves or tubes, or any agent or employee of such person, shall manufacture or cause to be manufactured for sale in this state, or sell or distribute in this state: (a) any package or other container of cigarettes containing fewer than twenty cigarettes; (b) any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco; or (c) any package or other container of cigarette wrapping papers, wrapping leaves or tubes, that are or are held out to be suitable for use or used as devices to wrap tobacco for smoking, containing fewer than twenty sheets, leaves or tubes.

§ 37. Unlawful shipment or transport of cigarettes and vapor products. 1. It shall be unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes to any person in this state who is not: (a) a person licensed as a cigarette tax agent or wholesale dealer under article twenty of the tax law or registered retail dealer under section four hundred eighty-a of the tax law; (b) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state and presents himself or herself as such, when such person is acting in accordance with his or her official duties. For purposes of this subdivision, a person is a licensed or registered agent or dealer described in paragraph (a) of this subdivision if his or her name appears on a list of licensed or registered agents or dealers published by the department of taxation and finance, or if such person is licensed or registered as an agent or dealer under article twenty of the tax law.

2. It shall be unlawful for any person engaged in the business of selling vapor products to ship or cause to be shipped any vapor products

intended or reasonably expected to be used with or for the consumption of nicotine to any person in this state who is not: (a) a person that receives a certificate of registration as a vapor products dealer under article twenty-eight-C of the tax law; (b) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state and presents himself or herself as such, when such person is acting in accordance with his or her official duties. For purposes of this subdivision, a person is a licensed or registered agent or dealer described in paragraph (a) of this subdivision if his or her name appears on a list of licensed or registered agents or vapor product dealers published by the department of taxation and finance, or if such person is licensed or registered as an agent or dealer under article twenty-eight-C of the tax law.

3. It shall be unlawful for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by such carrier to be other than a person described in paragraph (a), (b) or (c) of subdivision one of this section. For purposes of the preceding sentence, if cigarettes are transported to a home or residence, it shall be presumed that the common or contract carrier knew that such person was not a person described in paragraph (a), (b) or (c) of subdivision one of this section. It shall be unlawful for any other person to knowingly transport cigarettes to any person in this state, other than to a person described in paragraph (a), (b) or (c) of subdivision one of this section. Nothing in this subdivision shall be construed to prohibit a person other than a common or contract carrier from transporting not more than eight hundred cigarettes at any one time to any person in this state. It shall be unlawful for any common or contract carrier to knowingly transport vapor products intended or reasonably expected to be used with or for the consumption of nicotine to any person in this state reasonably believed by such carrier to be other than a person described in paragraph (a), (b) or (c) of subdivision two of this section. For purposes of the preceding sentence, if vapor products intended or reasonably expected to be used with or for the consumption of nicotine are transported to a home or residence, it shall be presumed that the common or contract carrier knew that such person was not a person described in paragraph (a), (b) or (c) of subdivision two of this section. It shall be unlawful for any other person to knowingly transport vapor products intended or reasonably expected to be used with or for the consumption of nicotine to any person in this state, other than to a person described in paragraph (a), (b) or (c) of subdivision two of this section. Nothing in this subdivision shall be construed to prohibit a person other than a common or contract carrier from transporting vapor products, provided that the amount of vapor products intended or reasonably expected to be used with or for the consumption of nicotine shall not exceed the lesser of five hundred milliliters, or a total nicotine content of three grams at any one time to any person in this state.

4. When a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to any person in this state, other than in the cigarette manufacturer's original container or wrapping, the container or wrapping shall be plainly and visibly marked with the word "cigarettes". When a person engaged in the business of selling

vapor products ships or causes to be shipped any vapor products intended or reasonably expected to be used with or for the consumption of nicotine to any person in this state, other than in the vapor products manufacturer's original container or wrapping, the container or wrapping shall be plainly and visibly marked with the words "vapor products".

5. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes or vapor products intended or reasonably expected to be used with or for the consumption of nicotine which have been or which are being shipped or transported in violation of this section, such person is hereby empowered and authorized to seize and take possession of such cigarettes or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, and such cigarettes or vapor products intended or reasonably expected to be used with or for the consumption of nicotine shall be subject to a forfeiture action pursuant to the procedures provided for in article thirteen-A of the civil practice law and rules, as if such article specifically provided for forfeiture of cigarettes or vapor products intended or reasonably expected to be used with or for the consumption of nicotine seized pursuant to this section as a pre-conviction forfeiture crime.

6. Any person who violates the provisions of subdivision one, two, or three of this section shall be guilty of a class A misdemeanor and for a second or subsequent violation shall be guilty of a class E felony. In addition to the criminal penalty, any person who violates the provisions of subdivision one, two, three or four of this section shall be subject to a civil penalty not to exceed the greater of (a) five thousand dollars for each such violation; (b) one hundred dollars for each pack of cigarettes shipped, caused to be shipped or transported in violation of such subdivision; or (c) one hundred dollars for each vapor product intended or reasonably expected to be used with or for the consumption of nicotine shipped, caused to be shipped or transported in violation of such subdivision.

7. The attorney general may bring an action to recover the civil penalties provided by subdivision six of this section and for such other relief as may be deemed necessary. In addition, the corporation counsel of any political subdivision that imposes a tax on cigarettes or vapor products intended or reasonably expected to used with or for the consumption of nicotine may bring an action to recover the civil penalties provided by subdivision six of this section and for such other relief as may be deemed necessary with respect to any cigarettes or vapor products intended or reasonably expected to be used with or for the consumption of nicotine shipped, caused to be shipped or transported in violation of this section to any person located within such political subdivision. All civil penalties obtained in any such action shall be retained by the state or political subdivision bringing such action, provided that no person shall be required to pay civil penalties to both the state and a political subdivision with respect to the same violation of this section.

§ 38. Sale of bidis prohibited. 1. No person shall knowingly sell or provide bidis to any other person. Notwithstanding that bidis is a tobacco product, no other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of bidis. Any person who violates the provisions of

this subdivision shall be subject to a civil fine of not more than five hundred dollars.

2. (a) The provisions of subdivision one of this section shall not apply to a tobacco business.

(b) Any person operating a tobacco business wherein bidis is sold or offered for sale is prohibited from selling such bidis to individuals under twenty-one years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF BIDIS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

(c) Sales of bidis by a tobacco business shall be made only to an individual who demonstrates, through a driver's license or other non-driver identification card issued by a government entity or educational institution indicating that the individual is at least twenty-one 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 to an individual under twenty-one years of age.

(d)(i) Any person operating a tobacco business wherein bidis is sold or offered for sale may perform a transaction scan as a precondition for such purchases.

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

(iii) In any proceeding pursuant to section thirty-one of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the bidis had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the chairperson shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a tobacco business wherein bidis is sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

(e) A tobacco business or agent or employee of such business shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in paragraph (d) of this subdivision. No tobacco business or agent or employee of such business shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this paragraph, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by section thirty-one of this article.

§ 39. Sale of gutka prohibited. 1. No person shall knowingly sell or provide gutka to any other person under twenty-one years of age. No other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of gutka. Any person who violates the provisions of this subdivision shall be subject to a civil penalty of not more than five hundred dollars.

2. (a) The provisions of subdivision one of this section shall not apply to a tobacco business.

(b) Any person operating a tobacco business wherein gutka is sold or offered for sale is prohibited from selling such gutka to individuals under twenty-one years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF GUTKA TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

(c) Sales of gutka by a tobacco business shall be made only to an individual who demonstrates, through a driver's license or other non-driver identification card issued by a government entity or educational institution indicating that the individual is at least twenty-one 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 to an individual under twenty-one years of age.

(d) (i) Any person operating a tobacco business wherein gutka is sold or offered for sale may perform a transaction scan as a precondition for such purchases.

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

(iii) In any proceeding pursuant to section thirty-four of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the gutka had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the chairperson shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a tobacco business wherein gutka is sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative

defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

(e) A tobacco business or agent or employee of such business shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in paragraph (d) of this subdivision. No tobacco business or agent or employee of such business shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this paragraph, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by section thirty-one of this article.

§ 40. Sale of flavored products prohibited. 1. For the purposes of this section "flavored product" shall mean any vapor product intended or reasonably expected to be used with or for the consumption of nicotine, with a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of such product or a component part thereof, including but not limited to tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb or spice, or any concept flavor that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor. A vapor product intended or reasonably expected to be used with or for the consumption of nicotine, shall be presumed to be flavored if a product's retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that such product or device has a distinguishable taste or aroma other than the taste or aroma of tobacco.

2. No vapor products dealer, or any agent or employee of a vapor products dealer, shall sell or offer for sale at retail in the state any flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine.

3. Any vapor products dealer, or any agent or employee of a vapor products dealer, who violates the provisions of this section shall be subject to a civil penalty of not more than one hundred dollars for each individual package of flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine sold or offered for sale, provided, however, that with respect to a manufacturer, it shall be an affirmative defense to a finding of violation pursuant to this section that such sale or offer of sale, as applicable, occurred without the knowledge, consent, authorization, or involvement, direct or indirect, of such manufacturer. Violations of this section shall be enforced pursuant to section thirty-five of this article,

except that any person may submit a complaint to an enforcement officer that a violation of this section has occurred.

4. The provisions of this section shall not apply to any vapor products dealer, or any agent or employee of a vapor products dealer, who sells or offers for sale, or who possesses with intent to sell or offer for sale, any flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine that the United States food and drug administration has authorized to legally market as defined under 21 U.S.C. § 387j and that has received a premarket review approval order under 21 U.S.C. § 387j(c) et seq.

§ 41. Sale in pharmacies. 1. No tobacco product, herbal cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine, shall be sold in a pharmacy or in a retail establishment that contains a pharmacy operated as a department as defined by paragraph f of subdivision two of section sixty-eight hundred eight of the education law. Provided, however, that such prohibition on the sale of tobacco products, herbal cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, shall not apply to any other business that owns or leases premises within any building or other facility that also contains a pharmacy or a retail establishment that contains a pharmacy operated as a department as defined by paragraph f of subdivision two of section sixty-eight hundred eight of the education law.

2. The chairperson shall have sole jurisdiction to enforce the provisions of this section. The chairperson shall have the power to assess penalties pursuant to a hearing conducted in accordance with section thirty-four of this article. Nothing in this section shall be construed to prohibit the chairperson from commencing a proceeding for injunctive relief to compel compliance with this section.

§ 42. Carrier oils. 1. For the purposes of this section "carrier oils" shall mean any ingredient of a vapor product intended to control the consistency or other physical characteristics of such vapor product, to control the consistency or other physical characteristics of vapor, or to facilitate the production of vapor when such vapor product is used in an electronic cigarette. "Carrier oils" shall not include any product approved by the United States food and drug administration as a drug or medical device or manufactured and dispensed pursuant to title five-A of article thirty-three of the public health law.

2. The chairperson is authorized to promulgate rules and regulations governing the sale and distribution of carrier oils that are suspected of causing acute illness and have been identified as a chemical of concern by the United States centers for disease control and prevention. Such regulations may, to the extent deemed by the chairperson as necessary for the protection of public health, prohibit or restrict the selling, offering for sale, possessing with intent to sell, or distributing of carrier oils.

3. The provisions of this section shall not apply where preempted by federal law. Furthermore, the provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid, or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of carrier oil, the provisions of this section shall nonetheless continue to apply with respect to all other carrier oils.

ARTICLE 4
TOBACCO ESCROW FUNDS

Section 50. Findings and purpose.
51. Definitions.
52. Requirements.

§ 50. Findings and purpose. 1. Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

2. Cigarette smoking also presents serious financial concerns for the state. Under certain health care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

3. Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

4. It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

5. On November twenty-third, nineteen hundred ninety-eight, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement", with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

6. It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ 51. Definitions. As used in this article the following terms shall mean:

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.

2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the term "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the

term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

3. "Allocable share" means allocable share as that term is defined in the master settlement agreement.

4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (a) any roll of tobacco wrapped in any substance not containing tobacco, or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this subdivision 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

5. "Master settlement agreement" means the settlement agreement (and related documents) entered into on November twenty-third, nineteen hundred ninety-eight by the state and leading United States tobacco product manufacturers. A copy of said agreement, including any amendments thereto, shall be kept on file by the attorney general, who shall make it available for inspection and copying pursuant to the provisions of article six of the public officers law.

6. "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with paragraph (b) of subdivision two of section fifty-two of this article.

7. "Released claims" means released claims as that term is defined in the master settlement agreement.

8. "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

9. "Tobacco product manufacturer" means an entity that after the effective date of this chapter directly (and not exclusively through any affiliate):

(a) manufacturers cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b) of this subdivision. The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the provisions of this paragraph or paragraphs (a) or (b) of this subdivision.

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs bearing the excise tax stamp of the state, or on roll-your-own tobacco containers. The commissioner of taxation and finance shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes and roll-your-own tobacco of such tobacco product manufacturer for each year. Notwithstanding any other provision of law, a failure of a cigarette tax agent or distributor licensed pursuant to section four hundred seventy-two of the tax law to provide any information required by such regulations shall be deemed a violation of the regulations of the commissioner of taxation and finance promulgated under article twenty of the tax law. Notwithstanding any provision of law to the contrary, the commissioner of taxation and finance shall provide to the attorney general any information necessary for the administration and enforcement of this article, including: (a) returns filed in accordance with article twenty or twenty-eight of the tax law (or any other provision of the tax law providing for an excise tax on cigarettes or roll-your-own tobacco); and (b) in the event the chairperson is unable to ascertain the identity of the applicable tobacco product manufacturer with respect to particular cigarettes or roll-your-own tobacco sold in the state, the number and brand names of such cigarettes or roll-your-own tobacco, the identity of the person from whom the excise tax on such cigarettes or roll-your-own tobacco was collected, and all other available information relating to such cigarettes or roll-your-own tobacco, to be used by the attorney general to ascertain the identity of such tobacco product manufacturer and for the administration and enforcement of this article. Notwithstanding any provision of law to the contrary, the attorney general may redisclose any such information if necessary for the administration or enforcement of this chapter.

§ 52. Requirements. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the effective date of this chapter shall do one of the following:

1. become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

2. (a) place into a qualified escrow fund by April fifteenth of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(i) 1999: $.0094241 per unit sold after the effective date of this chapter;

(ii) 2000: $.0104712 per unit sold;

(iii) for each of 2001 and 2002: $.0136125 per unit sold;

(iv) for each of 2003 through 2006: $.0167539 per unit sold;

(v) for each of 2007 and each year thereafter: $.0188482 per unit sold.

(b) a tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subdivision shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph: (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of the master settlement agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) to the extent not released from escrow under subparagraph (i) or (ii) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subdivision shall annually certify to the attorney general that it is in compliance with this subdivision. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this subdivision. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subdivision shall:

(i) be required within fifteen days to place such funds into escrow as shall bring it into compliance with this subdivision. The court, upon a finding of a violation of this subdivision, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with this subdivision. The court, upon a finding of a knowing violation of this subdivision, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(iii) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this subdivision shall constitute a separate violation, and the tobacco product manufacturer shall be required to pay the state's costs and attorneys' fees incurred during a successful prosecution under this subdivision.

§ 2. The executive law is amended by adding a new article 29 to read as follows:

ARTICLE 29
ADULT-USE SUBSTANCES AUTHORITY

Section 827-a. Adult-use substances authority.
827-b. Appointment of the adult-use substances authority.
827-c. Expenses.
827-d. Removal.
827-e. Vacancies; quorum.
827-f. Officers; employees; offices.
827-g. Disqualifications of members and employees of the adult-use substances authority.
827-h. Powers of the adult-use substances authority.
827-i. Powers and duties of the chairperson.
827-j. Oath of office.

§ 827-a. Adult-use substances authority. There shall be established in the executive department an adult-use substances authority whose members shall consist of a chairperson, chairperson of the tobacco, nicotine and vaping authority, chairperson of the cannabis control board and chairperson of the state liquor authority.

§ 827-b. Appointment of the adult-use substances authority. The chairperson shall be appointed by the governor by and with the advice and consent of the senate. The chairperson shall serve for a term of three years and until his or her successor has been appointed and qualified. The chairperson shall receive an annual salary established in paragraph (c) of subdivision one of section one hundred sixty-nine of this chapter, and their expenses actually and necessarily incurred in the performance of their official duties, unless otherwise provided by the legislature. The chairperson's spouse or minor child shall not have any interest in an entity regulated by the authority.

§ 827-c. Expenses. Each member of the adult-use substances authority shall be entitled to his or her expenses actually and necessarily incurred by him or her in the performance of his or her duties.

§ 827-d. Removal. Any member of the adult-use substances authority may be removed by the governor for cause after an opportunity to be heard. A statement of the cause of his or her removal shall be filed by the governor in the office of the secretary of state.

§ 827-e. Vacancies; quorum. 1. In the event of a vacancy caused by the death, resignation, removal or disability of a chairperson, the vacancy shall be filled by the governor by and with the advice and consent of the senate for the unexpired term.

2. (a) Notwithstanding any other provision of law to the contrary, the governor shall designate one of the members to serve as acting chairperson for a period not to exceed six months or until a successor chairperson has been confirmed by the senate, whichever comes first. Upon the expiration of the six-month term, if the governor has nominated a successor chairperson, but the senate has not acted upon the nomination, the acting chairperson can continue to serve as acting chairperson for an additional ninety days or until the governor's successor chairperson nomination is confirmed by the senate, whichever comes first.

(b) The governor shall provide immediate written notice to the temporary president of the senate of the designation of a chairperson as acting chairperson.

(c) If (i) the governor has not nominated a successor chairperson upon the expiration of the six month term or (ii) the senate does not confirm the governor's successor nomination within the additional ninety days,

the member designated as acting chairperson shall no longer be able to serve as acting chairperson and the governor is prohibited from extending the powers of that acting chairperson or from designating another member to serve as acting chairperson.

(d) A member serving as the acting chairperson of the adult-use substances authority shall be deemed a state officer for purposes of section seventy-three of the public officers law.

3. A majority of the members of the adult-use substances authority shall constitute a quorum for the purpose of conducting the business thereof and a majority vote of all the members in office shall be necessary for action. Provided, however, that a member designated as an acting chairperson pursuant to subdivision two of this section shall have only one vote for purposes of conducting the business of the adult-use substances authority.

§ 827-f. Officers; employees; offices. The counsel, secretary, chief executive officer, assistant chief executive officers, confidential secretaries to the chairperson and deputies shall be in the exempt class of the civil service. The other assistants and employees of the adult-use substances authority shall all be in the competitive class of the civil service. The adult-use substances authority shall have its principal office in the city of Albany, and may maintain a branch office in the cities of New York and Buffalo and such other places as the chairperson may deem necessary.

§ 827-g. Disqualifications of members and employees of the adult-use substances authority. No member of the adult-use substances authority or any officer, deputy, assistant, inspector or employee thereof shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien, or in any other manner, in or on any premises where alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products are manufactured or sold; nor shall he or she have any interest, direct or indirect, in any business wholly or partially devoted to the manufacture, sale, transportation or storage of alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products or own any stock in any corporation which has any interest, proprietary or otherwise, direct or indirect, in any premises where alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products are manufactured or sold, or in any business wholly or partially devoted to the manufacture, sale, transportation or storage of alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products or receive any commission or profit whatsoever, direct or indirect, from any person applying for or receiving any license or permit provided for in the laws of the state related to such alcoholic beverages or products, or hold any other public office in the state or in any political subdivision except upon the written permission of the adult-use substances authority, such member of the adult-use substances authority or officer, deputy, assistant, inspector or employee thereof may hold the public office of notary public or member of a community board of education in the city school district of the city of New York. Any person who violates any of the provisions of this section shall be removed.

§ 827-h. Powers of the adult-use substances authority. The adult-use substances authority shall have the following functions, powers and duties to:

1. Coordinate and supervise the activities of the tobacco, nicotine and vaping authority, the cannabis control board and the state liquor authority.

2. Maintain liaison with other public officials, agencies or entities involved with (a) the manufacture, sale or regulation of alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products or (b) education programs involved with the adult-use of such beverages and products.

3. Approve or refuse to approve the issuance of any license or permit provided for under the alcoholic beverage control law, the cannabis law or the tobacco, nicotine and vaping law.

4. Limit in its discretion the number of licenses or permits to be issued within the state or any political subdivision thereof as provided for under the alcoholic beverage control law, the cannabis law or the tobacco, nicotine and vaping law, and in connection therewith to prohibit the acceptance of applications for such licenses or permits which have been so limited.

5. Review the revocation, cancellation or suspension of any license or permit issued under the alcoholic beverage control law, the cannabis law or the tobacco, nicotine and vaping law.

6. Review and enforce a civil penalty for cause against any holder of a license or permit issued pursuant to the alcoholic beverage control law, the cannabis law or the tobacco, nicotine and vaping law.

7. Approve or refuse to approve any rules and regulations for standards of production in order to ensure the use of proper ingredients and methods in the production of any alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products to be sold or consumed in the state.

8. Hold hearings, subpoena witnesses, compel their attendance, administer oaths, to examine any person under oath and in connection therewith to require the production of any books or papers relative to the inquiry. A subpoena issued under this section shall be regulated by the civil practice law and rules.

9. Prohibit, at any time of public emergency, without previous notice or advertisement, the sale of any or all alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products for and during the period of such emergency.

10. Delegate the powers provided in this section to the chairperson, or to such other officers or employees as may be designated by the chairperson.

11. Appoint such advisory groups and committees as it deems necessary to provide assistance to the adult-use substances authority to carry out the purposes and objectives of this article, the alcoholic beverage control law, the cannabis law, or the tobacco, nicotine and vaping law.

§ 827-i. Powers and duties of the chairperson. The chairperson shall have the following functions, powers and duties to:

1. Exercise the powers and perform the duties in relation to the administration of the adult-use substances authority which are not specifically vested by this article, including but not limited to budgetary and fiscal matters.

2. Preside at all meetings of the adult-use substances authority and perform the administrative functions of the adult-use substances authority.

3. Appoint any necessary deputies, counsels, assistants, and other employees within the limits provided by appropriation.

4. Remove any employee of the adult-use substances authority for cause, after giving such employee a copy of the charges against him or her in writing, and an opportunity to be heard thereon. Any action

taken under this subdivision shall be subject to and in accordance with the civil service law.

5. Keep records in such form as he or she may prescribe of all licenses and permits issued and revoked within the state; such records shall be so kept as to provide ready information as to the identity of all licensees including the names of the officers and directors of corporate licenses and the location of all licensed premises. The chairperson may, with the approval of the commissioner of taxation and finance, contract to furnish copies of the records of licenses and permits of each class and type issued within the state or any political subdivision thereof, for any license or permit year or term of years not exceeding five years.

6. Inspect or provide for the inspection of any premises where alcoholic beverages, tobacco products, nicotine products, cannabis products or vaping products are manufactured or sold.

7. Prescribe forms of applications for licenses and permits under this article, the alcoholic beverage control law, the cannabis law, or the tobacco, nicotine and vaping law and of all reports deemed necessary by the adult-use substances authority.

8. Delegate to the officers and employees of the adult-use substances authority such of his or her powers and duties as he or she may determine.

9. Establish appropriate procedures to ensure that hearing officers are shielded from ex parte communications with alleged violators and their attorneys and from other employees of the adult-use substances authority and shall take such other steps as he or she shall deem necessary and proper to shield its judicial processes from unwarranted and inappropriate communications and attempts to influence.

§ 827-j. Oath of office. Each member of the adult-use substances authority shall, before entering upon his or her duties, take and file an oath of office as prescribed by section ten of the public officers law.

§ 3. Subdivision 1 of section 161 of the executive law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

1. Each of the following officers, to wit: the secretary of state, the comptroller, the commissioner of taxation and finance, the attorney general, the public service commission, the commissioner of agriculture and markets, the commissioner of transportation, the industrial commissioner, the chairman of the state labor relations board, the chairman of the state liquor authority, the superintendent of financial services, the state commissioner of human rights, the commissioner of general services, the chairperson of the adult-use substances authority, the chairperson of the tobacco, nicotine and vaping authority and the commissioner of housing and community renewal may require search to be made, in the office of any of the others, or of a county clerk or of the clerk of a court of record, for any record, document, or paper, where he or she deems it necessary for the discharge of his or her official duties, and a copy thereof, or extracts therefrom, to be made and officially certified or exemplified, without the payment of any fee or charge.

§ 4. Section 166 of the executive law, as amended by chapter 299 of the laws of 1995 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 166. Record of appearances. Every regulatory agency of the state shall keep a record of appearances before it or its appropriate divisions or bureaus of attorneys, agents and representatives appearing on

behalf of any person, firm, corporation or association subject to its regulatory jurisdiction, for which they receive a fee, which record shall be open to public inspection. Each regulatory agency shall file the record with the New York temporary state commission on lobbying on forms prescribed by the commission. The record shall be filed quarterly on the fifteenth day of the month following the end of the quarter. The term "regulatory agency" as used in this section shall mean the department of financial services[~~, department of financial services~~], state liquor authority, **adult-use substances authority, tobacco, nicotine and vaping authority,** department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or employees are performing duties specified in section sixty-three of this chapter.

§ 5. Paragraph (c) of subdivision 1 of section 169 of the executive law, as amended by section 9 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

(c) commissioner of agriculture and markets, commissioner of [~~alcoholism and substance abuse services~~] **the office of addiction services and supports**, adjutant general, commissioner and president of state civil service commission, commissioner of economic development, chair of the energy research and development authority, president of higher education services corporation, commissioner of motor vehicles, member-chair of board of parole, chair of public employment relations board, secretary of state, commissioner of [~~alcoholism and substance abuse services~~] **the office of addiction services and supports**, executive director of the housing finance agency, commissioner of housing and community renewal, executive director of state insurance fund, commissioner-chair of state liquor authority, chair of the workers' compensation board**, chairperson of the adult-use substances authority, chairperson of the tobacco, nicotine and vaping authority**;

§ 6. The opening paragraph of section 270 of the executive law, as amended by chapter 297 of the laws of 2016, is amended to read as follows:

The head of the alcoholic beverage control division **within the adult-use substances authority** shall be the state liquor authority whose members shall consist of a chairman and two commissioners, who shall be appointed by the governor, by and with the advice and consent of the senate.

§ 7. Paragraph (f) of subdivision 1 and the third undesignated paragraph of subdivision 3-a of section 296 of the executive law, paragraph (f) of subdivision 1 as amended by chapter 365 of the laws of 2015 and the third undesignated paragraph of subdivision 3-a as amended by chapter 296 of the laws of 1984, are amended to read as follows:

(f) Nothing in this subdivision shall affect any restrictions upon the activities of persons licensed by the state liquor authority **or the tobacco, nicotine and vaping authority** with respect to persons under twenty-one years of age.

The provisions of this subdivision shall not affect any restriction upon the activities of persons licensed by the state liquor authority **or the tobacco, nicotine and vaping authority** with respect to persons under twenty-one years of age.

§ 8. Subdivision 4 of section 296-c of the executive law, as added by chapter 97 of the laws of 2014, is amended to read as follows:

4. Nothing in this section shall affect any restrictions upon the activities of persons licensed by the state liquor authority **or the tobacco, nicotine and vaping authority** with respect to persons under twenty-one years of age.

§ 9. Articles 13-F and 13-G of the public health law are REPEALED.

§ 10. The public health law is amended by adding a new article 13-F to read as follows:

ARTICLE 13-F

TOBACCO USE AND VAPING AWARENESS AND PREVENTION PROGRAMS

Section 1399-aa. Tobacco and vapor product use prevention and control program.

1399-bb. Electronic cigarette and vaping prevention, awareness and control program.

§ 1399-aa. Tobacco and vapor product use prevention and control program. 1. To improve the health, quality of life, and economic well-being of all New York state citizens, there is hereby established within the department and in consultation and collaboration with the tobacco, nicotine and vaping authority a comprehensive statewide tobacco and vapor product use prevention and control program.

2. The board shall support tobacco and vapor product use prevention and control activities including, but not limited to:

(a) Community programs to prevent and reduce tobacco use through local involvement and partnerships;

(b) School-based programs to prevent and reduce tobacco use and use of vapor products;

(c) Marketing and advertising to discourage tobacco, vapor product and liquid nicotine use;

(d) Nicotine cessation programs for youth and adults;

(e) Special projects to reduce the disparities in smoking prevalence among various populations;

(f) Restriction of youth access to tobacco products and vapor products;

(g) Surveillance of smoking and vaping rates; and

(h) Any other activities determined by the chairperson to be necessary to implement the provisions of this section.

Such programs shall be selected by the chairperson through an application process which takes into account whether a program utilizes methods recognized as effective in reducing nicotine use. Eligible applicants may include, but not be limited to, a health care provider, schools, a college or university, a local public health department, a public health organization, a health care provider organization, association or society, municipal corporation, or a professional education organization.

3. (a) There shall be established a tobacco use prevention and control advisory board to advise the chairperson on tobacco use prevention and control issues and vapor product use amongst persons less than twenty-one years of age, including methods to prevent and reduce tobacco use in the state.

(b) The board shall consist of seventeen members who shall be appointed as follows: nine members by the governor; three members by the speaker of the assembly; three members by the temporary president of the senate and one member each by the minority leader of the senate and the minority leader of the assembly. Any vacancy or subsequent appointment shall be filled in the same manner and by the same appointing authority

as the original appointment. The chairperson of the board shall be designated by the governor from among the members of the board.

(c) The members shall serve for terms of two years commencing on the effective date of this section. Members of the board shall receive no compensation but shall be reimbursed for reasonable travel and other expenses incurred in the performance of their duties hereunder.

(d) The board shall meet as often as it deems necessary, but no less than four times a year. No nominee to the board shall have any past or current affiliation with the tobacco industry, vapor products industry or any industry, contractor, agent, or organization that engages in the manufacturing, marketing, distributing, or sale of tobacco products. The board shall be appointed in full within ninety days of the effective date of this section.

(e) The department shall prepare and submit to the board a spending plan for the tobacco and vapor product use prevention and control program authorized pursuant to the provisions of subdivision one of this section no later than thirty days after the submission of the budget to the legislature.

§ 1399-bb. Electronic cigarette and vaping prevention, awareness and control program. The commissioner shall, in consultation and collaboration with the commissioner of education and the chairperson of the tobacco, nicotine and vaping authority, establish and develop an electronic cigarette and vaping prevention, control and awareness program within the department. Such program shall be designed to educate students, parents and school personnel about the health risks associated with vapor product use and control measures to reduce the prevalence of vaping, particularly among persons less than twenty-one years of age. Such program shall include, but not be limited to, the creation of age-appropriate instructional tools and materials that may be used by all schools, and marketing and advertising materials to discourage electronic cigarette use.

§ 11. Subdivision 1 of section 7 of the cannabis law is amended to read as follows:

1. The cannabis control board is hereby created within the adult-use substances authority and shall consist of a chairperson nominated by the governor and with the advice and consent of the senate, with one vote, and four other voting board members as provided for in subdivision two of this section.

§ 12. Section 8 of the cannabis law is amended to read as follows:

§ 8. Establishment of an office of cannabis management. There is hereby established, within the [~~division of alcoholic beverage control~~] adult-use substances authority, an independent office of cannabis management, which shall have exclusive jurisdiction to exercise the powers and duties provided by this chapter. The office shall exercise its authority by and through an executive director.

§ 13. Subdivision 1 of section 14 of the cannabis law is amended to read as follows:

1. The state cannabis advisory board or "advisory board" is established within the office of cannabis management and directed to work in collaboration with the adult-use substances authority, the cannabis control board and the executive director to advise and issue recommendations on the use of medical cannabis, adult-use cannabis and cannabinoid hemp and hemp extract in the state of New York, and shall govern and administer the New York state community grants reinvestment fund pursuant to section [~~99-kk~~] ninety-nine-kk of the state finance law.

§ 14. Section 10 of the alcoholic beverage control law, as amended by chapter 297 of the laws of 2016, is amended to read as follows:

§ 10. State liquor authority. There shall continue to be in the [~~executive department~~] adult-use substances authority an alcoholic beverage control division, the head of which shall be the state liquor authority whose members shall consist of a chairman and two commissioners, all of whom shall be citizens and residents of the state. The terms "state alcoholic beverage control board", "state board", "liquor authority", or "authority", wherever occurring in any of the provisions of this chapter or of any other law, or in any official books, records, instruments, rules or papers, shall hereafter mean and refer to the state liquor authority provided for in this section.

§ 15. Subdivision 2 of section 19.06 of the mental hygiene law, as amended by chapter 283 of the laws of 2011, is amended to read as follows:

2. Advisory council on underage alcohol consumption and youth substance abuse. There is hereby created an advisory council on underage alcohol consumption and youth substance abuse. The council shall consist of twenty-one members, who are broadly representative of the various groups in society which are stakeholders in the effort to combat underage alcohol consumption and youth substance abuse. Seven members shall be appointed by the governor, seven members by the temporary president of the senate and seven members by the speaker of the assembly. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational, legal and advocacy groups and associations concerned with, or otherwise engaged in, the representation of the interests of the youth of New York state. The commissioner, the chairman of the state liquor authority, the chairperson of the adult-use substances authority, the chairperson of the tobacco, nicotine and vaping authority, the commissioner of mental health, the attorney general, the temporary president of the senate and the speaker of the assembly shall be ex-officio members of the council.

§ 16. Subparagraphs (i) and (ii) of paragraph (d) of subdivision 1 of section 480-a of the tax law, as added by chapter 799 of the laws of 1992, are amended to read as follows:

(i) The commissioner shall not register retail dealers or such registration may be cancelled or suspended by the commissioner [~~upon notification that the applicant or retail dealer has been convicted in a criminal proceeding of a violation of subdivision five of section 260.20 of the penal law or~~] as directed by an enforcement officer pursuant to article [~~thirteen-F~~] three of the [~~public health~~] tobacco, nicotine and vaping law. [~~The clerk of the court shall promptly report all criminal convictions under subdivision five of section 260.20 of the penal law to the commissioner, together with a direction to the commissioner to cancel such registration or to suspend it for a specified period of time.~~] Anything to the contrary in any law notwithstanding, retail dealers shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to any action taken by the commissioner under this paragraph, provided nothing herein shall be construed to deny retail dealers a hearing under article [~~thirteen-F~~] three of the [~~public health~~] tobacco, nicotine and vaping law or to prohibit retail dealers from commencing a court action or proceeding against an enforcement officer as defined in section [~~thirteen hundred ninety-nine-aa~~] two of the [~~public health~~] tobacco, nicotine and vaping law.

(ii) Anything to the contrary in any law notwithstanding, the commissioner shall provide upon request to an enforcement officer as defined in section [~~thirteen hundred ninety-nine-aa~~] two of the [~~public health~~] tobacco, nicotine and vaping law such registration information as is relevant and necessary for the implementation of article [~~thirteen-F~~] three of the [~~public health~~] tobacco, nicotine and vaping law.

§ 17. Subdivisions 1 and 2 of section 480-b of the tax law, as added by section 1 of part J of chapter 383 of the laws of 2001, are amended to read as follows:

1. Every tobacco product manufacturer as defined by section [~~thirteen hundred ninety-nine-oo~~] fifty-one of the [~~public health~~] tobacco, nicotine and vaping law whose cigarettes are sold for consumption in this state shall annually certify under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer: (a) is a participating manufacturer as defined in subdivision one of section [~~thirteen hundred ninety-nine-pp~~] fifty-two of the [~~public health~~] tobacco, nicotine and vaping law; or (b) is in full compliance with subdivision two of section [~~thirteen hundred ninety-nine-pp~~] fifty-two of the [~~public health~~] tobacco, nicotine and vaping law. Such certification shall be executed and delivered to the commissioner, the attorney general and any agent who affixes New York state cigarette tax stamps to cigarettes of such tobacco product manufacturer, no earlier than the sixteenth day of April and no later than the thirtieth day of April of each year, and shall be accompanied by a list setting forth each of the cigarette brands of such tobacco product manufacturer sold for consumption in New York state. Agents shall retain such certifications for a period of five years.

2. An agent may not affix, or cause to be affixed, a New York state cigarette tax stamp to a package of cigarettes if either: (a) the tobacco product manufacturer of such cigarettes has not provided such agent with the certification required by subdivision one of this section; or (b) the commissioner has notified such agent that such tobacco product manufacturer is in violation of section [~~thirteen hundred ninety-nine-pp~~] fifty-two of the [~~public health~~] tobacco, nicotine and vaping law, or has filed a false certification under subdivision one of this section, and such agent has not been notified by the commissioner that such violation has ceased.

§ 18. Subdivision h of section 1607 of the tax law, as amended by chapter 162 of the laws of 2002 and paragraph 1 as amended by section 7 of part EE of chapter 56 of the laws of 2020, is amended to read as follows:

h. A violation of article [~~thirteen-F~~] three of the [~~public health~~] tobacco, nicotine and vaping law as provided in this subdivision:

1. A license shall be suspended for a period of one year upon notification to the division by the commissioner of health of a lottery sales agent's accumulation of three or more points pursuant to subdivision three of section [~~thirteen hundred ninety-nine-ee~~] thirty-four of the [~~public health~~] tobacco, nicotine and vaping law.

2. A license shall be revoked for one year upon notification to the division by the commissioner of health of a lottery sales agent's fourth violation of article [~~thirteen-F~~] three of the [~~public health~~] tobacco, nicotine and vaping law within a three year period.

§ 19. Subdivision 10 of section 1399-n of the public health law, as added by chapter 335 of the laws of 2017, is amended to read as follows:

10. "Electronic cigarette" shall have the same meaning as in subdivision thirteen of section [~~thirteen hundred ninety-nine-aa~~] **two** of [~~this chapter~~] **the tobacco, nicotine and vaping law**.

§ 20. Paragraph b of subdivision 5 of section 1399-o of the public health law, as added by chapter 102 of the laws of 2017, is amended to read as follows:

b. "Electronic cigarette" or "e-cigarette" shall have the same meaning as in subdivision [~~thirteen~~] **twenty-two** of section [~~thirteen hundred ninety-nine-aa~~] **two** of [~~this chapter~~] **the tobacco, nicotine and vaping law**.

§ 21. The opening paragraph of paragraph (j) of subdivision 1 of section 2807-v of the public health law, as amended by section 14 of part Y of chapter 56 of the laws of 2020, is amended to read as follows:

Funds shall be reserved and accumulated from year to year and shall be available, including income from invested funds, for purposes of services and expenses related to the tobacco **and vapor product** use prevention and control program established pursuant to [~~sections~~] **section** thirteen hundred [~~ninety-nine-ii and thirteen hundred ninety-nine-jj~~] **ninety-nine-aa** of this chapter, from the tobacco control and insurance initiatives pool established for the following periods in the following amounts:

§ 22. Subdivision 1 of section 399-gg of the general business law, as added by chapter 542 of the laws of 2014, is amended to read as follows:

1. No person, firm or corporation shall sell or offer for sale any electronic liquid, as defined in paragraph [~~(e)~~] **(d)** of subdivision one of section [~~thirteen hundred ninety-nine-cc~~] **thirty-one** of the [~~public health~~] **tobacco, nicotine and vaping** law, unless the electronic liquid is sold or offered for sale in a child resistant bottle which is designed to prevent accidental exposure of children to electronic liquids.

§ 23. Paragraph (e) of subdivision 1 of section 73 of the public officers law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

(e) The term "regulatory agency" shall mean the department of financial services, state liquor authority, **adult-use substances authority, tobacco, nicotine and vaping authority,** department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or employees are performing duties specified in section sixty-three of the executive law.

§ 24. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.