

STATE OF NEW YORK

668

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

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

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

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

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

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

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

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

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

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20 REPEALED.

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

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

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

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

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

25 Sale of tobacco products~~[, or~~ or herbal cigarettes ~~[or electronic ciga-~~
26 ~~rettes]~~ in vending machines. No person, firm, partnership, company or
27 corporation shall operate a vending machine which dispenses tobacco
28 products~~[, or~~ or herbal cigarettes ~~[or electronic cigarettes]~~ unless such
29 machine is located:

30 § 5. Subdivisions 4 and 5 of section 1399-bb of the public health law,
31 as by amended section 4 of part EE of chapter 56 of the laws of 2020,
32 are amended to read as follows:

33 4. No retail dealer engaged in the business of selling or otherwise
34 distributing ~~[electronic cigarettes or]~~ vapor products intended or
35 reasonably expected to be used with or for the consumption of nicotine
36 for commercial purposes~~[, or any agent or employee of such person, shall~~
37 ~~knowingly, in furtherance of such business, distribute without charge~~
38 ~~any electronic cigarettes to any individual under twenty-one years of~~
39 ~~age].~~

40 5. The distribution of tobacco products~~[, electronic cigarettes,]~~ or
41 vapor products intended or reasonably expected to be used with or for
42 the consumption of nicotine, or herbal cigarettes pursuant to subdivi-
43 sion two of this section or the distribution without charge of ~~[elec-~~
44 ~~tronic cigarettes, or]~~ vapor products intended or reasonably expected to
45 be used with or for the consumption of nicotine, shall be made only to
46 an individual who demonstrates, through (a) a driver's license or non-
47 driver identification card issued by the commissioner of motor vehicles,
48 the federal government, any United States territory, commonwealth, or
49 possession, the District of Columbia, a state government within the
50 United States, or a provincial government of the dominion of Canada, (b)
51 a valid passport issued by the United States government or the govern-
52 ment of any other country, or (c) an identification card issued by the
53 armed forces of the United States, indicating that the individual is at
54 least twenty-one years of age. Such identification need not be required
55 of any individual who reasonably appears to be at least twenty-five
56 years of age; provided, however, that such appearance shall not consti-

1 tute a defense in any proceeding alleging the sale of a tobacco prod-
2 uct[~~, electronic cigarette,~~ or vapor product intended or reasonably
3 expected to be used with or for the consumption of nicotine, or herbal
4 cigarette or the distribution without charge of [~~electronic cigarettes,~~
5 ~~or~~] vapor products intended or reasonably expected to be used with or
6 for the consumption of nicotine to an individual.

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

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

22 3. Sale of tobacco products, herbal cigarettes[~~, liquid nicotine,~~ or
23 shisha [~~or electronic cigarettes~~] in such places, other than by a vend-
24 ing machine, shall be made only to an individual who demonstrates,
25 through (a) a valid driver's license or non-driver's identification card
26 issued by the commissioner of motor vehicles, the federal government,
27 any United States territory, commonwealth or possession, the District of
28 Columbia, a state government within the United States or a provincial
29 government of the dominion of Canada, or (b) a valid passport issued by
30 the United States government or any other country, or (c) an identifica-
31 tion card issued by the armed forces of the United States, indicating
32 that the individual is at least twenty-one years of age. Such identifi-
33 cation need not be required of any individual who reasonably appears to
34 be at least twenty-five years of age, provided, however, that such
35 appearance shall not constitute a defense in any proceeding alleging the
36 sale of a tobacco product, herbal cigarettes[~~, liquid nicotine,~~ or
37 shisha [~~or electronic cigarettes~~] to an individual under twenty-one
38 years of age.

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

51 § 7. This act shall take effect immediately.