

# 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 aware-  
ness 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 Assem-  
bly, do enact as follows:

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

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

5 ARTICLE 1  
6 SHORT TITLE; DEFINITIONS

7 Section 1. Short title.

8 2. Definitions.

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

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

15 1. "Bar" means any area, including outdoor seating areas, devoted to  
16 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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1 and where the service of food is only incidental to the consumption of  
2 such beverages.

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

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

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

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

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

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

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

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

36 10. "Retail electronic cigarette store" means a retail store devoted  
37 primarily to the sale of electronic cigarettes, and in which the sale of  
38 other products is merely incidental. The sale of such other products  
39 shall be considered incidental if such sales generate less than twenty-  
40 five percent of the total annual gross sales.

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

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

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

53 14. "Tobacco products" means one or more cigarettes or cigars, bidis,  
54 chewing tobacco, powdered tobacco, nicotine water or any other tobacco  
55 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

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

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

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

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

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

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

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

52 6. To limit or prohibit, at any time of public emergency and without  
53 previous notice or advertisement, the cultivation, processing, distrib-  
54 ution or sale of any or all tobacco, nicotine, and vaping products, for  
55 and during the period of such emergency.

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

6 8. To appoint any necessary directors, deputies, counsels, assistants,  
7 investigators, and other employees within the limits provided by appro-  
8 priation. Directors, deputies and counsels, including the chief equity  
9 officer, shall be in the exempt class of the civil service. The other  
10 assistants, investigators and employees of the authority shall all be in  
11 the competitive class of the civil service and shall be considered for  
12 purposes of article fourteen of the civil service law to be public  
13 employees of the state, and shall be assigned to the appropriate  
14 bargaining unit. Investigators so employed by the authority shall be  
15 deemed to be peace officers only for the purposes of enforcing the  
16 provisions of this chapter or judgments or orders obtained for violation  
17 thereof, with all the powers set forth in section 2.20 of the criminal  
18 procedure law. Employees transferred to the authority shall be trans-  
19 ferred without further examination or qualification to the same or simi-  
20 lar titles and shall remain in the same collective bargaining units and  
21 shall retain their respective civil service classifications, status and  
22 rights pursuant to their collective bargaining units and collective  
23 bargaining agreements. Employees serving in positions in newly created  
24 titles shall be assigned to the appropriate collective bargaining unit  
25 as they would have been assigned to were such titles created prior to  
26 the establishment of the tobacco, nicotine and vaping authority. Any  
27 action taken under this subdivision shall be subject to and in accord-  
28 ance with the civil service law.

29 9. To inspect or provide authorization for the inspection at any time  
30 of any premises where tobacco, nicotine, and vaping products are culti-  
31 vated, processed, stored, distributed or sold.

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

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

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

41 13. To develop and establish minimum criteria for certifying employees  
42 to work in the tobacco, nicotine, and vaping products industry in posi-  
43 tions requiring advanced training and education.

44 14. To enter into contracts, memoranda of understanding, and agree-  
45 ments as deemed appropriate to effectuate the policy and purpose of this  
46 chapter.

47 15. If public health, safety, or welfare imperatively requires emer-  
48 gency action, and incorporates a finding to that effect in an order,  
49 summary suspension of a license may be ordered, effective on the date  
50 specified in such order or upon service of a certified copy of such  
51 order on the licensee, whichever shall be later, pending proceedings for  
52 revocation or other action. These proceedings shall be promptly insti-  
53 tuted and determined. In addition, the authority may be directed to  
54 order the administrative seizure of product, issue a stop order, or take  
55 any other action necessary to effectuate and enforce the policy and  
56 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-



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

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

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

23 3. The chairperson shall distribute such monies as are made available  
24 for such purpose to enforcement officers and, in so doing, consider the  
25 number of licensed vapor products dealers and retail locations regis-  
26 tered to sell tobacco products within the jurisdiction of the enforce-  
27 ment officer and the level of proposed activities.

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

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

39 6. The chairperson shall submit to the adult-use substances authority,  
40 the governor and the legislature an annual tobacco and vapor products,  
41 intended or reasonably expected to be used with or for the consumption  
42 of nicotine, a control report which shall describe the extent of the use  
43 of tobacco products and vapor products, intended or reasonably expected  
44 to be used with or for the consumption of nicotine, by those under twen-  
45 ty-one years of age in the state and document the progress state and  
46 local governments have made in reducing such use among those under twen-  
47 ty-one years of age. The annual report shall be submitted to the gover-  
48 nor and the legislature on or before March thirty-first of each year.  
49 The annual report shall, to the extent practicable, include the follow-  
50 ing information on a county by county basis:

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

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

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

1 (d) the number of fires caused or believed to be caused by tobacco  
2 products and vapor products, intended or reasonably expected to be used  
3 with or for the consumption of nicotine, and deaths and injuries result-  
4 ing therefrom;

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

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

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

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

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

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

21 (k) the number of cigarette vending machines;

22 (l) the number and type of compliance checks;

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

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

27 7. The annual tobacco and vapor product, intended or reasonably  
28 expected to be used with or for the consumption of nicotine, control  
29 report shall, to the extent practicable, include the following informa-  
30 tion:

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

37 (b) recommendations for improving tobacco and vapor product, intended  
38 or reasonably expected to be used with or for the consumption of nico-  
39 tine, control efforts in the state; and

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

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

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

1 used with or for the consumption of nicotine, education programs admin-  
2 istered by the department of health.

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

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

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

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

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

### 29 ARTICLE 3

#### 30 REGULATION OF TOBACCO PRODUCTS, HERBAL CIGARETTES AND SMOKING 31 PARAPHERNALIA; DISTRIBUTION TO MINORS

32 Section 30. Distribution of tobacco products, vapor products, or herbal  
33 cigarettes without charge.

34 31. Sale of tobacco products, herbal cigarettes, liquid nico-  
35 tine, shisha, rolling papers or smoking paraphernalia to  
36 minors prohibited.

37 32. Sale of tobacco products, herbal cigarettes or electronic  
38 cigarettes in vending machines.

39 33. Public display of tobacco product and electronic cigarette  
40 advertisements and smoking paraphernalia prohibited.

41 34. Hearings; penalties.

42 35. Enforcement.

43 36. Out-of-package sales and minimum package sizes.

44 37. Unlawful shipment or transport of cigarettes and vapor  
45 products.

46 38. Sale of bidis prohibited.

47 39. Sale of gutka prohibited.

48 40. Sale of flavored products prohibited.

49 41. Sale in pharmacies.

50 42. Carrier oils.

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

1 cigarettes for commercial purposes, or any agent or employee of such  
2 retail dealer, or any agent or employee of a retail dealer, shall know-  
3 ingly, in furtherance of such business:

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

12 (b) distribute price reduction instruments which are redeemable for  
13 tobacco products, vapor products intended or reasonably expected to be  
14 used with or for the consumption of nicotine, or herbal cigarettes to  
15 any individual, provided that this subdivision shall not apply to  
16 coupons contained in newspapers, magazines or other types of publica-  
17 tions, coupons obtained through the purchase of tobacco products, vapor  
18 products intended or reasonably expected to be used with or for the  
19 consumption of nicotine, or herbal cigarettes or obtained at locations  
20 which sell tobacco products, vapor products intended or reasonably  
21 expected to be used with or for the consumption of nicotine, or herbal  
22 cigarettes provided that such distribution is confined to a designated  
23 area or to coupons sent through the mail.

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

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

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

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

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

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

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

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

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

12 (d) bars;

13 (e) tobacco businesses; and

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

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

22 5. No retail dealer engaged in the business of selling or otherwise  
23 distributing electronic cigarettes or vapor products intended or reason-  
24 ably expected to be used with or for the consumption of nicotine for  
25 commercial purposes, or any agent or employee of such person, shall  
26 knowingly, in furtherance of such business, distribute without charge  
27 any electronic cigarettes to any individual under twenty-one years of  
28 age.

29 6. The distribution of tobacco products, electronic cigarettes, vapor  
30 products intended or reasonably expected to be used with or for the  
31 consumption of nicotine, or herbal cigarettes pursuant to subdivision  
32 three of this section or the distribution without charge of electronic  
33 cigarettes, or vapor products intended or reasonably expected to be used  
34 with or for the consumption of nicotine, shall be made only to an indi-  
35 vidual who demonstrates, through (a) a driver's license or non-driver  
36 identification card issued by the commissioner of motor vehicles, the  
37 federal government, any United States territory, commonwealth, or  
38 possession, the District of Columbia, a state government within the  
39 United States, or a provincial government of the dominion of Canada, (b)  
40 a valid passport issued by the United States government or the govern-  
41 ment of any other country, or (c) an identification card issued by the  
42 armed forces of the United States, indicating that the individual is at  
43 least twenty-one years of age. Such identification need not be required  
44 of any individual who reasonably appears to be at least twenty-five  
45 years of age; provided, however, that such appearance shall not consti-  
46 tute a defense in any proceeding alleging the sale of a tobacco product,  
47 electronic cigarette, vapor product intended or reasonably expected to  
48 be used with or for the consumption of nicotine, or herbal cigarette or  
49 the distribution without charge of electronic cigarettes, or vapor  
50 products intended or reasonably expected to be used with or for the  
51 consumption of nicotine to an individual.

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

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

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

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

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

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

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

29 3. Sale of tobacco products, herbal cigarettes, liquid nicotine,  
30 shisha or electronic cigarettes in such places, other than by a vending  
31 machine, shall be made only to an individual who demonstrates, through  
32 (a) a valid driver license or non-driver identification card issued by  
33 the commissioner of motor vehicles, the federal government, any United  
34 States territory, commonwealth or possession, the District of Columbia,  
35 a state government within the United States or a provincial government  
36 of the dominion of Canada, or (b) a valid passport issued by the United  
37 States government or any other country, or (c) an identification card  
38 issued by the armed forces of the United States, indicating that the  
39 individual is at least twenty-one years of age. Such identification need  
40 not be required of any individual who reasonably appears to be at least  
41 twenty-five years of age, provided, however, that such appearance shall  
42 not constitute a defense in any proceeding alleging the sale of a tobac-  
43 co product, herbal cigarettes, liquid nicotine, shisha or electronic  
44 cigarettes to an individual under twenty-one years of age.

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

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

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

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

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

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

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

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

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

7 § 33. Public display of tobacco product and electronic cigarette  
8 advertisements and smoking paraphernalia prohibited. 1. For purposes of  
9 this section "advertisement" means words, pictures, photographs,  
10 symbols, graphics or visual images of any kind, or any combination ther-  
11 eof, which bear a health warning required by federal statute, the  
12 purpose or effect of which is to identify a brand of a tobacco product,  
13 electronic cigarette, or vapor product intended or reasonably expected  
14 to be used with or for the consumption of nicotine, a trademark of a  
15 tobacco product, electronic cigarette, or vapor product intended or  
16 reasonably expected to be used with or for the consumption of nicotine  
17 or a trade name associated exclusively with a tobacco product, electron-  
18 ic cigarette, or vapor product intended or reasonably expected to be  
19 used with or for the consumption of nicotine or to promote the use or  
20 sale of a tobacco product, electronic cigarette, or vapor product  
21 intended or reasonably expected to be used with or for the consumption  
22 of nicotine.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (5) means of identifying fraudulent identification of attempted under-  
10 age purchasers;

11 (6) techniques used to refuse a sale;

12 (7) the penalties arising out of unlawful sales to underage individ-  
13 uals; and

14 (8) the significant disciplinary action or loss of employment that may  
15 be imposed by the retail dealer for a violation of the law or a devi-  
16 ation from the policies of the retail dealer in respect to compliance  
17 with such law.

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

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

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

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

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

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

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

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

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

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

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

1 intended or reasonably expected to be used with or for the consumption  
2 of nicotine to any person in this state who is not: (a) a person that  
3 receives a certificate of registration as a vapor products dealer under  
4 article twenty-eight-C of the tax law; (b) an export warehouse proprie-  
5 tor pursuant to chapter 52 of the internal revenue code or an operator  
6 of a customs bonded warehouse pursuant to section 1311 or 1555 of title  
7 19 of the United States Code; or (c) a person who is an officer, employ-  
8 ee or agent of the United States government, this state or a department,  
9 agency, instrumentality or political subdivision of the United States or  
10 this state and presents himself or herself as such, when such person is  
11 acting in accordance with his or her official duties. For purposes of  
12 this subdivision, a person is a licensed or registered agent or dealer  
13 described in paragraph (a) of this subdivision if his or her name  
14 appears on a list of licensed or registered agents or vapor product  
15 dealers published by the department of taxation and finance, or if such  
16 person is licensed or registered as an agent or dealer under article  
17 twenty-eight-C of the tax law.

18 3. It shall be unlawful for any common or contract carrier to know-  
19 ingly transport cigarettes to any person in this state reasonably believed  
20 by such carrier to be other than a person described in paragraph (a),  
21 (b) or (c) of subdivision one of this section. For purposes of the  
22 preceding sentence, if cigarettes are transported to a home or resi-  
23 dence, it shall be presumed that the common or contract carrier knew  
24 that such person was not a person described in paragraph (a), (b) or (c)  
25 of subdivision one of this section. It shall be unlawful for any other  
26 person to knowingly transport cigarettes to any person in this state,  
27 other than to a person described in paragraph (a), (b) or (c) of subdivi-  
28 sion one of this section. Nothing in this subdivision shall be  
29 construed to prohibit a person other than a common or contract carrier  
30 from transporting not more than eight hundred cigarettes at any one time  
31 to any person in this state. It shall be unlawful for any common or  
32 contract carrier to knowingly transport vapor products intended or  
33 reasonably expected to be used with or for the consumption of nicotine  
34 to any person in this state reasonably believed by such carrier to be  
35 other than a person described in paragraph (a), (b) or (c) of subdivi-  
36 sion two of this section. For purposes of the preceding sentence, if  
37 vapor products intended or reasonably expected to be used with or for  
38 the consumption of nicotine are transported to a home or residence, it  
39 shall be presumed that the common or contract carrier knew that such  
40 person was not a person described in paragraph (a), (b) or (c) of subdivi-  
41 sion two of this section. It shall be unlawful for any other person to  
42 knowingly transport vapor products intended or reasonably expected to be  
43 used with or for the consumption of nicotine to any person in this  
44 state, other than to a person described in paragraph (a), (b) or (c) of  
45 subdivision two of this section. Nothing in this subdivision shall be  
46 construed to prohibit a person other than a common or contract carrier  
47 from transporting vapor products, provided that the amount of vapor  
48 products intended or reasonably expected to be used with or for the  
49 consumption of nicotine shall not exceed the lesser of five hundred  
50 milliliters, or a total nicotine content of three grams at any one time  
51 to any person in this state.

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

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

6 5. Whenever a police officer designated in section 1.20 of the crimi-  
7 nal procedure law or a peace officer designated in subdivision four of  
8 section 2.10 of such law, acting pursuant to his or her special duties,  
9 shall discover any cigarettes or vapor products intended or reasonably  
10 expected to be used with or for the consumption of nicotine which have  
11 been or which are being shipped or transported in violation of this  
12 section, such person is hereby empowered and authorized to seize and  
13 take possession of such cigarettes or vapor products intended or reason-  
14 ably expected to be used with or for the consumption of nicotine, and  
15 such cigarettes or vapor products intended or reasonably expected to be  
16 used with or for the consumption of nicotine shall be subject to a  
17 forfeiture action pursuant to the procedures provided for in article  
18 thirteen-A of the civil practice law and rules, as if such article  
19 specifically provided for forfeiture of cigarettes or vapor products  
20 intended or reasonably expected to be used with or for the consumption  
21 of nicotine seized pursuant to this section as a pre-conviction forfei-  
22 ture crime.

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

35 7. The attorney general may bring an action to recover the civil  
36 penalties provided by subdivision six of this section and for such other  
37 relief as may be deemed necessary. In addition, the corporation counsel  
38 of any political subdivision that imposes a tax on cigarettes or vapor  
39 products intended or reasonably expected to be used with or for the  
40 consumption of nicotine may bring an action to recover the civil penal-  
41 ties provided by subdivision six of this section and for such other  
42 relief as may be deemed necessary with respect to any cigarettes or  
43 vapor products intended or reasonably expected to be used with or for  
44 the consumption of nicotine shipped, caused to be shipped or transported  
45 in violation of this section to any person located within such political  
46 subdivision. All civil penalties obtained in any such action shall be  
47 retained by the state or political subdivision bringing such action,  
48 provided that no person shall be required to pay civil penalties to both  
49 the state and a political subdivision with respect to the same violation  
50 of this section.

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

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

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

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

12 (c) Sales of bidis by a tobacco business shall be made only to an  
13 individual who demonstrates, through a driver's license or other non-  
14 driver identification card issued by a government entity or educational  
15 institution indicating that the individual is at least twenty-one years  
16 of age. Such identification need not be required of any individual who  
17 reasonably appears to be at least twenty-five years of age, provided,  
18 however, that such appearance shall not constitute a defense in any  
19 proceeding alleging the sale of a tobacco product to an individual under  
20 twenty-one years of age.

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

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

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

44 (e) A tobacco business or agent or employee of such business shall  
45 only use a device capable of deciphering any electronically readable  
46 format, and shall only use the information recorded and maintained  
47 through the use of such devices, for the purposes contained in paragraph  
48 (d) of this subdivision. No tobacco business or agent or employee of  
49 such business shall resell or disseminate the information recorded  
50 during such a scan to any third person. Such prohibited resale or  
51 dissemination includes but is not limited to any advertising, marketing  
52 or promotional activities. Notwithstanding the restrictions imposed by  
53 this paragraph, such records may be released pursuant to a court ordered  
54 subpoena or pursuant to any other statute that specifically authorizes  
55 the release of such information. Each violation of this paragraph shall  
56 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

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

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

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

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

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

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

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



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

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

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

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

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

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

47 3. The provisions of this section shall not apply where preempted by  
48 federal law. Furthermore, the provisions of this section shall be sever-  
49 able, and if any phrase, clause, sentence, or provision is declared to  
50 be invalid, or is preempted by federal law or regulation, the validity  
51 of the remainder of this section shall not be affected thereby. If any  
52 provision of this section is declared to be inapplicable to any specific  
53 category, type, or kind of carrier oil, the provisions of this section  
54 shall nonetheless continue to apply with respect to all other carrier  
55 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

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

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

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

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

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

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

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

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

44 (a) manufacturers cigarettes anywhere that such manufacturer intends  
45 to be sold in the United States, including cigarettes intended to be  
46 sold in the United States through an importer (except where such import-  
47 er is an original participating manufacturer (as that term is defined in  
48 the master settlement agreement) that will be responsible for the  
49 payments under the master settlement agreement with respect to such  
50 cigarettes as a result of the provisions of subsections II(mm) of the  
51 master settlement agreement and that pays the taxes specified in  
52 subsection II(z) of the master settlement agreement, and provided that  
53 the manufacturer of such cigarettes does not market or advertise such  
54 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;

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

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

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

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

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

26 (c) Each tobacco product manufacturer that elects to place funds into  
27 escrow pursuant to this subdivision shall annually certify to the attor-  
28 ney general that it is in compliance with this subdivision. The attor-  
29 ney general may bring a civil action on behalf of the state against any  
30 tobacco product manufacturer that fails to place into escrow the funds  
31 required under this subdivision. Any tobacco product manufacturer that  
32 fails in any year to place into escrow the funds required under this  
33 subdivision shall:

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

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

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

53 Each failure to make an annual deposit required under this subdivision  
54 shall constitute a separate violation, and the tobacco product manufac-  
55 turer shall be required to pay the state's costs and attorneys' fees  
56 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,

1 the member designated as acting chairperson shall no longer be able to  
2 serve as acting chairperson and the governor is prohibited from extend-  
3 ing the powers of that acting chairperson or from designating another  
4 member to serve as acting chairperson.

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

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

15 § 827-f. Officers; employees; offices. The counsel, secretary, chief  
16 executive officer, assistant chief executive officers, confidential  
17 secretaries to the chairperson and deputies shall be in the exempt class  
18 of the civil service. The other assistants and employees of the adult-  
19 use substances authority shall all be in the competitive class of the  
20 civil service. The adult-use substances authority shall have its prin-  
21 cipal office in the city of Albany, and may maintain a branch office in  
22 the cities of New York and Buffalo and such other places as the chair-  
23 person may deem necessary.

24 § 827-g. Disqualifications of members and employees of the adult-use  
25 substances authority. No member of the adult-use substances authority  
26 or any officer, deputy, assistant, inspector or employee thereof shall  
27 have any interest, direct or indirect, either proprietary or by means of  
28 any loan, mortgage or lien, or in any other manner, in or on any prem-  
29 ises where alcoholic beverages, tobacco products, nicotine products,  
30 cannabis products or vaping products are manufactured or sold; nor shall  
31 he or she have any interest, direct or indirect, in any business wholly  
32 or partially devoted to the manufacture, sale, transportation or storage  
33 of alcoholic beverages, tobacco products, nicotine products, cannabis  
34 products or vaping products or own any stock in any corporation which  
35 has any interest, proprietary or otherwise, direct or indirect, in any  
36 premises where alcoholic beverages, tobacco products, nicotine products,  
37 cannabis products or vaping products are manufactured or sold, or in any  
38 business wholly or partially devoted to the manufacture, sale, transpor-  
39 tation or storage of alcoholic beverages, tobacco products, nicotine  
40 products, cannabis products or vaping products or receive any commission  
41 or profit whatsoever, direct or indirect, from any person applying for  
42 or receiving any license or permit provided for in the laws of the state  
43 related to such alcoholic beverages or products, or hold any other  
44 public office in the state or in any political subdivision except upon  
45 the written permission of the adult-use substances authority, such  
46 member of the adult-use substances authority or officer, deputy, assist-  
47 ant, inspector or employee thereof may hold the public office of notary  
48 public or member of a community board of education in the city school  
49 district of the city of New York. Any person who violates any of the  
50 provisions of this section shall be removed.

51 § 827-h. Powers of the adult-use substances authority. The adult-use  
52 substances authority shall have the following functions, powers and  
53 duties to:

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

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

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

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

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

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

21 7. Approve or refuse to approve any rules and regulations for stand-  
22 ards of production in order to ensure the use of proper ingredients and  
23 methods in the production of any alcoholic beverages, tobacco products,  
24 nicotine products, cannabis products or vaping products to be sold or  
25 consumed in the state.

26 8. Hold hearings, subpoena witnesses, compel their attendance, admin-  
27 ister oaths, to examine any person under oath and in connection there-  
28 with to require the production of any books or papers relative to the  
29 inquiry. A subpoena issued under this section shall be regulated by the  
30 civil practice law and rules.

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

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

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

42 § 827-i. Powers and duties of the chairperson. The chairperson shall  
43 have the following functions, powers and duties to:

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

48 2. Preside at all meetings of the adult-use substances authority and  
49 perform the administrative functions of the adult-use substances author-  
50 ity.

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

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



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

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

13 6. Inspect or provide for the inspection of any premises where alco-  
14 holic beverages, tobacco products, nicotine products, cannabis products  
15 or vaping products are manufactured or sold.

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

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

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

29 § 827-j. Oath of office. Each member of the adult-use substances  
30 authority shall, before entering upon his or her duties, take and file  
31 an oath of office as prescribed by section ten of the public officers  
32 law.

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

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

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

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

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

18 § 5. Paragraph (c) of subdivision 1 of section 169 of the executive  
19 law, as amended by section 9 of part A of chapter 60 of the laws of  
20 2012, is amended to read as follows:

21 (c) commissioner of agriculture and markets, commissioner of [~~alcohol-~~  
22 ~~ism and substance abuse services~~] the office of addiction services and  
23 supports, adjutant general, commissioner and president of state civil  
24 service commission, commissioner of economic development, chair of the  
25 energy research and development authority, president of higher education  
26 services corporation, commissioner of motor vehicles, member-chair of  
27 board of parole, chair of public employment relations board, secretary  
28 of state, commissioner of [~~alcoholism and substance abuse services~~] the  
29 office of addiction services and supports, executive director of the  
30 housing finance agency, commissioner of housing and community renewal,  
31 executive director of state insurance fund, commissioner-chair of state  
32 liquor authority, chair of the workers' compensation board, chairperson  
33 of the adult-use substances authority, chairperson of the tobacco, nico-  
34 tine and vaping authority;

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

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

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

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

52 The provisions of this subdivision shall not affect any restriction  
53 upon the activities of persons licensed by the state liquor authority or  
54 the tobacco, nicotine and vaping authority with respect to persons under  
55 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

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

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

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

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

19 § 1399-bb. Electronic cigarette and vaping prevention, awareness and  
20 control program. The commissioner shall, in consultation and collab-  
21 oration with the commissioner of education and the chairperson of the  
22 tobacco, nicotine and vaping authority, establish and develop an elec-  
23 tronic cigarette and vaping prevention, control and awareness program  
24 within the department. Such program shall be designed to educate  
25 students, parents and school personnel about the health risks associated  
26 with vapor product use and control measures to reduce the prevalence of  
27 vaping, particularly among persons less than twenty-one years of age.  
28 Such program shall include, but not be limited to, the creation of age-  
29 appropriate instructional tools and materials that may be used by all  
30 schools, and marketing and advertising materials to discourage electron-  
31 ic cigarette use.

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

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

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

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

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

48 1. The state cannabis advisory board or "advisory board" is estab-  
49 lished within the office of cannabis management and directed to work in  
50 collaboration with the adult-use substances authority, the cannabis  
51 control board and the executive director to advise and issue recommenda-  
52 tions on the use of medical cannabis, adult-use cannabis and cannabinoid  
53 hemp and hemp extract in the state of New York, and shall govern and  
54 administer the New York state community grants reinvestment fund pursu-  
55 ant 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 ee]~~ 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-ee]~~ 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.