

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.

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

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

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

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

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

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

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

24 22. "Electronic cigarette" or "e-cigarette" means an electronic device
25 that delivers vapor which is inhaled by an individual user, and shall
26 include any refill, cartridge and any other component of such a device.

27 23. "Price reduction instrument" means any coupon, voucher, rebate,
28 card, paper, note, form, statement, ticket, image, or other issue,
29 whether in paper, digital, or any other form, used for commercial
30 purposes to receive an article, product, service, or accommodation with-
31 out charge or at a discounted price.

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

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

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

52 27. "Vapor products dealer" means a person licensed by the commission-
53 er of taxation and finance to sell vapor products in this state.

54 28. "Smoking paraphernalia" means any pipe, water pipe, hookah, roll-
55 ing papers, electronic cigarette, vaporizer or any other device, equip-
56 ment or apparatus designed for the inhalation of tobacco or nicotine.

ARTICLE 2

TOBACCO, NICOTINE AND VAPING AUTHORITY

1 Section 10. Tobacco, nicotine and vaping authority.

2 11. Appointment of authority.

3 12. Expenses.

4 13. Removal.

5 14. Vacancies; quorum.

6 15. Officers; employees; offices.

7 16. Disqualification of members and employees of authority.

8 17. Powers and duties of the authority.

9 18. Powers and duties of the chairperson.

10 19. Oath of office.

11 § 10. Tobacco, nicotine and vaping authority. There is hereby estab-
12 lished, within the adult-use substances authority, the tobacco, nicotine
13 and vaping authority, which shall have jurisdiction to exercise the
14 powers and duties provided by this chapter. The authority shall exercise
15 its powers by and through a chairperson. The terms "tobacco, nicotine
16 and vaping authority" or "authority", wherever occurring in any of the
17 provisions of this chapter shall hereafter mean and refer to the tobac-
18 co, nicotine and vaping authority provided for in this section.

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

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

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

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

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

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

11 (b) The governor shall provide immediate written notice to the tempo-
12 rary president of the senate of the designation of a chairperson as
13 acting chairperson.

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

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

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

29 § 15. Officers; employees; offices. The authority shall have power to
30 appoint any necessary deputies, counsels, assistants, investigators, and
31 other employees within the limits provided by appropriation. Investi-
32 gators so employed by the authority shall be deemed to be peace officers
33 for the purpose of enforcing the provisions of the tobacco, nicotine and
34 vaping law or judgments or orders obtained for violation thereof, with
35 all the powers set forth in section 2.20 of the criminal procedure law.
36 The counsel, secretary, chief executive officer, assistant chief execu-
37 tive officers, confidential secretaries to the chairperson and deputies
38 shall be in the exempt class of the civil service. The other assistants,
39 investigators and employees of the authority shall all be in the compet-
40 itive class of the civil service. The authority shall have its principal
41 office in the city of Albany, and may maintain a branch office in the
42 cities of New York and Buffalo and such other places as it may deem
43 necessary.

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

50 § 16. Disqualification of members and employees of authority. No
51 member of the authority or any officer, deputy, assistant, inspector or
52 employee thereof shall have any interest, direct or indirect, either
53 proprietary or by means of any loan, mortgage or lien, or in any other
54 manner, in or on any premises where tobacco, nicotine, or vaping
55 products are manufactured or sold; nor shall he or she have any inter-
56 est, 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.

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

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

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

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

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

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

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

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

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

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

46 18. When an administrative decision is appealed by an applicant,
47 registered organization, licensee or permittee, issue a final determi-
48 nation.

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

54 20. Set price quotas or price controls.

55 21. To enter into tribal-state compacts with the New York state Indian
56 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 certifi-
44 cation. 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 thir-
49 ty-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 lyly 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.

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

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

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

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

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

26 (c) Sales of gutka by a tobacco business shall be made only to an
27 individual who demonstrates, through a driver's license or other non-
28 driver identification card issued by a government entity or educational
29 institution indicating that the individual is at least twenty-one years
30 of age. Such identification need not be required of any individual who
31 reasonably appears to be at least twenty-five years of age, provided,
32 however, that such appearance shall not constitute a defense in any
33 proceeding alleging the sale of a tobacco product to an individual under
34 twenty-one years of age.

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

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

43 (iii) In any proceeding pursuant to section thirty-four of this arti-
44 cle, it shall be an affirmative defense that such person had produced a
45 driver's license or non-driver identification card apparently issued by
46 a governmental entity, successfully completed that transaction scan, and
47 that the gutka had been sold, delivered or given to such person in
48 reasonable reliance upon such identification and transaction scan. In
49 evaluating the applicability of such affirmative defense the chairperson
50 shall take into consideration any written policy adopted and implemented
51 by the seller to effectuate the provisions of this chapter. Use of a
52 transaction scan shall not excuse any person operating a tobacco busi-
53 ness wherein gutka is sold, or the agent or employee of such person,
54 from the exercise of reasonable diligence otherwise required by this
55 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 tobac-
12 co 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);

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

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

9 10. "Units sold" means the number of individual cigarettes sold in the
10 state by the applicable tobacco product manufacturer (whether directly
11 or through a distributor, retailer or similar intermediary or interme-
12 diaries) during the year in question, as measured by excise taxes
13 collected by the state on packs bearing the excise tax stamp of the
14 state, or on roll-your-own tobacco containers. The commissioner of taxa-
15 tion and finance shall promulgate such regulations as are necessary to
16 ascertain the amount of state excise tax paid on the cigarettes and
17 roll-your-own tobacco of such tobacco product manufacturer for each
18 year. Notwithstanding any other provision of law, a failure of a ciga-
19 rette tax agent or distributor licensed pursuant to section four hundred
20 seventy-two of the tax law to provide any information required by such
21 regulations shall be deemed a violation of the regulations of the
22 commissioner of taxation and finance promulgated under article twenty of
23 the tax law. Notwithstanding any provision of law to the contrary, the
24 commissioner of taxation and finance shall provide to the attorney
25 general any information necessary for the administration and enforcement
26 of this article, including: (a) returns filed in accordance with article
27 twenty or twenty-eight of the tax law (or any other provision of the tax
28 law providing for an excise tax on cigarettes or roll-your-own tobacco);
29 and (b) in the event the chairperson is unable to ascertain the identity
30 of the applicable tobacco product manufacturer with respect to partic-
31 ular cigarettes or roll-your-own tobacco sold in the state, the number
32 and brand names of such cigarettes or roll-your-own tobacco, the identi-
33 ty of the person from whom the excise tax on such cigarettes or roll-
34 your-own tobacco was collected, and all other available information
35 relating to such cigarettes or roll-your-own tobacco, to be used by the
36 attorney general to ascertain the identity of such tobacco product
37 manufacturer and for the administration and enforcement of this article.
38 Notwithstanding any provision of law to the contrary, the attorney
39 general may redisclose any such information if necessary for the admin-
40 istration or enforcement of this chapter.

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

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

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

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

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

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

55 (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.

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

3 ARTICLE 29

4 ADULT-USE SUBSTANCES AUTHORITY

5 Section 827-a. Adult-use substances authority.

6 827-b. Appointment of the adult-use substances authority.

7 827-c. Expenses.

8 827-d. Removal.

9 827-e. Vacancies; quorum.

10 827-f. Officers; employees; offices.

11 827-g. Disqualifications of members and employees of the adult-
12 use substances authority.

13 827-h. Powers of the adult-use substances authority.

14 827-i. Powers and duties of the chairperson.

15 827-j. Oath of office.

16 § 827-a. Adult-use substances authority. There shall be established in
17 the executive department an adult-use substances authority whose members
18 shall consist of a chairperson, chairperson of the tobacco, nicotine and
19 vaping authority, chairperson of the cannabis control board and chair-
20 person of the state liquor authority.

21 § 827-b. Appointment of the adult-use substances authority. The chair-
22 person shall be appointed by the governor by and with the advice and
23 consent of the senate. The chairperson shall serve for a term of three
24 years and until his or her successor has been appointed and qualified.
25 The chairperson shall receive an annual salary established in paragraph
26 (c) of subdivision one of section one hundred sixty-nine of this chap-
27 ter, and their expenses actually and necessarily incurred in the
28 performance of their official duties, unless otherwise provided by the
29 legislature. The chairperson's spouse or minor child shall not have any
30 interest in an entity regulated by the authority.

31 § 827-c. Expenses. Each member of the adult-use substances authority
32 shall be entitled to his or her expenses actually and necessarily
33 incurred by him or her in the performance of his or her duties.

34 § 827-d. Removal. Any member of the adult-use substances authority may
35 be removed by the governor for cause after an opportunity to be heard. A
36 statement of the cause of his or her removal shall be filed by the
37 governor in the office of the secretary of state.

38 § 827-e. Vacancies; quorum. 1. In the event of a vacancy caused by the
39 death, resignation, removal or disability of a chairperson, the vacancy
40 shall be filled by the governor by and with the advice and consent of
41 the senate for the unexpired term.

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

51 (b) The governor shall provide immediate written notice to the tempo-
52 rary president of the senate of the designation of a chairperson as
53 acting chairperson.

54 (c) If (i) the governor has not nominated a successor chairperson upon
55 the expiration of the six month term or (ii) the senate does not confirm
56 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.

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

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

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

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

10 ARTICLE 13-F

11 TOBACCO USE AND VAPING AWARENESS AND PREVENTION PROGRAMS

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

14 1399-bb. Electronic cigarette and vaping prevention, awareness
15 and control program.

16 § 1399-aa. Tobacco and vapor product use prevention and control
17 program. 1. To improve the health, quality of life, and economic well-
18 being of all New York state citizens, there is hereby established within
19 the department and in consultation and collaboration with the tobacco,
20 nicotine and vaping authority a comprehensive statewide tobacco and
21 vapor product use prevention and control program.

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

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

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

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

30 (d) Nicotine cessation programs for youth and adults;

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

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

35 (g) Surveillance of smoking and vaping rates; and

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

38 Such programs shall be selected by the chairperson through an applica-
39 tion process which takes into account whether a program utilizes methods
40 recognized as effective in reducing nicotine use. Eligible applicants
41 may include, but not be limited to, a health care provider, schools, a
42 college or university, a local public health department, a public health
43 organization, a health care provider organization, association or socie-
44 ty, municipal corporation, or a professional education organization.

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

50 (b) The board shall consist of seventeen members who shall be
51 appointed as follows: nine members by the governor; three members by the
52 speaker of the assembly; three members by the temporary president of the
53 senate and one member each by the minority leader of the senate and the
54 minority leader of the assembly. Any vacancy or subsequent appointment
55 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.

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

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

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

16 2. Advisory council on underage alcohol consumption and youth
17 substance abuse. There is hereby created an advisory council on underage
18 alcohol consumption and youth substance abuse. The council shall consist
19 of twenty-one members, who are broadly representative of the various
20 groups in society which are stakeholders in the effort to combat under-
21 age alcohol consumption and youth substance abuse. Seven members shall
22 be appointed by the governor, seven members by the temporary president
23 of the senate and seven members by the speaker of the assembly. In
24 making such appointments, due consideration shall be given to the recom-
25 mendations made by representative civic, educational, legal and advocacy
26 groups and associations concerned with, or otherwise engaged in, the
27 representation of the interests of the youth of New York state. The
28 commissioner, the chairman of the state liquor authority, the chair-
29 person of the adult-use substances authority, the chairperson of the
30 tobacco, nicotine and vaping authority, the commissioner of mental
31 health, the attorney general, the temporary president of the senate and
32 the speaker of the assembly shall be ex-officio members of the council.

33 § 16. Subparagraphs (i) and (ii) of paragraph (d) of subdivision 1 of
34 section 480-a of the tax law, as added by chapter 799 of the laws of
35 1992, are amended to read as follows:

36 (i) The commissioner shall not register retail dealers or such regis-
37 tration may be cancelled or suspended by the commissioner [~~upon notifi-~~
38 ~~cation that the applicant or retail dealer has been convicted in a crim-~~
39 ~~inal proceeding of a violation of subdivision five of section 260.20 of~~
40 ~~the penal law or~~] as directed by an enforcement officer pursuant to
41 article [~~thirteen-F~~] three of the [~~public health~~] tobacco, nicotine and
42 vaping law. [~~The clerk of the court shall promptly report all criminal~~
43 ~~convictions under subdivision five of section 260.20 of the penal law to~~
44 ~~the commissioner, together with a direction to the commissioner to~~
45 ~~cancel such registration or to suspend it for a specified period of~~
46 ~~time.~~] Anything to the contrary in any law notwithstanding, retail deal-
47 ers shall have no right to a hearing under this chapter and shall have
48 no right to commence a court action or proceeding or to any other legal
49 recourse against the commissioner with respect to any action taken by
50 the commissioner under this paragraph, provided nothing herein shall be
51 construed to deny retail dealers a hearing under article [~~thirteen-F~~]
52 three of the [~~public health~~] tobacco, nicotine and vaping law or to
53 prohibit retail dealers from commencing a court action or proceeding
54 against an enforcement officer as defined in section [~~thirteen hundred~~
55 ~~ninety-nine-aa~~] two of the [~~public health~~] tobacco, nicotine and vaping
56 law.

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

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

10 1. Every tobacco product manufacturer as defined by section [~~thirteen~~
11 ~~hundred ninety nine ee~~] fifty-one of the [~~public health~~] tobacco, nico-
12 tine and vaping law whose cigarettes are sold for consumption in this
13 state shall annually certify under penalty of perjury that, as of the
14 date of such certification, such tobacco product manufacturer: (a) is a
15 participating manufacturer as defined in subdivision one of section
16 [~~thirteen hundred ninety nine pp~~] fifty-two of the [~~public health~~]
17 tobacco, nicotine and vaping law; or (b) is in full compliance with
18 subdivision two of section [~~thirteen hundred ninety nine pp~~] fifty-two
19 of the [~~public health~~] tobacco, nicotine and vaping law. Such certif-
20 ication shall be executed and delivered to the commissioner, the attor-
21 ney general and any agent who affixes New York state cigarette tax
22 stamps to cigarettes of such tobacco product manufacturer, no earlier
23 than the sixteenth day of April and no later than the thirtieth day of
24 April of each year, and shall be accompanied by a list setting forth
25 each of the cigarette brands of such tobacco product manufacturer sold
26 for consumption in New York state. Agents shall retain such certif-
27 ications for a period of five years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (e) The term "regulatory agency" shall mean the department of finan-
35 cial services, state liquor authority, adult-use substances authority,
36 tobacco, nicotine and vaping authority, department of agriculture and
37 markets, department of education, department of environmental conserva-
38 tion, department of health, division of housing and community renewal,
39 department of state, other than the division of corporations and state
40 records, department of public service, the industrial board of appeals
41 in the department of labor and the department of law, other than when
42 the attorney general or his agents or employees are performing duties
43 specified in section sixty-three of the executive law.

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