

STATE OF NEW YORK

187

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

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

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

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

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

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

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

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

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

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20 REPEALED.

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

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

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

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

12 4. No retail dealer engaged in the business of selling or otherwise
13 distributing [~~electronic cigarettes or~~] vapor products intended or
14 reasonably expected to be used with or for the consumption of nicotine
15 for commercial purposes[, ~~or any agent or employee of such person, shall~~
16 ~~knowingly, in furtherance of such business, distribute without charge~~
17 ~~any electronic cigarettes to any individual under twenty-one years of~~
18 ~~age~~].

19 5. The distribution of tobacco products[, ~~electronic cigarettes,~~ **or**
20 vapor products intended or reasonably expected to be used with or for
21 the consumption of nicotine, or herbal cigarettes pursuant to subdivi-
22 sion two of this section or the distribution without charge of [~~elec-~~
23 ~~tronic cigarettes, or~~] vapor products intended or reasonably expected to
24 be used with or for the consumption of nicotine, shall be made only to
25 an individual who demonstrates, through (a) a driver's license or non-
26 driver identification card issued by the commissioner of motor vehicles,
27 the federal government, any United States territory, commonwealth, or
28 possession, the District of Columbia, a state government within the
29 United States, or a provincial government of the dominion of Canada, (b)
30 a valid passport issued by the United States government or the govern-
31 ment of any other country, or (c) an identification card issued by the
32 armed forces of the United States, indicating that the individual is at
33 least twenty-one years of age. Such identification need not be required
34 of any individual who reasonably appears to be at least twenty-five
35 years of age; provided, however, that such appearance shall not consti-
36 tute a defense in any proceeding alleging the sale of a tobacco prod-
37 uct[, ~~electronic cigarette,~~ **or** vapor product intended or reasonably
38 expected to be used with or for the consumption of nicotine, or herbal
39 cigarette or the distribution without charge of [~~electronic cigarettes,~~
40 ~~or~~] vapor products intended or reasonably expected to be used with or
41 for the consumption of nicotine to an individual.

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

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

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

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

30 § 6. This act shall take effect immediately.