STATE OF NEW YORK

9044--B

IN ASSEMBLY

January 17, 2012

Introduced by M. of A. ROSENTHAL, RAIA, TITONE, ENGLEBRIGHT, MAISEL, GALEF, M. MILLER, CASTRO, JAFFE, BROOK-KRASNY, PERRY, LOSQUADRO, ORTIZ, ZEBROWSKI, WEPRIN, P. RIVERA, RA, MONTESANO, DUPREY, ROBINSON -- Multi-Sponsored by -- M. of A. ARROYO, BRENNAN, BURLING, CAMARA, CERETTO, CYMBROWITZ, FINCH, GLICK, GOODSELL, GOTTFRIED, MCKEVEIT, MURRAY, SWEENEY, TOBACCO, WEISENBERG -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to prohibiting the sale of electronic cigarettes to minors.

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

Section 1. The article heading of article 13-F of the public health law, as amended by chapter 508 of the laws of 2000, is amended to read as follows:

ARTICLE 13-F

REGULATION OF TOBACCO PRODUCTS [AND] HERBAL CIGARETTES AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

§ 2. Section 1399-aa of the public health law is amended by adding a new subdivision 13 to read as follows:

13. "Electronic cigarette" or "e-cigarette" means a battery-operated device that contains cartridges filled with a combination of nicotine, flavor and chemicals that are turned into vapor which is inhaled by the user.

§ 3. Subdivisions 2, 3, 4 and 7 of section 1399-cc of the public health law, as amended by chapter 131 of the laws of 2011, are amended to read as follows:

2. Any person operating a place of business wherein tobacco products, herbal cigarettes [or] shisha or electronic cigarettes, are sold or offered for sale is prohibited from selling such products, herbal cigarettes, shisha, electronic cigarettes or smoking paraphernalia to indi-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted. LBD13620-10-2
viduals under eighteen years of age, and shall post in a conspicuous
place a sign upon which there shall be imprinted the following state-
ment, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO,
SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC CIGA-
RETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER EIGH-
TEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a
white card in red letters at least one-half inch in height.

3. Sale of tobacco products, herbal cigarettes [or] shisha or elec-
tronic cigarettes in such places, other than by a vending machine, shall
be made only to an individual who demonstrates, through (a) a valid
driver's license or non-driver's identification card issued by the
commissioner of motor vehicles, the federal government, any United
States territory, commonwealth or possession, the District of Columbia,
a state government within the United States or a provincial government
of the dominion of Canada, or (b) a valid passport issued by the United
States government or any other country, or (c) an identification card
issued by the armed forces of the United States, indicating that the
individual is at least eighteen years of age. Such identification need
not be required of any individual who reasonably appears to be at least
twenty-five years of age, provided, however, that such appearance shall
not constitute a defense in any proceeding alleging the sale of a tobacco
product, herbal cigarettes [or] shisha or electronic cigarettes to
an individual under eighteen years of age.

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

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

(c) In any proceeding pursuant to section thirteen [hundred-ninety-
nine-e] hundred ninety-nine-e of this article, it shall be an affirma-
tive defense that such person had produced a driver's license or non-
driver identification card apparently issued by a governmental entity,
successfully completed that transaction scan, and that the tobacco prod-
uct or herbal cigarettes had been sold, delivered or given to such
person in reasonable reliance upon such identification and transaction
scan. In evaluating the applicability of such affirmative defense the
commissioner shall take into consideration any written policy adopted
and implemented by the seller to effectuate the provisions of this chap-
ter. Use of a transaction scan shall not excuse any person operating a
place of business wherein tobacco products, herbal cigarettes [or]
shisha or electronic cigarettes are sold, or the agent or employee of
such person, from the exercise of reasonable diligence otherwise
required by this chapter. Notwithstanding the above provisions, any
such affirmative defense shall not be applicable in any civil or crimi-
nal proceeding, or in any other forum.

7. No person operating a place of business wherein tobacco products,
herbal cigarettes [or] shisha or electronic cigarettes are sold or
offered for sale shall sell, permit to be sold, offer for sale or
display for sale any tobacco product, herbal cigarettes \[\text{or}\] shisha \[\text{or}\]
electronic cigarettes in any manner, unless such products and cigarettes
are stored for sale (a) behind a counter in an area accessible only to
the personnel of such business, or (b) in a locked container; provided,

however, such restriction shall not apply to tobacco businesses, as
defined in subdivision eight of section thirteen hundred ninety-nine-aa
of this article, and to places to which admission is restricted to
persons eighteen years of age or older.
§ 4. Section 1399-dd of the public health law, as amended by chapter
13 of the laws of 2003, is amended to read as follows:
§ 1399-dd. Sale of tobacco products \[\text{or}\] herbal cigarettes \[\text{or}\] elec-
tronic cigarettes in vending machines. No person, firm, partnership,
company or corporation shall operate a vending machine which dispenses
tobacco products \[\text{or}\] herbal cigarettes \[\text{or}\] electronic cigarettes unless
such machine is located: (a) in a bar as defined in subdivision one of
section thirteen hundred ninety-nine-n of this chapter, or the bar area
of a food service establishment with a valid, on-premises full liquor
license; (b) in a private club; (c) in a tobacco business as defined in
subdivision eight of section thirteen hundred ninety-nine-aa of this
article; or (d) in a place of employment which has an insignificant
portion of its regular workforce comprised of people under the age of
eighteen years and only in such locations that are not accessible to the
general public; provided, however, that in such locations the vending
machine is located in plain view and under the direct supervision and
control of the person in charge of the location or his or her designated
agent or employee.
§ 5. Subdivision 1 of section 1399-ff of the public health law, as
amended by chapter 508 of the laws of 2000, is amended to read as
follows:
1. Where a civil penalty for a particular incident has not been
imposed or an enforcement action regarding an alleged violation for a
particular incident is not pending under section thirteen hundred nine-
ty-nine-ee of this article, a parent or guardian of a minor to whom
tobacco products \[\text{or}\] herbal cigarettes \[\text{or}\] electronic cigarettes are
sold or distributed in violation of this article may submit a complaint
to an enforcement officer setting forth the name and address of the
alleged violator, the date of the alleged violation, the name and
address of the complainant and the minor, and a brief statement describ-
ing the alleged violation. The enforcement officer shall notify the
alleged violator by certified or registered mail, return receipt
requested, that a complaint has been submitted, and shall set a date, at
least fifteen days after the mailing of such notice, for a hearing on
the complaint. Such notice shall contain the information submitted by
the complainant.
§ 6. This act shall take effect on the first day of January next
succeeding the date on which it shall have become a law.