

A06037 Text:

S T A T E O F N E W Y O R K

6037--A

2011-2012 Regular Sessions

I N A S S E M B L Y

March 4, 2011

Introduced by M. of A. BROOK-KRASNY, P. RIVERA, JAFFEE, STEVENSON, BARRON, ORTIZ, CYMBROWITZ, N. RIVERA, COLTON -- Multi-Sponsored by -- M. of A. ABBATE, BURLING, CERETTO, CROUCH, DUPREY, FINCH, GOODELL, McKEVITT, McLAUGHLIN, MONTESANO, PHEFFER, SCHIMEL, WEISENBERG -- read once and referred to the Committee on Health -- 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 hookahs, shisha and water pipes to minors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1399-aa of the public health law is amended by
2 adding a new subdivision 12 to read as follows:
3 12. "SHISHA" MEANS ANY PRODUCT MADE PRIMARILY OF TOBACCO OR OTHER
4 LEAF, OR ANY COMBINATION THEREOF, SMOKED OR INTENDED TO BE SMOKED IN A
5 HOOKAH OR WATER PIPE.
6 S 2. Section 1399-cc of the public health law, as amended by chapter
7 508 of the laws of 2000, subdivision 3 as separately amended by chapter
8 508 of the laws of 2000 and chapter 162 of the laws of 2002, subdivision
9 7 as amended by chapter 13 of the laws of 2003, is amended to read as
10 follows:
11 S 1399-cc. Sale of tobacco products, herbal cigarettes, SHISHA, roll-
12 ing papers or [pipes] SMOKING PARAPHERNALIA to minors prohibited. 1. As
13 used in this section:
14 (a) "A device capable of deciphering any electronically readable
15 format" or "device" shall mean any commercial device or combination of
16 devices used at a point of sale or entry that is capable of reading the
17 information encoded on the bar code or magnetic strip of a driver's
18 license or non-driver identification card issued by the state commis-
19 sioner of motor vehicles;

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

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1 (b) "Card holder" means any person presenting a driver's license or
2 non-driver identification card to a licensee, or to the agent or employ-
3 ee of such licensee under this chapter; [and]

4 (c) "SMOKING PARAPHERNALIA" MEANS ANY PIPE, WATER PIPE, HOOKAH, ROLL-
5 ING PAPERS, VAPORIZER OR ANY OTHER DEVICE, EQUIPMENT OR APPARATUS
6 DESIGNED FOR THE INHALATION OF TOBACCO; AND

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

13 2. Any person operating a place of business wherein tobacco products
14 [or], herbal cigarettes OR SHISHA, are sold or offered for sale is
15 prohibited from selling such products, herbal cigarettes, [rolling
16 papers or pipes] SHISHA OR SMOKING PARAPHERNALIA to individuals under
17 eighteen years of age, and shall post in a conspicuous place a sign upon
18 which there shall be imprinted the following statement, "SALE OF CIGA-
19 RETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER
20 TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR [PIPES] SMOKING
21 PARAPHERNALIA, TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY
22 LAW." Such sign shall be printed on a white card in red letters at
23 least one-half inch in height.

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

39 4. (a) Any person operating a place of business wherein tobacco
40 products [or], herbal cigarettes OR SHISHA are sold or offered for sale
41 may perform a transaction scan as a precondition for such purchases.

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

47 (c) In any proceeding pursuant to section thirteen hundred-ninety-
48 nine-ee of this article, it shall be an affirmative defense that such
49 person had produced a driver's license or non-driver identification card
50 apparently issued by a governmental entity, successfully completed that
51 transaction scan, and that the tobacco product or herbal cigarettes had
52 been sold, delivered or given to such person in reasonable reliance upon
53 such identification and transaction scan. In evaluating the applicabil-
54 ity of such affirmative defense the commissioner shall take into consid-
55 eration any written policy adopted and implemented by the seller to

1 shall not excuse any person operating a place of business wherein tobac-
2 co products [or], herbal cigarettes OR SHISHA are sold, or the agent or
3 employee of such person, from the exercise of reasonable diligence
4 otherwise required by this chapter. Notwithstanding the above
5 provisions, any such affirmative defense shall not be applicable in any
6 civil or criminal proceeding, or in any other forum.

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

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

32 7. No person operating a place of business wherein tobacco products
33 [or], herbal cigarettes OR SHISHA are sold or offered for sale shall
34 sell, permit to be sold, offer for sale or display for sale any tobacco
35 product [or], herbal cigarettes OR SHISHA in any manner, unless such
36 products and cigarettes are stored for sale (a) behind a counter in an
37 area accessible only to the personnel of such business, or (b) in a
38 locked container; provided, however, such restriction shall not apply to
39 tobacco businesses, as defined in subdivision eight of section thirteen
40 hundred ninety-nine-aa of this article, and to places to which admission
41 is restricted to persons eighteen years of age or older.

42 S 3. This act shall take effect on the first of January next succeed-
43 ing the date on which it shall have become a law.