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§ 1399-aa. Definitions. As used in this article:

1. "Enforcement officer" means the enforcement officer designated pursuant to article thirteen-E of this chapter to enforce such article and hold hearings pursuant thereto; provided that in a city with a population of more than one million it shall also mean an officer or employee or any agency of such city that is authorized to enforce any local law of such city related to the regulation of the sale of tobacco products to minors.

2. "Food service establishment" means any area, including outdoor seating areas, in which the business is the sale of food for on-premises consumption.

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

4. "Private club" means an organization with no more than an insignificant portion of its membership comprised of people under the age of eighteen years that regularly receives dues and/or payments from its members for the use of space, facilities and services.

5. "Tobacco products" means one or more cigarettes or cigars, bidis, chewing tobacco, powdered tobacco, nicotine water or any other tobacco products.

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

7. "Bidis" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendra leaf (*diospyros exculpra*), or any other product offered to consumers as "beedies" or "bidis".

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

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

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

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

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

§ 1399-bb. Distribution of tobacco products or herbal cigarettes without charge. 1. No person engaged in the business of selling or otherwise distributing tobacco products or herbal cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business:

(a) distribute without charge any tobacco products or herbal cigarettes to any individual, provided that the distribution of a package containing tobacco products or herbal cigarettes in violation of this subdivision shall constitute a single violation without regard to the number of items in the package; or

(b) distribute coupons which are redeemable for tobacco products or herbal cigarettes to any individual, provided that this subdivision shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products or herbal cigarettes or obtained at locations which sell tobacco products or herbal cigarettes provided that such distribution is confined to a designated area or to coupons sent through the mail.

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

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

(b) conventions and trade shows; provided that the distribution is confined to designated areas generally accessible only to persons over the age of eighteen;

(c) events sponsored by tobacco or herbal cigarette manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of eighteen;

(d) bars as defined in subdivision one of section thirteen hundred ninety-nine-n of this chapter;

(e) tobacco businesses as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article;

(f) factories as defined in subdivision nine of section thirteen hundred ninety-nine-aa of this article and construction sites; provided that the distribution is confined to designated areas generally accessible only to persons over the age of eighteen.

3. No person shall distribute tobacco products or herbal cigarettes at the locations set forth in paragraphs (b), (c) and (f) of subdivision two of this section unless such person gives five days written notice to the enforcement officer.

4. The distribution of tobacco products or herbal cigarettes pursuant to subdivision two of this section shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution 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 or herbal cigarette to an individual.

§ 1399-cc. Sale of tobacco products, herbal cigarettes, shisha, rolling papers or smoking paraphernalia to minors prohibited. 1. As used in this section:

(a) "A device capable of deciphering any electronically readable format" or "device" shall mean any commercial device or combination of devices used at a point of sale or entry that is capable of reading the information encoded on the bar code or magnetic strip of a driver's license or non-driver identification card issued by the state commissioner of motor vehicles;

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

(c) "Smoking paraphernalia" means any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco; and

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

2. Any person operating a place of business wherein tobacco products, herbal cigarettes or shisha, are sold or offered for sale is prohibited from selling such products, herbal cigarettes, shisha or smoking paraphernalia to individuals under eighteen years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER EIGHTEEN 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 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 to an individual under eighteen years of age.

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

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

(c) In any proceeding pursuant to section thirteen hundred-ninety-nine-ee of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity,

successfully completed that transaction scan, and that the tobacco product 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 chapter. Use of a transaction scan shall not excuse any person operating a place of business wherein tobacco products, herbal cigarettes or shisha 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 criminal proceeding, or in any other forum.

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

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

7. No person operating a place of business wherein tobacco products, herbal cigarettes or shisha are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product, herbal cigarettes or shisha 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.

§ 1399-gg. Out-of-package sales and minimum package sizes. 1. All tobacco cigarettes sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer, or packager which bears all health warnings required by applicable law.

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

§ 1399-ii. Tobacco use prevention and control program. 1. To improve the health, quality of life, and economic well-being of all New York state citizens, there is hereby established within the department a comprehensive statewide tobacco use prevention and control program.

2. The department shall support tobacco use prevention and control activities including, but not limited to:

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

(b) School-based programs to prevent and reduce tobacco use;

(c) Marketing and advertising to discourage tobacco use;

(d) Tobacco cessation programs for youth and adults;

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

(f) Restriction of youth access to tobacco products;

(g) Surveillance of smoking rates; and

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

Such programs shall be selected by the commissioner through an application process which takes into account whether a program utilizes methods recognized as effective in reducing smoking and tobacco use. Eligible applicants may include, but not be limited to, a health care provider, schools, a college or university, a local public health department, a public health organization, a health care provider organization, association or society, or a professional education organization.

3. (a) There shall be established a tobacco use prevention and control advisory board to advise the commissioner on tobacco use prevention and control issues, including methods to prevent and reduce tobacco use in the state.

(b) The board shall consist of seventeen members who shall be appointed as follows: nine members by the governor; three members by the speaker of the assembly; three members by the temporary president of the senate and one member each by the minority leader of the senate and minority leader of the assembly. Any vacancy or subsequent appointment shall be filled in the same manner and by the same appointing authority as the original appointment. The chairperson of the board shall be designated by the governor from among the members of the board.

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

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

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