

Public Health Law

ARTICLE 13-F

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

Section 1399-aa.	Definitions.
1399-bb.	Distribution of tobacco products or herbal cigarettes without charge.
1399-cc.	Sale of tobacco products, herbal cigarettes, shisha, rolling papers or smoking paraphernalia to minors prohibited.
1399-dd.	Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines.
1399-ee.	Hearings; penalties.
1399-ff.	Enforcement.
1399-gg.	Out-of-package sales and minimum package sizes.
1399-hh.	Tobacco enforcement.
1399-ii.	Tobacco use prevention and control program.
1399-jj.	Evaluation requirements.
1399-kk.	Annual tobacco enforcement reporting.
1399-ll.	Unlawful shipment or transport of cigarettes.
1399-ll*2.	Sale of bidis prohibited.
1399-mm.	Sale of gutka prohibited.

§ 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 melanoxydon) 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.

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.

§ 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, 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 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, ELECTRONIC 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, shisha or electronic 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, 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, shisha or electronic cigarettes 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, 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 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, 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, shisha 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.

§ 1399-dd. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines. No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products, herbal cigarettes 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.

§ 1399-ee. Hearings; penalties. 1. Hearings with respect to violation of this article shall be conducted in the same manner as hearings conducted under article thirteen-E of this chapter.

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, he or she shall impose a civil penalty of a minimum of three hundred dollars, but not to exceed one thousand dollars for a first violation, and a minimum of five hundred dollars, but not to exceed one thousand five hundred dollars for each subsequent violation, unless a different penalty is otherwise provided in this article. The enforcement officer shall advise the retail dealer that upon the accumulation of three or more points pursuant to this section the department of taxation and finance shall suspend the dealer's registration. If the enforcement officer determines after a hearing that a retail dealer was selling tobacco products while their registration was suspended or permanently revoked pursuant to subdivision three or four of this section, he or she shall impose a civil penalty of twenty-five hundred dollars.

3. (a) Imposition of points. If the enforcement officer determines, after a hearing, that the retail dealer violated subdivision one of section thirteen hundred ninety-nine-cc of this article with respect to a prohibited sale to a minor, he or she shall, in addition to imposing any other penalty required or permitted pursuant to this section, assign two points to the retail dealer's record where the individual who committed the violation did not hold a certificate of completion from a state certified tobacco sales training program and one point where the retail dealer demonstrates that the person who committed the violation held a certificate of completion from a state certified tobacco sales training program.

(b) Revocation. If the enforcement officer determines, after a hearing, that a retail dealer has violated this article four times within a three year time frame he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to revoke the dealer's registration for one year.

(c) Duration of points. Points assigned to a retail dealer's record shall be assessed for a period of thirty-six months beginning on the first day of the month following the assignment of points.

(d) Reinspection. Any retail dealer who is assigned points pursuant to paragraph (a) of this subdivision shall be reinspected at least two

times a year by the enforcement officer until points assessed are removed from the retail dealer's record.

(e) Suspension. If the department determines that a retail dealer has accumulated three points or more, the department shall direct the commissioner of taxation and finance to suspend such dealer's registration for six months. The three points serving as the basis for a suspension shall be erased upon the completion of the six month penalty.

(f) Surcharge. A fifty dollar surcharge to be assessed for every violation will be made available to enforcement officers and shall be used solely for compliance checks to be conducted to determine compliance with this section.

4. (a) If the enforcement officer determines, after a hearing, that a retail dealer has violated this article while their registration was suspended pursuant to subdivision three of this section, he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to permanently revoke the dealer's registration and not permit the dealer to obtain a new registration.

(b) If the enforcement officer determines, after a hearing, that a vending machine operator has violated this article three times within a two year period, or four or more times cumulatively he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to suspend the vendor's registration for one year and not permit the vendor to obtain a new registration for such period.

5. The department shall publish a notification of the name and address of any retailer violating the provisions of this section and indicate the number of times the dealer has violated the provisions of this section. The notification shall be published in a newspaper of general circulation in the locality in which the retailer is located.

6. (a) In any proceeding pursuant to subdivision three of this section to assign points to a retail dealer's record, the retail dealer shall be assigned one point instead of two points where the retail dealer demonstrates that the person who committed the violation of section thirteen hundred ninety-nine-cc of this article held a valid certificate of completion from a state certified tobacco sales training program.

(b) A state certified tobacco sales training program shall include instruction in the following elements:

- (1) the health effects of tobacco use, especially at a young age;
- (2) the legal purchase age and the additional requirements of section thirteen hundred ninety-nine-cc of this article;
- (3) legal forms of identification and the key features thereof;
- (4) reliance upon legal forms of identification and the right to refuse sales when acting in good faith;
- (5) means of identifying fraudulent identification of attempted underage purchasers;
- (6) techniques used to refuse a sale;
- (7) the penalties arising out of unlawful sales to underage individuals; and
- (8) the significant disciplinary action or loss of employment that may be imposed by the retail dealer for a violation of the law or a deviation from the policies of the retail dealer in respect to compliance with such law.

(c) A tobacco sales training program may be given and administered by a retail dealer duly registered under section four hundred eighty-a of the tax law which operates five or more registered locations, by a trade association whose members are registered as retail dealers, by national and regional franchisors who have granted at least five franchises in the state to persons who are registered as such retail dealers by a

cooperative corporation with five or more members who are registered as retail dealers and are operating in this state, and by a wholesaler supplying fifty or more retail dealers. A person or entity administering such training program shall issue certificates of completion to persons successfully completing such a training program. Such certificates shall be prima facie evidence of the completion of such a training program by the person named therein.

(d) A certificate of completion may be issued for a period of three years, however such certificate shall be invalidated by a change in employment.

(e) Entities authorized pursuant to paragraph (c) of this subdivision to give and administer a tobacco sales training program may submit a proposed curriculum, a facsimile of any training aids and materials, and a list of training locations to the department for review. Training aids may include the use of video, computer based instruction, printed materials and other formats deemed acceptable to the department. The department shall certify programs which provide instruction in the elements set forth in paragraph (b) of this subdivision in a clear and meaningful fashion. Programs approved by the department shall be certified for a period of three years at which time an entity may reapply for certification. A non-refundable fee in the amount of three hundred dollars shall be paid to the department with each application.

§ 1399-ff. Enforcement. 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 ninety-nine-ee of this article, a parent or guardian of a minor to whom tobacco products, herbal cigarettes 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 describing 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.

2. With respect to any penalty imposed with respect to a complaint under this section, an enforcement officer other than the department shall use fifty percent of such penalty collected for educational efforts administered by the board or a local school district for the purposes of preventing adolescent tobacco use.

3. The enforcement officer shall promptly notify the commissioner of taxation and finance and the director of the division of the lottery of any determination, made after a hearing, that a violation of this article has occurred together with a direction to such commissioner and director with respect to any action to be taken concerning registration under section four hundred eighty-a of the tax law and licensing under section sixteen hundred seven of the tax law.

§ 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-hh. Tobacco enforcement. The commissioner shall develop, plan and implement a comprehensive program to reduce the prevalence of tobacco use, particularly among persons less than eighteen years of age. This program shall include, but not be limited to, support for enforcement of article thirteen-F of this chapter.

1. An enforcement officer, as defined in section thirteen hundred ninety-nine-t of this chapter, may annually, on such dates as shall be fixed by the commissioner, submit an application for such monies as are made available for such purpose. Such application shall be in such form as prescribed by the commissioner and shall include, but not be limited to, plans regarding random spot checks, including the number and types of compliance checks that will be conducted, and other activities to determine compliance with this article. Each such plan shall include an agreement to report to the commissioner: the names and addresses of tobacco retailers and vendors determined to be unlicensed, if any; the number of complaints filed against licensed tobacco retail outlets; and the names of tobacco retailers and vendors who have paid fines, or have been otherwise penalized, due to enforcement actions.

2. The commissioner shall distribute such monies as are made available for such purpose to enforcement officers and, in so doing, consider the number of retail locations registered to sell tobacco products within the jurisdiction of the enforcement officer and the level of proposed activities.

3. Monies made available to enforcement officers pursuant to this section shall only be used for local tobacco enforcement activities approved by the commissioner.

§ 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.

§ 1399-jj. Evaluation requirements. 1. The commissioner shall evaluate the effectiveness of the efforts by state and local governments to reduce the use of tobacco products among minors and adults. The principal measurements of effectiveness shall include negative attitudes toward tobacco use and reduction of tobacco use among the general population, and given target populations.

2. The commissioner shall ensure that, to the extent practicable, the most current research findings regarding mechanisms to reduce and change attitudes toward tobacco use are used in tobacco education programs administered by the department.

3. To diminish tobacco use among minors and adults, the commissioner shall ensure that, to the extent practicable, the following is achieved:

The department shall conduct an independent evaluation of the statewide tobacco use prevention and control program under section thirteen hundred ninety-nine-ii of this article. The purpose of this evaluation is to direct the most efficient allocation of state resources devoted to tobacco education and cessation to accomplish the maximum prevention and reduction of tobacco use among minors and adults. Such evaluation shall be provided to the governor, the majority leader of the senate and the speaker of the assembly on or before September first, two thousand one, and annually on or before such date thereafter. The comprehensive evaluation design shall be guided by the following:

(a) sound evaluation principles including, to the extent feasible, elements of controlled experimental methods;

(b) an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications; and

(c) an evaluation of other programs identified by state agencies, local lead agencies, and federal agencies.

§ 1399-kk. Annual tobacco enforcement reporting. The commissioner

shall submit to the governor and the legislature an interim tobacco control report and annual tobacco control reports which shall describe the extent of the use of tobacco products by minors in the state and document the progress state and local governments have made in reducing such use among minors.

1. The interim tobacco control report. The commissioner shall submit to the governor and the legislature an interim tobacco control report on or before September first, nineteen hundred ninety-eight. Such interim report shall, to the extent practicable, include the following information on a county by county basis:

- (a) number of licensed and registered tobacco retailers and vendors;
- (b) the names and addresses of retailers and vendors who have paid fines, or have been otherwise penalized, due to enforcement actions;
- (c) the number of complaints filed against licensed and registered tobacco retailers;
- (d) the number of fires caused or believed to be caused by tobacco products and deaths and injuries resulting therefrom;
- (e) the number and type of compliance checks conducted; and
- (f) such other information as the commissioner deems appropriate.

2. The commissioner shall submit to the governor and the legislature an annual tobacco control report which shall describe the extent of the use of tobacco products by minors in the state and document the progress state and local governments have made in reducing such use among minors. The annual report shall be submitted to the governor and the legislature on or before March thirty-first of each year beginning on March thirty-first, nineteen hundred ninety-nine. The annual report shall, to the extent practicable, include the following information on a county by county basis:

- (a) number of licensed and registered tobacco retailers and vendors;
- (b) the names and addresses of retailers and vendors who have paid fines, or have been otherwise penalized, due to enforcement actions;
- (c) the number of complaints filed against licensed and registered tobacco retailers;
- (d) the number of fires caused or believed to be caused by tobacco products and deaths and injuries resulting therefrom;
- (e) the number and type of compliance checks conducted;
- (f) a survey of attitudes and behaviors regarding tobacco use among minors. The initial such survey shall be deemed to constitute the baseline survey;
- (g) the number of tobacco users and estimated trends in tobacco use among minors;
- (h) annual tobacco sales;
- (i) tax revenue collected from the sale of tobacco products;
- (j) the number of licensed tobacco retail outlets;
- (k) the number of cigarette vending machines;
- (l) the number and type of compliance checks;
- (m) the names of entities that have paid fines due to enforcement actions; and
- (n) the number of complaints filed against licensed tobacco retail outlets.

The annual tobacco control report shall, to the extent practicable, include the following information: (a) tobacco control efforts sponsored by state government agencies including money spent to educate minors on the hazards of tobacco use;

- (b) recommendations for improving tobacco control efforts in the state; and
- (c) such other information as the commissioner deems appropriate.

* § 1399-11. Unlawful shipment or transport of cigarettes. 1. It shall be unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes to any person in this state who is not: (a) a person licensed as a cigarette tax agent or wholesale dealer under article twenty of the tax law or registered retail dealer under section four hundred eighty-a of the tax law; (b) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state, when such person is acting in accordance with his or her official duties. For purposes of this subdivision, a person is a licensed or registered agent or dealer described in paragraph (a) of this subdivision if his or her name appears on a list of licensed or registered agents or dealers published by the department of taxation and finance, or if such person is licensed or registered as an agent or dealer under article twenty of the tax law.

2. It shall be unlawful for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by such carrier to be other than a person described in paragraph (a), (b) or (c) of subdivision one of this section. For purposes of the preceding sentence, if cigarettes are transported to a home or residence, it shall be presumed that the common or contract carrier knew that such person was not a person described in paragraph (a), (b) or (c) of subdivision one of this section. It shall be unlawful for any other person to knowingly transport cigarettes to any person in this state, other than to a person described in paragraph (a), (b) or (c) of subdivision one of this section. Nothing in this subdivision shall be construed to prohibit a person other than a common or contract carrier from transporting not more than eight hundred cigarettes at any one time to any person in this state.

3. When a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to any person in this state, other than in the cigarette manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the word "cigarettes".

4. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes which have been or which are being shipped or transported in violation of this section, such person is hereby empowered and authorized to seize and take possession of such cigarettes, and such cigarettes shall be subject to a forfeiture action pursuant to the procedures provided for in article thirteen-A of the civil practice law and rules, as if such article specifically provided for forfeiture of cigarettes seized pursuant to this section as a pre-conviction forfeiture crime.

5. Any person who violates the provisions of subdivision one or two of this section shall be guilty of a class A misdemeanor and for a second or subsequent violation shall be guilty of a class E felony. In addition to the criminal penalty, the commissioner may impose a civil fine not to exceed five thousand dollars for each such violation on any person who violates subdivision one or two of this section. The commissioner may impose a civil fine not to exceed five thousand dollars for each violation of subdivision three of this section on any person engaged in the business of selling cigarettes who ships or causes to be shipped any such cigarettes to any person in this state.

* NB There are 2 § 1399-11's

* § 1399-11. Sale of bidis prohibited. 1. No person shall knowingly sell or provide bidis to any other person. Notwithstanding that bidis is a tobacco product, no other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of bidis. Any person who violates the provisions of this subdivision shall be subject to a civil fine of not more than five hundred dollars.

2. (a) The provisions of subdivision one of this section shall not apply to a tobacco business, as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article.

(b) Any person operating a tobacco business wherein bidis is sold or offered for sale is prohibited from selling such bidis 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 BIDIS 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.

(c) Sales of bidis by a tobacco business 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 to an individual under eighteen years of age.

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

(ii) 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.

(iii) 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 bidis 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 tobacco business wherein bidis is 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.

(e) A tobacco business or agent or employee of such business 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 paragraph (d) of this subdivision. No tobacco business or agent or employee of such business 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 paragraph, 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 paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business 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: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by section thirteen hundred ninety-nine-cc of this article.

* NB There are 2 § 1399-11's

§ 1399-mm. Sale of gutka prohibited. 1. No person shall knowingly sell or provide gutka to any other person under eighteen years of age. No other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of gutka. Any person who violates the provisions of this subdivision shall be subject to a civil penalty of not more than five hundred dollars.

2. (a) The provisions of subdivision one of this section shall not apply to a tobacco business, as defined in section thirteen hundred ninety-nine-n of this chapter.

(b) Any person operating a tobacco business wherein gutka is sold or offered for sale is prohibited from selling such gutka 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 GUTKA 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.

(c) Sales of gutka by a tobacco business 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 to an individual under eighteen years of age.

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

(ii) 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.

(iii) 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 gutka 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 tobacco business wherein gutka is 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.

(e) A tobacco business or agent or employee of such business 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 paragraph (d) of this subdivision. No tobacco business or agent or employee of such business 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 paragraph, 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 paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business 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: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by section thirteen hundred ninety-nine-cc of this article.