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

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2003-2004 Regular Sessions

S E N A T E - A S S E M B L Y

March 21, 2003

IN SENATE -- Introduced by Sens. FUSCHILLO, BALBONI, BONACIC, HANNON, LAVALLE, MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Grannis, Silver, Paulin, Gottfried, Dinowitz, Weisenberg, Ortiz, Clark, Jacobs, Hoyt, Galef, Norman, Grodenchik, Peralta, Alfano, Bacalles, Bradley, Brennan, Canestrari, Christensen, A. Cohen, Colton, Cook, L. Diaz, Eddington, Englebright, Finch, Glick, Gordon, Green, John, Koon, Lafayette, Lifton, Magnarelli, Mayersohn, McEneny, Miller, Millman, Perry, P. Rivera, Robinson, Sanders, Sidikman, Sweeney, Tonko, Towns, Weinstein) -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the education law, in relation to the regulation of smoking in certain public areas

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

1 Section 1. Section 1399-n of the public health law, as added by chap-
2 ter 244 of the laws of 1989, subdivisions 9 and 16 as added and subdivi-
3 sions 10, 11, 12, 13, 14 and 15 as renumbered by chapter 565 of the laws
4 of 1994, is amended to read as follows:

5 S 1399-n. Definitions. For purposes of this article:

6 1. {"Auditorium" means the part of a public building where an audience
7 sits but does not include any corridors, hallways or lobbies adjacent
8 thereto.

9 2.} "Bar" means any {indoor} area {open to the public}, INCLUDING
10 OUTDOOR SEATING AREAS, devoted to the sale and service of alcoholic
11 beverages for on-premises consumption and where the service of food is

12 only incidental to the consumption of such beverages. {Service of food
 13 shall be considered incidental if the food service generates less than
 14 forty percent of total annual gross sales. Any bar that generates forty

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

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1 percent or more of total annual gross sales from the sale of food for
 2 on-premises consumption shall be a food service establishment.

3 3.) 2. "Employer" {shall mean} MEANS any person, partnership, {associ-
 4 ate} ASSOCIATION, LIMITED LIABILITY COMPANY, corporation or nonprofit
 5 entity which employs one or more persons, including the legislative,
 6 executive and judicial branches of state government and any political
 7 subdivision of the state.

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

12 5.) 3. "Food service establishment" means any {indoor} area {open to
 13 the public}, INCLUDING OUTDOOR SEATING AREAS, or portion thereof in
 14 which the business is the sale of food for on-premises consumption {and
 15 which has an indoor seating capacity of greater than fifty persons
 16 including, but not limited to restaurants, cafeterias, coffee shops,
 17 diners, sandwich shops or short order cafes. A food service establish-
 18 ment shall not include the bar area of such establishment}.

19 {6. "Indoor area open to the public" means any indoor area or portion
 20 thereof generally accessible to the public.

21 7.) 4. "MEMBERSHIP ASSOCIATION" MEANS A NOT-FOR-PROFIT ENTITY WHICH
 22 HAS BEEN CREATED OR ORGANIZED FOR A CHARITABLE, PHILANTHROPIC, EDUCA-
 23 TIONAL, POLITICAL, SOCIAL OR OTHER SIMILAR PURPOSE.

24 5. "Place of employment" means any indoor area or portion thereof
 25 under the control of an employer in which employees of the employer
 26 perform services {but which is not generally accessible to the public},
 27 AND SHALL INCLUDE, BUT NOT BE LIMITED TO, OFFICES, SCHOOL GROUNDS,
 28 RETAIL STORES, BANQUET FACILITIES, THEATERS, FOOD STORES, BANKS, FINAN-
 29 CIAL INSTITUTIONS, FACTORIES, WAREHOUSES, EMPLOYEE CAFETERIAS, LOUNGES,
 30 AUDITORIUMS, GYMNASIUMS, RESTROOMS, ELEVATORS, HALLWAYS, MUSEUMS,
 31 LIBRARIES, BOWLING ESTABLISHMENTS, EMPLOYEE MEDICAL FACILITIES, ROOMS OR
 32 AREAS CONTAINING PHOTOCOPYING EQUIPMENT OR OTHER OFFICE EQUIPMENT USED
 33 IN COMMON, AND COMPANY VEHICLES.

34 {8. "Public building" means any building owned or operated by the
 35 state or any county, city, town, village or any other political subdivi-
 36 sion, public improvement or special district, public authority, commis-
 37 sion, agency or public benefit corporation; or any other separate corpo-
 38 rate instrumentality or unit of state or local government.

39 9.) 6. "School grounds" means any building, structure, and surrounding
 40 outdoor grounds contained within a public or private pre-school, nursery
 41 school, elementary or secondary school's legally defined property bound-
 42 aries as registered in a county clerk's office, and any vehicles used to
 43 transport children or school personnel.

44 {10. "Smoke-free work area" means an enclosed indoor area in a place
 45 of employment where no smoking occurs. Such area shall be clearly desig-

46 nated, and separate from any smoking area.

47 11.} 7. "RETAIL TOBACCO BUSINESS" MEANS A SOLE PROPRIETORSHIP, LIMITED
48 LIABILITY COMPANY, CORPORATION, PARTNERSHIP OR OTHER ENTERPRISE IN WHICH
49 THE PRIMARY ACTIVITY IS THE RETAIL SALE OF TOBACCO PRODUCTS AND ACCESSO-
50 RIES, AND IN WHICH THE SALE OF OTHER PRODUCTS IS MERELY INCIDENTAL.

51 8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or
52 any other matter or substance which contains tobacco.

53 {12. "Smoking area" means an enclosed indoor area in which smoking is
54 permitted. Such smoking area shall be clearly designated and separate
55 from any area in which smoking is not permitted. In a place of employ-
56 ment, the smoking area shall be separated from a smoke-free work area by

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1 walls or some other means, equally effective in reducing the effects of
2 smoke on the smoke-free work area, other than ventilation systems or air
3 cleaning devices.

4 13. "Tobacco business" means a sole proprietorship, corporation, part-
5 nership or other enterprise in which the primary activity is the sale,
6 manufacture or promotion of tobacco, tobacco products and accessories
7 either at wholesale or retail, and in which the sale, manufacture or
8 promotion of other products is merely incidental.

9 14. "Warehouse" means any building or structure used for the purpose
10 of storing merchandise or commodities.

11 15. "Work area" means an area in a place of employment where one or
12 more employees are routinely assigned and perform services for their
13 employer.

14 16. "Zoo" means any indoor area open to the public for the purpose of
15 viewing animals.}

16 S 2. Section 1399-o of the public health law, as added by chapter 244
17 of the laws of 1989, subdivisions 1 and 2 as amended and subdivision 8
18 as added by chapter 565 of the laws of 1994, is amended to read as
19 follows:

20 S 1399-o. Smoking restrictions. {1.} Smoking shall not be permitted
21 and no person shall smoke in the following indoor areas {open to the
22 public}:

23 { (a) auditoriums;

24 (b) elevators;

25 (c) gymnasiums;

26 (d)} 1. PLACES OF EMPLOYMENT;

27 2. BARS;

28 3. FOOD SERVICE ESTABLISHMENTS, EXCEPT AS PROVIDED IN SUBDIVISION SIX
29 OF SECTION THIRTEEN HUNDRED NINETY-NINE-Q OF THIS ARTICLE;

30 4. enclosed indoor areas open to the public containing a swimming
31 pool;

32 {(e) indoor areas open to the public in food stores provided, however,
33 that any separate or distinct portion or part of such establishment
34 which is dedicated to the sale of food for on-premises consumption shall
35 be governed by the provisions of subdivision five of this section;

36 (f) classrooms;

37 (g)} 5. public means of mass transportation, including subways, under-
38 ground subway stations, and when occupied by passengers, buses, vans,
39 taxicabs and limousines;

40 {(h)} 6. ticketing {and}, boarding AND WAITING areas in public trans-
41 portation terminals;

42 {(i)} 7. youth centers and facilities for detention as defined in
43 sections five hundred twenty-seven-a and five hundred three of the execu-
44 tive law;
45 {(j)} 8. any facility that provides child care services as defined in
46 section four hundred ten-p of the social services law, provided that
47 such services provided in a private home are excluded from this {para-
48 graph} SUBDIVISION WHEN CHILDREN ENROLLED IN SUCH DAY CARE ARE NOT PRES-
49 ENT;
50 {(k)} 9. child day care centers as defined in section three hundred
51 ninety of the social services law and child day care centers licensed by
52 the city of New York;
53 {(l)} 10. group homes for children as defined in section three hundred
54 seventy-one of the social services law;
55 {(m)} 11. public institutions for children as defined in section three
56 hundred seventy-one of the social services law; {and

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1 {(n)} 12. residential treatment facilities for children and youth as
2 defined in section 1.03 of the mental hygiene law{.
3 2. Except as provided in subdivisions three, four and five of this
4 section, smoking shall not be permitted and no person shall smoke in any
5 indoor area open to the public, including but not limited to any indoor
6 area open to the public in:
7 (a)};
8 13. all public and private colleges, universities and other {educa-
9 tion} EDUCATIONAL and vocational institutions;
10 {(b)} 14. general hospitals and residential health care facilities as
11 defined in article twenty-eight of this chapter, and other health care
12 facilities licensed by the state in which persons reside{, provided,
13 however, that cafeterias and lunchrooms in such facilities shall be
14 governed by the provisions of paragraph (c) of subdivision six of this
15 section;
16 (c) public buildings, provided, however, that an employee whose work
17 area is in an indoor area open to the public shall be governed by the
18 provisions of subdivision six of this section;
19 (d) theaters;
20 (e) museums;
21 (f) libraries;
22 (g) retail stores in which goods, wares or merchandise are offered for
23 sale;
24 (h)}; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL
25 NOT PROHIBIT SMOKING BY PATIENTS IN SEPARATE ENCLOSED ROOMS OF RESIDEN-
26 TIAL HEALTH CARE FACILITIES, ADULT CARE FACILITIES ESTABLISHED OR CERTI-
27 FIED UNDER TITLE TWO OF ARTICLE SEVEN OF THE SOCIAL SERVICES LAW, COMMU-
28 NITY MENTAL HEALTH RESIDENCES ESTABLISHED UNDER SECTION 41.44 OF THE
29 MENTAL HYGIENE LAW, OR FACILITIES WHERE DAY TREATMENT PROGRAMS ARE
30 PROVIDED, WHICH ARE DESIGNATED AS SMOKING ROOMS FOR PATIENTS OF SUCH
31 FACILITIES OR PROGRAMS;
32 15. commercial establishments used for the purpose of carrying on or
33 exercising any trade, profession, vocation or charitable activity;
34 {(i)} 16. indoor arenas;
35 {(j)} waiting rooms and waiting areas;
36 (k) banks and other financial institutions;
37 (l) restrooms;

38 (m) waiting areas in public transportation terminals; and
 39 (n) service areas in cafeterias and businesses selling food for
 40 on-premises and off-premises consumption; and
 41 (o)} 17. zoos{.

42 3. The owner, operator or manager of an indoor area open to the public
 43 subject to subdivision two of this section may designate a smoking area
 44 or areas. Such smoking area shall not include any of the indoor areas
 45 open to the public set forth in subdivision one of this section.

46 4. (a) The owner, operator or manager of a bowling establishment may
 47 permit smoking in the concourse area, which is the area directly behind
 48 and immediately contiguous to the bowler settee area, but shall provide
 49 a nonsmoking area constituting at least twenty-five percent of the
 50 square footage of the concourse area.

51 (b) The organizer or sponsor of}; AND

52 18. bingo {shall provide a contiguous nonsmoking area sufficient to
 53 meet patron demand. If at least fifty percent of seating capacity is
 54 designated for nonsmokers, demand shall be deemed to have been met. The
 55 organizer or sponsor may not determine that no such demand exists.

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1 Notice shall be prominently posted at each entrance stating that a
 2 nonsmoking section is available.

3 5. The owner, operator or manager of a food service establishment:

4 (a) shall designate a contiguous nonsmoking area sufficient to meet
 5 customer demand and may not determine that no such demand exists. If
 6 seventy percent of a food service establishment`s indoor seating capaci-
 7 ty for dining is designated as a nonsmoking area, then customer demand
 8 will be deemed to have been met. The designation of less than seventy
 9 percent of the indoor seating capacity for dining of a food service
 10 establishment as a nonsmoking area shall not create the presumption of
 11 noncompliance with the provisions of this subdivision;

12 (b) shall prominently post notice at each entrance advising that a
 13 nonsmoking section is available, and each patron shall be given an
 14 opportunity to state his preference; and

15 (c) may designate a separate enclosed room or rooms solely for use by
 16 smokers.

17 6. Each employer shall adopt and implement a written smoking policy.
 18 The policy shall apply only to a place of employment as defined in
 19 subdivision six of section thirteen hundred ninety-nine-n of this arti-
 20 cle and shall require at least the following:

21 (a) that employers shall provide nonsmoking employees with a smoke-
 22 free work area;

23 (b) that employers may set aside a work area for smoking if all
 24 employees assigned to the work area agree to the designation;

25 (c) that employers shall provide for contiguous nonsmoking areas in
 26 employee cafeterias, lunch rooms and lounges. The contiguous nonsmoking
 27 areas in employee cafeterias and lunchrooms shall be sufficient to meet
 28 employee demand. An employer may not determine that no such demand
 29 exists. If seventy percent of the indoor seating capacity is designated
 30 as a non-smoking area, employee demand shall be deemed to have been met.
 31 The designation of less than seventy percent of the indoor seating
 32 capacity for dining of a food service establishment as a nonsmoking area
 33 shall not create the presumption of noncompliance with the provisions of

34 this subdivision;

35 (d) that smoking shall be prohibited in auditoriums, gymnasiums, rest
36 rooms, elevators, classrooms, hallways, employee medical facilities and
37 rooms or areas which contain photocopying equipment or other office
38 equipment used in common, and in company vehicles occupied by more than
39 one person unless the occupants of such vehicle agree that smoking may
40 be permitted;

41 (e) that smoking shall be prohibited in conference rooms and meeting
42 rooms, unless everyone in that room agrees that smoking may be permit-
43 ted;

44 (f) that an employer may designate a separate enclosed room or rooms
45 not open to the public for use as a smoking area;

46 (g) that employers shall prominently post the smoking policy in the
47 workplace, and supply a written copy upon request to any existing or
48 prospective employee;

49 (h) an employer shall not be required to make any expenditures or
50 structural changes to create a smoke-free work area. In the event an
51 employer cannot, after using its best efforts, comply with an employee`s
52 request for a smoke-free work area, the employer shall designate that
53 employee`s work area as a smoke-free work area; and

54 (i) any provisions in a smoking policy that are more restrictive than
55 the minimum requirements set forth in this subdivision shall, if a

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1 collective bargaining unit exists, be subject to applicable law govern-
2 ing collective bargaining.

3 7. (a) For the purposes of this article, the employer of any place of
4 employment within the New York state senate, and the owner, operator or
5 manager of an indoor area open to the public in that portion of a public
6 building occupied by the New York state senate or any member or employee
7 thereof, shall be the temporary president of the senate or any person or
8 persons designated by the temporary president.

9 (b) For the purposes of this article, the employer of any place of
10 employment within the New York state assembly, and the owner, operator,
11 or manager of an indoor area open to the public in that portion of a
12 public building occupied by the New York state assembly or any member or
13 employee thereof, shall be the speaker of the assembly or any person or
14 persons designated by the speaker.

15 (c) For the purposes of this article, the employer of any place of
16 employment within the executive chamber of the state capitol, and the
17 owner, operator, or manager of an indoor area open to the public in that
18 portion of a public building occupied by the governor or any employee of
19 the governor`s office, shall be the governor.

20 (d) For the purposes of this article, the employer of any place of
21 employment within any state agency as defined in paragraph (g) of subdi-
22 vision one of section seventy-three of the public officers law, and the
23 owner, operator, or manager of an indoor area open to the public in that
24 portion of a public building occupied by any such agency, shall be the
25 commissioner, director, or other chief executive officer of such agency.

26 (e) For the purposes of this article, the employer of any place of
27 employment within the judiciary, and the owner, operator or manager of
28 an indoor area open to the public in that portion of a public building
29 occupied by the judiciary, or any employee thereof, shall be the chief
30 administrative judge of the office of court administration, or any

31 person or persons designated by the chief administrative judge.

32 (f) Notwithstanding section two of the public buildings law or any
33 other provision of law, the commissioner of general services shall not
34 have or exercise any supervision or control over places of employment or
35 with respect to any indoor area open to the public in that portion of a
36 public building, which are subject to the provisions of paragraph (a),
37 (b), (c), (d) or (e) of this subdivision.

38 8. Notwithstanding the provisions of any other law, rule or regu-
39 lation, tobacco use shall not be permitted and no person shall use
40 tobacco on school grounds; provided, however, that smoking by adult
41 faculty and staff members may be permitted in a designated smoking area
42 during non-school hours. For purposes of this section, school hours
43 shall include any student activity that is supervised by faculty or
44 staff, or any officially sanctioned school event} FACILITIES.

45 S 3. Subdivision 1 of section 1399-p of the public health law, as
46 added by chapter 244 of the laws of 1989, is amended to read as follows:

47 1. "Smoking" or "No Smoking" signs, or the international "No Smoking"
48 symbol, which consists of a pictorial representation of a burning ciga-
49 rette enclosed in a circle with a bar across it, shall be prominently
50 posted and properly maintained where smoking is regulated by this arti-
51 cle, by the owner, operator, manager or other person having control of
52 such {indoor} area.

53 S 4. Section 1399-q of the public health law, as added by chapter 244
54 of the laws of 1989, is amended to read as follows:

55 S 1399-q. Smoking restrictions inapplicable. This article shall not
56 apply to:

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1 1. Private homes, private residences and private automobiles;

2 2. {Any indoor area where private social functions are being held when
3 seating arrangements are under the control of the sponsor of the func-
4 tion and not the owner, operator, manager or person in charge of such
5 indoor area;

6 3. Any indoor area open to the public exclusively reserved for
7 conventions and trade shows if the sponsor or organizer gives notice in
8 any promotional material or advertisements that smoking will not be
9 restricted, and prominently posts notice at the entrance to the conven-
10 tion or trade show advising the public that smoking will not be
11 restricted;

12 4.} A hotel or motel room rented to one or more guests;

13 {5. Tobacco} 3. RETAIL TOBACCO businesses;

14 {6. Limousines under private hire by an individual or corporation;

15 7. Wholly or partially enclosed private boxes in indoor arenas; and

16 8. Bars.}

17 4. MEMBERSHIP ASSOCIATIONS; PROVIDED, HOWEVER, THAT SMOKING SHALL ONLY
18 BE ALLOWED IN MEMBERSHIP ASSOCIATIONS IN WHICH ALL OF THE DUTIES WITH
19 RESPECT TO THE OPERATION OF SUCH ASSOCIATION, INCLUDING, BUT NOT LIMITED
20 TO, THE PREPARATION OF FOOD AND BEVERAGES, THE SERVICE OF FOOD AND
21 BEVERAGES, RECEPTION AND SECRETARIAL WORK, AND THE SECURITY SERVICES OF
22 THE MEMBERSHIP ASSOCIATION ARE PERFORMED BY MEMBERS OF SUCH MEMBERSHIP
23 ASSOCIATION WHO DO NOT RECEIVE COMPENSATION OF ANY KIND FROM THE MEMBER-
24 SHIP ASSOCIATION OR ANY OTHER ENTITY FOR THE PERFORMANCE OF SUCH DUTIES;

25 5. CIGAR BARS THAT, IN THE CALENDAR YEAR ENDING DECEMBER THIRTY-FIRST,
26 TWO THOUSAND TWO, GENERATED TEN PERCENT OR MORE OF ITS TOTAL ANNUAL

27 GROSS INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF
28 ON-SITE HUMIDORS, NOT INCLUDING ANY SALES FROM VENDING MACHINES, AND IS
29 REGISTERED WITH THE APPROPRIATE ENFORCEMENT OFFICER, AS DEFINED IN
30 SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-T OF THIS ARTI-
31 CLE. SUCH REGISTRATION SHALL REMAIN IN EFFECT FOR ONE YEAR AND SHALL BE
32 RENEWABLE ONLY IF: (A) IN THE PRECEDING CALENDAR YEAR, THE CIGAR BAR
33 GENERATED TEN PERCENT OR MORE OF ITS TOTAL ANNUAL GROSS INCOME FROM THE
34 ON-SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, AND
35 (B) THE CIGAR BAR HAS NOT EXPANDED ITS SIZE OR CHANGED ITS LOCATION FROM
36 ITS SIZE OR LOCATION SINCE DECEMBER THIRTY-FIRST, TWO THOUSAND TWO;

37 6. OUTDOOR DINING AREAS OF FOOD SERVICE ESTABLISHMENTS WITH NO ROOF OR
38 OTHER CEILING ENCLOSURE; PROVIDED, HOWEVER, THAT SMOKING MAY BE PERMIT-
39 TED IN A CONTIGUOUS AREA DESIGNATED FOR SMOKING SO LONG AS SUCH AREA:
40 (A) CONSTITUTES NO MORE THAN TWENTY-FIVE PERCENT OF THE OUTDOOR SEATING
41 CAPACITY OF SUCH FOOD SERVICE ESTABLISHMENT, (B) IS AT LEAST THREE FEET
42 AWAY FROM THE OUTDOOR AREA OF SUCH FOOD SERVICE ESTABLISHMENT NOT DESIG-
43 NATED FOR SMOKING, AND (C) IS CLEARLY DESIGNATED WITH WRITTEN SIGNAGE AS
44 A SMOKING AREA; AND

45 7. ENCLOSED ROOMS IN FOOD SERVICE ESTABLISHMENTS, BARS, CATERING
46 HALLS, CONVENTION HALLS, HOTEL AND MOTEL CONFERENCE ROOMS, AND OTHER
47 SUCH SIMILAR FACILITIES DURING THE TIME SUCH ENCLOSED AREAS OR ROOMS ARE
48 BEING USED EXCLUSIVELY FOR FUNCTIONS WHERE THE PUBLIC IS INVITED FOR THE
49 PRIMARY PURPOSE OF PROMOTING AND SAMPLING TOBACCO PRODUCTS, AND THE
50 SERVICE OF FOOD AND DRINK IS INCIDENTAL TO SUCH PURPOSE, PROVIDED THAT
51 THE SPONSOR OR ORGANIZER GIVES NOTICE IN ANY PROMOTIONAL MATERIAL OR
52 ADVERTISEMENTS THAT SMOKING WILL NOT BE RESTRICTED, AND PROMINENTLY
53 POSTS NOTICE AT THE ENTRANCE OF THE FACILITY AND HAS PROVIDED NOTICE OF
54 SUCH FUNCTION TO THE APPROPRIATE ENFORCEMENT OFFICER, AS DEFINED IN
55 SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-T OF THIS ARTI-
56 CLE, AT LEAST TWO WEEKS PRIOR TO SUCH FUNCTION. THE ENFORCEMENT OFFICER

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1 SHALL KEEP A RECORD OF ALL TOBACCO SAMPLING EVENTS, AND SUCH RECORD
2 SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION. NO SUCH FACILITY SHALL
3 PERMIT SMOKING UNDER THIS SUBDIVISION FOR MORE THAN TWO DAYS IN ANY
4 CALENDAR YEAR.

5 S 5. Section 1399-s of the public health law, as added by chapter 244
6 of the laws of 1989, is amended to read as follows:

7 S 1399-s. Violations. 1. It shall be unlawful for any person, firm,
8 LIMITED LIABILITY COMPANY, corporation or other entity that owns,
9 manages, operates or otherwise controls the use of an {indoor} area
10 {open to the public} in which smoking is prohibited or restricted pursu-
11 ant to section thirteen hundred ninety-nine-o of this article to fail to
12 comply with the provisions of this article. For violations of this
13 subdivision, it shall be an affirmative defense that during the relevant
14 time period actual control of the {indoor} area {open to the public} was
15 not exercised by the respondent, but rather by a lessee, the sublessee
16 or any other person. To establish an affirmative defense, the respond-
17 ent shall submit an affidavit and may submit any other relevant proof
18 indicating that the respondent did not exercise actual control of said
19 area during the relevant time period. Such affidavit and other proof
20 shall be mailed by certified mail to the appropriate enforcement officer
21 within thirty days of receipt of such notice of violation.

22 2. {It shall be unlawful for any person, firm, corporation or other
 23 entity that owns, manages or operates a food service establishment in
 24 which smoking is restricted to fail to designate areas pursuant to
 25 subdivision five of section thirteen hundred ninety-nine-o of this arti-
 26 cle, or to fail to make good faith efforts to ensure that employees
 27 responsible for seating arrangements substantially comply with the
 28 requirements of this article. In actions brought for violations of
 29 subdivision five of section thirteen hundred ninety-nine-o of this arti-
 30 cle, it shall be an affirmative defense that notice of a violation was
 31 provided to a customer.

32 3.) It shall be unlawful for an employer whose place of employment is
 33 subject to subdivision {six} ONE of section thirteen hundred ninety-
 34 nine-o of this article to fail to comply with the provisions of such
 35 subdivision. For violations of SUCH subdivision {six of section thirteen
 36 hundred ninety-nine-o of this article}, it shall be an affirmative
 37 defense that the employer has made good faith efforts to ensure that
 38 employees comply with the provisions of {any policy adopted pursuant to
 39 subdivision six of section thirteen hundred ninety-nine-o of} this arti-
 40 cle.

41 {4.} 3. It shall be unlawful for any person to smoke in any area where
 42 smoking is prohibited or restricted under section thirteen hundred nine-
 43 ty-nine-o of this article.

44 S 6. Subdivisions 1, 2 and 4 of section 1399-t of the public health
 45 law, as added by chapter 244 of the laws of 1989, are amended to read as
 46 follows:

47 1. For the purpose of this article the term "enforcement officer"
 48 shall mean the board of health of a county or part county health
 49 district established pursuant to title three of article three of this
 50 chapter, or in the absence thereof, an officer of a county designated
 51 for such purpose by resolution of the elected county legislature or
 52 board of supervisors adopted within sixty days after the effective date
 53 of this {act} ARTICLE. Any such designation shall be filed with the
 54 commissioner within thirty days after adoption. If no such designation
 55 is made, the county will be deemed to have designated the department as
 56 its enforcement officer. Any county that does not designate an enforce-

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1 ment officer during the time period specified above may do so at any
 2 time, thereafter, such designation will be effective thirty days after
 3 it is filed with the commissioner. The enforcement officer shall have
 4 sole jurisdiction to enforce the provisions of this article on a coun-
 5 ty-wide basis pursuant to rules and regulations promulgated by the
 6 commissioner. In a city with a population of more than one million the
 7 enforcement officer shall be the {board of health} DEPARTMENT OF HEALTH
 8 AND MENTAL HYGIENE of such city which shall have sole jurisdiction to
 9 enforce the provisions of this article in such city.

10 2. If the enforcement officer determines after a hearing that a
 11 violation of this article has occurred, a civil penalty may be imposed
 12 by the enforcement officer pursuant to section thirteen hundred ninety-
 13 nine-v of this article. When the enforcement officer is the commission-
 14 er, the hearing shall be conducted pursuant to the provisions of section
 15 twelve-a of this chapter. When the enforcement officer is a board of
 16 health or IN A CITY WITH A POPULATION OF MORE THAN ONE MILLION, THE
 17 DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OR an officer designated to

18 enforce the provisions of this article, the hearing shall be conducted
 19 pursuant to procedures set forth in the county sanitary code, OR HEALTH
 20 CODE OF SUCH CITY, or in the absence thereof, pursuant to procedures
 21 established by the elected county legislature or board of supervisors.
 22 No other penalty, fine or sanction may be imposed, provided that nothing
 23 herein shall be construed to prohibit an enforcement officer from
 24 commencing a proceeding for injunctive relief to compel compliance with
 25 this article.

26 4. The owner, manager, operator or other person having control of {an
 27 indoor} ANY area {open to the public, food service establishment or
 28 place of employment under} SUBJECT TO THE PROVISIONS OF this article,
 29 shall inform, or shall designate an agent who shall be responsible for
 30 informing individuals smoking in an area in which smoking is not permit-
 31 ted that they are in violation of this article.

32 S 7. Section 1399-u of the public health law, as added by chapter 244
 33 of the laws of 1989, is amended to read as follows:

34 S 1399-u. Waiver. 1. The enforcement officer may grant a waiver from
 35 the application of a specific provision of this article, provided that
 36 prior to the granting of any such waiver the applicant for a waiver
 37 shall establish that:

38 (a) compliance with a specific provision of this article would cause
 39 undue financial hardship; or

40 (b) other factors{, including but not limited to the physical layout,}
 41 exist which would render {strict} compliance unreasonable.

42 2. {Notwithstanding subdivision one of this section, the enforcement
 43 officer shall grant a waiver from the application of subdivision six of
 44 section thirteen hundred ninety-nine-o of this article to any applicant
 45 who as the owner, operator or manager of a factory or warehouse demon-
 46 strates that the effects of smoking on employees in work areas have been
 47 reduced to a minimal degree by factors, including but not limited to,
 48 the physical layout or size of such factory or warehouse.

49 3. Subdivision two of this section shall not apply to work areas in
 50 separate enclosed offices, employee cafeterias, lunchrooms or lounges in
 51 a factory or warehouse.

52 4.} Every waiver granted shall be subject to such conditions or
 53 restrictions as may be necessary to minimize the adverse effects of the
 54 waiver upon persons subject to an involuntary exposure to second-hand
 55 smoke and to ensure that the waiver is consistent with the general
 56 purpose of this article.

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1 S 8. Subdivisions 1 and 2 of section 1399-aa of the public health law,
 2 as added by chapter 799 of the laws of 1992, are amended to read as
 3 follows:

4 1. "Enforcement officer" means the enforcement officer designated
 5 pursuant to article thirteen-E of this chapter to enforce such article
 6 and hold hearings pursuant thereto; PROVIDED THAT IN A CITY WITH A POPU-
 7 LATION OF MORE THAN ONE MILLION IT SHALL ALSO MEAN AN OFFICER OR EMPLOY-
 8 EE OR ANY AGENCY OF SUCH CITY THAT IS AUTHORIZED TO ENFORCE ANY LOCAL
 9 LAW OF SUCH CITY RELATED TO THE REGULATION OF THE SALE OF TOBACCO
 10 PRODUCTS TO MINORS.

11 2. "Food service establishment" means any {indoor area open to the
 12 public or portion thereof in which the business is the sale of food for
 13 on-premises consumption and which has an indoor seating capacity of

14 greater than fifty persons including, but not limited to restaurants,
15 cafeterias, coffee shops, diners, sandwich shops or short order cafes}
16 AREA, INCLUDING OUTDOOR SEATING AREAS, IN WHICH THE BUSINESS IS THE SALE
17 OF FOOD FOR ON-PREMISES CONSUMPTION.

18 S 9. Subdivision 6 of section 1399-aa of the public health law, as
19 added by chapter 518 of the laws of 2000, is renumbered subdivision 7
20 and two new subdivisions 8 and 9 are added to read as follows:

21 8. "TOBACCO BUSINESS" MEANS A SOLE PROPRIETORSHIP, CORPORATION, LIMIT-
22 ED LIABILITY COMPANY, PARTNERSHIP OR OTHER ENTERPRISE IN WHICH THE
23 PRIMARY ACTIVITY IS THE SALE, MANUFACTURE OR PROMOTION OF TOBACCO,
24 TOBACCO PRODUCTS AND ACCESSORIES, EITHER AT WHOLESALE OR RETAIL, AND IN
25 WHICH THE SALE, MANUFACTURE OR PROMOTION OF OTHER PRODUCTS IS MERELY
26 INCIDENTAL.

27 9. "FACTORY" MEANS ANY MILL OR OTHER MANUFACTURING ESTABLISHMENT WHERE
28 ONE OR MORE PERSONS ARE EMPLOYED IN MANUFACTURING INCLUDING MAKING,
29 ALTERING, REPAIRING, FINISHING, BOTTLING, CANNING, CLEANING OR LAUNDER-
30 ING ANY ARTICLE OR THING.

31 S 10. Subdivision 2 of section 1399-bb of the public health law, as
32 amended by chapter 508 of the laws of 2000, is amended to read as
33 follows:

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

36 (a) private social functions {as defined in section thirteen hundred
37 ninety-nine-q of this chapter} WHEN SEATING ARRANGEMENTS ARE UNDER THE
38 CONTROL OF THE SPONSOR OF THE FUNCTION AND NOT THE OWNER, OPERATOR,
39 MANAGER OR PERSON IN CHARGE OF SUCH INDOOR AREA;

40 (b) conventions and trade shows {that comply with the provisions of
41 subdivision three of section thirteen hundred ninety-nine-q of this
42 chapter}; provided that the distribution is confined to designated areas
43 generally accessible only to persons over the age of eighteen;

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

47 (d) bars as defined in subdivision {two} ONE of section thirteen
48 hundred ninety-nine-n of this chapter;

49 (e) tobacco businesses as defined in subdivision {twelve} EIGHT of
50 section {thirteen hundred ninety-nine-n} THIRTEEN HUNDRED NINETY-NINE-AA
51 of this {chapter} ARTICLE;

52 (f) factories as defined in subdivision {four} NINE of section {thir-
53 teen hundred ninety-nine-n} THIRTEEN HUNDRED NINETY-NINE-AA of this
54 {chapter} ARTICLE and construction sites; provided that the distribution
55 is confined to designated areas generally accessible only to persons
56 over the age of eighteen.

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1 S 11. Subdivision 7 of section 1399-cc of the public health law, as
2 added by section 1 of chapter 568 of the laws of 2001, is amended to
3 read as follows:

4 7. No person operating a place of business wherein tobacco products or
5 herbal cigarettes are sold or offered for sale shall sell, permit to be
6 sold, offer for sale or display for sale any tobacco product or herbal
7 cigarettes in any manner, unless such products and cigarettes are stored
8 for sale (a) behind a counter in an area accessible only to the person-

9 nel of such business, or (b) in a locked container; provided, however,
10 such restriction shall not apply to tobacco businesses, as defined in
11 subdivision {thirteen} EIGHT of section {thirteen hundred ninety-nine-n}
12 THIRTEEN HUNDRED NINETY-NINE-AA of this {chapter} ARTICLE, and to places
13 to which admission is restricted to persons eighteen years of age or
14 older.

15 S 12. Subdivision 2 of section 1399-cc of the public health law, as
16 added by section 2 of chapter 568 of the laws of 2001, is amended to
17 read as follows:

18 2. No person operating a place of business wherein tobacco products or
19 herbal cigarettes are sold or offered for sale shall sell, permit to be
20 sold, offer for sale or display for sale any tobacco product or herbal
21 cigarettes in any manner, unless such products and cigarettes are stored
22 for sale (a) behind a counter in an area accessible only to the person-
23 nel of such business, or (b) in a locked container; provided, however,
24 such restriction shall not apply to tobacco businesses, as defined in
25 subdivision {thirteen} EIGHT of section {thirteen hundred ninety-nine-n}
26 THIRTEEN HUNDRED NINETY-NINE-AA of this {chapter} ARTICLE, and to places
27 to which admission is restricted to persons eighteen years of age or
28 older.

29 S 13. Section 1399-dd of the public health law, as amended by chapter
30 508 of the laws of 2000, is amended to read as follows:

31 S 1399-dd. Sale of tobacco products or herbal cigarettes in vending
32 machines. No person, firm, partnership, company or corporation shall
33 operate a vending machine which dispenses tobacco products or herbal
34 cigarettes unless such machine is located: (a) in a bar as defined in
35 subdivision {two} ONE of section thirteen hundred ninety-nine-n of this
36 chapter, or the bar area of a food service establishment with a valid,
37 on-premises full liquor license; (b) in a private club; (c) in a tobacco
38 business as defined in subdivision {thirteen} EIGHT of section {thirteen
39 hundred ninety-nine-n} THIRTEEN HUNDRED NINETY-NINE-AA of this {chapter}
40 ARTICLE; or (d) in a place of employment which has an insignificant
41 portion of its regular workforce comprised of people under the age of
42 eighteen years and only in such locations that are not accessible to the
43 general public; provided, however, that in such locations the vending
44 machine is located in plain view and under the direct supervision and
45 control of the person in charge of the location or his or her designated
46 agent or employee.

47 S 14. Paragraph (a) of subdivision 2 of section 1399-ll of the public
48 health law, as added by chapter 518 of the laws of 2000, is amended to
49 read as follows:

50 (a) The provisions of subdivision one of this section shall not apply
51 to a tobacco business, as defined in SUBDIVISION EIGHT OF section THIR-
52 TEEN HUNDRED NINETY-NINE-AA of this {chapter} ARTICLE.

53 S 15. Subdivision 2 of section 409 of the education law, as added by
54 chapter 565 of the laws of 1994, is amended to read as follows:

55 2. Notwithstanding the provisions of any other law, rule or regu-
56 lation, tobacco use shall not be permitted and no person shall use

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1 tobacco on school grounds{; provided, however, that smoking by adult
2 faculty and staff members may be permitted in a designated smoking area
3 during non-school hours. For purposes of this section, school hours
4 shall include any student activity that is supervised by faculty or

5 staff, or any officially sanctioned school event}. "School grounds"
6 means any building, structure and surrounding outdoor grounds contained
7 within a public or private pre-school, nursery school, elementary or
8 secondary school`s legally defined property boundaries as registered in
9 a county clerk`s office.

10 S 16. This act shall take effect on the one hundred twentieth day
11 after it shall have become a law, provided that the amendments to subdi-
12 vision 7 of section 1399-cc of the public health law, made by section
13 eleven of this act, shall be subject to the expiration and reversion of
14 such section pursuant to section 4 of chapter 519 of the laws of 1999,
15 as amended, when upon such date the provisions of section twelve of this
16 act shall take effect.

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