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I N A S S E M B L Y

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January 7, 2009

Introduced by M. of A. GALEF, DINOWITZ, CONTE, WEISENBERG, BENEDETTO, ZEBROWSKI, BOYLAND, ESPAILLAT, FIELDS, HOOPER, JAFFEE, MILLER -- Multi-Sponsored by -- M. of A. EDDINGTON, GOTTFRIED, HIKIND, LATIMER, MAYERSOHN, McDONOUGH, MILLMAN, REILLY, N. RIVERA, P. RIVERA, ROBINSON, SWEENEY, TOWNS -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the penal law, in relation to increasing the purchasing age for tobacco products from eighteen to nineteen

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

- 1 Section 1. Subdivisions 2, 3 and 7 of section 1399-cc of the public
2 health law, subdivisions 2 and 3 as amended by chapter 508 of the laws
3 of 2000, subdivision 3 as separately amended by chapter 162 of the laws
4 of 2002 and subdivision 7 as amended by chapter 13 of the laws of 2003,
5 are amended to read as follows:
6 2. Any person operating a place of business wherein tobacco products
7 or herbal cigarettes are sold or offered for sale is prohibited from
8 selling such products, herbal cigarettes, rolling papers or pipes to
9 individuals under [eighteen] NINETEEN years of age, and shall post in a
10 conspicuous place a sign upon which there shall be imprinted the follow-
11 ing statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED
12 TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR
13 PIPES, TO PERSONS UNDER [EIGHTEEN] NINETEEN YEARS OF AGE IS PROHIBITED
14 BY LAW." Such sign shall be printed on a white card in red letters at
15 least one-half inch in height.
16 3. Sale of tobacco products or herbal cigarettes in such places, other
17 than by a vending machine, shall be made only to an individual who
18 demonstrates, through (a) a valid driver's license or non-driver's iden-
19 tification card issued by the commissioner of motor vehicles, the feder-
20 al government, any United States territory, commonwealth or possession,

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

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1 the District of Columbia, a state government within the United States or
2 a provincial government of the dominion of Canada, or (b) a valid pass-
3 port issued by the United States government or any other country, or (c)
4 an identification card issued by the armed forces of the United States,
5 indicating that the individual is at least [eighteen] NINETEEN years of
6 age. Such identification need not be required of any individual who
7 reasonably appears to be at least [twenty-five] TWENTY-SIX years of age,
8 provided, however, that such appearance shall not constitute a defense
9 in any proceeding alleging the sale of a tobacco product or herbal ciga-
10 rettes to an individual under [eighteen] NINETEEN years of age.

11 7. No person operating a place of business wherein tobacco products or
12 herbal cigarettes are sold or offered for sale shall sell, permit to be
13 sold, offer for sale or display for sale any tobacco product or herbal
14 cigarettes in any manner, unless such products and cigarettes are stored
15 for sale (a) behind a counter in an area accessible only to the person-
16 nel of such business, or (b) in a locked container; provided, however,
17 such restriction shall not apply to tobacco businesses, as defined in
18 subdivision eight of section thirteen hundred ninety-nine-aa of this
19 article, and to places to which admission is restricted to persons
20 [eighteen] NINETEEN years of age or older.

21 S 2. Section 1399-cc of the public health law, as amended by chapter
22 568 of the laws of 2001, subdivision 1 as amended by chapter 162 of the
23 laws of 2002 and subdivision 2 as amended by chapter 13 of the laws of
24 2003, is amended to read as follows:

25 S 1399-cc. Sale of tobacco products or herbal cigarettes, rolling
26 papers or pipes to [minors] PERSONS UNDER NINETEEN YEARS OF AGE prohib-
27 ited. 1. Any person operating a place of business wherein tobacco
28 products or herbal cigarettes are sold or offered for sale is prohibited
29 from selling such products, herbal cigarettes, rolling papers or pipes
30 to individuals under [eighteen] NINETEEN years of age, and shall post in
31 a conspicuous place a sign upon which there shall be imprinted the
32 following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO,
33 POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING
34 PAPERS OR PIPES, TO PERSONS UNDER [EIGHTEEN] NINETEEN YEARS OF AGE IS
35 PROHIBITED BY LAW." Such sign shall be printed on a white card in red
36 letters at least one-half inch in height. Sale of tobacco products or
37 herbal cigarettes in such places, other than by a vending machine, shall
38 be made only to an individual who demonstrates, through (a) a valid
39 driver's license or non-driver's identification card issued by the
40 commissioner of motor vehicles, the federal government, any United
41 States territory, commonwealth or possession, the District of Columbia,
42 a state government within the United States or a provincial government
43 of the dominion of Canada, or (b) a valid passport issued by the United
44 States government or any other country, or (c) an identification card
45 issued by the armed forces of the United States, indicating that the
46 individual is at least [eighteen] NINETEEN years of age. Such identifi-
47 cation need not be required of any individual who reasonably appears to
48 be at least [twenty-five] TWENTY-SIX years of age, provided, however,
49 that such appearance shall not constitute a defense in any proceeding
50 alleging the sale of a tobacco product or herbal cigarettes to an indi-
51 vidual under [eighteen] NINETEEN years of age.

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

1 nel of such business, or (b) in a locked container; provided, however,
2 such restriction shall not apply to tobacco businesses, as defined in
3 subdivision eight of section thirteen hundred ninety-nine-aa of this
4 article, and to places to which admission is restricted to persons
5 [eighteen] NINETEEN years of age or older.

6 S 3. Subdivision 4 of section 1399-aa of the public health law, as
7 added by chapter 799 of the laws of 1992, is amended to read as follows:

8 4. "Private club" means an organization with no more than an insignif-
9 icant portion of its membership comprised of people under the age of
10 [eighteen] NINETEEN years that regularly receives dues and/or payments
11 from its members for the use of space, facilities and services.

12 S 4. Paragraphs (b), (c) and (f) of subdivision 2 of section 1399-bb
13 of the public health law, as amended by chapter 13 of the laws of 2003,
14 are amended to read as follows:

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

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

21 (f) factories as defined in subdivision nine of section thirteen
22 hundred ninety-nine-aa of this article and construction sites; provided
23 that the distribution is confined to designated areas generally accessi-
24 ble only to persons over the age of [eighteen] NINETEEN.

25 S 5. Subdivision 4 of section 1399-bb of the public health law, as
26 amended by chapter 508 of the laws of 2000, is amended to read as
27 follows:

28 4. The distribution of tobacco products or herbal cigarettes pursuant
29 to subdivision two of this section shall be made only to an individual
30 who demonstrates, through a driver's license or other photographic iden-
31 tification card issued by a government entity or educational institution
32 indicating that the individual is at least [eighteen] NINETEEN years of
33 age. Such identification need not be required of any individual who
34 reasonably appears to be at least [twenty-five] TWENTY-SIX years of age;
35 provided, however, that such appearance shall not constitute a defense
36 in any proceeding alleging the sale of a tobacco product or herbal ciga-
37 rette to an individual UNDER NINETEEN YEARS OF AGE.

38 S 6. Section 1399-dd of the public health law, as amended by chapter
39 13 of the laws of 2003, is amended to read as follows:

40 S 1399-dd. Sale of tobacco products or herbal cigarettes in vending
41 machines. No person, firm, partnership, company or corporation shall
42 operate a vending machine which dispenses tobacco products or herbal
43 cigarettes unless such machine is located: (a) in a bar as defined in
44 subdivision one of section thirteen hundred ninety-nine-n of this chap-
45 ter, or the bar area of a food service establishment with a valid,
46 on-premises full liquor license; (b) in a private club; (c) in a tobacco
47 business as defined in subdivision eight of section thirteen hundred
48 ninety-nine-aa of this article; or (d) in a place of employment which
49 has an insignificant portion of its regular workforce comprised of
50 people under the age of [eighteen] NINETEEN years and only in such
51 locations that are not accessible to the general public; provided,
52 however, that in such locations the vending machine is located in plain
53 view and under the direct supervision and control of the person in
54 charge of the location or his or her designated agent or employee.

1 S 7. Subdivision 1 of section 1399-ff of the public health law, as
2 amended by chapter 508 of the laws of 2000, is amended to read as
3 follows:

4 1. Where a civil penalty for a particular incident has not been
5 imposed or an enforcement action regarding an alleged violation for a
6 particular incident is not pending under section thirteen hundred nine-
7 ty-nine-ee of this article, a parent or guardian of a [minor] PERSON
8 UNDER NINETEEN YEARS OF AGE to whom tobacco products or herbal ciga-
9 rettes are sold or distributed in violation of this article may submit a
10 complaint to an enforcement officer setting forth the name and address
11 of the alleged violator, the date of the alleged violation, the name and
12 address of the complainant and the minor, and a brief statement describ-
13 ing the alleged violation. The enforcement officer shall notify the
14 alleged violator by certified or registered mail, return receipt
15 requested, that a complaint has been submitted, and shall set a date, at
16 least fifteen days after the mailing of such notice, for a hearing on
17 the complaint. Such notice shall contain the information submitted by
18 the complainant.

19 S 8. The opening paragraph of section 1399-hh of the public health
20 law, as added by chapter 433 of the laws of 1997, is amended to read as
21 follows:

22 The commissioner shall develop, plan and implement a comprehensive
23 program to reduce the prevalence of tobacco use, particularly among
24 persons less than [eighteen] NINETEEN years of age. This program shall
25 include, but not be limited to, support for enforcement of THIS article
26 [thirteen-F of this chapter].

27 S 9. Paragraph (f) of subdivision 2 of section 1399-ii of the public
28 health law, as added by chapter 1 of the laws of 1999, is amended to
29 read as follows:

30 (f) Restriction of [youth] access to tobacco products BY PERSONS UNDER
31 NINETEEN YEARS OF AGE;

32 S 10. Subdivisions 1 and 3 of section 1399-jj of the public health
33 law, as amended by chapter 1 of the laws of 1999, are amended to read as
34 follows:

35 1. The commissioner shall evaluate the effectiveness of the efforts by
36 state and local governments to reduce the use of tobacco products among
37 [minors] PERSONS UNDER NINETEEN YEARS OF AGE and adults. The principal
38 measurements of effectiveness shall include negative attitudes toward
39 tobacco use and reduction of tobacco use among the general population,
40 and given target populations.

41 3. To diminish tobacco use among [minors] PERSONS UNDER NINETEEN YEARS
42 OF AGE and adults, the commissioner shall ensure that, to the extent
43 practicable, the following is achieved:

44 The department shall conduct an independent evaluation of the state-
45 wide tobacco use prevention and control program under section thirteen
46 hundred ninety-nine-ii of this article. The purpose of this evaluation
47 is to direct the most efficient allocation of state resources devoted to
48 tobacco education and cessation to accomplish the maximum prevention and
49 reduction of tobacco use among [minors] PERSONS UNDER NINETEEN YEARS OF
50 AGE and adults. Such evaluation shall be provided to the governor, the
51 majority leader of the senate and the speaker of the assembly on or
52 before September first, two thousand one, and annually on or before such
53 date thereafter. The comprehensive evaluation design shall be guided by
54 the following:

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

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

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

6 S 11. The opening paragraph and the closing paragraph of section
7 1399-kk of the public health law, as added by chapter 433 of the laws of
8 1997, are amended to read as follows:

9 The commissioner shall submit to the governor and the legislature an
10 interim tobacco control report and annual tobacco control reports which
11 shall describe the extent of the use of tobacco products by [minors]
12 PERSONS UNDER NINETEEN YEARS OF AGE in the state and document the
13 progress state and local governments have made in reducing such use
14 among [minors] PERSONS UNDER NINETEEN YEARS OF AGE.

15 The annual tobacco control report shall, to the extent practicable,
16 include the following information: (a) tobacco control efforts sponsored
17 by state government agencies including money spent to educate [minors]
18 PERSONS UNDER NINETEEN YEARS OF AGE on the hazards of tobacco use;

19 (b) recommendations for improving tobacco control efforts in the
20 state; and

21 (c) such other information as the commissioner deems appropriate.

22 S 12. The opening paragraph and paragraphs (f) and (g) of subdivision
23 2 of section 1399-kk of the public health law, as added by chapter 433
24 of the laws of 1997, are amended to read as follows:

25 The commissioner shall submit to the governor and the legislature an
26 annual tobacco control report which shall describe the extent of the use
27 of tobacco products by [minors] PERSONS UNDER NINETEEN YEARS OF AGE in
28 the state and document the progress state and local governments have
29 made in reducing such use among [minors] PERSONS UNDER NINETEEN YEARS OF
30 AGE. The annual report shall be submitted to the governor and the legis-
31 lature on or before March thirty-first of each year beginning on March
32 thirty-first, nineteen hundred ninety-nine. The annual report shall, to
33 the extent practicable, include the following information on a county by
34 county basis:

35 (f) a survey of attitudes and behaviors regarding tobacco use among
36 [minors] PERSONS UNDER NINETEEN YEARS OF AGE. The initial such survey
37 shall be deemed to constitute the baseline survey;

38 (g) the number of tobacco users and estimated trends in tobacco use
39 among [minors] PERSONS UNDER NINETEEN YEARS OF AGE;

40 S 13. Subdivision 3 of section 260.21 of the penal law, as added by
41 chapter 362 of the laws of 1992, is amended to read as follows:

42 3. He OR SHE sells or causes to be sold tobacco in any form to a child
43 less than [eighteen] NINETEEN years old.

44 S 14. This act shall take effect on the one hundred twentieth day
45 after it shall have become a law; provided that the amendments to subdi-
46 visions 2, 3 and 7 of section 1399-cc of the public health law made by
47 section one of this act shall be subject to the expiration and reversion
48 of such section pursuant to section 4 of chapter 519 of the laws of
49 1999, as amended, when upon such date the provisions of section two of
50 this act shall take effect.