

1018

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the penal law, in relation to increasing the age at which a person can be sold tobacco products

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

1 Section 1. Subdivision 4 of section 1399-aa of the public health law,
2 as added by chapter 799 of the laws of 1992, is amended to read as
3 follows:

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

8 S 2. Subdivisions 2 and 4 of section 1399-bb of the public health law,
9 subdivision 2 as amended by chapter 13 of the laws of 2003 and subdivi-
10 sion 4 as amended by chapter 508 of the laws of 2000, are amended to
11 read as follows:

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

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

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

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

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

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

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

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

7 4. The distribution of tobacco products or herbal cigarettes pursuant
8 to subdivision two of this section shall be made only to an individual
9 who demonstrates, through a driver's license or other photographic iden-
10 tification card issued by a government entity or educational institution
11 indicating that the individual is at least [eighteen] NINETEEN years of
12 age. Such identification need not be required of any individual who
13 reasonably appears to be at least twenty-five years of age; provided,
14 however, that such appearance shall not constitute a defense in any
15 proceeding alleging the sale of a tobacco product or herbal cigarette to
16 an individual.

17 S 3. Section 1399-cc of the public health law, as amended by chapter
18 508 of the laws of 2000, subdivision 3 as separately amended by chapter
19 162 of the laws of 2002 and subdivision 7 as amended by chapter 13 of
20 the laws of 2003, is amended to read as follows:

21 S 1399-cc. Sale of tobacco products, herbal cigarettes, rolling papers
22 or pipes to minors prohibited. 1. As used in this section:

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

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

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

38 2. Any person operating a place of business wherein tobacco products
39 or herbal cigarettes are sold or offered for sale is prohibited from
40 selling such products, herbal cigarettes, rolling papers or pipes to
41 individuals under [eighteen] NINETEEN years of age, and shall post in a
42 conspicuous place a sign upon which there shall be imprinted the follow-
43 ing statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED
44 TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR
45 PIPES, TO PERSONS UNDER [EIGHTEEN] NINETEEN YEARS OF AGE IS PROHIBITED
46 BY LAW." Such sign shall be printed on a white card in red letters at
47 least one-half inch in height.

48 3. Sale of tobacco products or herbal cigarettes in such places, other
49 than by a vending machine, shall be made only to an individual who
50 demonstrates, through (a) a valid driver's license or non-driver's iden-
51 tification card issued by the commissioner of motor vehicles, the feder-
52 al government, any United States territory, commonwealth or possession,
53 the District of Columbia, a state government within the United States or
54 a provincial government of the dominion of Canada, or (b) a valid pass-
55 port issued by the United States government or any other country, or (c)
56 an identification card issued by the armed forces of the United States,

1 indicating that the individual is at least [eighteen] NINETEEN years of
2 age. Such identification need not be required of any individual who
3 reasonably appears to be at least twenty-five years of age, provided,
4 however, that such appearance shall not constitute a defense in any
5 proceeding alleging the sale of a tobacco product or herbal cigarettes
6 to an individual under [eighteen] NINETEEN years of age.

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

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

15 (c) In any proceeding pursuant to section thirteen hundred-ninety-
16 nine-ee of this article, it shall be an affirmative defense that such
17 person had produced a driver's license or non-driver identification card
18 apparently issued by a governmental entity, successfully completed that
19 transaction scan, and that the tobacco product or herbal cigarettes had
20 been sold, delivered or given to such person in reasonable reliance upon
21 such identification and transaction scan. In evaluating the applicabil-
22 ity of such affirmative defense the commissioner shall take into consid-
23 eration any written policy adopted and implemented by the seller to
24 effectuate the provisions of this chapter. Use of a transaction scan
25 shall not excuse any person operating a place of business wherein tobac-
26 co products or herbal cigarettes are sold, or the agent or employee of
27 such person, from the exercise of reasonable diligence otherwise
28 required by this chapter. Notwithstanding the above provisions, any such
29 affirmative defense shall not be applicable in any civil or criminal
30 proceeding, or in any other forum.

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

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

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

11 S 4. Section 1399-cc of the public health law, as amended by chapter
12 568 of the laws of 2001, subdivision 1 as amended by chapter 162 of the
13 laws of 2002 and subdivision 2 as amended by chapter 13 of the laws of
14 2003, is amended to read as follows:

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

41 2. No person operating a place of business wherein tobacco products or
42 herbal cigarettes are sold or offered for sale shall sell, permit to be
43 sold, offer for sale or display for sale any tobacco product or herbal
44 cigarettes in any manner, unless such products and cigarettes are stored
45 for sale (a) behind a counter in an area accessible only to the person-
46 nel of such business, or (b) in a locked container; provided, however,
47 such restriction shall not apply to tobacco businesses, as defined in
48 subdivision eight of section thirteen hundred ninety-nine-aa of this
49 article, and to places to which admission is restricted to persons
50 [eighteen] NINETEEN years of age or older.

51 S 5. Section 1399-dd of the public health law, as amended by chapter
52 13 of the laws of 2003, is amended to read as follows:

53 S 1399-dd. Sale of tobacco products or herbal cigarettes in vending
54 machines. No person, firm, partnership, company or corporation shall
55 operate a vending machine which dispenses tobacco products or herbal
56 cigarettes unless such machine is located: (a) in a bar as defined in

1 subdivision one of section thirteen hundred ninety-nine-n of this chap-
2 ter, or the bar area of a food service establishment with a valid,
3 on-premises full liquor license; (b) in a private club; (c) in a tobacco
4 business as defined in subdivision eight of section thirteen hundred
5 ninety-nine-aa of this article; or (d) in a place of employment which
6 has an insignificant portion of its regular workforce comprised of
7 people under the age of [eighteen] NINETEEN years and only in such
8 locations that are not accessible to the general public; provided,
9 however, that in such locations the vending machine is located in plain
10 view and under the direct supervision and control of the person in
11 charge of the location or his or her designated agent or employee.

12 S 6. Subdivision 3 of section 260.21 of the penal law, as added by
13 chapter 362 of the laws of 1992, is amended to read as follows:

14 3. He sells or causes to be sold tobacco in any form to a child less
15 than [eighteen] NINETEEN years old.

16 S 7. This act shall take effect on the sixtieth day after it shall
17 have become a law; provided, however, that the amendments to section
18 1399-cc of the public health law made by section three of this act shall
19 be subject to the expiration, repeal and reversion of such section as
20 provided in chapter 519 of the laws of 1999, as amended, when upon such
21 date the provisions of section four of this act shall take effect.