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

24

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. FUSCHILLO -- 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 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:

Section 1. Subdivisions 2, 3 and 7 of section 1399-cc of the public health law, subdivisions 2 and 3 as amended by chapter 508 of the laws of 2000, subdivision 3 as separately amended by chapter 162 of the laws of 2002 and subdivision 7 as amended by chapter 13 of the laws of 2003, are amended to read as follows:

2. Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale is prohibited from selling such products, herbal cigarettes, rolling papers or pipes to individuals under [eighteen] NINETEEN 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, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS UNDER [EIGHTEEN] NINETEEN 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 or herbal 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)

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

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an identification card issued by the armed forces of the United States, indicating that the individual is at least [eighteen] NINETEEN years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] TWENTY-SIX 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 cigarettes to an individual under [eighteen] NINETEEN years of age.

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

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

S 1399-cc. Sale of tobacco products or herbal cigarettes, rolling papers or pipes to [minors] PERSONS UNDER NINETEEN YEARS OF AGE prohibited. 1. Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale is prohibited from selling such products, herbal cigarettes, rolling papers or pipes to individuals under [eighteen] NINETEEN 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, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS UNDER [EIGHTEEN] NINETEEN 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. Sale of tobacco products or herbal 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] NINETEEN years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] TWENTY-SIX 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 cigarettes to an individual under [eighteen] NINETEEN years of age.

2. No person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product or herbal 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] NINETEEN years of age or older.

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

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

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

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

(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] NINETEEN;

(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] NINETEEN.

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

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] NINETEEN years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] TWENTY-SIX 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 UNDER NINETEEN YEARS OF AGE.

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

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

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

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 nine-ty-nine-ee of this article, a parent or guardian of a [minor] PERSON UNDER NINETEEN YEARS OF AGE to whom tobacco products or herbal 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.

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

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

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

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

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

1. The commissioner shall evaluate the effectiveness of the efforts by state and local governments to reduce the use of tobacco products among [minors] PERSONS UNDER NINETEEN YEARS OF AGE 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.

3. To diminish tobacco use among [minors] PERSONS UNDER NINETEEN YEARS OF AGE 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] PERSONS UNDER NINETEEN YEARS OF AGE 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.

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

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] PERSONS UNDER NINETEEN YEARS OF AGE in the state and document the progress state and local governments have made in reducing such use among [minors] PERSONS UNDER NINETEEN YEARS OF AGE.

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] PERSONS UNDER NINETEEN YEARS OF AGE 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.

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

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] PERSONS UNDER NINETEEN YEARS OF AGE in the state and document the progress state and local governments have made in reducing such use among [minors] PERSONS UNDER NINETEEN YEARS OF AGE. 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:

(f) a survey of attitudes and behaviors regarding tobacco use among [minors] PERSONS UNDER NINETEEN YEARS OF AGE. 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] PERSONS UNDER NINETEEN YEARS OF AGE;

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

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

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