

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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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:

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

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

18 S 2. Section 1399-cc of the public health law, as amended by chapter  
19 568 of the laws of 2001, subdivision 1 as amended by chapter 162 of the  
20 laws of 2002 and subdivision 2 as amended by chapter 13 of the laws of  
21 2003, is amended to read as follows:

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

49 2. No person operating a place of business wherein tobacco products or  
50 herbal cigarettes are sold or offered for sale shall sell, permit to be  
51 sold, offer for sale or display for sale any tobacco product or herbal  
52 cigarettes in any manner, unless such products and cigarettes are stored  
53 for sale (a) behind a counter in an area accessible only to the person-  
54 nel of such business, or (b) in a locked container; provided, however,  
55 such restriction shall not apply to tobacco businesses, as defined in  
56 subdivision eight of section thirteen hundred ninety-nine-aa of this

1 article, and to places to which admission is restricted to persons  
2 [eighteen] NINETEEN years of age or older.

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

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

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

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

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

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

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

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

35 S 6. Section 1399-dd of the public health law, as amended by chapter  
36 13 of the laws of 2003, is amended to read as follows:

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

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

55 1. Where a civil penalty for a particular incident has not been  
56 imposed or an enforcement action regarding an alleged violation for a

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

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

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

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

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

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

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

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

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

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

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

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

1 S 11. The opening paragraph and the closing paragraph of section  
2 1399-kk of the public health law, as added by chapter 433 of the laws of  
3 1997, are amended to read as follows:

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

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

14 (b) recommendations for improving tobacco control efforts in the  
15 state; and

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

17 S 12. The opening paragraph and paragraphs (f) and (g) of subdivision  
18 2 of section 1399-kk of the public health law, as added by chapter 433  
19 of the laws of 1997, are amended to read as follows:

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

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

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

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

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

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