

4863

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 8, 2011

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Introduced by M. of A. GALEF, DINOWITZ, CONTE, WEISENBERG, BENEDETTO, ZEBROWSKI, BOYLAND, HOOPER, JAFFEE, J. MILLER, N. RIVERA, TOBACCO -- Multi-Sponsored by -- M. of A. CALHOUN, FINCH, GOTTFRIED, HIKIND, KOLB, LATIMER, MARKEY, MAYERSOHN, McDONOUGH, MILLMAN, PAULIN, REILLY, P. RIVERA, ROBINSON, SWEENEY, THIELE, 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, UNLESS SUCH INDIVID-  
10 UALS ARE EIGHTEEN YEARS OF AGE WHO ARE SERVING IN THE UNITED STATES  
11 MILITARY, INCLUDING BUT NOT LIMITED TO, THE NATIONAL GUARD AND RESERVES;  
12 and shall post in a conspicuous place a sign upon which there shall be  
13 imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING  
14 TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES,  
15 ROLLING PAPERS OR PIPES, TO PERSONS UNDER [EIGHTEEN] NINETEEN YEARS OF  
16 AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card  
17 in red letters at least one-half inch in height.  
18     3. Sale of tobacco products or herbal cigarettes in such places, other  
19 than by a vending machine, shall be made only to an individual who  
20 demonstrates, through (a) a valid driver's license or non-driver's iden-

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

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

13 7. No person operating a place of business wherein tobacco products or  
14 herbal cigarettes are sold or offered for sale shall sell, permit to be  
15 sold, offer for sale or display for sale any tobacco product or herbal  
16 cigarettes in any manner, unless such products and cigarettes are stored  
17 for sale (a) behind a counter in an area accessible only to the person-  
18 nel of such business, or (b) in a locked container; provided, however,  
19 such restriction shall not apply to tobacco businesses, as defined in  
20 subdivision eight of section thirteen hundred ninety-nine-aa of this  
21 article, and to places to which admission is restricted to persons  
22 [eighteen] NINETEEN years of age or older, UNLESS SUCH INDIVIDUALS ARE  
23 EIGHTEEN YEARS OF AGE WHO ARE SERVING IN THE UNITED STATES MILITARY,  
24 INCLUDING BUT NOT LIMITED TO, THE NATIONAL GUARD AND RESERVES.

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

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

31 S 3. Paragraphs (b), (c) and (f) of subdivision 2 of section 1399-bb  
32 of the public health law, as amended by chapter 13 of the laws of 2003,  
33 are amended to read as follows:

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

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

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

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

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

1 S 5. Section 1399-dd of the public health law, as amended by chapter  
2 13 of the laws of 2003, is amended to read as follows:

3 S 1399-dd. Sale of tobacco products or herbal cigarettes in vending  
4 machines. No person, firm, partnership, company or corporation shall  
5 operate a vending machine which dispenses tobacco products or herbal  
6 cigarettes unless such machine is located: (a) in a bar as defined in  
7 subdivision one of section thirteen hundred ninety-nine-n of this chap-  
8 ter, or the bar area of a food service establishment with a valid,  
9 on-premises full liquor license; (b) in a private club; (c) in a tobacco  
10 business as defined in subdivision eight of section thirteen hundred  
11 ninety-nine-aa of this article; or (d) in a place of employment which  
12 has an insignificant portion of its regular workforce comprised of  
13 people under the age of [eighteen] NINETEEN years and only in such  
14 locations that are not accessible to the general public; provided,  
15 however, that in such locations the vending machine is located in plain  
16 view and under the direct supervision and control of the person in  
17 charge of the location or his or her designated agent or employee.

18 S 6. Subdivision 1 of section 1399-ff of the public health law, as  
19 amended by chapter 508 of the laws of 2000, is amended to read as  
20 follows:

21 1. Where a civil penalty for a particular incident has not been  
22 imposed or an enforcement action regarding an alleged violation for a  
23 particular incident is not pending under section thirteen hundred nine-  
24 ty-nine-ee of this article, a parent or guardian of a [minor] PERSON  
25 UNDER NINETEEN YEARS OF AGE to whom tobacco products or herbal ciga-  
26 rettes are sold or distributed in violation of this article may submit a  
27 complaint to an enforcement officer setting forth the name and address  
28 of the alleged violator, the date of the alleged violation, the name and  
29 address of the complainant and the minor, and a brief statement describ-  
30 ing the alleged violation. The enforcement officer shall notify the  
31 alleged violator by certified or registered mail, return receipt  
32 requested, that a complaint has been submitted, and shall set a date, at  
33 least fifteen days after the mailing of such notice, for a hearing on  
34 the complaint. Such notice shall contain the information submitted by  
35 the complainant.

36 S 7. The opening paragraph of section 1399-hh of the public health  
37 law, as added by chapter 433 of the laws of 1997, is amended to read as  
38 follows:

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

44 S 8. Paragraph (f) of subdivision 2 of section 1399-ii of the public  
45 health law, as added by chapter 1 of the laws of 1999, is amended to  
46 read as follows:

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

49 S 9. Subdivisions 1 and 3 of section 1399-jj of the public health law,  
50 as amended by chapter 1 of the laws of 1999, are amended to read as  
51 follows:

52 1. The commissioner shall evaluate the effectiveness of the efforts by  
53 state and local governments to reduce the use of tobacco products among  
54 [minors] PERSONS UNDER NINETEEN YEARS OF AGE and adults. The principal  
55 measurements of effectiveness shall include negative attitudes toward

1 tobacco use and reduction of tobacco use among the general population,  
2 and given target populations.

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

6 The department shall conduct an independent evaluation of the state-  
7 wide tobacco use prevention and control program under section thirteen  
8 hundred ninety-nine-ii of this article. The purpose of this evaluation  
9 is to direct the most efficient allocation of state resources devoted to  
10 tobacco education and cessation to accomplish the maximum prevention and  
11 reduction of tobacco use among [minors] PERSONS UNDER NINETEEN YEARS OF  
12 AGE and adults. Such evaluation shall be provided to the governor, the  
13 majority leader of the senate and the speaker of the assembly on or  
14 before September first, two thousand one, and annually on or before such  
15 date thereafter. The comprehensive evaluation design shall be guided by  
16 the following:

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

19 (b) an evaluation of the comparative effectiveness of individual  
20 program designs which shall be used in funding decisions and program  
21 modifications; and

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

24 S 10. The opening paragraph and the closing paragraph of section  
25 1399-kk of the public health law, as added by chapter 433 of the laws of  
26 1997, are amended to read as follows:

27 The commissioner shall submit to the governor and the legislature an  
28 interim tobacco control report and annual tobacco control reports which  
29 shall describe the extent of the use of tobacco products by [minors]  
30 PERSONS UNDER NINETEEN YEARS OF AGE in the state and document the  
31 progress state and local governments have made in reducing such use  
32 among [minors] PERSONS UNDER NINETEEN YEARS OF AGE.

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

37 (b) recommendations for improving tobacco control efforts in the  
38 state; and

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

40 S 11. The opening paragraph and paragraphs (f) and (g) of subdivision  
41 2 of section 1399-kk of the public health law, as added by chapter 433  
42 of the laws of 1997, are amended to read as follows:

43 The commissioner shall submit to the governor and the legislature an  
44 annual tobacco control report which shall describe the extent of the use  
45 of tobacco products by [minors] PERSONS UNDER NINETEEN YEARS OF AGE in  
46 the state and document the progress state and local governments have  
47 made in reducing such use among [minors] PERSONS UNDER NINETEEN YEARS OF  
48 AGE. The annual report shall be submitted to the governor and the legis-  
49 lature on or before March thirty-first of each year beginning on March  
50 thirty-first, nineteen hundred ninety-nine. The annual report shall, to  
51 the extent practicable, include the following information on a county by  
52 county basis:

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

1 (g) the number of tobacco users and estimated trends in tobacco use  
2 among [minors] PERSONS UNDER NINETEEN YEARS OF AGE;  
3 S 12. Subdivision 3 of section 260.21 of the penal law, as added by  
4 chapter 362 of the laws of 1992, is amended to read as follows:  
5 3. He OR SHE sells or causes to be sold tobacco in any form to a child  
6 less than [eighteen] NINETEEN years old.  
7 S 13. This act shall take effect on the one hundred twentieth day  
8 after it shall have become a law.