

6393--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 26, 2013

Introduced by M. of A. GALEF, DINOWITZ, WEISENBERG, BENEDETTO, ZEBROW-SKI, HOOPER, JAFFEE -- Multi-Sponsored by -- M. of A. FINCH, GOTTFRIED, HIKIND, KOLB, MARKEY, McDONOUGH, MILLMAN, PAULIN, ROBINSON, SWEENEY, THIELE -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, as amended by chapter 448 of the laws of 2012, are amended
3 and a new subdivision 8 is added to read as follows:
4 2. Any person operating a place of business wherein tobacco products,
5 herbal cigarettes, shisha or electronic cigarettes, are sold or offered
6 for sale is prohibited from selling such products, herbal cigarettes,
7 shisha, electronic cigarettes or smoking paraphernalia to individuals
8 under [eighteen] NINETEEN years of age, UNLESS SUCH INDIVIDUALS ARE
9 EIGHTEEN YEARS OF AGE WHO ARE SERVING IN THE UNITED STATES MILITARY,
10 INCLUDING BUT NOT LIMITED TO, THE NATIONAL GUARD AND RESERVES; and shall
11 post in a conspicuous place a sign upon which there shall be imprinted
12 the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO,
13 POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES,
14 ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO
15 PERSONS UNDER [EIGHTEEN] NINETEEN YEARS OF AGE IS PROHIBITED BY LAW."
16 Such sign shall be printed on a white card in red letters at least one-
17 half inch in height.
18 3. Sale of tobacco products, herbal cigarettes, shisha or electronic
19 cigarettes in such places, other than by a vending machine, shall be

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

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1 made only to an individual who demonstrates, through (a) a valid driv-
2 er's license or non-driver's identification card issued by the commis-
3 sioner of motor vehicles, the federal government, any United States
4 territory, commonwealth or possession, the District of Columbia, a state
5 government within the United States or a provincial government of the
6 dominion of Canada, or (b) a valid passport issued by the United States
7 government or any other country, or (c) an identification card issued by
8 the armed forces of the United States, indicating that the individual is
9 at least eighteen years of age. Such identification need not be required
10 of any individual who reasonably appears to be at least [twenty-five]
11 TWENTY-SIX years of age, provided, however, that such appearance shall
12 not constitute a defense in any proceeding alleging the sale of a tobac-
13 co product, herbal cigarettes, shisha or electronic cigarettes to an
14 individual under [eighteen] NINETEEN years of age.

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

28 8. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF
29 ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR
30 ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE
31 MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG
32 AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO
33 PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF
34 PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR
35 INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF
36 THIS SUBDIVISION.

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

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

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

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

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

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

1 S 4. Subdivision 4 of section 1399-bb of the public health law, as
2 amended by chapter 508 of the laws of 2000, is amended and a new subdi-
3 vision 5 is added to read as follows:

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

14 5. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF
15 ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR
16 ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE
17 MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG
18 AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO
19 PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF
20 PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR
21 INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF
22 THIS SUBDIVISION.

23 S 5. Section 1399-dd of the public health law, as amended by chapter
24 448 of the laws of 2012, is amended to read as follows:

25 S 1399-dd. 1. Sale of tobacco products, herbal cigarettes or electron-
26 ic cigarettes in vending machines. No person, firm, partnership, company
27 or corporation shall operate a vending machine which dispenses tobacco
28 products, herbal cigarettes or electronic cigarettes unless such machine
29 is located: (a) in a bar as defined in subdivision one of section thir-
30 teen hundred ninety-nine-n of this chapter, or the bar area of a food
31 service establishment with a valid, on-premises full liquor license; (b)
32 in a private club; (c) in a tobacco business as defined in subdivision
33 eight of section thirteen hundred ninety-nine-aa of this article; or (d)
34 in a place of employment which has an insignificant portion of its regu-
35 lar workforce comprised of people under the age of [eighteen] NINETEEN
36 years and only in such locations that are not accessible to the general
37 public; provided, however, that in such locations the vending machine is
38 located in plain view and under the direct supervision and control of
39 the person in charge of the location or his or her designated agent or
40 employee.

41 2. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF
42 ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR
43 ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE
44 MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG
45 AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO
46 PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF
47 PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR
48 INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF
49 THIS SUBDIVISION.

50 S 6. Subdivision 1 of section 1399-ff of the public health law, as
51 amended by chapter 448 of the laws of 2012, is amended and a new subdi-
52 vision 4 is added to read as follows:

53 1. Where a civil penalty for a particular incident has not been
54 imposed or an enforcement action regarding an alleged violation for a
55 particular incident is not pending under section thirteen hundred nine-
56 ty-nine-ee of this article, a parent or guardian of a [minor] PERSON

1 UNDER NINETEEN YEARS OF AGE to whom tobacco products, herbal cigarettes
2 or electronic cigarettes are sold or distributed in violation of this
3 article may submit a complaint to an enforcement officer setting forth
4 the name and address of the alleged violator, the date of the alleged
5 violation, the name and address of the complainant and the minor, and a
6 brief statement describing the alleged violation. The enforcement offi-
7 cer shall notify the alleged violator by certified or registered mail,
8 return receipt requested, that a complaint has been submitted, and shall
9 set a date, at least fifteen days after the mailing of such notice, for
10 a hearing on the complaint. Such notice shall contain the information
11 submitted by the complainant.

12 4. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF
13 ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR
14 ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE
15 MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SECTION, SO LONG
16 AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO
17 PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF
18 PERSONS OR PROPERTY. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR
19 INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF
20 THIS SUBDIVISION.

21 S 7. Paragraph (f) of subdivision 2 of section 1399-ii of the public
22 health law, as added by chapter 1 of the laws of 1999, is amended to
23 read as follows:

24 (f) Restriction of [youth] access to tobacco products BY PERSONS UNDER
25 NINETEEN YEARS OF AGE, HOWEVER NOTHING IN THIS SUBDIVISION SHALL BE
26 DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO
27 ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER
28 RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR
29 AUTHORIZED BY THIS SUBDIVISION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE
30 IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH,
31 SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS
32 SUBDIVISION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR
33 ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS PARAGRAPH;

34 S 8. Subdivision 3 of section 260.21 of the penal law, as added by
35 chapter 362 of the laws of 1992, is amended to read as follows:

36 3. He OR SHE sells or causes to be sold tobacco in any form to a child
37 less than [eighteen] NINETEEN years old, HOWEVER NOTHING IN THIS SECTION
38 SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR
39 VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES
40 STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT
41 PROVIDED OR AUTHORIZED BY THIS SUBDIVISION, SO LONG AS SUCH LOCAL LAW OR
42 ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER,
43 CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY.
44 NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL
45 LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION.

46 S 9. This act shall take effect on the one hundred twentieth day after
47 it shall have become a law.