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

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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, ZEBROWSKI, 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:

Section 1. Subdivisions 2, 3 and 7 of section 1399-cc of the public health law, as amended by chapter 448 of the laws of 2012, are amended and a new subdivision 8 is added to read as follows:

2. Any person operating a place of business wherein tobacco products, herbal cigarettes, shisha or electronic cigarettes, are sold or offered for sale is prohibited from selling such products, herbal cigarettes, shisha, electronic cigarettes or smoking paraphernalia to individuals under [eighteen] NINETEEN years of age, UNLESS SUCH INDIVIDUALS ARE EIGHTEEN YEARS OF AGE WHO ARE SERVING IN THE UNITED STATES MILITARY, INCLUDING BUT NOT LIMITED TO, THE NATIONAL GUARD AND RESERVES; 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, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, 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, herbal cigarettes, shisha or electronic 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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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 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, herbal cigarettes, shisha or electronic cigarettes to an individual under [eighteen] NINETEEN years of age.

7. No person operating a place of business wherein tobacco products, herbal cigarettes, shisha or electronic cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product, herbal cigarettes, shisha or electronic 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 UNLESS SUCH INDIVIDUALS ARE EIGHTEEN YEARS OF AGE WHO ARE SERVING IN THE UNITED STATES MILITARY, INCLUDING BUT NOT LIMITED TO, THE NATIONAL GUARD AND RESERVES.

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

S 2. 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 3. 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 4. Subdivision 4 of section 1399-bb of the public health law, as amended by chapter 508 of the laws of 2000, is amended and a new subdivision 5 is added 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.

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

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

S 1399-dd. 1. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines. No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products, herbal cigarettes or electronic 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.

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

S 6. Subdivision 1 of section 1399-ff of the public health law, as amended by chapter 448 of the laws of 2012, is amended and a new subdivision 4 is added 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 ninety-nine-ee of this article, a parent or guardian of a [minor] PERSON

UNDER NINETEEN YEARS OF AGE to whom tobacco products, herbal cigarettes or electronic 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.

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

S 7. 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, HOWEVER NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT OR AMEND ANY LOCAL LAW OR ORDINANCE WHICH IMPOSES STRICTER RESTRICTIONS AND CONDITIONS ON THE MINIMUM AGE REQUIREMENT PROVIDED OR AUTHORIZED BY THIS SUBDIVISION, SO LONG AS SUCH LOCAL LAW OR ORDINANCE IS CONSISTENT WITH THE AUTHORITY TO PROTECT THE ORDER, CONDUCT, HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS OR PROPERTY. NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO ALTER OR INVALIDATE ANY LOCAL LAW OR ORDINANCE IN EFFECT ON THE EFFECTIVE DATE OF THIS PARAGRAPH;

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

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