

4863

2013-2014 Regular Sessions

I N   S E N A T E

April 26, 2013

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Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the penal law and the administrative code of the city of New York, in relation to increasing the purchasing age for tobacco products from eighteen to twenty-one

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 4 of section 1399-aa of the public health law,  
2     as added by chapter 799 of the laws of 1992, is amended to read as  
3     follows:  
4     4. "Private club" means an organization with no more than an insignif-  
5     icant portion of its membership comprised of people under the age of  
6     [eighteen] TWENTY-ONE years that regularly receives dues and/or payments  
7     from its members for the use of space, facilities and services.  
8     S 2. Paragraphs (b), (c) and (f) of subdivision 2 of section 1399-bb  
9     of the public health law, as amended by chapter 13 of the laws of 2003,  
10    are amended to read as follows:  
11    (b) conventions and trade shows; provided that the distribution is  
12    confined to designated areas generally accessible only to persons over  
13    the age of [eighteen] TWENTY-ONE;  
14    (c) events sponsored by tobacco or herbal cigarette manufacturers  
15    provided that the distribution is confined to designated areas generally  
16    accessible only to persons over the age of [eighteen] TWENTY-ONE;  
17    (f) factories as defined in subdivision nine of section thirteen  
18    hundred ninety-nine-aa of this article and construction sites; provided  
19    that the distribution is confined to designated areas generally accessi-  
20    ble only to persons over the age of [eighteen] TWENTY-ONE.  
21    S 3. Subdivision 4 of section 1399-bb of the public health law, as  
22    amended by chapter 508 of the laws of 2000, is amended to read as  
23    follows:

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

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

11 S 4. Subdivisions 2, 3 and 7 of section 1399-cc of the public health  
12 law, as amended by chapter 448 of the laws of 2012, are amended to read  
13 as follows:

14 2. Any person operating a place of business wherein tobacco products,  
15 herbal cigarettes, shisha or electronic cigarettes, are sold or offered  
16 for sale is prohibited from selling such products, herbal cigarettes,  
17 shisha, electronic cigarettes or smoking paraphernalia to individuals  
18 under [eighteen] TWENTY-ONE years of age, and shall post in a conspicu-  
19 ous place a sign upon which there shall be imprinted the following  
20 statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBAC-  
21 CO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC  
22 CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER  
23 [EIGHTEEN] TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." Such sign  
24 shall be printed on a white card in red letters at least one-half inch  
25 in height.

26 3. Sale of tobacco products, herbal cigarettes, shisha or electronic  
27 cigarettes in such places, other than by a vending machine, shall be  
28 made only to an individual who demonstrates, through (a) a valid driv-  
29 er's license or non-driver's identification card issued by the commis-  
30 sioner of motor vehicles, the federal government, any United States  
31 territory, commonwealth or possession, the District of Columbia, a state  
32 government within the United States or a provincial government of the  
33 dominion of Canada, or (b) a valid passport issued by the United States  
34 government or any other country, or (c) an identification card issued by  
35 the armed forces of the United States, indicating that the individual is  
36 at least [eighteen] TWENTY-ONE years of age. Such identification need  
37 not be required of any individual who reasonably appears to be at least  
38 twenty-five years of age, provided, however, that such appearance shall  
39 not constitute a defense in any proceeding alleging the sale of a tobac-  
40 co product, herbal cigarettes, shisha or electronic cigarettes to an  
41 individual under eighteen years of age.

42 7. No person operating a place of business wherein tobacco products,  
43 herbal cigarettes, shisha or electronic cigarettes are sold or offered  
44 for sale shall sell, permit to be sold, offer for sale or display for  
45 sale any tobacco product, herbal cigarettes, shisha or electronic ciga-  
46 rettes in any manner, unless such products and cigarettes are stored for  
47 sale (a) behind a counter in an area accessible only to the personnel of  
48 such business, or (b) in a locked container; provided, however, such  
49 restriction shall not apply to tobacco businesses, as defined in subdi-  
50 vision eight of section thirteen hundred ninety-nine-aa of this article,  
51 and to places to which admission is restricted to persons [eighteen]  
52 TWENTY-ONE years of age or older.

53 S 5. Subdivision (d) of section 1399-dd of the public health law, as  
54 amended by chapter 448 of the laws of 2012, is amended to read as  
55 follows:

(d) in a place of employment which has an insignificant portion of its regular workforce comprised of people under the age of [eighteen] TWENTY-ONE 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 6. Subdivision 1 of section 1399-ff of the public health law, as amended by chapter 448 of the laws of 2012, 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 ninety-nine-ee of this article, a parent or guardian of a [minor] PERSON UNDER TWENTY-ONE 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] PERSON UNDER TWENTY-ONE YEARS OF AGE, 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 7. Paragraphs (b) and (c) of subdivision 2 of section 1399-ll of the public health law, as added by chapter 518 of the laws of 2000, are amended to read as follows:

(b) Any person operating a tobacco business wherein bidis is sold or offered for sale is prohibited from selling such bidis to individuals under [eighteen] TWENTY-ONE years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF BIDIS TO PERSONS UNDER [EIGHTEEN] TWENTY-ONE 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.

(c) Sales of bidis by a tobacco business 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] TWENTY-ONE years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under [eighteen] TWENTY-ONE years of age.

S 8. Subdivision 1 and paragraphs (b) and (c) of subdivision 2 of section 1399-mm of the public health law, as added by chapter 549 of the laws of 2003, are amended to read as follows:

1. No person shall knowingly sell or provide gutka to any other person under [eighteen] TWENTY-ONE years of age. No other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of gutka. Any person who violates the provisions of this subdivision shall be subject to a civil penalty of not more than five hundred dollars.

(b) Any person operating a tobacco business wherein gutka is sold or offered for sale is prohibited from selling such gutka to individuals

1 under [eighteen] TWENTY-ONE years of age, and shall post in a conspicu-  
2 ous place a sign upon which there shall be imprinted the following  
3 statement, "SALE OF GUTKA TO PERSONS UNDER [EIGHTEEN] TWENTY-ONE YEARS  
4 OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white  
5 card in red letters at least one-half inch in height.

6 (c) Sales of gutka by a tobacco business shall be made only to an  
7 individual who demonstrates, through a driver's license or other photo-  
8 graphic identification card issued by a government entity or educational  
9 institution indicating that the individual is at least [eighteen] TWEN-  
10 TY-ONE years of age. Such identification need not be required of any  
11 individual who reasonably appears to be at least twenty-five years of  
12 age, provided, however, that such appearance shall not constitute a  
13 defense in any proceeding alleging the sale of a tobacco product to an  
14 individual under [eighteen] TWENTY-ONE years of age.

15 S 9. Subdivision 3 of section 260.21 of the penal law, as added by  
16 chapter 362 of the laws of 1992, is amended to read as follows:

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

19 S 10. Section 17-706 of the administrative code of the city of New  
20 York, as amended by local law number 69 of the city of New York for the  
21 year 2009, is amended to read as follows:

22 S 17-706 Sale of tobacco products to minors prohibited. Any person  
23 operating a place of business wherein tobacco products are sold or  
24 offered for sale must be licensed as required by section 17-703 of this  
25 [code] SUBCHAPTER and is prohibited from selling such products to indi-  
26 viduals under [eighteen] TWENTY-ONE years of age, and shall post in a  
27 conspicuous place a sign upon which there shall be imprinted the follow-  
28 ing statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED  
29 TOBACCO, OR OTHER TOBACCO PRODUCTS, ROLLING PAPER OR PIPES, TO PERSONS  
30 UNDER [EIGHTEEN] TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." Such  
31 sign shall be printed on a white card in red letters at least one-half  
32 inch in height. Sale of tobacco products in such places, other than by a  
33 vending machine, shall be made only to an individual who demonstrates,  
34 through a driver's license or other photographic identification card  
35 issued by a government entity or educational institution, that the indi-  
36 vidual is at least [eighteen] TWENTY-ONE years of age. Such identifica-  
37 tion need not be required of any individual who reasonably appears to be  
38 at least twenty-five years of age, provided, however, that such appear-  
39 ance shall not constitute a defense in any proceeding alleging the sale  
40 of a tobacco product to an individual under [eighteen] TWENTY-ONE years  
41 of age.

42 S 11. Section 17-714 of the administrative code of the city of New  
43 York, as amended by local law number 69 of the city of New York for the  
44 year 2009, is amended to read as follows:

45 S 17-714 Sale of herbal cigarettes to minors prohibited. It shall be  
46 unlawful for any person to sell or offer for sale herbal cigarettes to  
47 an individual under [eighteen] TWENTY-ONE years of age.

48 S 12. This act shall take effect on the one hundred twentieth day  
49 after it shall have become a law.