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

4863

2013-2014 Regular Sessions

I N S E N A T E

April 26, 2013

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:

Section 1. 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] TWENTY-ONE years that regularly receives dues and/or payments from its members for the use of space, facilities and services.

S 2. 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] TWENTY-ONE;

(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] TWENTY-ONE;

(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] TWENTY-ONE.

S 3. Subdivision 4 of section 1399-bb of the public health law, as amended by chapter 508 of the laws of 2000, is amended to read as follows:

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

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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] 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 or herbal cigarette to an individual.

S 4. 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 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] 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 CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, 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.

3. Sale of tobacco products, herbal cigarettes, shisha or electronic cigarettes in such places, other than by a vending machine, shall be 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] 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, herbal cigarettes, shisha or electronic cigarettes to an individual under eighteen 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] TWENTY-ONE years of age or older.

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

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 GUTKA 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 gutka 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 9. 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] TWENTY-ONE years old.

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

S 17-706 Sale of tobacco products to minors prohibited. Any person operating a place of business wherein tobacco products are sold or offered for sale must be licensed as required by section 17-703 of this [code] SUBCHAPTER and is prohibited from selling such products 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 CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, ROLLING PAPER OR PIPES, 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. Sale of tobacco products in such places, other than by a vending machine, 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, 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 11. Section 17-714 of the administrative code of the city of New York, as amended by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

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

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