

7053

I N S E N A T E

April 23, 2014

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed 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, 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
20 made only to an individual who demonstrates, through (a) a valid driv-
21 er's license or non-driver's identification card issued by the commis-
22 sioner of motor vehicles, the federal government, any United States
23 territory, commonwealth or possession, the District of Columbia, a state
24 government within the United States or a provincial government of the
25 dominion of Canada, or (b) a valid passport issued by the United States
26 government or any other country, or (c) an identification card issued by
27 the armed forces of the United States, indicating that the individual is

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

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1 at least eighteen years of age. Such identification need not be required
2 of any individual who reasonably appears to be at least [twenty-five]
3 TWENTY-SIX years of age, provided, however, that such appearance shall
4 not constitute a defense in any proceeding alleging the sale of a tobac-
5 co product, herbal cigarettes, shisha or electronic cigarettes to an
6 individual under [eighteen] NINETEEN years of age.

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

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

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

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

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

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

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

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

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

51 4. The distribution of tobacco products or herbal cigarettes pursuant
52 to subdivision two of this section shall be made only to an individual
53 who demonstrates, through a driver's license or other photographic iden-
54 tification card issued by a government entity or educational institution
55 indicating that the individual is at least [eighteen] NINETEEN years of
56 age. Such identification need not be required of any individual who

1 reasonably appears to be at least [twenty-five] TWENTY-SIX years of age;
2 provided, however, that such appearance shall not constitute a defense
3 in any proceeding alleging the sale of a tobacco product or herbal ciga-
4 rette to an individual UNDER NINETEEN YEARS OF AGE.

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

14 S 5. Section 1399-dd of the public health law, as amended by chapter
15 448 of the laws of 2012, is amended to read as follows:

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

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

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

44 1. Where a civil penalty for a particular incident has not been
45 imposed or an enforcement action regarding an alleged violation for a
46 particular incident is not pending under section thirteen hundred nine-
47 ty-nine-ee of this article, a parent or guardian of a [minor] PERSON
48 UNDER NINETEEN YEARS OF AGE to whom tobacco products, herbal cigarettes
49 or electronic cigarettes are sold or distributed in violation of this
50 article may submit a complaint to an enforcement officer setting forth
51 the name and address of the alleged violator, the date of the alleged
52 violation, the name and address of the complainant and the minor, and a
53 brief statement describing the alleged violation. The enforcement offi-
54 cer shall notify the alleged violator by certified or registered mail,
55 return receipt requested, that a complaint has been submitted, and shall
56 set a date, at least fifteen days after the mailing of such notice, for

1 a hearing on the complaint. Such notice shall contain the information
2 submitted by the complainant.

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

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

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

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

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

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