

# STATE OF NEW YORK

7529

2017-2018 Regular Sessions

## IN ASSEMBLY

May 1, 2017

Introduced by M. of A. GALEF, DINOWITZ, BENEDETTO, ZEBROWSKI, HOOPER, JAFFEE -- Multi-Sponsored by -- M. of A. FINCH, GOTTFRIED, HIKIND, KOLB, McDONOUGH, PAULIN, THIELE -- read once and referred 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 542 of the laws of 2014, 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, liquid nicotine, shisha or electronic cigarettes, are  
6 sold or offered for sale is prohibited from selling such products,  
7 herbal cigarettes, liquid nicotine, shisha, electronic cigarettes or  
8 smoking paraphernalia to individuals under [~~eighteen~~ nineteen years of  
9 age, unless such individuals are eighteen years of age who are serving  
10 in the United States military, including but not limited to, the  
11 National Guard and reserves; and shall post in a conspicuous place a  
12 sign upon which there shall be imprinted the following statement, "SALE  
13 OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR  
14 OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC  
15 CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER  
16 [~~EIGHTEEN~~ NINETEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall  
17 be printed on a white card in red letters at least one-half inch in  
18 height.

19 3. Sale of tobacco products, herbal cigarettes, liquid nicotine,  
20 shisha or electronic cigarettes in such places, other than by a vending  
21 machine, shall be made only to an individual who demonstrates, through  
22 (a) a valid driver's license or non-driver's identification card issued

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

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1 by the commissioner of motor vehicles, the federal government, any  
2 United States territory, commonwealth or possession, the District of  
3 Columbia, a state government within the United States or a provincial  
4 government of the dominion of Canada, or (b) a valid passport issued by  
5 the United States government or any other country, or (c) an identifica-  
6 tion card issued by the armed forces of the United States, indicating  
7 that the individual is at least eighteen years of age. Such identifica-  
8 tion need not be required of any individual who reasonably appears to be  
9 at least twenty-five years of age, provided, however, that such appear-  
10 ance shall not constitute a defense in any proceeding alleging the sale  
11 of a tobacco product, herbal cigarettes, liquid nicotine, shisha or  
12 electronic cigarettes to an individual under [~~eighteen~~] nineteen years  
13 of age.

14 7. No person operating a place of business wherein tobacco products,  
15 herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are  
16 sold or offered for sale shall sell, permit to be sold, offer for sale  
17 or display for sale any tobacco product, herbal cigarettes, liquid nico-  
18 tine, shisha or electronic cigarettes in any manner, unless such  
19 products and cigarettes are stored for sale (a) behind a counter in an  
20 area accessible only to the personnel of such business, or (b) in a  
21 locked container; provided, however, such restriction shall not apply to  
22 tobacco businesses, as defined in subdivision eight of section thirteen  
23 hundred ninety-nine-aa of this article, and to places to which admission  
24 is restricted to persons [~~eighteen~~] nineteen years of age or older  
25 unless such individuals are eighteen years of age who are serving in the  
26 United States military, including but not limited to, the National Guard  
27 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 § 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 § 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.

§ 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.

§ 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:

§ 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.

§ 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

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