

STATE OF NEW YORK

558--A

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. L. ROSENTHAL, DINOWITZ, MOSLEY, JAFFEE, GALEF, THIELE, FINCH, RIVERA, SIMON, ORTIZ, VANEL, DICKENS, D'URSO, LAVINE, SEAWRIGHT, DE LA ROSA, CRESPO, BICHOTTE, GLICK, LIFTON, FAHY, WEPRIN, ZEBROWSKI, TAYLOR, PERRY, ABINANTI, PAULIN, COOK, GOTTFRIED, EPSTEIN, BUTTENSCHON, MONTESANO, JACOBSON, SMULLEN, SAYEGH, ROMEO, REYES, FALL, RODRIGUEZ, B. MILLER, GRIFFIN -- Multi-Sponsored by -- M. of A. ARROYO, DeSTEFANO, M. L. MILLER, NIOU -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- 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 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 § 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];

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

LBD00518-04-9

1 (c) events sponsored by tobacco or herbal cigarette manufacturers
2 provided that the distribution is confined to designated areas generally
3 accessible only to persons over the age of [~~eighteen~~] twenty-one;

4 (f) factories as defined in subdivision nine of section thirteen
5 hundred ninety-nine-aa of this article and construction sites; provided
6 that the distribution is confined to designated areas generally accessi-
7 ble only to persons over the age of [~~eighteen~~] twenty-one.

8 § 3. Subdivisions 4 and 5 of section 1399-bb of the public health law,
9 as amended by chapter 4 of the laws of 2018, are amended to read as
10 follows:

11 4. No person engaged in the business of selling or otherwise distrib-
12 uting electronic cigarettes for commercial purposes, or any agent or
13 employee of such person, shall knowingly, in furtherance of such busi-
14 ness, distribute without charge any electronic cigarettes to any indi-
15 vidual under [~~eighteen~~] twenty-one years of age.

16 5. The distribution of tobacco products or herbal cigarettes pursuant
17 to subdivision two of this section or the distribution without charge of
18 electronic cigarettes shall be made only to an individual who demon-
19 strates, through a driver's license or other photographic identification
20 card issued by a government entity or educational institution indicating
21 that the individual is at least [~~eighteen~~] twenty-one years of age. Such
22 identification need not be required of any individual who reasonably
23 appears to be at least twenty-five years of age; provided, however, that
24 such appearance shall not constitute a defense in any proceeding alleg-
25 ing the sale of a tobacco product, electronic cigarette or herbal ciga-
26 rette or the distribution without charge of electronic cigarettes to an
27 individual.

28 § 4. Subdivisions 2, 3 and 7 of section 1399-cc of the public health
29 law, as amended by chapter 542 of the laws of 2014, are amended to read
30 as follows:

31 2. Any person operating a place of business wherein tobacco products,
32 herbal cigarettes, liquid nicotine, shisha or electronic cigarettes, are
33 sold or offered for sale is prohibited from selling such products,
34 herbal cigarettes, liquid nicotine, shisha, electronic cigarettes or
35 smoking paraphernalia to individuals under [~~eighteen~~] twenty-one years
36 of age, and shall post in a conspicuous place a sign upon which there
37 shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS,
38 CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS,
39 HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING
40 PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER [~~EIGHTEEN~~] TWENTY-ONE
41 YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a
42 white card in red letters at least one-half inch in height.

43 3. Sale of tobacco products, herbal cigarettes, liquid nicotine,
44 shisha or electronic cigarettes in such places, other than by a vending
45 machine, shall be made only to an individual who demonstrates, through
46 (a) a valid driver's license or non-driver's identification card issued
47 by the commissioner of motor vehicles, the federal government, any
48 United States territory, commonwealth or possession, the District of
49 Columbia, a state government within the United States or a provincial
50 government of the dominion of Canada, or (b) a valid passport issued by
51 the United States government or any other country, or (c) an identifica-
52 tion card issued by the armed forces of the United States, indicating
53 that the individual is at least [~~eighteen~~] twenty-one years of age. Such
54 identification need not be required of any individual who reasonably
55 appears to be at least twenty-five years of age, provided, however, that
56 such appearance shall not constitute a defense in any proceeding alleg-

1 ing the sale of a tobacco product, herbal cigarettes, liquid nicotine,
2 shisha or electronic cigarettes to an individual under [~~eighteen~~] twen-
3 ty-one years of age.

4 7. No 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 shall sell, permit to be sold, offer for sale
7 or display for sale any tobacco product, herbal cigarettes, liquid nico-
8 tine, shisha or electronic cigarettes in any manner, unless such
9 products and cigarettes are stored for sale (a) behind a counter in an
10 area accessible only to the personnel of such business, or (b) in a
11 locked container; provided, however, such restriction shall not apply to
12 tobacco businesses, as defined in subdivision eight of section thirteen
13 hundred ninety-nine-aa of this article, and to places to which admission
14 is restricted to persons [~~eighteen~~] twenty-one years of age or older.

15 § 5. Subdivision (d) of section 1399-dd of the public health law, as
16 amended by chapter 448 of the laws of 2012, is amended to read as
17 follows:

18 (d) in a place of employment which has an insignificant portion of its
19 regular workforce comprised of people under the age of [~~eighteen~~] twen-
20 ty-one years and only in such locations that are not accessible to the
21 general public; provided, however, that in such locations the vending
22 machine is located in plain view and under the direct supervision and
23 control of the person in charge of the location or his or her designated
24 agent or employee.

25 § 6. Subdivision 1 of section 1399-ff of the public health law, as
26 amended by chapter 448 of the laws of 2012, is amended to read as
27 follows:

28 1. Where a civil penalty for a particular incident has not been
29 imposed or an enforcement action regarding an alleged violation for a
30 particular incident is not pending under section thirteen hundred nine-
31 ty-nine-ee of this article, a parent or guardian of a [~~minor~~] person
32 under twenty-one years of age to whom tobacco products, herbal ciga-
33 rettes or electronic cigarettes are sold or distributed in violation of
34 this article may submit a complaint to an enforcement officer setting
35 forth the name and address of the alleged violator, the date of the
36 alleged violation, the name and address of the complainant and the
37 [~~minor~~] person under twenty-one years of age, and a brief statement
38 describing the alleged violation. The enforcement officer shall notify
39 the alleged violator by certified or registered mail, return receipt
40 requested, that a complaint has been submitted, and shall set a date, at
41 least fifteen days after the mailing of such notice, for a hearing on
42 the complaint. Such notice shall contain the information submitted by
43 the complainant.

44 § 7. Paragraphs (b) and (c) of subdivision 2 of section 1399-ll of the
45 public health law, as added by chapter 518 of the laws of 2000, are
46 amended to read as follows:

47 (b) Any person operating a tobacco business wherein bidis is sold or
48 offered for sale is prohibited from selling such bidis to individuals
49 under [~~eighteen~~] twenty-one years of age, and shall post in a conspicu-
50 ous place a sign upon which there shall be imprinted the following
51 statement, "SALE OF BIDIS TO PERSONS UNDER [~~EIGHTEEN~~] TWENTY-ONE YEARS
52 OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white
53 card in red letters at least one-half inch in height.

54 (c) Sales of bidis by a tobacco business shall be made only to an
55 individual who demonstrates, through a driver's license or other photo-
56 graphic identification card issued by a government entity or educational

1 institution indicating that the individual is at least [~~eighteen~~] twenty-one
2 ty-one years of age. Such identification need not be required of any
3 individual who reasonably appears to be at least twenty-five years of
4 age, provided, however, that such appearance shall not constitute a
5 defense in any proceeding alleging the sale of a tobacco product to an
6 individual under [~~eighteen~~] twenty-one years of age.

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

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

16 (b) Any person operating a tobacco business wherein gutka is sold or
17 offered for sale is prohibited from selling such gutka 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 GUTKA TO PERSONS UNDER [~~EIGHTEEN~~] TWENTY-ONE YEARS
21 OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white
22 card in red letters at least one-half inch in height.

23 (c) Sales of gutka by a tobacco business shall be made only to an
24 individual who demonstrates, through a driver's license or other photo-
25 graphic identification card issued by a government entity or educational
26 institution indicating that the individual is at least [~~eighteen~~] twen-
27 ty-one years of age. Such identification need not be required of any
28 individual who reasonably appears to be at least twenty-five years of
29 age, provided, however, that such appearance shall not constitute a
30 defense in any proceeding alleging the sale of a tobacco product to an
31 individual under [~~eighteen~~] twenty-one years of age.

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

34 3. He or she sells or causes to be sold tobacco in any form to a child
35 less than [~~eighteen~~] twenty-one years old.

36 § 10. This act shall take effect on the one hundred twentieth day
37 after it shall have become a law.