

SENATE, No. 359

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator Turner

SYNOPSIS

Raises minimum age for purchase and sale of tobacco products and electronic smoking devices from 19 to 21.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning the minimum age for the sale and distribution of tobacco products and electronic smoking devices and revising various parts of the statutory law

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1995, c.304 (C.2A:170-51.1) is amended to read as follows:
3. A person [19] 21 years of age or older who purchases a tobacco product for a person who is under [19] 21 years of age is a petty disorderly person.
(cf: P.L.2005, c.384, s.3)

2. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to read as follows:
 1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under [19] 21 years of age:

(1) any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco; or

(2) any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser of the tobacco product or electronic smoking device or the recipient of the promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to make the purchase or receive the sample;

(2) that the appearance of the purchaser of the tobacco product or electronic smoking device or the recipient of the promotional sample was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to make the purchase or receive the sample; and

(3) that the sale or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to make the purchase or receive the sample.

c. A person who violates the provisions of subsection a. of this section, including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product to a person under [19] 21 years of age, shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and \$1,000 for the third and each subsequent violation. The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes or a law enforcement officer having enforcement authority in that municipality may issue a summons for a violation of the provisions of subsection a. of this section, and may serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

d. In addition to the provisions of subsection c. of this section, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation in the Department of the Treasury may suspend or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke the license issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail dealer. The licensee shall be subject to administrative charges, based on a schedule issued by the Director of the Division of Taxation, which may provide for a monetary penalty in lieu of a suspension.

e. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed

pursuant to section 3 of P.L.1999, c. 90 (C.2C:33-13.1).

(cf: P.L.2009, c.182, s.3)

3. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to read as follows:

3. a. A person who sells or gives to a person under [19] 21 years of age any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, or any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product, including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product or electronic smoking device to a person under [19] 21 years of age, shall be punished by a fine as provided for a petty disorderly persons offense. A person who has been previously punished under this section and who commits another offense under it may be punishable by a fine of twice that provided for a petty disorderly persons offense.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser or recipient of the tobacco product or electronic smoking device falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to purchase or receive the tobacco product or electronic smoking device;

(2) that the appearance of the purchaser or recipient of the tobacco product or electronic smoking device was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to purchase or receive the tobacco product or electronic smoking device; and

(3) that the sale or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to purchase or receive the tobacco product or electronic smoking device.

c. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 1 of P.L.2000, c.87 (C.2A:170-51.4).

(cf: P.L.2009, c.182, s.4)

4. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read as follows:

7. (a) There is hereby established a special projects and development fund which shall consist of all funds appropriated or otherwise made available for the purposes set forth in this section. The commissioner, with the approval of the Public Health Council, may make grants from the special projects and development fund to local health agencies, to hospitals, and to voluntary health agencies to provide State health assistance for new health services and for special health projects in order to stimulate continued development of health services and to assure the citizens of New Jersey the benefits of the most advanced health protection techniques.

(b) Except as provided in subsection (c) of this section, grants from the special projects and development fund for specific purposes shall be made on an annual basis for a period not in excess of 5 years and such grants shall be in diminishing amounts during this period. The commissioner shall determine the conditions applicable to each such grant including the extent of local financial participation to be required. Grants from the special projects and development fund to voluntary health agencies shall not exceed 40% of said fund.

(c) (1) Grants from the special projects and development fund shall be made on an annual basis to local health agencies for local enforcement efforts concerning the sale and commercial distribution of tobacco products to persons under the age of [19] 21 years, in an amount determined by the commissioner. The grants shall be distributed based on the number of cigarette retail dealer and vending machine licenses issued within a local health agency's jurisdictional authority in order to ensure Statewide coverage and Statewide consistency of enforcement efforts; except that the commissioner may designate up to 5% of available funds, annually, for incentive grants to local health agencies to enhance enforcement efforts.

Each grant recipient shall report quarterly to the commissioner on the number of compliance check inspections it has completed and the results of those compliance checks. The commissioner shall determine any other conditions applicable to the grants.

(2) Beginning in 1999, notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the commissioner may make grants from the special projects and development fund to public and private local agencies to reduce teenage use of addictive substances.

(cf: P.L.2005, c.384, s.2)

5. Section 2 of P.L.1995, c.320 (C.26:3A2-20.1) is amended to read as follows:

2. a. The Commissioner of Health [and Senior Services] is authorized to enforce the provisions of section 1 of P.L.2000, c.87 (C.2A:170-51.4) with respect to the prohibition on the sale and commercial distribution of tobacco products to persons under [19] 21 years of age. The commissioner may delegate the enforcement authority provided in this section to local health agencies, subject to the availability of sufficient funding. The commissioner shall report quarterly to the Legislature on the enforcement program's progress, use of grants awarded pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7), results of enforcement efforts and other matters the commissioner deems appropriate.

b. The Department of the Treasury shall provide the commissioner with information about retail tobacco dealer licensees necessary to carry out the purpose of this section.

(cf: P.L. 2005, c.384, s.4)

6. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to read as follows:

2. Notwithstanding any other provision of law to the contrary, a person to whom a license is issued pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall, as a condition of the license, conspicuously post a legible sign at the point of display of the tobacco products and at the point of sale. The sign, which also shall be posted conspicuously on any licensed cigarette vending machine, shall be at least six inches by three inches in bold letters at least one-quarter inch high and shall read as follows:

"A person who sells or offers to sell a tobacco product to a person under [19] 21 years of age shall pay a

penalty of up to \$1,000 and may be subject to a license suspension or revocation.

Proof of age may be required for purchase."

(cf: P.L.2005, c.384, s.6)

7. Section 4 of P.L.2005, c.85 (C.54:40A-49) is amended to read as follows:

4. A person shall not engage in a retail sale of cigarettes in this State unless the sale is a face-to-face sale, except that a person may engage in a non-face-to-face sale of cigarettes to a person in this State if the following conditions are met:

a. The seller has fully complied with all of the requirements of the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;

b. The seller has verified payment of, paid, or collected all applicable State taxes, including the cigarette taxes imposed by the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), due on the cigarettes; and

c. The seller has, before mailing or shipping the cigarettes:

(1) obtained from the purchaser reliable confirmation that the purchaser is at least [19] 21 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address;

(2) made good faith effort to verify the information contained in the certification provided by the purchaser against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser;

(3) received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check; and

(4) verified that a credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped matches the credit or debit card company's address for the cardholder.

Sellers taking an order for a non-face-to-face sale may request that prospective purchasers provide their e-mail addresses.

(cf: P.L.2005, c.384, s.7)

8. This act shall take effect on the first day of the fourth month next following the date of enactment.

STATEMENT

This bill raises the minimum age for purchasing tobacco and electronic smoking devices from 19 to 21 years, and raises the minimum age from 19 to 21 years of a person to whom a vendor may sell, offer for sale, distribute, give or furnish such products in New Jersey. The bill also amends various related statutes concerning penalties, fines, signage requirements, non face-to-face transactions, and enforcement provisions to reflect the increased minimum age.