

SB 248-FN - AS AMENDED BY THE SENATE

01/08/2020 0022s

2019 SESSION

19-0517

01/04

SENATE BILL 248-FN

AN ACT increasing the age for sales and possession of tobacco products.

SPONSORS: Sen. Watters, Dist 4; Sen. Kahn, Dist 10; Sen. Hennessey, Dist 5; Sen. Fuller Clark, Dist 21; Sen. Sherman, Dist 24; Rep. Berrien, Rock. 18; Rep. Cahill, Rock. 17; Rep. MacKay, Merr. 14

COMMITTEE: Commerce

ANALYSIS

This bill increases the age for sales and possession of tobacco products.

Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears ~~[in brackets and struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT increasing the age for sales and possession of tobacco products.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-K:1 to read as follows:

126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from the possibility of addiction, disability, and death resulting from the use of tobacco products by ensuring that tobacco products will not be supplied to persons under the age of ~~[49]~~ **21**.

2 Access to and Use of Tobacco Products; Definitions. Amend RSA 126-K:2, XI to read as follows:

XI. "Tobacco product" means any product containing tobacco including, but not limited to, cigarettes, smoking tobacco, cigars, chewing tobacco, snuff, pipe tobacco, smokeless tobacco, and smokeless cigarettes. ***"Tobacco product" shall not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the federal Food, Drug, and Cosmetic Act.***

3 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory paragraph of RSA 126-K:3, I to read as follows:

I. For the purposes of this chapter, any person responsible for monitoring sales from a tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or liquid nicotine which vending machine or other sale is to be made to any person who does not appear to be at least ~~[49]~~ **21** years of age, shall require the purchaser to furnish any of the following documentation that such person is ~~[49]~~ **21** years of age or over:

4 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III to read as follows:

III. The establishment of all of the following facts by a person responsible for monitoring sales from a vending machine or a person or sampler making a sale or distribution of tobacco products, e-cigarettes, or liquid nicotine to a person under ~~[49]~~ **21** years of age shall constitute prima facie evidence of innocence and a defense to any prosecution for such sale:

- (a) That the person falsely represented in writing and supported by some official documents that the person was ~~[49]~~ **21** years of age or older;
- (b) That the appearance of the person was such that an ordinary and prudent person would believe such person to be at least ~~[49]~~ **21** years of age or older; and
- (c) That the sale was made in good faith relying on such written representation and appearance in the reasonable belief that the person was actually ~~[49]~~ **21** years of age or over.

5 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading and paragraph I of RSA 126-K:4 to read as follows:

126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or Liquid Nicotine to Persons Who Have Not Attained ~~[49]~~ **21** years of Age Prohibited.

I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or furnished tobacco products, e-cigarettes, or liquid nicotine to a person who has not attained ~~[49]~~ **21** years of age. The prohibition established by this paragraph shall not be deemed to prohibit persons who have not attained ~~[49]~~ **21** years of age employed by any manufacturer, wholesaler, sub-jobber, vending machine operator, sampler, or retailer from performing the necessary handling of tobacco products, e-cigarettes, or liquid nicotine during the duration of their employment.

6 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a, II to read as follows:

126-K:4-a Rolling Papers.

II. No person under ~~[49]~~ **21** years of age shall purchase, possess, or use any rolling paper. Any person who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense.

7 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I and II to read as follows:

I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes, or liquid nicotine in a public place or to a person who has not attained ~~[49]~~ **21** years of age. This prohibition shall not apply to sampling:

- (a) In an area to which minors are denied access.
- (b) In a store to which a retailer's license has been issued.
- (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport facilities in areas to which minors are denied access.

II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of free samples of tobacco products, e-cigarettes, or liquid nicotine to prevent their distribution to persons who have not attained ~~[49]~~ **21** years of age.

8 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-Cigarettes, or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or Liquid Nicotine by Persons Who Have Not Attained ~~[49]~~ **21** years of age.

I. No person under ~~[49]~~ **21** years of age shall purchase, attempt to purchase, possess, or use any tobacco product, e-cigarette, or liquid nicotine.

II. The prohibition on possession of tobacco products, e-cigarettes, or liquid nicotine shall not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending machine operator, sampler, or retailer from performing the necessary handling of tobacco products, e-cigarettes, or liquid nicotine during the duration of their employment.

III. A person who has not attained ~~[49]~~ **21** years of age shall not misrepresent his or her age for the purpose of purchasing tobacco products.

IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who violates this section shall not be considered a delinquent or a child in need of services.

V. Any person who has not attained ~~[49]~~ **21** years of age who violates this section may be guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be required to complete up to 20 hours of community service for each offense, or both. Where available, punishment may also include participation in an education program.

9 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read as follows:

I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or liquid nicotine to a person who has not attained ~~[49]~~ **21** years of age who has a note from an adult requesting such sale, gift, or delivery. Tobacco products, e-cigarettes, or liquid nicotine shall only be delivered to a person who provides an identification as enumerated in RSA 126-K:3 establishing that the person has attained ~~[49]~~ **21** years of age.

10 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as follows:

169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be construed as applying to any minor charged with the violation of any law relating to the possession, sale, or distribution of tobacco products to or by a person under ~~[49]~~ **21** years of age. However, if incarceration takes place at any stage in proceedings on such violations, incarceration shall be only in a juvenile facility certified by the commissioner of the department of health and human services.

11 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to read as follows:

169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as applying to any minor charged with the violation of any law relating to the possession, sale, or distribution of tobacco products to or by a person under ~~[49]~~ **21** years of age.

12 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco products or e-cigarettes to persons under age ~~[49]~~ **21**. Warning: violators of these provisions may be subject to a fine."

13 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

(c) Does not allow any person under the age of ~~[49]~~ **21** on the premises unless accompanied by a parent, legal guardian, or adult spouse.

14 Effective Date. This act shall take effect upon its passage.

LBAO
19-0517
1/15/19

SB 248-FN- FISCAL NOTE AS INTRODUCED

AN ACT increasing the age for sales and possession of tobacco products.

FISCAL IMPACT: ☒ **State** ☐ **County** ☒ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$61,000	\$59,500	\$59,500	\$59,500
Funding Source:	☒ General ☐ Education ☐ Highway ☒ Other - Liquor Funds			

LOCAL:

Revenue	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill amends RSAs 126:K, 169:B, 169:D, and 178 by increasing the age for sales and possession of tobacco products from 18 to 21. The bill also amends RSA 193-E:2-a requiring schools to establish a policy specifying violations for furnishing tobacco products to individuals under 21.

The Department of Health and Human Services anticipates four hours weekly would be required of one current full-time position to support any educational efforts, communications, and other resources to assist individuals and businesses in meeting the

expectations of the bill. The Department estimates annual costs to design, print, and mail signs and update other materials for retailers and other stakeholders would be \$58,000 through FY 2023.

The Liquor Commission estimates costs to produce and provide signs to each licensee the first year would be \$3,000 in FY 2020 (4000 signs) and \$1,500 (2000 signs) in each year thereafter. The Commission does not anticipate an impact to enforcement efforts but notes if grants are available, it will apply for the grants to fund any additional expenditures resulting from the bill. There may be an indeterminable impact to state tax revenue to the extent tobacco sales decrease.

The Department of Education does not anticipate any fiscal impact to the Department, but notes there may be an indeterminable impact to local revenue and expenditures to the extent schools implement policies with fines, community service requirements, mandatory education courses, or other penalties as a result of a violation.

AGENCIES CONTACTED:

Department of Health and Human Services, Department of Education, and Liquor Commission