

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)

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District 27 (Essex and Morris)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senators Turner, Stack and Assemblyman McKeon

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee with technical review.

(Sponsorship Updated As Of: 6/23/2017)

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2

1 AN ACT concerning the minimum age for the sale and distribution
2 of tobacco products and electronic smoking devices and revising
3 various parts of the statutory law
4

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

7
8 1. Section 3 of P.L.1995, c.304 (C.2A:170-51.1) is amended to
9 read as follows:

10 3. A person **[19]** 21 years of age or older who purchases a
11 tobacco product for a person who is under **[19]** 21 years of age is a
12 petty disorderly person.
13 (cf: P.L.2005, c.384, s.3)
14

15 2. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
16 read as follows:

17 1. a. No person, either directly or indirectly by an agent or
18 employee, or by a vending machine owned by the person or located
19 in the person's establishment, shall sell, offer for sale, distribute for
20 commercial purpose at no cost or minimal cost or with coupons or
21 rebate offers, give or furnish, to a person under **[19]** 21 years of
22 age:

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

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

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

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

43 (2) that the appearance of the purchaser of the tobacco product
44 or electronic smoking device or the recipient of the promotional

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 sample was such that an ordinary prudent person would believe the
2 purchaser or recipient to be of legal age to make the purchase or
3 receive the sample; and

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

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

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

40 e. A penalty imposed pursuant to this section shall be in
41 addition to any penalty that may be imposed pursuant to section 3
42 of P.L.1999, c. 90 (C.2C:33-13.1).

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

44

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

47 3. a. A person who sells or gives to a person under **[19]** 21
48 years of age any cigarettes made of tobacco or of any other matter

1 or substance which can be smoked, or any cigarette paper or
2 tobacco in any form, including smokeless tobacco, or any electronic
3 smoking device that can be used to deliver nicotine or other
4 substances to the person inhaling from the device, including, but not
5 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any
6 cartridge or other component of the device or related product,
7 including an employee of a retail dealer licensee under P.L.1948,
8 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a
9 tobacco product or electronic smoking device to a person under
10 **[19]** 21 years of age, shall be punished by a fine as provided for a
11 petty disorderly persons offense. A person who has been previously
12 punished under this section and who commits another offense under
13 it may be punishable by a fine of twice that provided for a petty
14 disorderly persons offense.

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

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

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

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

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

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

42

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

45 7. (a) There is hereby established a special projects and
46 development fund which shall consist of all funds appropriated or
47 otherwise made available for the purposes set forth in this section.
48 The commissioner, with the approval of the Public Health Council,

1 may make grants from the special projects and development fund to
2 local health agencies, to hospitals, and to voluntary health agencies
3 to provide State health assistance for new health services and for
4 special health projects in order to stimulate continued development
5 of health services and to assure the citizens of New Jersey the
6 benefits of the most advanced health protection techniques.

7 (b) Except as provided in subsection (c) of this section, grants
8 from the special projects and development fund for specific
9 purposes shall be made on an annual basis for a period not in excess
10 of 5 years and such grants shall be in diminishing amounts during
11 this period. The commissioner shall determine the conditions
12 applicable to each such grant including the extent of local financial
13 participation to be required. Grants from the special projects and
14 development fund to voluntary health agencies shall not exceed
15 40% of said fund.

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

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

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

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

38

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

41 2. a. The Commissioner of Health **[and Senior Services]** is
42 authorized to enforce the provisions of section 1 of P.L.2000, c.87
43 (C.2A:170-51.4) with respect to the prohibition on the sale and
44 commercial distribution of tobacco products to persons under **[19]**
45 21 years of age. The commissioner may delegate the enforcement
46 authority provided in this section to local health agencies, subject to
47 the availability of sufficient funding. The commissioner shall
48 report quarterly to the Legislature on the enforcement program's

1 progress, use of grants awarded pursuant to section 7 of P.L.1966,
2 c.36 (C.26:2F-7), results of enforcement efforts and other matters
3 the commissioner deems appropriate.

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

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

8

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

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

19 "A person who sells or offers to sell a tobacco product to a
20 person under **[19]** 21 years of age shall pay a penalty of up to
21 \$1,000 and may be subject to a license suspension or revocation.

22 Proof of age may be required for purchase."

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

24

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

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

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

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

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

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

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

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

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

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

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

11

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