

2020 -- S 2537

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO CRIMINAL OFFENSES -- CHILDREN

Introduced By: Senators Coyne, Ruggerio, Lombardo, Gallo, and Sosnowski

Date Introduced: February 25, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-9-13, 11-9-13.4, 11-9-13.5, 11-9-13.6, 11-9-13.7, 11-9-13.8, 11-
2 9-13.10, 11-9-13.11, and 11-9-13.13 of the General Laws in Chapter 11-9 entitled "Children" are
3 hereby amended to read as follows:

4 **~~11-9-13. Purchase, sale or delivery of tobacco products to persons under eighteen --~~**
5 **Posting notice of law. Purchase, sale or delivery of tobacco products to persons under twenty-**
6 **one -- Posting notice of law.**

7 No person under ~~eighteen (18)~~ twenty-one (21) years of age shall purchase, nor shall any
8 person sell, give, or deliver to any person under ~~eighteen (18)~~ twenty-one (21) years of age, any
9 tobacco in the form of cigarettes, bidi cigarettes, cigars, little cigars, flavored cigars known as
10 "blunts," unflavored "blunts," flavored and unflavored blunt wraps, cigarette rolling papers of any
11 size or composition, cigarillos and tiparillos, pipe tobacco, chewing tobacco, electronic nicotine-
12 delivery systems, electronic nicotine-delivery system liquids, liquid nicotine containers, or snuff.
13 Any person, firm, or corporation that owns, manages, or operates a place of business in which
14 tobacco products are sold, including sales through cigarette vending machines, shall post notice of
15 this law conspicuously in the place of business in letters at least three-eighths of an inch (3/8")
16 high.

17 **11-9-13.4. Definitions.**

18 As used in this chapter:

19 (1) "Bidi cigarette" means any product that (i) contains tobacco that is wrapped in temburni

1 or tender leaf, or that is wrapped in any other material identified by rules of the Department of
2 Health that is similar in appearance or characteristics to the temburni or tender leaf, and (ii) does
3 not contain a smoke filtering device.

4 (2) "Court" means any appropriate district court of the state of Rhode Island.

5 (3) "Dealer" is synonymous with the term "retail tobacco products dealer".

6 (4) "Department of behavioral healthcare, developmental disabilities and hospitals " means
7 the state of Rhode Island behavioral healthcare, developmental disabilities and hospitals
8 department, its employees, agents or assigns.

9 (5) "Department of taxation" means the state of Rhode Island taxation division, its
10 employees, agents, or assigns.

11 (6) "License" is synonymous with the term "retail tobacco products dealer license" or
12 "electronic nicotine-delivery system license."

13 (7) "License holder" is synonymous with the term "retail tobacco products dealer" or
14 "electronic nicotine-delivery system license."

15 (8) "Person" means any individual person, firm, association, or corporation licensed as a
16 retail dealer to sell tobacco products within the state.

17 (9) "Retail tobacco products dealer" means the holder of a license to sell tobacco products
18 at retail.

19 (10) "Retail tobacco products dealer license" means a license to sell tobacco products at
20 retail as issued by the department of taxation.

21 (11) "Spitting tobacco" also means snuff, powdered tobacco, chewing tobacco, dipping
22 tobacco, pouch tobacco, or smokeless tobacco.

23 (12) "Tobacco product(s)" means ~~any product containing tobacco, including bidi cigarettes,~~
24 ~~as defined in subdivision (1) of this section, that can be used for, but whose use is not limited to,~~
25 ~~smoking, sniffing, chewing, or spitting of the product.~~ any product made or derived from tobacco
26 that is intended for human consumption, including any component, part, or accessory of a tobacco
27 product (except for raw materials other than tobacco used in manufacturing a component, part, or
28 accessory of a tobacco product). "Tobacco product(s)" also means electronic nicotine-delivery
29 systems and liquids used in electronic nicotine-delivery systems, whether or not they contain
30 nicotine. "Tobacco product(s)" does not include drugs, devices, or combination products authorized
31 for sale by the United States Food and Drug Administration as those terms are defined in the Federal
32 Food, Drug and Cosmetic Act.

33 (13) "Underage individual" or "underage individuals" means any ~~child~~ person under the
34 age of ~~eighteen (18)~~ twenty-one (21) years of age.

1 (14) "Little cigars" means and includes any roll, made wholly or in part of tobacco,
2 irrespective of size or shape, and irrespective of whether the tobacco is flavored, adulterated, or
3 mixed with any other ingredient, where such roll has a wrapper or cover made of tobacco wrapped
4 in leaf tobacco or any substance containing tobacco paper or any other material, except where such
5 wrapper is wholly or in greater part made of tobacco and such roll weighs over three (3) pounds
6 per thousand (1,000).

7 (15) "Electronic nicotine-delivery system" means an electronic device that may be used to
8 simulate smoking in the delivery of nicotine or other substance to a person inhaling from the device,
9 and includes, but is not limited to, an electronic cigarette, electronic cigar, electronic cigarillo,
10 electronic pipe, or electronic hookah and any related device and any cartridge or other component
11 of such device.

12 **11-9-13.5. Responsibility for tobacco or health issues.**

13 The Rhode Island department of behavioral healthcare, developmental disabilities and
14 hospitals shall develop, monitor and aggressively enforce health rules and regulations pertaining to
15 stopping the illegal sale of tobacco products [and electronic nicotine-delivery systems](#) to ~~children~~
16 [persons under twenty-one \(21\)](#).

17 **11-9-13.6. Duties of the department of behavioral healthcare, developmental**
18 **disabilities and hospitals.**

19 The department of behavioral healthcare, developmental disabilities and hospitals shall:

20 (1) Coordinate and promote the enforcement of the provisions of this chapter and serve as
21 the primary liaison from this department to other state or local agencies, departments, or divisions
22 on issues pertaining to stopping ~~children's~~ [persons under twenty-one \(21\)](#) access to tobacco
23 [products](#) and electronic nicotine-delivery ~~system-dealers~~ [systems](#).

24 (2) Provide retail tobacco products dealers and electronic nicotine-delivery system dealers
25 signs concerning the prohibition of sales to ~~children~~ [persons](#) under ~~eighteen (18)~~ [twenty-one \(21\)](#)
26 years of age. The signs, conforming to the requirements of this chapter, shall be sold at cost. This
27 sign, or an exact duplicate of it made privately, shall be displayed in all locations where tobacco
28 products and/or electronic nicotine-delivery systems are sold.

29 (3) Investigate concurrently with other state and local officials violations of this chapter.

30 (4)(i) Utilize unannounced statewide compliance checks of tobacco product sales and/or
31 electronic nicotine-delivery system sales including retail tobacco and/or electronic nicotine-
32 delivery system over-the-counter sales, mail-order sales initiated via mail, facsimile, telephone or
33 internet ordering or other types of electronic communications, and tobacco and/or electronic
34 nicotine-delivery systems vending machine sales as part of investigating compliance with the

1 provisions of this chapter. Underage individuals, acting as agents for the department of behavioral
2 healthcare, developmental disabilities and hospitals and with the written permission of a parent or
3 guardian for persons under eighteen (18) years of age, may purchase, with impunity from
4 prosecution, tobacco products and electronic nicotine-delivery system for the purposes of law
5 enforcement or government research involving monitoring compliance with this chapter, provided
6 that the underage individuals are supervised by an adult law enforcement official. Any individual
7 participating in an unannounced compliance check of over-the-counter or vending machine sales,
8 must state his or her accurate age if asked by the sales representative of the retail establishment
9 being checked.

10 (ii) In fulfilling the requirement of unannounced statewide compliance checks, the
11 department of behavioral healthcare, developmental disabilities and hospitals shall maintain
12 complete records of the unannounced compliance checks, detailing, at least, the date of the
13 compliance check; the name and address of the retail establishment checked or the mail order
14 company; the results of the compliance check (sale/no sale); whether the sale was made as an over-
15 the-counter sale, a mail-order purchase or a tobacco and/or or electronic nicotine-delivery systems
16 vending machine sale; and if a citation was issued for any violation found. The records shall be
17 subject to public disclosure. Further, the department of behavioral healthcare, developmental
18 disabilities and hospitals shall report to the owner of each retail establishment checked or mail-
19 order company the results of any compliance check (sale/no sale) whether the sale was made as an
20 over-the-counter sale, a mail-order purchase, or a tobacco and/or electronic nicotine-delivery
21 systems vending machine sale, and if a citation was issued for any violation found.

22 (5) Seek enforcement, concurrently with other state and local officials, of the penalties as
23 detailed in this chapter.

24 (6) Develop and disseminate community health education information and materials
25 relating to this chapter.

26 ~~**11-9-13.7. Signs concerning sales to individuals under age eighteen (18). Signs**~~
27 **concerning sales to persons under age twenty-one (21).**

28 Signs provided by the department of behavioral healthcare, developmental disabilities and
29 hospitals, or an exact duplicate of it made privately, shall:

30 (1) Contain in red bold lettering a minimum of three-eighths (3/8") inch high on a white
31 background the following wording in both English and Spanish:

32 THE SALE OF CIGARETTES, TOBACCO AND ELECTRONIC NICOTINE-DELIVERY
33 SYSTEM PRODUCTS TO PERSONS UNDER THE AGE OF ~~18~~ 21 IS AGAINST RHODE
34 ISLAND LAW (§ 11-9-13.8(1), Rhode Island Statutes) PHOTO ID FOR PROOF OF AGE IS

1 REQUIRED FOR PURCHASE.

2 (2) Contain the phone number at the department of behavioral healthcare, developmental
3 disabilities and hospitals, where violations of §§ 11-9-13.2 -- 11-9-13.19 can be reported, in
4 addition to any other information required by the department of behavioral healthcare,
5 developmental disabilities and hospitals.

6 (3) Be displayed prominently for public view, wherever tobacco products [or electronic](#)
7 [nicotine-delivery systems](#) are sold at each cash register, each tobacco and/or electronic nicotine-
8 delivery systems vending machine, or any other place from which tobacco products [or electronic](#)
9 [nicotine-delivery systems](#) are sold. The signs shall be electronically available in both English and
10 Spanish online at the department of behavioral healthcare, developmental disabilities and hospitals'
11 website.

12 **11-9-13.8. Prohibitions applicable to license holders and their employees and agents.**

13 A person holding a license issued under chapter 20 of title 44 and/or § 23-1-56, or an
14 employee or agent of that person, is prohibited from selling, distributing, or delivering a tobacco
15 and/or electronic nicotine-delivery system product:

- 16 (1) To any ~~individual person~~ who is under ~~eighteen (18)~~ [twenty-one \(21\)](#) years of age; or
17 (2) In any form other than an original, factory-wrapped package; or
18 (3) As a single-cigarette sale (§ 44-20-31) or as a sale of cigarettes by the individual piece
19 known as "loosies."

20 **11-9-13.10. Prohibition on the distribution of free tobacco products.**

21 The distribution of free tobacco products and electronic nicotine-delivery systems or
22 coupons or vouchers redeemable for free tobacco or electronic nicotine-delivery system products
23 to any person under ~~eighteen (18)~~ [twenty-one \(21\)](#) years of age shall be prohibited. Further, the
24 distribution of free tobacco products or electronic nicotine-delivery systems or coupons or vouchers
25 redeemable for free tobacco or electronic nicotine-delivery systems products shall be prohibited,
26 regardless of the age of the person to whom the products, coupons, or vouchers are distributed,
27 within five hundred feet (500') of any school. The attorney general, or any local or state of Rhode
28 Island police department, or their officers or agents, shall bring an action for any violation of this
29 section. Every separate, free tobacco product or electronic nicotine-delivery system or coupon or
30 voucher redeemable for a free tobacco or electronic nicotine-delivery system or product in violation
31 of this section shall constitute a separate offense subject to a fine of five hundred dollars (\$500).
32 The penalty shall be assessed against the business or individual responsible for initiating the Rhode
33 Island distribution of the free tobacco products or electronic nicotine-delivery systems or coupons
34 or vouchers redeemable for free tobacco products or electronic nicotine-delivery systems.

1 11-9-13.11. ~~Prohibition on the sale or distribution of tobacco products through the~~
2 ~~mail conveyance of tobacco products through the mail to children under eighteen (18)--- Proof~~
3 ~~of age of purchaser required---General rule.~~ **Prohibition on the sale or distribution of tobacco**
4 **products through the mail -- Conveyance of tobacco products through the mail to persons**
5 **under twenty-one (21) -- Proof of age of purchaser required -- General rule.**

6 (a) The distribution, or sale or conveyance of tobacco products [or electronic nicotine-](#)
7 [delivery systems](#) to ~~children~~ [persons](#) under the age of ~~eighteen (18)~~ [twenty-one \(21\)](#) via the United
8 States Postal Service, or by any other public or private postal or package delivery service, shall be
9 prohibited.

10 (b) Any person selling or distributing tobacco products in the form of cigars, pipe tobacco,
11 chewing tobacco, or snuff, [or electronic nicotine-delivery systems](#) directly to a consumer via the
12 United States Postal Service, or by any other public or private postal or package delivery service,
13 including orders placed by mail, telephone, facsimile, or internet, shall: (1) before distributing or
14 selling the tobacco product [or electronic nicotine-delivery system](#) through any of these means,
15 receive both a copy of a valid form of government identification showing date of birth to verify the
16 purchaser is age ~~eighteen (18)~~ [twenty-one \(21\)](#) years or over and an attestation from the purchaser
17 certifying that the information on the government identification truly and correctly identifies the
18 purchaser and the purchaser's current address, and (2) deliver the tobacco product [or electronic](#)
19 [nicotine-delivery system](#) to the address of the purchaser given on the valid form of government
20 identification and by a postal or package delivery service method that either limits delivery to that
21 purchaser and requires the purchaser to sign personally to receive the delivery or requires a
22 signature of ~~an adult~~ [a person the age of twenty-one \(21\) or over](#) at the purchaser's address to deliver
23 the package.

24 (c) The attorney general shall bring an action for any violation of this chapter. Any
25 distribution, or sale or conveyance of a tobacco product [or electronic nicotine-delivery system](#) to a
26 ~~child~~ [person](#) under ~~eighteen (18)~~ [twenty-one \(21\)](#) years of age via the United States Postal Service,
27 or by any other public or private postal or package delivery service, shall be subject to an action
28 against the distributor, or seller or conveyor by the attorney general of the state of Rhode Island. A
29 minimum fine of one thousand dollars (\$1,000) shall be assessed against any distributor, or seller
30 or conveyor convicted of distributing, or selling or conveying tobacco products [or electronic](#)
31 [nicotine-delivery systems](#) via the United States postal service, or by any other public or private
32 postal or package delivery service, for each delivery, or sale or conveyance of a tobacco product [or](#)
33 [electronic nicotine-delivery system](#) to a ~~child~~ [person](#) under ~~eighteen (18)~~ [twenty-one \(21\)](#) years of
34 age.

1 (d) For the purpose of this section, "distribution," "distributing," "selling" and "sale" do not
2 include the acts of the United States Postal Service or other common carrier when engaged in the
3 business of transporting and delivering packages for others or the acts of a person, whether
4 compensated or not, who transports or delivers a package for another person without any reason to
5 know of the package's contents.

6 (e) Any delivery sale of cigarettes shall be made pursuant to the provisions of chapter 20.1
7 of title 44. The provisions of this section shall apply to each tobacco product listed in subsection
8 (b) herein [or electronic nicotine-delivery systems](#), but shall not apply to any delivery sale of
9 cigarettes.

10 **11-9-13.13. Nature and size of penalties.**

11 (a) Any ~~person or individual~~ [license holder](#) who violates a requirement of §§ 11-9-13.6(2)
12 [or 11-9-13.7](#), display of specific signage, shall be subject to a fine in court of not less than thirty-
13 five dollars (\$35.00), nor more than five hundred dollars (\$500), per civil violation.

14 (b) The license holder is responsible for all violations of this section that occur at the
15 location for which the license is issued. Any license holder who or that violates the prohibition of
16 § 11-9-13.8(1) ~~and/or (2)~~ or § 11-9-13.20 shall be subject to civil fines as follows:

17 (1) A fine of two hundred fifty dollars (\$250) for the first violation within any thirty-six-
18 month (36) period;

19 (2) A fine of five hundred dollars (\$500) for the second violation within any thirty-six-
20 month (36) period;

21 (3) A fine of one thousand dollars (\$1,000) and a fourteen-day (14) suspension of the
22 license to sell tobacco products or electronic nicotine-delivery systems for the third violation within
23 any thirty-six-month (36) period;

24 (4) A fine of one thousand five hundred dollars (\$1,500) and a ninety-day (90) suspension
25 of the license to sell tobacco products or electronic nicotine-delivery systems for each violation in
26 excess of three (3).

27 (c) Any person who or that violates a prohibition of § 11-9-13.8(3), sale of single cigarettes;
28 or § 11-9-13.8(2), regarding factory-wrapped packs; shall be subject to a penalty of five hundred
29 dollars (\$500) for each violation.

30 (d) The department of taxation and/or the department of health shall not issue a license to
31 any individual, business, firm, association, or corporation, the license of which has been revoked
32 or suspended; to any corporation, an officer of which has had his or her license revoked or
33 suspended; or to any individual who is, or has been, an officer of a corporation the license of which
34 has been revoked or suspended so long as such revocations or suspensions are in effect.

1 (e) The court ~~shall~~ may suspend the imposition of a license suspension of the license
2 secured from the Rhode Island tax administrator or department of health for a violation of
3 subsections (b)(3) and (b)(4) of this section if the court finds that the license holder has taken
4 measures to prevent the sale of tobacco products and/or electronic nicotine-delivery systems to
5 ~~minors~~ an underage person and the license holder can demonstrate to the court that those measures
6 have been taken and that employees have received training. No person shall sell tobacco products
7 and/or electronic nicotine-delivery system products at retail without first being trained in the legal
8 sale of tobacco and/or electronic nicotine-delivery ~~system-products~~ systems. Training shall teach
9 employees what constitutes a tobacco product and/or electronic nicotine-delivery system ~~product~~;
10 legal age of ~~purchase~~ sale; acceptable identification; how to refuse a direct sale to ~~a minor~~ an
11 underage person or secondary sale to ~~an adult~~ a person twenty-one (21) years or older; and all
12 applicable laws on tobacco sales and distribution. Dealers shall maintain records indicating that the
13 provisions of this section were reviewed with all employees who conduct, or will conduct, tobacco
14 product and/or electronic nicotine-delivery systems sales. Each employee who sells or will sell
15 tobacco products and/or electronic nicotine-delivery system products shall sign an
16 acknowledgement form attesting that the provisions of this section were reviewed with him or her.
17 Each form shall be maintained by the retailer for as long as the employee is so employed and for
18 no less than one year after termination of employment. The measures to prevent the sale of tobacco
19 products and/or electronic nicotine-delivery systems to ~~minors~~ underage persons shall be defined
20 by the department of behavioral healthcare, developmental disabilities and hospitals in rules and
21 regulations.

22 SECTION 2. Chapter 11-9 of the General Laws entitled "Children" is hereby amended by
23 adding thereto the following section:

24 **11-9-14.1. Compliance with Food and Drug Administration regulations.**

25 (a) The provisions of §§ 11-9-13, 11-9-13.4, 11-9-13.6, 11-9-13.7, 11-9-13.8, 11-9-13.10,
26 11-9-13.11, and 11-9-14 shall be deemed and interpreted so as to be consistent and in compliance
27 with any regulation promulgated or updated by the United States Food and Drug Administration or
28 the Secretary of Health and Human Services to comply with the provisions of the Federal Food,
29 Drug, and Cosmetic Act, 21 U.S.C. 387f(d), in regard to prohibiting the sale of tobacco and
30 electronic nicotine-delivery system products to persons under the age of twenty-one (21) years. In
31 the event of any question as to the applicability with federal regulations, §§ 11-9-13, 11-9-13.4, 11-
32 9-13.6, 11-9-13.7, 11-9-13.8, 11-9-13.10, 11-9-13.11, and 11-9-14 shall be deemed and interpreted
33 to conform with applicable federal requirements to obtain federal funding regarding tobacco, the
34 use and cessation of tobacco, and electronic nicotine-delivery system products.

1 SECTION 3. Section 11-9-14 of the General Laws in Chapter 11-9 entitled "Children" is
2 hereby repealed.

3 ~~**11-9-14. Use of tobacco by minors.**~~

4 ~~No person under eighteen (18) years of age shall use or possess, when such possession is~~
5 ~~clearly visible, tobacco in any public street, place, or resort, any tobacco and/or electronic nicotine~~
6 ~~delivery system in any form whatsoever. Any person under eighteen (18) years of age violating the~~
7 ~~provisions of this section shall be required to perform up to thirty (30) hours of community service~~
8 ~~or shall be required to enter into a tobacco treatment program, approved by any local substance~~
9 ~~abuse prevention task force, at the option of a minor charged with a violation of this section.~~

10 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES -- CHILDREN

1 This act would raise the legal age for persons to purchase or be sold or delivered certain
2 tobacco products, electronic nicotine-delivery systems and liquid nicotine containers from eighteen
3 (18) years of age to twenty-one (21) years of age.

4 This act would take effect upon passage.

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