

CHAPTER 87

AN ACT concerning penalties for the sale or distribution of tobacco products to persons under 18 years of age and revising parts of the statutory law.

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

C.2A:170-51.4 Sale, distribution of tobacco to persons under age 18, prohibited; civil penalties.

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 18 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.

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 the recipient of the promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the Division of Motor Vehicles in the Department of Transportation, 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 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 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 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).

2. Section 4 of P.L.1995, c.304 (C.2A:170-51.2) is amended to read as follows:

C.2A:170-51.2 Vending machine ordinances not preempted.

4. Nothing in P.L.1995, c.304 (C.2A:170-51.1 et al.) or section 1 of P.L.2000, c.87 (C.2A:170-51.4) shall be construed to preempt the provisions of any municipal ordinance concerning vending machines that dispense tobacco products.

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

C.26:3A2-20.1 Sale of tobacco to minors, prohibition, enforcement; reports.

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 18 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.

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

C.2C:33-13.1 Sale of cigarettes to minors, petty disorderly persons offense.

3. a. A person who sells or gives to a person under 18 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, 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 falsely represented, by producing either a driver's license or non-driver identification card issued by the Division of Motor Vehicles in the Department of Transportation, 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;

(2) that the appearance of the purchaser or recipient of the tobacco product 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; and

(3) that the sale or distribution of the tobacco product 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.

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).

Repealer.

5. Section 5 of P.L.1995, c.304 (C.2A:170-51.3) is repealed.

6. This act shall take effect immediately.

Approved August 14, 2000.