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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO CRIMINAL OFFENSES -- SALE OF TOBACCO PRODUCTS TO THOSE
UNDER EIGHTEEN (18)

Introduced By: Representative Helio Melo

Date Introduced: January 08, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-9-13, 11-9-13.1, 11-9-13.4, 11-9-13.6, 11-9-13.7, 11-9-13.11,
2 11-9-13.13 and 11-9-14 of the General Laws in Chapter 11-9 entitled "Children" are hereby
3 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. --** No person under eighteen (18) years of age shall purchase, nor shall any
6 person sell, give or deliver to any person under eighteen (18) years of age, any tobacco product in
7 ~~the any~~ form ~~of~~ including, but not limited to, cigarettes, bidi cigarettes, cigars, little cigars,
8 flavored cigars known as "blunts" unflavored "blunts", flavored and unflavored blunt wraps,
9 cigarette rolling papers of any size or composition, cigarillos, and tiparillos, pipe tobacco,
10 chewing tobacco, electronic cigarettes, electronic cigars, electronic pipes, or other similar
11 products that rely on vaporization or aerosolization, or snuff. Any person, firm, or corporation
12 that owns, manages, or operates a place of business in which tobacco products are sold, including
13 sales through cigarette vending machines, shall post notice of this law conspicuously in the place
14 of business in letters at least three-eighths of an inch (3/8") high.

15 **11-9-13.1. Cigarette and tobacco vending machines. --** (a) No cigarettes nor any other
16 tobacco product shall be sold from any device or vending machine which is in an area not
17 continuously supervised and in direct line of sight of an authorized person employed by the
18 person, firm, or corporation that owns the business occupying the premises in which the device or

1 vending machine is located, nor shall any tobacco product be sold from any device or vending
2 machine which is in an area supervised by such an authorized person unless the device or vending
3 machine is equipped with an electronic locking device which will not allow the device or vending
4 machine to dispense a pack of cigarettes, or any other tobacco product, unless it is electronically
5 unlocked from a secured position inaccessible to the public and under the supervision of an
6 authorized person employed by the person, firm, or corporation that owns the business occupying
7 the premises in which the device or vending machine is located. "Direct line of sight" means that
8 the vending machine and the purchaser of cigarettes, or any other tobacco products, must be
9 visible to the authorized person pressing the unlock button while the unlock button is being
10 activated. Provided, a locking device shall not be required in an establishment licensed to sell
11 alcoholic beverages which limits access to persons over the age of twenty-one (21) years.

12 (b) No cigarettes nor any other tobacco product shall be sold from any device or vending
13 machine from which non-tobacco products are sold.

14 (c) No cigarettes shall be sold in packs which contain less than twenty (20) cigarettes.

15 (d) Any person, firm, or corporation who owns a business occupying the premises in
16 which a device or vending machine which dispenses cigarettes or any other tobacco product is
17 located who shall violate any of the provisions of subsections (a) and (b) of this section shall for
18 the first offense be subject to a fine of seventy-five dollars (\$75.00), for the second offense, be
19 subject to a fine of one hundred fifty dollars (\$150), and for the third and any subsequent offense,
20 be subject to a fine of five hundred dollars (\$500); provided, that in the event that there are no
21 offenses in three (3) successive years from the date of the last offense, then the next offense shall
22 be treated as the first offense.

23 (e) Any person, firm or corporation who shall violate subsection (c) of this section shall
24 for the first offense be subject to a fine of seventy-five dollars (\$75.00), for the second offense, be
25 subject to a fine of one hundred fifty dollars (\$150), and for the third and any subsequent offense,
26 be subject to a fine of five hundred dollars (\$500); provided, that in the event that there are no
27 offenses in three (3) successive years from the date of the last offense, then the next offense shall
28 be treated as the first offense.

29 (f) One-half (1/2) of all the fines collected pursuant to this section shall be transferred to
30 the municipalities in which the citations originated. One-half (1/2) of all the fines collected
31 pursuant to this section shall be transferred to the general fund.

32 (g) Severability. - If any provision of this section or the application of it to any person or
33 circumstance is held invalid, that invalidity shall not affect other provisions or applications of this
34 section, which can be given effect without the invalid provision or application, and to this end the

1 provisions of this section are declared to be severable.

2 **11-9-13.4. Definitions.** -- As used in this chapter:

3 (1) "Bidi cigarette" means any product that (i) contains tobacco that is wrapped in
4 temburni or tender leaf or that is wrapped in any other material identified by rules of the
5 Department of Health that is similar in appearance or characteristics to the temburni or tender leaf
6 and (ii) does not contain a smoke filtering device.

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

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

9 (4) "Department of ~~mental health, retardation~~ behavioral healthcare, developmental
10 disabilities and hospitals " means the state of Rhode Island ~~mental health, retardation~~ behavioral
11 healthcare, developmental disabilities and hospitals department , its employees, agents or assigns.

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

14 (6) "License" is synonymous with the term "retail tobacco products dealer license."

15 (7) "License holder" is synonymous with the term "retail tobacco products dealer."

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

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

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

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

24 (12) "Tobacco product(s)" means any product containing and made, or derived from
25 tobacco, or nicotine that is intended for human consumption, including, but not limited to,
26 cigarettes, cigars, little cigars, pipe tobacco, spitting tobacco, snus, or electronic cigarettes,
27 electronic cigars, electronic pipes, or other similar products that rely on vaporization or
28 aerosolization, or bidi cigarettes, as defined in subdivision (1) of this section, which can be used
29 for, but whose use is not limited to, smoking, sniffing, chewing, vaporizing, inhaling, absorbing,
30 dissolving, or spitting or ingestion by any other means of the product. "Tobacco product(s)"
31 includes any component, part, or accessory of a tobacco product whether or not it is sold
32 separately. "Tobacco product(s)" does not include: any product that has been approved by the
33 United States Food and Drug Administration for sale as a tobacco cessation product and is being
34 marketed and sold solely for the approved purpose.

1 (13) "Underage individual" or "underage individuals" means any child under the age of
2 eighteen (18) years of age.

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

9 **11-9-13.6. Duties of the department of mental health, retardation and hospitals**

10 **Duties of the department of behavioral healthcare, developmental disabilities and hospitals.**

11 ~~==~~ The department of ~~mental health, retardation~~ behavioral healthcare, developmental disabilities
12 and hospitals shall:

13 (1) Coordinate and promote the enforcement of the provisions of this chapter and serve
14 as the primary liaison from this department to other state or local agencies, departments, or
15 divisions on issues pertaining to stopping children's access to tobacco products.

16 (2) Provide retail tobacco products dealers signs concerning the prohibition of sales to
17 children under eighteen (18) years of age. The signs, conforming to the requirements of this
18 chapter, shall be sold at cost. This sign, or an exact duplicate of it made privately, shall be
19 displayed in all locations where tobacco products are sold.

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

21 (4) (i) Utilize unannounced statewide compliance checks of tobacco product sales
22 including retail tobacco over-the-counter sales, mail order sales initiated via mail, facsimile,
23 telephone or internet ordering or other types of electronic communications, and tobacco product
24 vending machine sales as part of investigating compliance with the provisions of this chapter.
25 Underage individuals, acting as agents for the department of ~~mental health, retardation~~ behavioral
26 healthcare, developmental disabilities and hospitals and with the written permission of a parent or
27 guardian, may purchase, with impunity from prosecution, tobacco products for the purposes of
28 law enforcement or government research involving monitoring compliance with this chapter,
29 provided that the underage individuals are supervised by an adult law enforcement official. Any
30 individual participating in an unannounced compliance check of over-the-counter or vending
31 machine sales, must state his or her accurate age if asked by the sales representative of the retail
32 establishment being checked.

33 (ii) In fulfilling the requirement of unannounced statewide compliance checks, the
34 department of ~~mental health, retardation~~ behavioral healthcare, developmental disabilities and

1 hospitals shall maintain complete records of the unannounced compliance checks, detailing, at
2 least, the date of the compliance check, the name and address of the retail establishment checked
3 or the mail order company, the results of the compliance check (saleo sale), whether the sale was
4 made as an over-the-counter sale, a mail order purchase or a tobacco [product](#) vending machine
5 sale, and if a citation was issued for any violation found. The records shall be subject to public
6 disclosure. Further, the department of ~~mental health, retardation~~ [behavioral healthcare,](#)
7 [developmental disabilities](#) and hospitals shall report to the owner of each retail establishment
8 checked or mail order company, the results of any compliance check (saleo sale) whether the sale
9 was made as an over-the-counter sale, a mail order purchase or a tobacco [product](#) vending
10 machine sale, and if a citation was issued for any violation found.

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

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

15 **11-9-13.7. Signs concerning sales to individuals under age eighteen (18).** -- Signs
16 provided by the department of behavioral healthcare, developmental disabilities and hospitals, or
17 an exact duplicate of it made privately, shall: (1) Contain in red bold lettering a minimum of
18 three-eighths (3/8") inch high on a white background the following wording in both English and
19 Spanish:

20 THE SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO PERSONS
21 UNDER THE AGE OF 18 IS AGAINST RHODE ISLAND LAW (Section 11-9-13.8(1), Rhode
22 Island Statutes) PHOTO ID FOR PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

27 (3) Be displayed prominently for public view wherever tobacco products are sold at each
28 cash register, each tobacco [product](#) vending machine, or any other place from which tobacco
29 products are sold. The signs shall be electronically available in both English and Spanish online at
30 the department of behavioral healthcare, developmental disabilities and hospitals' website.

31 **11-9-13.11. Prohibition on the sale or distribution of tobacco products through the**
32 **mail conveyance of tobacco products through the mail to children under eighteen (18) --**
33 **Proof of age of purchaser required -- General rule.** -- (a) The distribution, or sale or
34 conveyance of tobacco products to children under the age of eighteen (18) via the United States

1 Postal Service, or by any other public or private postal or package delivery service, shall be
2 prohibited.

3 (b) ~~Subject to subsection (e) herein, any~~ Any person selling or distributing tobacco
4 products in ~~the any form of cigars, pipe tobacco, chewing tobacco, or snuff~~ directly to a consumer
5 via the United States Postal Service, or by any other public or private postal or package delivery
6 service, including orders placed by mail, telephone, facsimile, or internet, shall: (1) before
7 distributing or selling the tobacco product through any of these means, receive both a copy of a
8 valid form of government issued photo identification showing date of birth to verify the purchaser
9 is age eighteen (18) years or over and an attestation from the purchaser certifying that the
10 information on the government issued photo identification truly and correctly identifies the
11 purchaser and the purchaser's current address, and (2) deliver the tobacco product to the address
12 of the purchaser given on the valid form of government issued photo identification and by a
13 postal or package delivery service method that either limits delivery to that purchaser and requires
14 the purchaser to sign personally to receive the delivery or requires a signature of an adult at the
15 purchaser's address to deliver the package.

16 (c) The attorney general shall bring an action for any violation of this chapter. Any
17 distribution, or sale or conveyance of a tobacco product to a child under eighteen (18) years of
18 age via the United States Postal Service, or by any other public or private postal or package
19 delivery service, shall be subject to an action against the distributor, or seller or conveyor by the
20 attorney general of the state of Rhode Island. A minimum fine of one thousand dollars (\$1,000)
21 shall be assessed against any distributor, or seller or conveyor convicted of distributing, or selling
22 or conveying tobacco products via the United States postal service, or by any other public or
23 private postal or package delivery service, for each delivery, or sale or conveyance of a tobacco
24 product to a child under eighteen (18) years of age.

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

30 (e) Any delivery sale of cigarettes shall be made pursuant to the provisions of chapter
31 20.1 of title 44. The provisions of this section shall apply to ~~each tobacco product~~ tobacco
32 product(s), as defined in § 11-9-13.4, listed in subsection (b) herein, but shall not apply to any
33 delivery sale of cigarettes.

34 **11-9-13.13. Nature and size of penalties.** -- (a) Any person or individual that violates a

1 requirement of section 11-9-13.6(2), display of specific signage, shall be subject to a fine in court
2 of not less than thirty-five dollars (\$35.00) nor more than five hundred dollars (\$500) per civil
3 violation.

4 (b) The license holder is responsible for all violations of this section that occur at the
5 location for which the license is issued. Any license holder that violates the prohibition of section
6 11-9-13.8(1) and/or (2) shall be subject to civil fines as follows:

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

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

11 (3) A fine of one thousand dollars (\$1,000) and a fourteen (14) day suspension of the
12 license to sell tobacco products for the third violation within any thirty-six (36) month period;

13 (4) A fine of one thousand five hundred dollars (\$1,500) and a ninety (90) day
14 suspension of the license to sell tobacco products for each violation in excess of three (3).

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

18 (d) The department of taxation shall not issue a license to any individual, business, firm,
19 association, or corporation the license of which has been revoked or suspended, to any
20 corporation an officer of which has had his or her license revoked or suspended, or to any
21 individual who is or has been an officer of a corporation the license of which has been revoked or
22 suspended so long as such revocations or suspensions are in effect.

23 (e) The court shall suspend the imposition of a license suspension of the license secured
24 from the Rhode Island tax administrator for violation of subdivisions (b)(3) and (b)(4) of this
25 section if the court finds that the license holder has taken measures to prevent the sale of tobacco
26 [products](#) to minors and the license holder can demonstrate to the court that those measures have
27 been taken and that employees have received training. No person shall sell tobacco products, at
28 retail, without first being trained in the legal sale of tobacco products. Training shall teach
29 employees what constitutes a tobacco product, legal age of purchase, acceptable identification,
30 how to refuse a direct sale to a minor or secondary sale to an adult, and all applicable laws on
31 tobacco [product](#) sales and distribution. Dealers shall maintain records indicating that the
32 provisions of this section were reviewed with all employees who conduct or will conduct tobacco
33 [product](#) sales. Each employee who sells or will sell tobacco products shall sign an
34 acknowledgement form attesting that the provisions of this section were reviewed with him/her.

1 Each form shall be maintained by the retailer for as long as the employee is so employed and for
2 no less than one year after termination of employment. The measures to prevent the sale of
3 tobacco [products](#) to minors shall be defined by the department of ~~mental health, retardation~~
4 [behavioral healthcare, developmental disabilities](#) and hospitals in rules and regulations.

5 **11-9-14. Use of tobacco by minors. --** No person under eighteen (18) years of age shall
6 ~~smoke or chew~~ [use](#) or possess, when such possession is clearly visible tobacco [products](#), in any
7 public street, place or resort, any tobacco [product](#) in any form whatsoever. Any person under
8 eighteen (18) years of age violating the provisions of this section shall be required to perform up
9 to thirty (30) hours of community service or shall be required to enter into a tobacco treatment
10 program approved by any local substance abuse prevention task force, at the option of a minor
11 charged with a violation of this section.

12 SECTION 2. Sections 44-20-2 and 44-20-3 of the General Laws in Chapter 44-20
13 entitled "Cigarette Tax" are hereby amended to read as follows:

14 **44-20-2. Importer, distributor, and dealer licenses required -- Licenses required. --**

15 Each person engaging in the business of selling cigarette and/or any tobacco products, [as defined](#)
16 [in § 11-9-13.4](#), in this state, including any distributor or dealer, shall secure a license from the
17 administrator before engaging in that business, or continuing to engage in it. A separate
18 application and license is required for each place of business operated by a distributor or dealer;
19 provided, that an operator of vending machines for cigarette products is not required to obtain a
20 distributor's license for each machine. If the applicant for a license does not have a place of
21 business in this state, the license shall be issued for such applicant's principal place of business,
22 wherever located. A licensee shall notify the administrator within thirty (30) days in the event that
23 it changes its principal place of business. A separate license is required for each class of business
24 if the applicant is engaged in more than one of the activities required to be licensed by this
25 section. No person shall maintain or operate or cause to be operated a vending machine for
26 cigarette products without procuring a dealer's license for each machine.

27 **44-20-3. Penalties for unlicensed business. --** Any distributor or dealer who sells, offers
28 for sale, or possesses with intent to sell, cigarettes and/or any tobacco products, [as defined in §](#)
29 [11-9-13.4](#), without a license as provided in section 44-20-2, shall be fined in accordance with the
30 provisions of and the penalties contained in section 11-9-13.15.

31 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO CRIMINAL OFFENSES -- SALE OF TOBACCO PRODUCTS TO THOSE
UNDER EIGHTEEN (18)

- 1 This act would amend the definition of tobacco products to include electronic cigarettes
- 2 for the purpose of prohibiting access by minors.
- 3 This act would take effect upon passage.

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