

2021 -- H 5571

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO CRIMINAL OFFENSES -- CHILDREN

Introduced By: Representatives Diaz, Kazarian, Williams, Ackerman, Tanzi, Perez,
Corvese, and Noret

Date Introduced: February 12, 2021

Referred To: House 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~~ Sale or delivery of tobacco products to persons under twenty one –
6 posting notice of law.

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

16 11-9-13.4. Definitions.

17 As used in this chapter:

18 (1) "Bidi cigarette" means any product that (i) contains tobacco that is wrapped in temburni
19 or tender leaf, or that is wrapped in any other material identified by rules of the Department of

1 Health that is similar in appearance or characteristics to the temburni or tender leaf, and (ii) does
2 not contain a smoke filtering device.

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

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

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

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

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

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

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

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

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

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

22 (12) "Tobacco product(s)" means ~~any product containing tobacco, including bidi cigarettes,~~
23 ~~as defined in subdivision (1) of this section, that can be used for, but whose use is not limited to,~~
24 ~~smoking, sniffing, chewing, or spitting of the product~~ any product containing, made of, or derived
25 from tobacco or nicotine that is intended for human consumption or is likely to be consumed,
26 whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette,
27 a cigar, pipe tobacco, chewing tobacco, snuff, snus, electronic nicotine-delivery systems, any
28 substances that may be aerosolized or vaporized by such device, whether or not they contain
29 nicotine.

30 (i) "Tobacco product(s)" does not include drugs, devices, or combination products intended
31 to treat tobacco or nicotine dependence that are authorized by the United States Food and Drug
32 Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act. Nor does
33 it include such authorized drugs, devices or combination products with such treatment purpose by
34 those under age twenty-one (21) if prescribed by a licensed prescriber such as a physician, nurse

1 [practitioner or physician assistant.](#)

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

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

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

15 **11-9-13.5. Responsibility for tobacco or health issues.**

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

20 **11-9-13.6. Duties of the department of behavioral healthcare, developmental**
21 **disabilities and hospitals.**

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

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

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

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

33 (4)(i) Utilize unannounced statewide compliance checks of tobacco product sales and/or
34 electronic nicotine-delivery system sales including retail tobacco and/or electronic nicotine-

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

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

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

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

29 **11-9-13.7. ~~Signs concerning sales to individuals under age eighteen (18)~~ Signs**
30 **concerning sales to persons under age twenty-one (21).**

31 Signs provided by the department of behavioral healthcare, developmental disabilities and
32 hospitals, or an exact duplicate of it made privately, shall: (1) Contain in red bold lettering a
33 minimum of three-eighths (3/8") inch high on a white background the following wording in both
34 English and Spanish:

1 THE SALE OF CIGARETTES,
2 TOBACCO AND ELECTRONIC NICOTINE-DELIVERY SYSTEM
3 PRODUCTS

4 TO PERSONS UNDER THE AGE OF ~~18~~ 21

5 IS AGAINST RHODE ISLAND LAW

6 (§ 11-9-13.8(1), Rhode Island Statutes)

7 PHOTO ID FOR PROOF OF AGE IS

8 REQUIRED FOR PURCHASE.

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

13 (3) Be displayed prominently for public view, wherever tobacco products or electronic
14 nicotine-delivery systems are sold at each cash register, each tobacco and/or electronic nicotine-
15 delivery systems vending machine, or any other place from which tobacco products or electronic
16 nicotine-delivery systems are sold. The signs shall be electronically available in both English and
17 Spanish online at the department of behavioral healthcare, developmental disabilities and hospitals'
18 website.

19 **11-9-13.8. Prohibitions applicable to license holders and their employees and agents.**

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

23 (1) To any ~~individual person~~ who is under ~~eighteen (18)~~ twenty-one (21) years of age; or

24 (2) In any form other than an original, factory-wrapped package; or

25 (3) As a single-cigarette sale (§ 44-20-31) or as a sale of cigarettes by the individual piece
26 known as "loosies."

27 **11-9-13.10. Prohibition on the distribution of free tobacco products.**

28 The distribution of free tobacco products and electronic nicotine-delivery systems or
29 coupons or vouchers redeemable for free tobacco or electronic nicotine-delivery system products
30 to any person under ~~eighteen (18)~~ twenty-one (21) years of age shall be prohibited. Further, the
31 distribution of free tobacco products or electronic nicotine-delivery systems or coupons or vouchers
32 redeemable for free tobacco or electronic nicotine-delivery systems products shall be prohibited,
33 regardless of the age of the person to whom the products, coupons, or vouchers are distributed,
34 within five hundred feet (500') of any school. The attorney general, or any local or state of Rhode

1 Island police department, or their officers or agents, shall bring an action for any violation of this
2 section. Every separate, free tobacco product or electronic nicotine-delivery system or coupon or
3 voucher redeemable for a free tobacco or electronic nicotine-delivery system or product in violation
4 of this section shall constitute a separate offense subject to a fine of five hundred dollars (\$500).
5 The penalty shall be assessed against the business or individual responsible for initiating the Rhode
6 Island distribution of the free tobacco products or electronic nicotine-delivery systems or coupons
7 or vouchers redeemable for free tobacco products or electronic nicotine-delivery systems.

8 **11-9-13.11. ~~Prohibition on the sale or distribution of tobacco products through the~~**
9 **~~mail conveyance of tobacco products through the mail to children under eighteen (18) -- Proof~~**
10 **~~of age of purchaser required -- General rule~~ Prohibition on the sale or distribution of tobacco**
11 **products through the mail – Conveyance of tobacco products through the mail to persons**
12 **under twenty one (21) – Proof of age of purchaser required – General rule.**

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

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

31 (c) The attorney general shall bring an action for any violation of this chapter. Any
32 distribution, or sale or conveyance of a tobacco product to a ~~child~~ [person](#) under ~~eighteen (18)~~
33 [twenty-one \(21\)](#) years of age via the United States Postal Service, or by any other public or private
34 postal or package delivery service, shall be subject to an action against the distributor, or seller or

1 conveyor by the attorney general of the state of Rhode Island. A minimum fine of one thousand
2 dollars (\$1,000) shall be assessed against any distributor, or seller or conveyor convicted of
3 distributing, or selling or conveying tobacco products [or electronic nicotine-delivery systems](#) via
4 the United States postal service, or by any other public or private postal or package delivery service,
5 for each delivery, or sale or conveyance of a tobacco product [or electronic nicotine-delivery system](#)
6 to a [child person](#) under ~~eighteen (18)~~ [twenty-one \(21\)](#) years of age.

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

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

16 **11-9-13.13. Nature and size of penalties.**

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

20 (b) The license holder is responsible for all violations of this section that occur at the
21 location for which the license is issued. Any license holder who or that violates the prohibition of
22 § 11-9-13.8(1) ~~and/or (2)~~ or § 11-9-13.20 shall be subject to civil fines as follows:

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

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

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

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

33 (c) Any person who or that violates a prohibition of § 11-9-13.8(3), sale of single cigarettes;
34 or § 11-9-13.8(2), regarding factory-wrapped packs; shall be subject to a penalty of five hundred

1 dollars (\$500) for each violation.

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

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

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

30 **11-9-14.1. Compliance with federal statutes and regulations.**

31 (a) The provisions of §§ 11-9-13, 11-9-13.1, 11-9-13.4, 11-9-13.6, 11-9-13.7, 11-9-13.8,
32 11-9-13.10, 11-9-13.11, and 11-9-13.12 shall be interpreted so as not to be less restrictive than the
33 Federal Food, Drug and Cosmetic Act, 21 U.S.C. 387 et seq., including 21 U.S.C. 387 f(d), or than
34 Section 1926 of the Federal Public Health Service Act, 42 U.S.C. 300x-26, or than any regulation

1 promulgated or updated by the United States Food and Drug Administration or the United States
2 Secretary of Health and Human Services arising from the acts; so as to comply with the provisions
3 of the acts and related regulations in regard to prohibiting the sale of tobacco and electronic
4 nicotine-delivery system products to persons under the age of twenty-one (21) years; and so that
5 the state may maintain qualification for federal funding regarding tobacco, the use and cessation of
6 tobacco, and electronic nicotine-delivery system products. Nothing herein shall prohibit the state
7 from enacting a statute or promulgating a regulation that is more restrictive than any provision of
8 21 U.S.C. 387 et seq., or any provision of 42 U.S.C. 300x-26.

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

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

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

18 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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