

Chapter 535 RESTRICTIONS RELATING TO THE SALE OF TOBACCO PRODUCTS TO MINORS*

*Editor's note: Ch. 535, added by L.L. No. 20-2001, shall take effect on July 20, 2001. This local law also provided for the repeal, effective July 20, 2001, of Arts. X and XVII of Ch. 863, pertaining to restriction of sale of cigarette rolling paper and sale of tobacco products by vending machines, respectively.

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Sec. 535.01. Legislative findings.

In 1988, the Surgeon General confirmed that nicotine contained in tobacco products causes an addiction similar to, and as powerful as, that of cocaine or heroin. In 1995, the Food and Drug Administration concluded that "the nicotine in tobacco products is highly addictive, causes other psychoactive effects, such as relaxation and stimulation and affects weight regulation." In addition, it has been found that 82 percent of adult smokers begin smoking before they have reached 18--the age at which they are legally allowed to be sold cigarettes. Therefore, it is in the public interest to discourage minors from being enticed into violating the law and to protect the health of such minors by prohibiting the sale of tobacco products to minors.

(Added by L.L. No. 22-2001)

Sec. 535.11. Definitions.

1. "Bar" means any indoor area open to the public devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than forty (40) percent of total annual gross sales. Any bar that generates forty (40) percent or more of the total annual gross sales from the sale of food for on-premises consumption shall be a food service establishment.

2. "Cigarette rolling paper" means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

3. "Food service establishment" means any indoor area open to the public or portion thereof in which the business is the sale of food for on-premises consumption and which has an indoor seating capacity of greater than fifty (50) persons including, but not limited to restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment.

4. "Lockout device" means a token or other type of device which enables the operator of a vending machine containing tobacco products to directly regulate the sale of said items by limiting access to the vending machines to authorized adults.

5. "Point-of-sale advertising" means all printed or graphical materials bearing the brand name, but not the cigarettes packs and cartons, which alone or in conjunction with any other word, logo, symbol, motto, selling message or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes, smokeless tobacco, or other tobacco product which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.

6. "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

7. "Tobacco products" means cigarettes, cigars, chewing tobacco, powdered tobacco, smokeless tobacco or other similar products containing tobacco.

8. "Token" means a facsimile coin made available by an establishment for the purpose of use in vending machines.

(Added by L.L. No. 22-2001)

Sec. 535.21. Sale of tobacco products to minors prohibited.

1. Any person operating a place of business wherein tobacco products are sold or offered for sale is prohibited from selling such products to individuals under 18 years of age and shall post a sign upon which there shall be imprinted the following statement:

"The Sale of Cigarettes, Cigars, Chewing Tobacco, Powdered Tobacco, or other Tobacco Products, Rolling Papers or Pipes to Persons under 18 Years of Age is Prohibited by Law."

Such sign shall be printed on a white card in red letters at least one-half inch in height. The sign shall be posted in a conspicuous location both where the tobacco products are stored and at the point-of-sale,

except where the storage of the tobacco products and the point-of-sale are within three feet of each other, only one sign shall be required.

2. Sale of tobacco products in such places, other than by vending machine, shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least 18 years of age.

(Added by L.L. No. 22-2001)

Sec. 535.31. Restrictions on self-service sale and free-standing display of tobacco products.

1. Except as provided in section 535.51 below, it shall be unlawful for any person to display or store a tobacco product for sale, storage, or distribution without charge, in a manner which permits the purchaser or recipient of the tobacco product direct access or self-service to tobacco products.

2. No person operating a place of business wherein tobacco products are sold or offered for sale may display and store such products except as follows:

(a) Behind a manned counter that is under the plain view and direct supervision and control of a business employee who is at least 18 years of age; or

(b) Under lock and key and under the control of a business employee who is at least 18 years of age.

(Added by L.L. No. 22-2001)

Sec. 535.41. Sale and distribution of tobacco products by vending machines.

1. It shall be unlawful for any person to sell or distribute any tobacco product by vending machine to any person under the age of 18.

2. No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products, unless:

a. Such machine is located in:

(i) A bar or bar area of a food service establishment with a valid, on-premises full liquor license;

(ii) A private club;

(iii) A tobacco business; or

(iv) A place of employment in which an insignificant portion of its regular workforce is comprised of persons under the age of 18, and only in locations that are not accessible to the general public; and

b. Provided that any such vending machine:

(i) Contains a lockout device;

(ii) Is under the plain view and direct supervision and control of the person in charge of the location or his or her designated agent or employee who is at least 18 years of age; and

(iii) Is located at least 20 feet or more from an entry door into the premises.

3. Any person, firm, partnership, company or corporation that operates a vending machine pursuant to subdivision 2. above shall post in a conspicuous place on the front of the vending machine the following notice:

"The Sale of Cigarettes, Cigars, Chewing Tobacco, Powdered Tobacco, or other Tobacco Products, Rolling Papers or Pipes to Persons under 18 Years of Age is Prohibited by Law."

4. The individual responsible for the vending machine as set forth in subsection 2.(b)(ii) above shall monitor its use and shall require the identification of any individual utilizing the vending machine to assure that the person is at least 18 years of age.

5. No person, firm, partnership, company or corporation operating a vending machine which dispenses tobacco products shall use such vending machine to dispense any non-tobacco products; provided, however, that such machine may dispense matches.

(Added by L.L. No. 22-2001)

Sec. 535.51. Sale of cigarette rolling paper.

No merchant or other person shall sell or cause to be sold cigarette rolling paper or any device used for or in connection with the consumption of tobacco to a person under 18 years of age.

(Added by L.L. No. 22-2001)

Sec. 535.61. Point-of-sale advertising.

1. Any establishment selling tobacco products within the County of Westchester may engage in point-of-sale advertising of tobacco products only as follows:

Point-of-sale advertisements shall not be attached to nor located within ten feet of any fixture on which candy, toys or trading cards are displayed for sale.

2. The owner and/or manager of any establishment may apply to the Westchester County Department of Health for a waiver or modification of the requirements of subdivision 1., where such establishment is either:

(a) Unable to comply with the requirements of subdivision 1. above, or

(b) Where compliance would cause undue hardship upon the establishment.

(Added by L.L. No. 22-2001)

Sec. 535.71. Distribution of tobacco products without charge.

(1) No person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business:

(a) Distribute without charge any tobacco products to any individual, provided that the distribution of a package containing tobacco products in violation of this subdivision shall constitute a single violation without regard to the number of items in the package; or

(b) Distribute coupons which are redeemable for tobacco products to any individual, provided that this subdivision shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products or obtained at locations which sell tobacco products provided that such distribution is confined to a designated area or to coupons sent through the mail.

(2) The prohibitions contained in subdivision (1) of this section shall not apply to the following locations:

(a) Private social functions as defined in section thirteen hundred ninety-nine-q of the Public Health Law;

(b) Conventions and trade shows that comply with the provisions of subdivision three of section thirteen hundred ninety-nine-q of the Public Health Law; provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18;

(c) Events sponsored by tobacco manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18;

(d) Bars as defined in subdivision two of section thirteen hundred ninety-nine-n of the Public Health Law;

(e) Tobacco business as defined in subdivision twelve of section thirteen hundred ninety-nine-n of the Public Health Law;

(f) Factories as defined in subdivision four of section thirteen hundred ninety-nine-n of the Public Health Law and construction sites; provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18.

(3) No person shall distribute tobacco products at the locations set forth in paragraphs (b), (c) and (f) of subdivision (2) of this section unless such person gives five days written notice to the enforcement officer.

(4) The distribution of tobacco products pursuant to subdivision (2) of this section shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least 18

years of age. Such identification need not be required of any individual who reasonably appears to be at least 25 years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual.

(Added by L.L. No. 22-2001)

Sec. 535.81. Enforcement and penalties.

1. The Westchester County Board of Health is authorized to enforce the provisions of this chapter.
2. Any person who violates any provision of this chapter:
 - a. Shall be subject to a fine or civil penalty of a minimum of \$300.00, but not to exceed \$1,000.00 for a first violation within a two-year period;
 - b. Shall be subject to a fine or civil penalty of a minimum of \$500.00, but not to exceed \$1,500.00 for each subsequent violation within a two-year period; and
 - c. Shall also be subject to any penalty provided for under New York State Public Health Law §1399-ee and §1399-ff unless such penalty is expressly provided for herein.
 - d. If an individual violates this provision three times or more within a two-year period, then, in addition to any other penalty permitted by this section, the New York State Commissioner of Taxation and Finance shall be contacted in order to suspend the individual's applicable registration in accordance with New York State Public Health Law §1399-dd.
3. A person shall be guilty of a Class B misdemeanor and subject to penalty as prescribed by law if he or she has violated any provision of this chapter, except that a person may only be guilty of a B misdemeanor for violating sections 535.21(1), 535.41(3) or 535.61, if said person has violated those provisions more than once.

(Added by L.L. No. 22-2001)

Sec. 535.91. Severability.

If any clause, sentence, paragraph or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

(Added by L.L. No. 22-2001)