

(S. B. 924)

(No. 41-2015)

(Approved March 26, 2015)

AN ACT

To amend Section 6042.08 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011”; amend Section 4 of the “Act to Correct the Exploitation of Minor Children” of February 25, 1902, as amended, in order to prohibit the sale of electronic cigarettes or e-cigarettes to minors under the age of eighteen (18); empower the Secretary of Health to establish and adopt rules and regulations for the implementation of this Act; empower the Secretary of Health to establish an education plan through the Tobacco Control and Oral Health Division of the Department of Health; establish that any revenues generated from fines imposed on business owners by virtue of Section 6042.08 of Act No. 1-2011, as amended, and Section 4 of the “Act to Correct the Exploitation of Minor Children,” of February 25, 1902, as amended, by Act No. 96 of June 23, 1955, Act No. 128-1993, and Act No. 361-2004, as amended, shall be allocated to the Tobacco Control and Oral Health Division of the Department of Health to make prevention and education efforts on the effects of smoking, which revenues shall be under the control of the Department of Health; and for other purposes.

STATEMENT OF MOTIVES

The Epidemiology Bureau on Tobacco Control of the Centers for Disease Control of Atlanta describes the electronic cigarette or e-cigarette as a device that contains an atomizer and a fluid that almost always is nicotine and that when heated produces a vapor that simulates smoking. In the United States, there are over two hundred fifty (250) brands of this type of cigarettes, and over four hundred (400) worldwide, with different flavors and scents, such as vanilla and chocolate. The cartridges of many of these cigarettes are refillable. The electronic cigarette’s packaging is very appealing and these are easily acquired in stores, kiosks, gas stations, and especially on the Internet.

In Puerto Rico, the marketing of this type of cigarette began in 2009, and the most popular brands were Njoy and Blue. Currently, no research has been conducted in Puerto Rico on electronic cigarette or e-cigarette consumption. The Bureau has mentioned that youth who start smoking e-cigarettes could develop an addiction to nicotine and conventional cigarettes.¹ In the United States, it has been determined that smoking among high school students twofold between 2011 and 2012, and that 1.8 million middle and high school students have smoked these cigarettes. To such effects, forty one (41) Attorney Generals of the United States signed a letter dated September 13, 2013, addressed to the Food and Drug Administration (FDA) requesting regulations on e-cigarettes in order to prevent nicotine addiction and other health effects associated thereto among minors.

The Food and Drug Administration has issued a proposed regulation for the concerned entities to comment on. Such regulations shall extend the current jurisdiction of the FDA over tobacco to additional products that meet the legal definition of tobacco products, such as e-cigarettes, if said regulations are approved.²

Currently, around twenty-five (25) states of the United States of America have passed legislation to regulate e-cigarettes, under the provisions of the Family Smoking Prevention and Control Act, which allows states and local governments to regulate the sale and use of tobacco products, including electronic cigarettes or e-cigarettes. Some of those states are: Colorado, Minnesota, New Hampshire, New Jersey, Tennessee, Alabama, Alaska, Arizona, Arkansas, and California, among others. On the other hand, in Uruguay, the sale of this type of cigarettes is prohibited since 2009; in Turkey, the sale and advertisement thereof was suspended; in Norway, the import and sale of these products was prohibited; in Brazil, the import, sale, and

¹ Key Findings: Intentions to smoke cigarettes among never-smoking U.S. middle and high school electronic cigarette users, National Youth Tobacco Survey, 2011-2013; <http://www.cdc.gov/tobacco/youth/e-cigarettes/>

² <http://www.fda.gov/TobaccoProducts/Labeling/ucm388395.htm>

advertisement of these products is prohibited since 2009; and in Australia, the import and sale thereof is prohibited as well. In California, a new tax on these products shall be imposed, since it has been shown that if the price of the cigarette pack increases, the number of smokers decreases.

The World Health Organization has stated that the safety of electronic cigarettes or e-cigarettes has not been scientifically proven. For such reason, consumers must be advised on not using them. The nicotine content, as well as the content of other substances, varies. Lastly, the alleged efficacy of this product to help people to quit smoking is not proven. These cigarettes cannot be advertised as products that assist in smoking cessation because they have yet to be regulated by the FDA and the Federal Trade Commission (FTC). It must be noted that these cigarettes do not state in their packaging that these are goods intended for smoking cessation, as the patches and chewing gums do.

Furthermore, according to the FDA, electronic cigarettes (e-cigarettes) have not been thoroughly researched, thus, consumers may not be aware of:

- The potential risks posed by electronic cigarettes when used as intended;
- The concentration of potentially harmful chemicals or the dose of nicotine they are inhaling when using these products; and
- Any benefits associated to the use of these products.

The FDA is concerned that e-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.³

³ <https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>

Therefore, this Legislative Assembly deems it necessary to prohibit the sale of electronic cigarettes or e-cigarettes to minors under the age of eighteen (18), in view of the potential to develop a nicotine addiction. This shall enable the implementation of the same restrictions of conventional cigarettes and of an education plan by the Tobacco Control and Oral Health Division of the Department of Health geared to minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title.-

This Act shall be known as the “Act to Prohibit the Sale of Electronic Cigarettes or E-cigarettes to Minors under the Age of Eighteen (18).”

Section 2.- Definitions.-

(a) Electronic Cigarette or E-cigarette – means a product intended to provide the user with a dose of nicotine combined with other substances in the form of a vapor, as defined by the Department of Health through regulations, in conjunction and with the advice of the Department of the Treasury. For purposes of this definition, any provision established with respect to electronic cigarettes that is in conflict or addresses a matter governed by law, federal regulations, or any administrative guidelines issued by the United States Food and Drug Administration (FDA) which is applicable to Puerto Rico in what pertains to electronic cigarettes, shall be understood to be amended in order to be consistent with said law or federal regulations.

(b) Minor – means a person under the age of eighteen (18).

(c) Signs – means any notices advising on the health risks due to the nicotine content and other substances, as well as on the prohibition of selling to minors under the age of eighteen (18).

(d) Secretary – means the Secretary of the Department of Health.

Section 3.- Rulemaking Authority.-

The Secretary shall adopt rules and regulations within ninety (90) days following the effective date of this Act as are necessary to achieve the purposes of this Act, including the regulations related to signs prohibiting the sale of electronic cigarettes or e-cigarettes to minors.

The Secretary shall implement an education plan within ninety (90) days following the effective date of this Act through the Tobacco Control and Oral Health Division of the Department of Health on the health effects of smoking electronic cigarettes or e-cigarettes. This education plan shall be submitted to the Secretary of the Department of Education to be included in the work plan of primary and secondary school teachers. The Secretary of Education shall have six (6) months to implement the work plan established by the Tobacco Control and Oral Health Division of the Department of Health.

Section 4.- Signs.-

Any place where electronic cigarettes or e-cigarettes are sold shall display prominently in a conspicuous place the signs warning about the health risks entailed by the use of such cigarettes due to their nicotine content and of other substances, and about the prohibition on selling cigarettes to minors under the age of eighteen (18). The Department of Health in conjunction with the Mental Health and Addiction Services Administration shall provide the information that the aforementioned signs shall bear. The Mental Health and Addiction Services Administration shall be responsible for preparing the signs and making them available.

Section 5.- Section 6042.08 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 6042.08.- Cigarette-related Crimes.-

(a) Any person shall be guilty of a misdemeanor if:

(1) ...

(2) ...

(3) ...

(4) ...

(b) Any natural or juridical person, or owner or manager of a business or a business establishment shall have his license to trade cigarettes, whether at wholesale or at retail, or any cigarette-related license suspended for a term of twelve (12) months and an administrative fine in the amount of ten thousand dollars (\$10,000) shall be imposed for each violation, without prejudice to the provisions of the ‘Act to Correct Exploitation of Minor Children’ of February 25, 1902, as amended, when he:

(1) Sells, gives away, dispenses, delivers or, distributes cigarettes, or electronic cigarettes or ‘e-cigarettes,’ whether individually or in packs of any size or any other kind of wrapping, cigars, chewing tobacco, or any tobacco preparation to be inhaled or chewed, and any other kind of material, regardless of what it is made of, that can be used to roll any kind of cut tobacco to prepare cigarettes, cigars, or flavored cigarettes, as defined in Act No. 62 of August 5, 1993, as amended, to minors under the age of eighteen (18), or to any person who does not look older than twenty-seven (27), who does not show a photo identification card that appears to be valid on its face showing that such person is over the age of eighteen (18), whether for such person’s consumption or for the consumption of a third party. Any transaction in connection with the aforementioned goods in this paragraph shall be conducted in a direct and immediate manner between both parties, in order for the good not to be accessible to the person who intends to buy it, be it because the good is on a counter or in a self-service machine, except as otherwise provided in subsection (e) of Section 3050.01 of this Code.

(2) Any owner or manager of a business or a business establishment where cigarettes or electronic cigarettes or ‘e-cigarettes,’ are sold, given away, dispensed, delivered, or distributed at retail, whether individually or in packs of any size or any kind of wrapping, cigars, chewing tobacco, or any tobacco preparation to be inhaled or chewed, who does not place conspicuously in the business or the business establishment, a copy of the provisions of this subsection, in addition to the provisions of Section 4-A of the ‘Act to Correct Exploitation of Minor Children,’ approved on February 25, 1902, as amended.

(c) Once said twelve (12)-month period provided for in subsection (b) has elapsed, a person may request reinstatement of his license. If, after such license has been reinstated, such person is found guilty of the same violation for a second time, his license shall be permanently revoked. For purposes of the above provisions, any violation that occurs five (5) years after the date the determination on the first violation became final and binding, shall not be treated as a second violation of the provisions of subsection (b).

Any income generated as a result of the fines imposed to business owners or managers shall be allocated to the Division of Tobacco Control and Oral Health of the Department of Health to be used for any prevention and education efforts on the effects of smoking, and said income shall be under the custody of the Department of Health.”

Section 6.- Section 4 of the “Act to Correct Exploitation of Minor Children” of February 25, 1902, as amended by Act No. 96 of June 23, 1955, Act No. 128-1993, and Act No. 361-2004, as amended, is hereby amended to read as follows:

“Any person who sells, gives, delivers, or distributes cigars, cigarettes, electronic cigarettes or ‘e-cigarettes,’ or any tobacco preparation, and any kind of material, regardless of what it is made of, that may be used for rolling any kind of shredded tobacco for manufacturing cigarettes, cigars, or flavored cigarettes, as

these are defined by Act No. 62 of August 5, 1993, as amended, to minors under the age of eighteen (18), shall be guilty of a misdemeanor and, upon conviction, punished by a fine which shall not exceed five thousand dollars (\$5,000) or imprisonment for a term which shall not exceed six (6) months.”

Section 7.- The Bureau of Alcoholic Beverages of the Department of the Treasury and the Puerto Rico Police are hereby empowered to intervene, punish, and fine any business that fails to display the aforementioned signs prominently in a conspicuous place; provided that the Department of the Treasury shall be empowered to issue a notice or initial warning to the business for noncompliance, and grant the business thirty (30) days to display said signs. Moreover, the Bureau of Alcoholic Beverages may impose a daily fine in the amount of fifty dollars (\$50) to a business owner who, upon being issued an initial warning, fails to comply with the provisions of this Act.

Section 8.- Any income generated as a result of the fines imposed to business owners or managers shall be allocated to the Division of Tobacco Control and Oral Health of the Department of Health to be used for any prevention and education efforts on the effects of smoking, and said income shall be under the custody of the Department of Health.

Section 9.- Severability Clause.-

If any clause, paragraph, article, provision, section, or part of this Act were held to be null or unconstitutional, or held to be preempted by a Federal Law, said holding shall not affect or invalidate the remainder of this Act.

Section 10.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 41-2015 (S. B. 924)** of the **5th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Section 6042.08 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011”; amend Section 4 of the “Act to Correct the Exploitation of Minor Children” of February 25, 1902, as amended, in order to prohibit the sale of electronic cigarettes or e-cigarettes to minors under the age of eighteen (18); empower the Secretary of Health to establish and adopt rules and regulations for the implementation of this Act; empower the Secretary of Health to establish an education plan through the Tobacco Control and Oral Health Division of the Department of Health; [...]

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 14th day of November, 2017.

Orlando Pagán-Ramírez
Acting Director