

(S. B. 246)

(No. 45-2021)

(Approved September 21, 2021)

AN ACT

To amend subsection (b) (1) of 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; amend Section 1 of Act. No. 21 of April 13, 1916, as amended; amend Sections 1, 2, and 4 of Act No. 41-2015, known as the “Act to Prohibit the Sale of Electronic Cigarettes or E-cigarettes to Minors under the Age of Eighteen (18)”; amend Section 8(p) of Act No. 67-1993, known as amended, known as the “Mental Health and Addiction Services Administration Act”; and amend Section 3 of Act No. 62-1993, as amended, known as the “Act to Regulate the Publicity and Promotion of Every Product Manufactured with Tobacco,” in order to prohibit the sale of tobacco products to persons younger than twenty-one (21) years of age; and for other related purposes.

STATEMENT OF MOTIVES

In December 2019, the United States Government passed legislation through Congress to prohibit the sale of tobacco to persons younger than twenty-one (21) years of age. The amendment prohibits any retailer from selling this product to any person younger than twenty-one (21) years of age because they do not understand the harmful effects thereof. The United States Senate gave bipartisan approval to the legislative measure and it subsequently went through the process in the U.S. House of Representatives.

The 2016 Behavioral Risk Factor Surveillance System (BRFSS), an annual survey conducted by the Department of Health, showed that 10.6% of Puerto Ricans over the age of 18 smoke. However, that same survey showed that 69.8% of all smokers reported that they attempted to quit at least once during the year.

The Consulta Juvenil IX study for the year 2012-2013, sponsored by the Mental Health and Anti-Addiction Services Administration (ASSMCA, Spanish acronym), reported that 7.0% of middle and high-school students had smoked during the last year and 32.7% of those students stated that they began smoking before the age of 14. Likewise, 7.3% of students reported that they themselves had purchased cigarettes (over the last 30 days) from grocery stores and super markets, which were the preferred method (24.7%), as well as from cigarette machines (11.9%).

Smoking has been consistently decreasing in Puerto Rico just like in the United States. In 2014, Puerto Rico surpassed the smoking reduction goal established by the U.S. Government. The decrease in the prevalence of tobacco use is the result of a joint effort between the public and private sectors and academia to promote evidence-based public policies. There is no question that Act No. 40-1993, as amended, which prohibits smoking in public and private places, together with the increase of the excise tax on cigarettes, the access to smoking cessation services, and municipal public policies have contributed to reducing the consumption of tobacco in Puerto Rico.

The Government of the Commonwealth of Puerto Rico recognizes that adolescents and youths younger than the age of twenty-one (21) are more susceptible to the addictive properties of tobacco products. A 2015 report from the Institute of Medicine (IOM) states that “the parts of the brain that are most vulnerable to nicotine and addiction are those that manage decision making, impulse control, and reward seeking.” [Translation supplied] The purpose of this bill is to prevent the sale of tobacco products to minors under the age of twenty-one (21) and adjust the laws on tobacco consumption in Puerto Rico to reflect this change.

Hawaii was the first state of the United States to approve legislation to raise the minimum age for sale of tobacco products to twenty-one (21) and such legislation became effective on January 1, 2016. Between 2016 and 2017, the prevalence of tobacco use among adults in Hawaii was reduced from 14.1% to 13.1%. Four more states of the United States had enacted similar legislation by 2018.

Increasing the minimum age for sale of tobacco products to twenty-one (21) is consistent with the 2015-2020 Puerto Rico Strategic Tobacco Control Plan of the Department of Health. The goal of this Plan is to reduce the consumption of cigarettes and related products. Its six (6) strategic goals focus on preventing tobacco use initiation in persons younger than eighteen (18) years of age.

At the federal level, the American Academy of Pediatrics (AAP) was one of the main spokespersons in a campaign that advocated to increase the minimum age for sale of tobacco products to twenty-one (21). As a matter of fact, in 2019, the U.S. Congress passed the bill known as Big Tobacco with bipartisan support which seeks to increase the minimum age for sale of such products to twenty-one (21). During the consideration process of this bill in the United States Congress, cigarette manufacturer Marlboro expressed its support of the measure and agreed that raising the minimum age is the fastest and most efficient way to tackle the recent increase in tobacco consumption by adolescents.

Lastly, in December 2019, former President Donald Trump signed the bill into law for the main purpose of making these products less accessible and attractive to our children and youths. According to the Food and Drug Administration (FDA), about 2,000 youths under 18 smoke their first cigarette every day in the United States and more than 300 become daily smokers before the age of eighteen (18). This could mean that many of these youths could become

addicted to such products before they are old enough to understand the risks associated with them.

If this measure to increase the minimum age for sale of tobacco products to twenty-one (21) is approved, Puerto Rico could aim for more federal funds while also safeguarding the health of our youngest. Access to federal funding could be restricted under federal legislation if businesses are found noncompliant with the federal mandate prohibiting the sale of tobacco products to persons younger than twenty-one (21) years of age so as to address the problem of minors abusing this substance. Therefore, to promote health in Puerto Rico and ensure the access to federal funding or allocations, this Legislative Assembly deems it meritorious to introduce this legislative measure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 6042.08 of Act No. 1-2011, known as the “Puerto Rico Internal Revenue Code of 2011,” as amended, is hereby amended to read as follows:

“Section 6042.08.- Cigarette-Related Crimes.-

(a) ...

(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 other cigarette-related license suspended for a period of twelve (12) months and an administrative fine in the amount of ten thousand dollars (\$10,000) shall be imposed for each violation, without impairment to the provisions of the “Act to Correct the Exploitation of Minor Children” of February 25, 1902, as amended, when:

(1) such person sells, gives away, dispenses, delivers or, distributes cigarettes, 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. 62-1993, as amended, to persons younger than twenty-one (21) years of age, 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 twenty-one (21), whether for such person's consumption or for consumption by a third party. Any transaction in connection with the goods mentioned 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 acquire 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) ...”

Section 2.- Section 4 of the “Act to Correct the Exploitation of Minor Children” of February 25, 1902, as amended, is hereby amended to read as follows:

“Section 4.- Any person who sells, gives away, 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 terms are defined in Act No. 62 of August 5, 1993, as amended, to persons younger than twenty-one (21) years of age, 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 3.- Section 1 of Act No. 21 of April 13, 1916, as amended, is hereby amended to read as follows:

“Section 1.- The sale or donation of cigars, cigarettes, tobacco, and any kind of material, regardless of what it is made of, that may be used to roll any kind of shredded tobacco for manufacturing cigarettes, cigars, or flavored cigarettes, as these are defined in Act No. 62-1993, as amended, to minors under the age of twenty-one (21), regardless of their sex, is hereby prohibited.”

Section 4.- Section 1 of Act 41-2015, known as the “Act to Prohibit the Sale of Electronic Cigarettes or E-cigarettes to Minors under the Age of Eighteen (18),” is hereby amended to read as follows:

“Section 1.- Title.- This Act shall be known as the “Act to Prohibit the Sale of Electronic Cigarettes or E-cigarettes to Persons Younger than Twenty-one (21) Years of Age.”

Section 5.- Section 2 of Act No. 41-2015, known as the “Act to Prohibit the Sale of Electronic Cigarettes or E-cigarettes to Minors under the Age of Eighteen (18),” is hereby amended to read as follows:

“Section 2.- Definitions.-

(a) ...

(b) Minor- means a person younger than twenty-one (21) years of age.

(c) Signs- means any notices advising on the health risks due to the nicotine content and other substances, as well as on the prohibition to sell to persons younger than twenty-one (21) years of age.

(d) ...”

Section 6.- Section 4 of Act No. 41-2015, known as the “Act to Prohibit the Sale of Electronic Cigarettes or E-cigarettes to Minors under the Age of Eighteen (18),” is hereby amended to read as follows:

“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 against selling cigarettes to persons younger than twenty-one (21) years of age. The Department of Health in conjunction with the Mental Health and Anti-Addiction Services Administration shall provide the information that the aforementioned signs shall bear. The Mental Health and Anti-Addiction Services Administration shall be responsible for preparing the signs and making them available.”

Section 7.- Section 8(p) of Act No. 67-1993, known as the “Mental Health and Addiction Services Administration Act,” is hereby amended to read as follows:

“Section 8.- Administrator.

The operations and functions of the Administration shall be coordinated by an Administrator appointed by the Secretary who shall fix his salary.

The person who fills the position of Administrator shall be knowledgeable and experienced in the field of behavioral science, and administrative skills to qualify him to enforce the public policy on mental health and addiction.

The Administrator shall discharge the following duties and functions:

(a) ...

(p) To compile and process statistical data as well as render the reports required by the U.S. Secretary of Health and Human Resources[sic] with respect to the prohibition against the sale and distribution of cigarettes and tobacco products to persons younger than twenty-one (21) years of age, when said reports are a requirement or condition for the granting of federal funds. Provided, that in the performance of such duties, any source of information whose accuracy and reliability cannot reasonably be questioned may be used.

(q)...”

Section 8.- Section 3 of Act No. 62-1993, as amended, known as the “Act to Regulate the Publicity and Promotion of Every Product Manufactured with Tobacco,” is hereby amended to read as follows:

“Section 3.

For the purposes of this Act, the following prohibitions are hereby established:

(a) ...

(b) ...

(c) ...

(1) To persons younger than twenty-one (21) years of age.

(2) In places where the presence of persons younger than twenty-one (21) years of age is allowed due to the activity being carried out.”

Section 9.- Supremacy

The provisions of this Act shall prevail over any other provision of law that is inconsistent with this Act.

Section 10.- Severability Clause

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or

invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, invalidates, or holds to be unconstitutional any part thereof, or even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 11.- Effectiveness

This Act shall take effect immediately after its approval.