

Prohibiting Gutka Sales To Minors

Gutka is a smokeless tobacco product legally imported from India. Its chewing gum form is sweet and can contain three to four times the amount of nicotine as a cigarette and can contain unhealthy additives like magnesium carbonate. This Act prohibits the sale of gutka to minors, but allows it to be purchased by adults from tobacco businesses.

Submitted as:

New York

[A04789 - - B](#)

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Prevent the Sale of Gutka to
2 Minors."

3
4 Section 2. [*Definitions.*] As used in this Act, "gutka" means a product containing lime
5 paste, spices, areca and tobacco.

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7 Section 3. [*Sale of Gutka Prohibited.*]

8 1. No person shall knowingly sell or provide gutka to any other person under eighteen
9 years old. No other provision of law authorizing the sale of tobacco products, other than
10 subdivision two of this section, shall authorize the sale of gutka. Any person who violates the
11 provisions of this subdivision shall be subject to a civil penalty of not more than five hundred
12 dollars.

13 2. (a) The provisions of subdivision one of this section shall not apply to a tobacco
14 business, as defined in [insert citation].

15 (b) Any person operating a tobacco business wherein gutka is sold or offered for
16 sale is prohibited from selling such gutka to individuals under eighteen years of age, and shall
17 post in a conspicuous place a sign upon which there shall be imprinted the following statement,
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19 "Selling gutka to people under eighteen years old is prohibited by law."
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21 Such sign shall be printed on a white card in red letters at least one-half inch in height.

22 (c) Sales of gutka by a tobacco business shall be made only to an individual who
23 demonstrates, through a driver's license or other photographic identification card issued by a
24 government entity or educational institution indicating that the individual is at least eighteen
25 years old. Such identification need not be required of any individual who reasonably appears to
26 be at least twenty-five years old, provided, however, that such appearance shall not constitute a
27 defense in any proceeding alleging the sale of a tobacco product to an individual under eighteen
28 years old.

29 (d) (i) Any person operating a tobacco business wherein gutka is sold or
30 offered for sale may perform a transaction scan as a precondition for such purchases.

31 (ii) In any instance where the information deciphered by the transaction
32 scan fails to match the information printed on the driver's license or non-driver identification

card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied.

(iii) In any proceeding pursuant to [insert citation], it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the gutka had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the [commissioner] shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this Act. Use of a transaction scan shall not excuse any person operating a tobacco business wherein gutka is sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this Act. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

(e) A tobacco business or agent or employee of such business shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in paragraph (d) of this subdivision. No tobacco business or agent or employee of such business shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this paragraph, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following:

- (i) Name,
- (ii) Date of birth,
- (iii) Driver's license or non-driver identification number, and
- (iv) Expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by [insert citation].

Section 13. [*Severability*.] [Insert severability clause.]

Section 14. [*Repealer*.] [Insert repealer clause.]

Section 15. [*Effective Date*.] [Insert effective date.]