S T A T E O F N E W Y O R K

5215--A

2013-2014 Regular Sessions

I N S E N A T E

May 14, 2013

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the shipment of cigarettes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 1 and 5 of section 1399-ll of the public health law, as added by chapter 262 of the laws of 2000, are amended to read as follows:

1. It shall be unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes to any person in this state who is not: (a) a person licensed as a cigarette tax agent or wholesale dealer under article twenty of the tax law or registered retail dealer under section four hundred eighty-a of the tax law; (b) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state AND PRESENTS HIMSELF OR HERSELF AS SUCH, when such person is acting in accordance with his or her official duties. For purposes of this subdivision, a person is a licensed or registered agent or dealer described in paragraph (a) of this subdivision if his or her name appears on a list of licensed or registered agents or dealers published by the department of taxation and finance, or if such person is licensed or registered as an agent or dealer under article twenty of the tax law.

5. Any person who violates the provisions of subdivision one or two of this section shall be guilty of a class A misdemeanor and for a second

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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or subsequent violation shall be guilty of a class E felony. In addition to the criminal penalty, [the commissioner may impose a civil fine] ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE, TWO OR THREE OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY not to exceed THE GREATER OF (A) five thousand dollars for each such violation [on any person who violates subdivision one or two of this section. The commissioner may impose a civil fine not to exceed five thousand dollars for each violation of subdivision three of this section on any person engaged in the business of selling cigarettes who ships or causes to be shipped any such cigarettes to any person in this state]; OR (B) ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SHIPPED, CAUSED TO BE SHIPPED OR TRANSPORTED IN VIOLATION OF SUCH SUBDIVISION.

S 2. Section 1399-ll of the public health law, as added by chapter 262 of the laws of 2000, is amended by adding a new subdivision 6 to read as follows:

6. THE ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER THE CIVIL PENALTIES PROVIDED BY SUBDIVISION FIVE OF THIS SECTION AND FOR SUCH OTHER RELIEF AS MAY BE DEEMED NECESSARY. IN ADDITION, THE CORPORATION COUNSEL OF ANY POLITICAL SUBDIVISION THAT IMPOSES A TAX ON CIGARETTES MAY BRING AN ACTION TO RECOVER THE CIVIL PENALTIES PROVIDED BY SUBDIVISION FIVE OF THIS SECTION AND FOR SUCH OTHER RELIEF AS MAY BE DEEMED NECESSARY WITH RESPECT TO ANY CIGARETTES SHIPPED, CAUSED TO BE SHIPPED OR TRANSPORTED IN VIOLATION OF THIS SECTION TO ANY PERSON LOCATED WITHIN SUCH POLITICAL SUBDIVISION. ALL CIVIL PENALTIES OBTAINED IN ANY SUCH ACTION SHALL BE RETAINED BY THE STATE OR POLITICAL SUBDIVISION BRINGING SUCH ACTION, PROVIDED THAT NO PERSON SHALL BE REQUIRED TO PAY CIVIL PENALTIES TO BOTH THE STATE AND A POLITICAL SUBDIVISION WITH RESPECT TO THE SAME VIOLATION OF THIS SECTION.

S 3. This act shall take effect immediately.