

6540

I N S E N A T E

January 22, 2016

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting the use of smokeless tobacco on school grounds

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

1 Section 1. Subdivision 2 of section 409 of the education law, as
2 amended by chapter 449 of the laws of 2012, is amended and two new
3 subdivisions 3 and 4 are added to read as follows:
4 2. Notwithstanding the provisions of any other law, rule or regu-
5 lation, tobacco use shall not be permitted and no person shall use
6 tobacco OR SMOKELESS TOBACCO on school grounds.
7 (A) "School grounds" means any building, structure and surrounding
8 outdoor grounds, including entrances or exits, contained within a public
9 or private pre-school, nursery school, elementary or secondary school's
10 legally defined property boundaries as registered in a county clerk's
11 office.
12 (B) "SMOKELESS TOBACCO" MEANS ANY PRODUCT THAT CONSISTS OF CUT,
13 GROUND, POWDERED, OR LEAF TOBACCO THAT IS INTENDED TO BE PLACED BY THE
14 CONSUMER IN AN ORAL CAVITY.
15 3. THE BOARD OF EDUCATION OF EACH SCHOOL DISTRICT SHALL ENSURE THE
16 PLACEMENT, IN EVERY PUBLIC ENTRANCE TO A PUBLIC SCHOOL BUILDING IN ITS
17 DISTRICT, OF A SIGN WHICH SHALL BE LOCATED SO AS TO BE CLEARLY VISIBLE
18 TO THE PUBLIC AND SHALL CONTAIN LETTERS WHICH CONTRAST IN COLOR WITH THE
19 SIGN, INDICATING THAT THE USE OF TOBACCO AND SMOKELESS TOBACCO IS
20 PROHIBITED THEREIN.
21 (A) THE BOARD OF EDUCATION OF EACH SCHOOL DISTRICT SHALL ORDER ANY
22 PERSON USING TOBACCO OR SMOKELESS TOBACCO IN VIOLATION OF THIS SECTION
23 TO COMPLY WITH THE PROVISIONS OF THIS SECTION. EXCEPT AS OTHERWISE
24 PROVIDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, A PERSON, AFTER
25 BEING SO ORDERED, WHO USES TOBACCO AND/OR SMOKELESS TOBACCO IN VIOLATION
26 OF THIS SECTION IS SUBJECT TO A FINE OF NOT LESS THAN ONE HUNDRED
27 DOLLARS FOR THE FIRST OFFENSE, TWO HUNDRED FIFTY DOLLARS FOR THE SECOND
28 OFFENSE, AND FIVE HUNDRED DOLLARS FOR EACH SUBSEQUENT OFFENSE. A PENALTY

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

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1 SHALL BE RECOVERED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS (C)
2 AND (D) OF THIS SUBDIVISION.

3 (B) THE DEPARTMENT OF HEALTH, UPON WRITTEN COMPLAINT OR HAVING REASON
4 TO SUSPECT THAT A PUBLIC SCHOOL IS OR MAY BE IN VIOLATION OF THE
5 PROVISIONS OF THIS SECTION, SHALL, BY WRITTEN NOTIFICATION, ADVISE THE
6 BOARD OF EDUCATION OF THE SCHOOL DISTRICT ACCORDINGLY AND ORDER APPRO-
7 PRIATE ACTION TO BE TAKEN. A BOARD OF EDUCATION THAT RECEIVES THAT
8 NOTICE AND FAILS OR REFUSES TO COMPLY WITH THE ORDER IS SUBJECT TO A
9 FINE OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS FOR THE FIRST OFFENSE,
10 FIVE HUNDRED DOLLARS FOR THE SECOND OFFENSE, AND ONE THOUSAND DOLLARS
11 FOR EACH SUBSEQUENT OFFENSE. IN ADDITION TO THE PENALTY PROVIDED HEREIN,
12 A COURT MAY ORDER IMMEDIATE COMPLIANCE WITH THE PROVISIONS OF THIS
13 SECTION.

14 (C) A PENALTY RECOVERED UNDER THE PROVISIONS OF THIS SECTION SHALL BE
15 RECOVERED BY, AND IN THE NAME OF, THE COMMISSIONER OF HEALTH. WHEN THE
16 PLAINTIFF IS THE COMMISSIONER, THE PENALTY RECOVERED SHALL BE PAID BY
17 THE COMMISSIONER OF HEALTH INTO THE TREASURY OF THE STATE.

18 (D) THE SUPREME COURT OF THE COUNTY IN WHICH A VIOLATION IS ALLEGED TO
19 HAVE OCCURRED SHALL HAVE JURISDICTION OVER PROCEEDINGS TO ENFORCE AND
20 COLLECT ANY PENALTY IMPOSED BECAUSE OF A VIOLATION OF THIS SECTION.
21 PROCESS SHALL BE IN THE NATURE OF A SUMMONS OR WARRANT AND SHALL ISSUE
22 ONLY AT THE SUIT OF THE COMMISSIONER OF HEALTH OR THE LOCAL BOARD OF
23 HEALTH, AS THE CASE MAY BE, AS PLAINTIFF.

24 (E) THE PENALTIES PROVIDED IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVI-
25 SION SHALL BE THE ONLY CIVIL REMEDY FOR A VIOLATION OF THIS SECTION.
26 THERE SHALL BE NO PRIVATE RIGHT OF ACTION AGAINST A PARTY FOR FAILURE TO
27 COMPLY WITH THE PROVISIONS OF THIS SECTION.

28 4. A STUDENT WHO VIOLATES THE PROVISIONS OF THIS SECTION AFTER BEING
29 ORDERED BY THE BOARD OF EDUCATION OF THE DISTRICT TO COMPLY WITH THE
30 PROVISIONS OF THIS SECTION, SHALL NOT BE SUBJECT TO THE FINES ESTAB-
31 LISHED PURSUANT TO THIS SECTION, BUT, RATHER, SHALL BE PROHIBITED BY THE
32 BOARD OF EDUCATION OF THE DISTRICT FROM PARTICIPATION IN ALL EXTRACUR-
33 RICULAR ACTIVITIES, INCLUDING INTERSCHOLASTIC ATHLETICS, AND THE REVOCATION
34 OF ANY STUDENT PARKING PERMIT THAT THE STUDENT MAY POSSESS. THE
35 BOARD OF EDUCATION SHALL ADOPT A POLICY THAT ESTABLISHES THE LENGTH OF A
36 SUSPENSION OR REVOCATION TO BE IMPOSED ON A STUDENT FOR AN INITIAL OR
37 SUBSEQUENT VIOLATION OF THE PROVISIONS OF THIS SECTION.

38 S 2. This act shall take effect on the sixtieth day after it shall
39 have become a law.