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

2739

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. ENGLEBRIGHT, GREENE, DINOWITZ -- Multi-Sponsored by -- M. of A. DESTITO, HOYT, JACOBS, KOON, O'MARA -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to making it unlawful for a person under the age of eighteen to possess tobacco products

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

Section 1. Article 13-F of the public health law is amended by adding a new section 1399-mm-1 to read as follows:

S 1399-MM-1. UNLAWFUL POSSESSION OF TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF EIGHTEEN YEARS. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO PERSON UNDER THE AGE OF EIGHTEEN YEARS SHALL POSSESS ANY TOBACCO PRODUCT.

2. ANY PERSON WHO UNLAWFULLY POSSESSES A TOBACCO PRODUCT MAY BE SUMMONED BEFORE AND EXAMINED BY A COURT HAVING JURISDICTION OF THAT CHARGE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL AUTHORIZE OR BE CONSTRUED TO AUTHORIZE A PEACE OFFICER, A POLICE OFFICER OR AN ENFORCEMENT OFFICER TO ARREST A PERSON WHO UNLAWFULLY POSSESSES A TOBACCO PRODUCT. IF A DETERMINATION IS MADE SUSTAINING SUCH CHARGE THE COURT MAY IMPOSE A CIVIL FINE NOT EXCEEDING FIFTY DOLLARS AND/OR COMPLETION OF A TOBACCO AWARENESS PROGRAM IF SUCH PROGRAM IS BEING OFFERED AND/OR AN APPROPRIATE AMOUNT OF COMMUNITY SERVICE NOT TO EXCEED THIRTY HOURS.

3. NO SUCH DETERMINATION SHALL OPERATE AS A DISQUALIFICATION OF ANY SUCH PERSON SUBSEQUENTLY TO HOLD PUBLIC OFFICE, PUBLIC EMPLOYMENT OR AS A FORFEITURE OF ANY RIGHT OR PRIVILEGE OR TO RECEIVE ANY LICENSE GRANTED BY PUBLIC AUTHORITY; AND NO SUCH PERSON SHALL BE DENOMINATED A CRIMINAL BY REASON OF SUCH DETERMINATION, NOR SHALL SUCH DETERMINATION BE DEEMED A CONVICTION.

4. WHENEVER A PEACE OFFICER, POLICE OFFICER OR AN ENFORCEMENT OFFICER SHALL OBSERVE A PERSON UNDER EIGHTEEN YEARS OF AGE OPENLY IN POSSESSION

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

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OF A TOBACCO PRODUCT, SUCH OFFICER MAY SEIZE THE TOBACCO PRODUCT AND SHALL DELIVER IT TO THE CUSTODY OF HIS OR HER DEPARTMENT.

5. ANY TOBACCO PRODUCT SEIZED IN VIOLATION OF THIS SECTION IS HEREBY DECLARED A NUISANCE. THE OFFICIAL TO WHOM THE TOBACCO PRODUCT HAS BEEN DELIVERED SHALL, NO EARLIER THAN THREE DAYS FOLLOWING THE RETURN DATE FOR INITIAL APPEARANCE ON THE SUMMONS, DISPOSE OF OR DESTROY THE TOBACCO PRODUCT SEIZED OR CAUSE IT TO BE DISPOSED OF OR DESTROYED. ANY PERSON CLAIMING OWNERSHIP OF A TOBACCO PRODUCT SEIZED UNDER THIS SECTION MAY, ON THE INITIAL RETURN DATE OF THE SUMMONS OR EARLIER ON FIVE DAYS NOTICE TO THE OFFICIAL OR DEPARTMENT IN POSSESSION OF THE TOBACCO PRODUCT, APPLY TO THE COURT FOR AN ORDER PREVENTING THE DESTRUCTION OR DISPOSAL OF THE TOBACCO PRODUCT SEIZED AND ORDERING THE RETURN OF THAT TOBACCO PRODUCT. THE COURT MAY ORDER THE TOBACCO PRODUCT RETURNED IF IT IS DETERMINED THAT RETURN OF THE TOBACCO PRODUCT WOULD BE IN THE INTEREST OF JUSTICE OR THAT THE TOBACCO PRODUCT WAS IMPROPERLY SEIZED.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.