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

7362

2009-2010 Regular Sessions

I N A S S E M B L Y

March 31, 2009

Introduced by M. of A. MILLER, BENJAMIN -- Multi-Sponsored by -- M. of A. MAYERSOHN, McDONOUGH -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to smoking restrictions in certain outdoor areas

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

Section 1. Legislative intent. The legislature recognizes that exposure to second-hand smoke is known to cause cancer, pneumonia, asthma, bronchitis, and heart disease in humans. The legislature finds that prohibiting smoking within a presumptively reasonable minimum distance of fifteen feet from entrances and exits that serve enclosed areas where smoking is prohibited is consistent with such prohibition. This legislation will apply to any individual occupying such area with the purpose of smoking, but provides exceptions for individuals passing through such area. Therefore, the legislature finds that smoking in such area shall be prohibited and owners and other individuals in control of such area are recommended to post signs indicating no smoking areas and providing for fines for violations.

S 2. The public health law is amended by adding a new section 1399-o-1 to read as follows:

S 1399-O-1. SMOKING RESTRICTIONS; CERTAIN OUTDOOR AREAS. 1. SMOKING IS PROHIBITED WITHIN A PRESUMPTIVELY REASONABLE MINIMUM DISTANCE OF FIFTEEN FEET FROM ENTRANCES OR EXITS THAT SERVE AN ENCLOSED AREA WHERE SMOKING IS PROHIBITED PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-NINE-O OF THIS ARTICLE. SUCH DISTANCE SHALL BECOME A DESIGNATED NO SMOKING ZONE. THIS SECTION SHALL NOT APPLY TO AREAS WHERE A DISTANCE OF FIFTEEN FEET IS UNATTAINABLE FOR REASONS INCLUDING BUT NOT LIMITED TO, CIRCUMSTANCES PRESENTED BY LACK OF SUFFICIENT SPACE IN URBAN AREAS DUE TO LACK OF ADEQUATE SIDEWALK SPACE OR CLOSE PROXIMITY TO TRANSPORTATION INFRASTRUCTURE.

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

LBD09672-01-9

2. LOCAL HEALTH DEPARTMENTS ARE AUTHORIZED TO ADOPT REGULATIONS AS ARE REQUIRED TO IMPLEMENT THIS SECTION. ANY PENALTY ASSESSED AND RECOVERED IN AN ACTION BROUGHT UNDER THIS SECTION SHALL BE PAID TO AND USED BY THE MUNICIPALITY BRINGING THE ACTION.

3. THIS SECTION SHALL NOT APPLY TO INDIVIDUALS WALKING THROUGH THE DESIGNATED NO SMOKING ZONE OF SUCH AREA FOR THE PURPOSE OF GETTING TO ANOTHER DESTINATION, BUT SHALL ONLY APPLY TO INDIVIDUALS OCCUPYING THE DESIGNATED NO SMOKING ZONE FOR THE PURPOSE OF SMOKING.

4. ANY PERSON VIOLATING THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A VIOLATION, AND IS SUBJECT TO A FINE OF THIRTY-FIVE DOLLARS.

5. THE COMMISSIONER SHALL RECOMMEND DESIGNS FOR SIGNS WHICH MAY BE USED BY THE OWNERS, OPERATORS, MANAGERS, EMPLOYERS OR OTHER PERSONS, AT THEIR OPTION, WHO CONTROL AREAS WHERE SMOKING IS PROHIBITED PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-NINE-O OF THIS ARTICLE. SUCH SIGNS SHALL INCLUDE THE WARNING THAT "SMOKING IN THIS AREA IS PUNISHABLE BY LAW AND ALL VIOLATORS SHALL BE SUBJECT TO A FINE OF THIRTY-FIVE DOLLARS."

6. NOTHING CONTAINED IN THIS SECTION IS INTENDED TO REGULATE SMOKING IN A PRIVATE RESIDENCE OR IN THE GENERAL PUBLIC OUTDOORS, EXCEPTING PLACES IN WHICH SMOKING IS PROHIBITED THROUGH THE LOCAL FIRE DEPARTMENT, OR BY OTHER LAW, ORDINANCE, OR REGULATION.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.