

2324

2009-2010 Regular Sessions

I N   S E N A T E

February 18, 2009

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

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:

- 1     Section 1. Subdivisions 1, 2 and 5 of section 1399-11 of the public  
2 health law, as added by chapter 262 of the laws of 2000, are amended to  
3 read as follows:  
4     1. It shall be unlawful for any person engaged in the business of  
5 selling cigarettes to ship or cause to be shipped any cigarettes to any  
6 person in this state who is not: (a) a person licensed as a cigarette  
7 tax agent or wholesale dealer under article twenty of the tax law or  
8 registered retail dealer under section four hundred eighty-a of the tax  
9 law; (b) an export warehouse proprietor pursuant to chapter 52 of the  
10 internal revenue code or an operator of a customs bonded warehouse  
11 pursuant to section 1311 or 1555 of title 19 of the United States Code;  
12 or (c) a person who [is] PRESENTS HIMSELF OR HERSELF AS an officer,  
13 employee or agent of the United States government, this state or a  
14 department, agency, instrumentality or political subdivision of the  
15 United States or this state, when such person is acting in accordance  
16 with his or her official duties. For purposes of this subdivision, a  
17 person is a licensed or registered agent or dealer described in para-  
18 graph (a) of this subdivision if his or her name appears on a list of  
19 licensed or registered agents or dealers published by the department of  
20 taxation and finance, or if such person is licensed or registered as an  
21 agent or dealer under article twenty of the tax law.  
22     2. It shall be unlawful for any common or contract carrier to knowing-  
23 ly transport cigarettes to any person in this state reasonably believed  
24 by such carrier to be other than a person described in paragraph (a),  
25 (b) or (c) of subdivision one of this section. For purposes of the

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

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1 preceding sentence, if cigarettes are transported to a home or resi-  
2 dence, it shall be presumed that the common or contract carrier knew  
3 that such person was not a person described in paragraph (a), (b) or (c)  
4 of subdivision one of this section. It shall be unlawful for any other  
5 person to knowingly transport cigarettes to any person in this state,  
6 other than to a person described in paragraph (a), (b) or (c) of subdi-  
7 vision one of this section. Nothing in this subdivision shall be  
8 construed to prohibit a person other than a common or contract carrier  
9 OR A PERSON ENGAGED IN THE BUSINESS OF SELLING CIGARETTES from trans-  
10 porting not more than eight hundred cigarettes at any one time to any  
11 person in this state.

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

26 S 2. Section 1399-11 of the public health law, as added by chapter 262  
27 of the laws of 2000, is amended by adding a new subdivision 6 to read as  
28 follows:

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

42 S 3. This act shall take effect immediately.