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

10498--A

I N A S S E M B L Y

May 29, 2012

Introduced by M. of A. PAULIN, DINOWITZ, GALEF, CASTRO, TOBACCO, ABINANTI, CALHOUN, CLARK, CRESPO, ENGLEBRIGHT, JAFFEE, P. RIVERA, ROBERTS, TITUS, WEPRIN -- Multi-Sponsored by -- M. of A. BARRETT -- read once and referred 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 requiring owners of multiple dwelling properties to develop, implement and distribute smoking policies

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

Section 1. Legislative findings. Secondhand smoke is produced from the lighted end of tobacco products and from smoke exhaled from a smoker. Secondhand smoke is a known carcinogen and exposure to it is linked to increased risk of cancer, respiratory complications and heart disease. Any level of exposure to secondhand smoke is harmful to children and adults; it is estimated that 3,400 nonsmoking adults die of lung cancer and up to one million asthmatic children have worsened asthma and asthma-related problems each year in the United States as a result of inhaling secondhand smoke. Private owners and public housing authorities may restrict smoking in or on their properties. In buildings with multifamily units, smoke can spread between units through air ducts, cracks and elevator shafts and involuntarily expose nonsmoking tenants. Secondhand smoke often cannot be controlled using ventilation systems, air cleaning, or separating non-smokers from smokers. The intent of this legislation is to require owners of multiple dwelling properties to develop, incorporate into leases and contracts of sale, and to distribute smoking policies to current and prospective tenants. The bill acts to help nonsmokers protect themselves and their families from secondhand smoke by providing information they can weigh in selecting a new residence in a multiple dwelling building and to reduce the number of conflicts between nonsmokers and smokers.

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

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

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S 1399-Y. MULTIPLE DWELLING SMOKING POLICY. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "MULTIPLE DWELLING" MEANS: (I) A MULTIPLE DWELLING THAT IS OCCUPIED FOR PERMANENT RESIDENCE PURPOSES OF THREE OR MORE FAMILIES LIVING INDEPENDENTLY OF EACH OTHER.

(II) FOR PURPOSES OF THIS PARAGRAPH, "PERMANENT RESIDENCE PURPOSES" SHALL CONSIST OF OCCUPANCY OF A DWELLING UNIT BY THE SAME NATURAL PERSON OR FAMILY FOR THIRTY CONSECUTIVE DAYS OR MORE.

(B) "DWELLING UNIT" MEANS ANY ROOM OR GROUP OF ROOMS LOCATED WITHIN A DWELLING AND FORMING A SINGLE HABITABLE UNIT WITH FACILITIES WHICH ARE USED OR INTENDED TO BE USED FOR LIVING OR SLEEPING BY HUMAN OCCUPANTS.

(C) "OWNER" MEANS: (I) ANY PERSON WHO, ALONE, JOINTLY OR SEVERALLY WITH ANOTHER OR OTHERS HAS LEGAL TITLE TO ANY MULTIPLE DWELLING, WITH OR WITHOUT ACCOMPANYING ACTUAL POSSESSION THEREOF; (II) ANY PERSON WHO, ALONE, JOINTLY OR SEVERALLY WITH ANOTHER OR OTHERS HAS CHARGE, CARE OR CONTROL OF ANY DWELLING AS OWNER, LESSEE, MORTGAGEE OR VENDEE IN POSSESSION, ASSIGNEE OF RENTS OR AS A RECEIVER; OR AN EXECUTOR, ADMINISTRATOR, TRUSTEE, OR GUARDIAN OF THE ESTATE OF THE OWNER. ANY AGENT FOR ANY OF THE ABOVE SHALL BE BOUND TO COMPLY WITH THE PROVISIONS OF THIS SECTION TO THE SAME EXTENT AS IF HE OR SHE WAS THE OWNER; OR (III) THE BOARD OF MANAGERS OF A CONDOMINIUM AND BOARD OF DIRECTORS OF A COOPERATIVE APARTMENT.

(D) WHEN REFERRING TO A DWELLING UNIT IN A MULTIPLE DWELLING, "TENANT" MEANS A TENANT, TENANT-STOCKHOLDER OF A COOPERATIVE APARTMENT CORPORATION, CONDOMINIUM UNIT OWNER, SUBTENANT, LESSEE, SUBLESSEE OR OTHER PERSON ENTITLED TO THE POSSESSION OR TO THE USE OR OCCUPANCY OF A DWELLING UNIT.

2. AN OWNER OF A MULTIPLE DWELLING PROPERTY IS HEREBY REQUIRED TO:

(A) DEVELOP AND IMPLEMENT A WRITTEN SMOKING POLICY THAT DETAILS WHERE AND WHEN SMOKING IS PERMITTED OR PROHIBITED;

(B) DISTRIBUTE THE SMOKING POLICY TO ALL CURRENT TENANTS OF THE MULTIPLE DWELLING WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION OR OF DEVELOPMENT OF A NEW OR AMENDED SMOKING POLICY;

(C) POST A COPY OF THE SMOKING POLICY IN THE FOLLOWING COMMON AREAS OF THE MULTIPLE DWELLING, IF APPLICABLE: ALL ENTRANCES, WALLS ADJACENT TO ELEVATORS AND MAILBOXES, LAUNDRY ROOMS AND ANY OTHER COMMON ROOMS;

(D) INCORPORATE THE SMOKING POLICY INTO ALL WRITTEN AND ORAL LEASES AND CONTRACTS OF SALE FOR DWELLING UNITS IN THE MULTIPLE DWELLING;

(E) PROVIDE A COPY OF THE SMOKING POLICY TO ALL CURRENT AND PROSPECTIVE TENANTS BEFORE THEY ENTER INTO ORAL LEASES OR AGREEMENTS TO RENT OR CONTRACTS OF SALE; AND

(F) PROVIDE A COPY OF THE SMOKING POLICY UPON REQUEST TO ANY PERSON.

3. NOTHING IN THIS SECTION SHALL AUTHORIZE AN OWNER TO ADOPT A POLICY THAT THE OWNER IS NOT OTHERWISE AUTHORIZED TO ADOPT.

4. (A) AN OWNER WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO THE IMPOSITION BY THE ENFORCEMENT OFFICER, AS DEFINED BY SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-T OF THIS ARTICLE OF A CIVIL PENALTY. BEFORE IMPOSING SUCH A CIVIL PENALTY, THE ENFORCEMENT OFFICER SHALL NOTIFY THE OWNER IN WRITING OF THE REASONS FOR SUCH IMPOSITION OF A CIVIL PENALTY AND AFFORD THE OWNER AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL. PRIOR TO THE IMPOSITION OF THE FIRST CIVIL PENALTY FOR AN ALLEGED VIOLATION OF THE PROVISIONS OF THIS SECTION, THE ENFORCEMENT OFFICER SHALL ISSUE A WARNING TO THE OWNER, PROVIDE INFORMATION TO THE OWNER ABOUT THE PROVISIONS OF THIS SECTION AND PROVIDE THE OWNER THIRTY DAYS TO COMPLY WITH THE PROVISIONS OF THIS SECTION. FAILURE TO COMPLY WITHIN SUCH THIRTY DAY TIME PERIOD WILL

RESULT IN IMPOSITION OF A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS.

(B) ANY PERSON WHO DESIRES TO REGISTER A COMPLAINT UNDER THIS ARTICLE MAY DO SO WITH THE APPROPRIATE ENFORCEMENT OFFICER.

S 3. This act shall take effect one year after it shall have become a law.