

1589

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. DINOWITZ, MAGEE, GOTTFRIED, GALEF, MILLMAN, PAULIN, MAISEL, REILLY, PHEFFER -- Multi-Sponsored by -- M. of A. BOYLAND, CALHOUN, CLARK, CYMBROWITZ, GLICK, JAFFEE, McDONOUGH, McENE- NY, McKEVITT, P. RIVERA, SPANO, SWEENEY, WEISENBERG -- read once and referred 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-ll 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.

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

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

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

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

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

46 S 3. This act shall take effect immediately.