

S T A T E   O F   N E W   Y O R K

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10498--A

I N   A S S E M B L Y

May 29, 2012

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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:

1     Section 1. Legislative findings. Secondhand smoke is produced from  
2     the lighted end of tobacco products and from smoke exhaled from a smoker.  
3     Secondhand smoke is a known carcinogen and exposure to it is linked  
4     to increased risk of cancer, respiratory complications and heart  
5     disease. Any level of exposure to secondhand smoke is harmful to children  
6     and adults; it is estimated that 3,400 nonsmoking adults die of  
7     lung cancer and up to one million asthmatic children have worsened asthma  
8     and asthma-related problems each year in the United States as a  
9     result of inhaling secondhand smoke. Private owners and public housing  
10    authorities may restrict smoking in or on their properties. In buildings  
11    with multifamily units, smoke can spread between units through air  
12    ducts, cracks and elevator shafts and involuntarily expose nonsmoking  
13    tenants. Secondhand smoke often cannot be controlled using ventilation  
14    systems, air cleaning, or separating non-smokers from smokers. The  
15    intent of this legislation is to require owners of multiple dwelling  
16    properties to develop, incorporate into leases and contracts of sale,  
17    and to distribute smoking policies to current and prospective tenants.  
18    The bill acts to help nonsmokers protect themselves and their families  
19    from secondhand smoke by providing information they can weigh in selecting  
20    a new residence in a multiple dwelling building and to reduce the  
21    number of conflicts between nonsmokers and smokers.  
22    S 2. The public health law is amended by adding a new section 1399-y  
23    to read as follows:

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

LBD15438-06-2

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

3 (A) "MULTIPLE DWELLING" MEANS: (I) A MULTIPLE DWELLING THAT IS OCCU-  
4 PIED FOR PERMANENT RESIDENCE PURPOSES OF THREE OR MORE FAMILIES LIVING  
5 INDEPENDENTLY OF EACH OTHER.

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

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

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

23 (D) WHEN REFERRING TO A DWELLING UNIT IN A MULTIPLE DWELLING, "TENANT"  
24 MEANS A TENANT, TENANT-STOCKHOLDER OF A COOPERATIVE APARTMENT CORPO-  
25 RATION, CONDOMINIUM UNIT OWNER, SUBTENANT, LESSEE, SUBLESSEE OR OTHER  
26 PERSON ENTITLED TO THE POSSESSION OR TO THE USE OR OCCUPANCY OF A DWELL-  
27 ING UNIT.

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

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

31 (B) DISTRIBUTE THE SMOKING POLICY TO ALL CURRENT TENANTS OF THE MULTI-  
32 PLE DWELLING WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION OR  
33 OF DEVELOPMENT OF A NEW OR AMENDED SMOKING POLICY;

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

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

39 (E) PROVIDE A COPY OF THE SMOKING POLICY TO ALL CURRENT AND PROSPEC-  
40 TIVE TENANTS BEFORE THEY ENTER INTO ORAL LEASES OR AGREEMENTS TO RENT OR  
41 CONTRACTS OF SALE; AND

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

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

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

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

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

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