

3752

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 27, 2011

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Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the  
Committee on Health

AN ACT to amend the public health law, in relation to making it unlawful  
for a person under the age of eighteen to possess tobacco products

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

1     Section 1. Article 13-F of the public health law is amended by adding  
2     a new section 1399-mm-1 to read as follows:  
3     S 1399-MM-1. UNLAWFUL POSSESSION OF TOBACCO PRODUCTS BY PERSONS UNDER  
4     THE AGE OF EIGHTEEN YEARS. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS  
5     SECTION, NO PERSON UNDER THE AGE OF EIGHTEEN YEARS SHALL POSSESS ANY  
6     TOBACCO PRODUCT.  
7     2. ANY PERSON WHO UNLAWFULLY POSSESSES A TOBACCO PRODUCT MAY BE  
8     SUMMONED BEFORE AND EXAMINED BY A COURT HAVING JURISDICTION OF THAT  
9     CHARGE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL AUTHORIZE  
10    OR BE CONSTRUED TO AUTHORIZE A PEACE OFFICER, A POLICE OFFICER OR AN  
11    ENFORCEMENT OFFICER TO ARREST A PERSON WHO UNLAWFULLY POSSESSES A TOBAC-  
12    CO PRODUCT. IF A DETERMINATION IS MADE SUSTAINING SUCH CHARGE THE COURT  
13    MAY IMPOSE A CIVIL FINE NOT EXCEEDING FIFTY DOLLARS AND/OR COMPLETION OF  
14    A TOBACCO AWARENESS PROGRAM IF SUCH PROGRAM IS BEING OFFERED AND/OR AN  
15    APPROPRIATE AMOUNT OF COMMUNITY SERVICE NOT TO EXCEED THIRTY HOURS.  
16    3. NO SUCH DETERMINATION SHALL OPERATE AS A DISQUALIFICATION OF ANY  
17    SUCH PERSON SUBSEQUENTLY TO HOLD PUBLIC OFFICE, PUBLIC EMPLOYMENT OR AS  
18    A FORFEITURE OF ANY RIGHT OR PRIVILEGE OR TO RECEIVE ANY LICENSE GRANTED  
19    BY PUBLIC AUTHORITY; AND NO SUCH PERSON SHALL BE DENOMINATED A CRIMINAL  
20    BY REASON OF SUCH DETERMINATION, NOR SHALL SUCH DETERMINATION BE DEEMED  
21    A CONVICTION.  
22    4. WHENEVER A PEACE OFFICER, POLICE OFFICER OR AN ENFORCEMENT OFFICER  
23    SHALL OBSERVE A PERSON UNDER EIGHTEEN YEARS OF AGE OPENLY IN POSSESSION  
24    OF A TOBACCO PRODUCT, SUCH OFFICER MAY SEIZE THE TOBACCO PRODUCT AND  
25    SHALL DELIVER IT TO THE CUSTODY OF HIS OR HER DEPARTMENT.

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

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1        5. ANY TOBACCO PRODUCT SEIZED IN VIOLATION OF THIS SECTION IS HEREBY  
2 DECLARED A NUISANCE. THE OFFICIAL TO WHOM THE TOBACCO PRODUCT HAS BEEN  
3 DELIVERED SHALL, NO EARLIER THAN THREE DAYS FOLLOWING THE RETURN DATE  
4 FOR INITIAL APPEARANCE ON THE SUMMONS, DISPOSE OF OR DESTROY THE TOBACCO  
5 PRODUCT SEIZED OR CAUSE IT TO BE DISPOSED OF OR DESTROYED. ANY PERSON  
6 CLAIMING OWNERSHIP OF A TOBACCO PRODUCT SEIZED UNDER THIS SECTION MAY,  
7 ON THE INITIAL RETURN DATE OF THE SUMMONS OR EARLIER ON FIVE DAYS NOTICE  
8 TO THE OFFICIAL OR DEPARTMENT IN POSSESSION OF THE TOBACCO PRODUCT,  
9 APPLY TO THE COURT FOR AN ORDER PREVENTING THE DESTRUCTION OR DISPOSAL  
10 OF THE TOBACCO PRODUCT SEIZED AND ORDERING THE RETURN OF THAT TOBACCO  
11 PRODUCT. THE COURT MAY ORDER THE TOBACCO PRODUCT RETURNED IF IT IS  
12 DETERMINED THAT RETURN OF THE TOBACCO PRODUCT WOULD BE IN THE INTEREST  
13 OF JUSTICE OR THAT THE TOBACCO PRODUCT WAS IMPROPERLY SEIZED.

14        S 2. This act shall take effect on the first of November next succeed-  
15 ing the date on which it shall have become a law.