

365--B

Cal. No. 181

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. DINOWITZ, MAGEE, GOTTFRIED, GALEF, MILLMAN, PAULIN, MAISEL, COLTON, WEPRIN -- Multi-Sponsored by -- M. of A. ABINANTI, BOYLAND, CLARK, CURRAN, CYMBROWITZ, GLICK, JAFFEE, McDO- NOUGH, McKEVITT, SWEENEY, WEISENBERG -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

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 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 an officer, employee or agent of the United  
13 States government, this state or a department, agency, instrumentality  
14 or political subdivision of the United States or this state AND PRESENTS  
15 HIMSELF OR HERSELF AS SUCH, when such person is acting in accordance  
16 with his or her official duties. For purposes of this subdivision, a

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

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1 person is a licensed or registered agent or dealer described in para-  
2 graph (a) of this subdivision if his or her name appears on a list of  
3 licensed or registered agents or dealers published by the department of  
4 taxation and finance, or if such person is licensed or registered as an  
5 agent or dealer under article twenty of the tax law.

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

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

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

36 S 3. This act shall take effect immediately.