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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Ways and Means

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. Subdivision 1 of section 1399-11 of the public health law,
2 as added by chapter 262 of the laws of 2000, is amended to read as
3 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
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.
22 S 2. Subdivision 2 of section 1399-11 of the public health law, as
23 added by chapter 262 of the laws of 2000, is amended to read as follows:

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

LBD01162-01-3

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 subdivi-
11 sion 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 REGISTERED RETAIL DEALER UNDER SECTION FOUR HUNDRED EIGHTY-A OF THE
14 TAX LAW from transporting not more than eight hundred cigarettes at any
15 one time to any person in this state.

16 S 3. Subdivision 5 of section 1399-11 of the public health law, as
17 added by chapter 262 of the laws of 2000, is amended to read as follows:

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

32 S 4. Section 1399-11 of the public health law, as added by chapter 262
33 of the laws of 2000, is amended by adding a new subdivision 6 to read as
34 follows:

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

48 S 5. This act shall take effect immediately.