

S T A T E O F N E W Y O R K

5012--A

2013-2014 Regular Sessions

I N S E N A T E

May 6, 2013

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed 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 smok-
3 er. 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 chil-
6 dren and adults; it is estimated that 3,400 nonsmoking adults die of
7 lung cancer and up to one million asthmatic children have worsened asth-
8 ma 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 condominium bylaws,
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 select-
20 ing a new residence in a multiple dwelling building and to reduce the
21 number of conflicts between nonsmokers and smokers.

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

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1 S 2. The public health law is amended by adding a new section 1399-y
2 to read as follows:

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

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

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

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

14 (C) "OWNER" MEANS: (I) IN THE CASE OF A BUILDING WITH RENTAL DWELLING
15 UNITS, OTHER THAN A CONDOMINIUM OR A COOPERATIVE APARTMENT CORPORATION,
16 THE OWNER OF RECORD; OR (II) IN THE CASE OF A CONDOMINIUM, THE BOARD OF
17 MANAGERS; OR (III) IN THE CASE OF A COOPERATIVE APARTMENT CORPORATION,
18 THE BOARD OF DIRECTORS.

19 (D) "UNIT OWNER" MEANS: (I) IN THE CASE OF A CONDOMINIUM, ANY PERSON,
20 INCLUDING A SPONSOR, WHO, ALONE, JOINTLY OR SEVERALLY WITH ANOTHER OR
21 OTHERS HAS LEGAL TITLE TO ANY DWELLING UNIT IN THE BUILDING, WITH OR
22 WITHOUT ACCOMPANYING ACTUAL POSSESSION THEREOF; OR (II) IN THE CASE OF A
23 COOPERATIVE APARTMENT CORPORATION, ANY PERSON, INCLUDING A SPONSOR, WHO,
24 ALONE, JOINTLY OR SEVERALLY WITH ANOTHER OR OTHERS HAS THE LEGAL RIGHT
25 TO OCCUPY ANY DWELLING UNIT THROUGH OWNERSHIP INTERESTS IN A COOPERATIVE
26 APARTMENT CORPORATION, WITH OR WITHOUT ACCOMPANYING ACTUAL POSSESSION
27 THEREOF.

28 (E) WHEN REFERRING TO A DWELLING UNIT IN A MULTIPLE DWELLING, "TENANT"
29 MEANS A TENANT, TENANT-STOCKHOLDER OF A COOPERATIVE APARTMENT CORPO-
30 RATION, CONDOMINIUM UNIT OWNER, SUBTENANT, LESSEE, SUBLESSEE OR OTHER
31 PERSON ENTITLED TO THE POSSESSION OR TO THE USE OR OCCUPANCY OF A DWELL-
32 ING UNIT.

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

34 (A) DEVELOP AND IMPLEMENT A WRITTEN SMOKING POLICY THAT DETAILS WHERE
35 AND WHEN SMOKING IS PERMITTED OR PROHIBITED, ADDRESSING ALL INDOOR
36 LOCATIONS OF THE PROPERTY IN QUESTION, INCLUDING COMMON AREAS AND DWELL-
37 ING UNITS, AND ALL OUTDOOR AREAS, INCLUDING COMMON COURTYARDS, ROOFTOPS
38 AND BALCONIES, PATIOS AND OTHER OUTDOOR AREAS CONNECTED TO DWELLING
39 UNITS, AND THAT APPLIES TO ALL TENANTS AND ANY OTHER PERSON ON THE PREM-
40 ISES;

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

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

47 (D) IN THE CASE OF A RENTAL BUILDING, INCORPORATE THE SMOKING POLICY
48 INTO THE LEASE FOR ANY DWELLING UNIT, AND IN THE CASE OF A CONDOMINIUM,
49 INCORPORATE THE SMOKING POLICY INTO THE CONDOMINIUM BYLAWS;

50 (E) IN THE CASE OF A BUILDING WITH RENTAL DWELLING UNITS, OTHER THAN A
51 CONDOMINIUM OR A COOPERATIVE APARTMENT CORPORATION, PROVIDE A COPY OF
52 THE SMOKING POLICY TO ALL CURRENT AND PROSPECTIVE TENANTS BEFORE THEY
53 ENTER INTO ORAL LEASES OR AGREEMENTS TO RENT;

54 (F) ON AN ANNUAL BASIS, PROVIDE A COPY OF THE SMOKING POLICY TO ALL
55 TENANTS;

1 (G) PROVIDE A COPY OF THE SMOKING POLICY UPON REQUEST TO ANY PERSON;
2 AND

3 (H) MAKE AVAILABLE FOR INSPECTION BY THE ENFORCEMENT OFFICER COPIES OF
4 THE FOLLOWING: (I) THE ANNUAL DISCLOSURE REQUIRED BY PARAGRAPH (F) OF
5 THIS SUBDIVISION FOR THE CURRENT YEAR; AND (II) EACH NOTIFICATION OF AN
6 AMENDMENT MADE WITHIN THE PAST YEAR PURSUANT TO PARAGRAPH (B) OF THIS
7 SUBDIVISION.

8 3. NOTHING IN THIS SECTION SHALL AUTHORIZE AN OWNER TO ADOPT A POLICY
9 THAT THE OWNER IS NOT OTHERWISE AUTHORIZED TO ADOPT. THE SMOKING POLICY
10 AND ANY AMENDMENTS THERETO SHALL BE BINDING ON A TENANT RENTING OR LEAS-
11 ING A DWELLING UNIT ONLY TO THE EXTENT PROVIDED IN SUCH TENANT'S EXIST-
12 ING LEASE OR SUBLEASE AGREEMENT, PROVIDED THAT THE SMOKING POLICY AND
13 ANY AMENDMENTS THERETO SHALL NOT BE BINDING ON ANY TENANT IN OCCUPANCY
14 OF A RENT CONTROLLED OR RENT STABILIZED DWELLING UNIT PRIOR TO THE
15 ADOPTION OF THE INITIAL SMOKING POLICY AS REQUIRED IN THIS SECTION.

16 4. (A) AN OWNER WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE
17 SUBJECT TO THE IMPOSITION BY THE ENFORCEMENT OFFICER, AS DEFINED BY
18 SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-T OF THIS ARTI-
19 CLE OF A CIVIL PENALTY. BEFORE IMPOSING SUCH A CIVIL PENALTY, THE
20 ENFORCEMENT OFFICER SHALL NOTIFY THE OWNER IN WRITING OF THE REASONS FOR
21 SUCH IMPOSITION OF A CIVIL PENALTY AND AFFORD THE OWNER AN OPPORTUNITY
22 TO BE HEARD IN PERSON OR BY COUNSEL. PRIOR TO THE IMPOSITION OF THE
23 FIRST CIVIL PENALTY FOR AN ALLEGED VIOLATION OF THE PROVISIONS OF THIS
24 SECTION, THE ENFORCEMENT OFFICER SHALL ISSUE A WARNING TO THE OWNER,
25 PROVIDE INFORMATION TO THE OWNER ABOUT THE PROVISIONS OF THIS SECTION
26 AND PROVIDE THE OWNER THIRTY DAYS TO COMPLY WITH THE PROVISIONS OF THIS
27 SECTION. FAILURE TO COMPLY WITHIN SUCH THIRTY DAY TIME PERIOD WILL
28 RESULT IN IMPOSITION OF A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED
29 DOLLARS.

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

32 5. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO RESTRICT
33 LOCAL JURISDICTIONS FROM ENACTING MORE STRINGENT LAWS, RULES OR REGU-
34 LATIONS REGARDING THE SUBJECT MATTER REFERENCED HEREIN.

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