

# STATE OF NEW YORK

4677

2017-2018 Regular Sessions

## IN SENATE

February 24, 2017

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting the use of smokeless tobacco on school grounds

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 409 of the education law, as  
2 amended by chapter 449 of the laws of 2012, is amended and two new  
3 subdivisions 3 and 4 are added to read as follows:

4 2. Notwithstanding the provisions of any other law, rule or regu-  
5 lation, tobacco use shall not be permitted and no person shall use  
6 tobacco or smokeless tobacco on school grounds.

7 (a) "School grounds" means any building, structure and surrounding  
8 outdoor grounds, including entrances or exits, contained within a public  
9 or private pre-school, nursery school, elementary or secondary school's  
10 legally defined property boundaries as registered in a county clerk's  
11 office.

12 (b) "Smokeless tobacco" means any product that consists of cut,  
13 ground, powdered, or leaf tobacco that is intended to be placed by the  
14 consumer in an oral cavity.

15 3. The board of education of each school district shall ensure the  
16 placement, in every public entrance to a public school building in its  
17 district, of a sign which shall be located so as to be clearly visible  
18 to the public and shall contain letters which contrast in color with the  
19 sign, indicating that the use of tobacco and smokeless tobacco is  
20 prohibited therein.

21 (a) The board of education of each school district shall order any  
22 person using tobacco or smokeless tobacco in violation of this section  
23 to comply with the provisions of this section. Except as otherwise  
24 provided pursuant to subdivision four of this section, a person, after  
25 being so ordered, who uses tobacco and/or smokeless tobacco in violation

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

LBD02046-01-7

1 of this section is subject to a fine of not less than one hundred  
2 dollars for the first offense, two hundred fifty dollars for the second  
3 offense, and five hundred dollars for each subsequent offense. A penalty  
4 shall be recovered in accordance with the provisions of paragraphs (c)  
5 and (d) of this subdivision.

6 (b) The department of health, upon written complaint or having reason  
7 to suspect that a public school is or may be in violation of the  
8 provisions of this section, shall, by written notification, advise the  
9 board of education of the school district accordingly and order appro-  
10 priate action to be taken. A board of education that receives that  
11 notice and fails or refuses to comply with the order is subject to a  
12 fine of not less than two hundred fifty dollars for the first offense,  
13 five hundred dollars for the second offense, and one thousand dollars  
14 for each subsequent offense. In addition to the penalty provided herein,  
15 a court may order immediate compliance with the provisions of this  
16 section.

17 (c) A penalty recovered under the provisions of this section shall be  
18 recovered by, and in the name of, the commissioner of health. When the  
19 plaintiff is the commissioner, the penalty recovered shall be paid by  
20 the commissioner of health into the treasury of the state.

21 (d) The supreme court of the county in which a violation is alleged to  
22 have occurred shall have jurisdiction over proceedings to enforce and  
23 collect any penalty imposed because of a violation of this section.  
24 Process shall be in the nature of a summons or warrant and shall issue  
25 only at the suit of the commissioner of health or the local board of  
26 health, as the case may be, as plaintiff.

27 (e) The penalties provided in paragraphs (a) and (b) of this subdivi-  
28 sion shall be the only civil remedy for a violation of this section.  
29 There shall be no private right of action against a party for failure to  
30 comply with the provisions of this section.

31 4. A student who violates the provisions of this section after being  
32 ordered by the board of education of the district to comply with the  
33 provisions of this section, shall not be subject to the fines estab-  
34 lished pursuant to this section, but, rather, shall be prohibited by the  
35 board of education of the district from participation in all extracur-  
36 ricular activities, including interscholastic athletics, and the revoca-  
37 tion of any student parking permit that the student may possess. The  
38 board of education shall adopt a policy that establishes the length of a  
39 suspension or revocation to be imposed on a student for an initial or  
40 subsequent violation of the provisions of this section.

41 § 2. This act shall take effect on the sixtieth day after it shall  
42 have become a law.