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:

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

2. Notwithstanding the provisions of any other law, rule or regulation, tobacco use shall not be permitted and no person shall use tobacco **or smokeless tobacco** on school grounds.

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

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

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

(a) The board of education of each school district shall order any person using tobacco or smokeless tobacco in violation of this section to comply with the provisions of this section. Except as otherwise provided pursuant to subdivision four of this section, a person, after 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.

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

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

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

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

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

4. A student who violates the provisions of this section after being ordered by the board of education of the district to comply with the provisions of this section, shall not be subject to the fines established pursuant to this section, but, rather, shall be prohibited by the board of education of the district from participation in all extracurricular activities, including interscholastic athletics, and the revocation of any student parking permit that the student may possess. The board of education shall adopt a policy that establishes the length of a suspension or revocation to be imposed on a student for an initial or subsequent violation of the provisions of this section.

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