

# STATE OF NEW YORK

8135

## IN SENATE

March 26, 2020

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

AN ACT to amend the public health law and the tax law, in relation to requiring a business that is shown to have sold a tobacco product to a minor to close pending the completion of an investigation

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

1 Section 1. Section 1399-cc of the public health law is amended by  
2 adding a new subdivision 8 to read as follows:

3 8. Any person operating a place of business wherein tobacco products,  
4 herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are  
5 sold or offered for sale, who is found in violation of this section  
6 shall immediately close such place of business pending the completion of  
7 the enforcement action or hearing by an enforcement officer, pursuant to  
8 section thirteen hundred ninety-nine-ff of this article.

9 § 2. Subdivisions 2, 3, 4, 5 and 6 of section 1399-ee of the public  
10 health law, subdivisions 2, 3, 4, and 5 as amended and subdivision 6 as  
11 added by chapter 162 of the laws of 2002, are amended to read as  
12 follows:

13 2. If the enforcement officer determines after a hearing that a  
14 violation of this article has occurred, he or she shall impose a civil  
15 penalty of a minimum of three hundred dollars, but not to exceed one  
16 thousand dollars for a first violation, and a minimum of five hundred  
17 dollars, but not to exceed one thousand five hundred dollars for each  
18 subsequent violation, unless a different penalty is otherwise provided  
19 in this article and direct the commissioner of taxation and finance to  
20 suspend the dealer's registration for a period not less than five years.

21 [~~The enforcement officer shall advise the retail dealer that upon the~~  
22 ~~accumulation of three or more points pursuant to this section the~~  
23 ~~department of taxation and finance shall suspend the dealer's registra-~~  
24 ~~tion.~~] If the enforcement officer determines after a hearing that a  
25 retail dealer was selling tobacco products while their registration was  
26 suspended or permanently revoked pursuant to [~~subdivision three or four~~

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

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1 ~~of~~] this section, he or she shall impose a civil penalty of twenty-five  
2 hundred dollars.

3 ~~3. (a) Imposition of points. If the enforcement officer determines,~~  
4 ~~after a hearing, that the retail dealer violated subdivision one of~~  
5 ~~section thirteen hundred ninety nine ee of this article with respect to~~  
6 ~~a prohibited sale to a minor, he or she shall, in addition to imposing~~  
7 ~~any other penalty required or permitted pursuant to this section, assign~~  
8 ~~two points to the retail dealer's record where the individual who~~  
9 ~~committed the violation did not hold a certificate of completion from a~~  
10 ~~state certified tobacco sales training program and one point where the~~  
11 ~~retail dealer demonstrates that the person who committed the violation~~  
12 ~~held a certificate of completion from a state certified tobacco sales~~  
13 ~~training program.~~

14 ~~(b) Revocation. If the enforcement officer determines, after a hear-~~  
15 ~~ing, that a retail dealer has violated this article four times within a~~  
16 ~~three year time frame he or she shall, in addition to imposing any other~~  
17 ~~penalty required or permitted by this section, direct the commissioner~~  
18 ~~of taxation and finance to revoke the dealer's registration for one~~  
19 ~~year.~~

20 ~~(c) Duration of points. Points assigned to a retail dealer's record~~  
21 ~~shall be assessed for a period of thirty six months beginning on the~~  
22 ~~first day of the month following the assignment of points.~~

23 ~~(d) Reinspection. Any retail dealer who is assigned points pursuant to~~  
24 ~~paragraph (a) of this subdivision shall be reinspected at least two~~  
25 ~~times a year by the enforcement officer until points assessed are~~  
26 ~~removed from the retail dealer's record.~~

27 ~~(e) Suspension. If the department determines that a retail dealer has~~  
28 ~~accumulated three points or more, the department shall direct the~~  
29 ~~commissioner of taxation and finance to suspend such dealer's registra-~~  
30 ~~tion for six months. The three points serving as the basis for a suspen-~~  
31 ~~sion shall be erased upon the completion of the six month penalty.~~

32 ~~(f) Surcharge. A fifty dollar surcharge to be assessed for every~~  
33 ~~violation will be made available to enforcement officers and shall be~~  
34 ~~used solely for compliance checks to be conducted to determine compli-~~  
35 ~~ance with this section.~~

36 ~~4.]~~ (a) If the enforcement officer determines, after a hearing, that a  
37 retail dealer has violated this article while their registration was  
38 suspended pursuant to subdivision three of this section, he or she  
39 shall, in addition to imposing any other penalty required or permitted  
40 by this section, direct the commissioner of taxation and finance to  
41 permanently revoke the dealer's registration and not permit the dealer  
42 to obtain a new registration.

43 (b) If the enforcement officer determines, after a hearing, that a  
44 vending machine operator has violated this article three times within a  
45 two year period, or four or more times cumulatively he or she shall, in  
46 addition to imposing any other penalty required or permitted by this  
47 section, direct the commissioner of taxation and finance to suspend the  
48 vendor's registration for one year and not permit the vendor to obtain a  
49 new registration for such period.

50 ~~[5-]~~ 4. The department shall publish a notification of the name and  
51 address of any retailer violating the provisions of this section and  
52 indicate the number of times the dealer has violated the provisions of  
53 this section. The notification shall be published in a newspaper of  
54 general circulation in the locality in which the retailer is located.

55 ~~[6. (a) In any proceeding pursuant to subdivision three of this~~  
56 ~~section to assign points to a retail dealer's record, the retail dealer~~

1 ~~shall be assigned one point instead of two points where the~~ 5. (a) The  
2 retail dealer ~~[demonstrates that the person]~~ who committed ~~[the]~~ a  
3 violation ~~[of]~~ pursuant to section thirteen hundred ninety-nine-cc of  
4 this article ~~[held]~~ may complete and receive a valid certificate of  
5 completion from a state certified tobacco sales training program to  
6 reduce the number of years such retail license is suspended. After the  
7 completion of such program, the retail dealer shall submit such certif-  
8 icate of completion to the commissioner of taxation and finance who  
9 shall determine whether to reduce such retail dealer's time of suspen-  
10 sion.

11 (b) A state certified tobacco sales training program shall include  
12 instruction in the following elements:

13 (1) the health effects of tobacco use, especially at a young age;

14 (2) the legal purchase age and the additional requirements of section  
15 thirteen hundred ninety-nine-cc of this article;

16 (3) legal forms of identification and the key features thereof;

17 (4) reliance upon legal forms of identification and the right to  
18 refuse sales when acting in good faith;

19 (5) means of identifying fraudulent identification of attempted under-  
20 age purchasers;

21 (6) techniques used to refuse a sale;

22 (7) the penalties arising out of unlawful sales to underage individ-  
23 uals; and

24 (8) the significant disciplinary action or loss of employment that may  
25 be imposed by the retail dealer for a violation of the law or a devi-  
26 ation from the policies of the retail dealer in respect to compliance  
27 with such law.

28 (c) A tobacco sales training program may be given and administered by  
29 a retail dealer duly registered under section four hundred eighty-a of  
30 the tax law which operates five or more registered locations, by a trade  
31 association whose members are registered as retail dealers, by national  
32 and regional franchisors who have granted at least five franchises in  
33 the state to persons who are registered as such retail dealers by a  
34 cooperative corporation with five or more members who are registered as  
35 retail dealers and are operating in this state, and by a wholesaler  
36 supplying fifty or more retail dealers. A person or entity administering  
37 such training program shall issue certificates of completion to persons  
38 successfully completing such a training program. Such certificates shall  
39 be prima facie evidence of the completion of such a training program by  
40 the person named therein.

41 (d) A certificate of completion may be issued for a period of three  
42 years, however such certificate shall be invalidated by a change in  
43 employment.

44 (e) Entities authorized pursuant to paragraph (c) of this subdivision  
45 to give and administer a tobacco sales training program may submit a  
46 proposed curriculum, a facsimile of any training aids and materials, and  
47 a list of training locations to the department for review. Training aids  
48 may include the use of video, computer based instruction, printed mate-  
49 rials and other formats deemed acceptable to the department. The depart-  
50 ment shall certify programs which provide instruction in the elements  
51 set forth in paragraph (b) of this subdivision in a clear and meaningful  
52 fashion. Programs approved by the department shall be certified for a  
53 period of three years at which time an entity may reapply for certifi-  
54 cation. A non-refundable fee in the amount of three hundred dollars  
55 shall be paid to the department with each application.

1     § 3. Paragraph 1 of subdivision h of section 1607 of the tax law, as  
2 amended by chapter 162 of the laws of 2002, is amended to read as  
3 follows:

4     1. A license shall be suspended for a period of six months upon  
5 notification to the division by the commissioner of health of a lottery  
6 sales agent's [~~accumulation of three or more points~~] retail license  
7 being revoked pursuant to [~~subdivision three of~~] section thirteen  
8 hundred ninety-nine-ee of the public health law.

9     § 4. This act shall take effect on the ninetieth day after it shall  
10 have become a law.