STATE OF NEW YORK

3872

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

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:

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

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

§ 2. Subdivisions 2, 3, 4, 5 and 6 of section 1399-ee of the public health law, subdivision 2 and paragraphs (e) and (f) of subdivision 3 as amended by section 6 of part EE of chapter 56 of the laws of 2020, and subdivisions 3, 4, and 5 as amended and subdivision 6 as added by chapter 162 of the laws of 2002, are amended to read as follows:

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, he or she shall impose a civil penalty of a minimum of three hundred dollars, but not to exceed one thousand five hundred dollars for a first violation, and a minimum of one thousand dollars, but not to exceed two thousand five hundred dollars for each subsequent violation, unless a different penalty is otherwise provided in this article **and direct the commissioner of taxation and finance to suspend the dealer's registration for a period not less than five years**. [~~The enforcement officer shall advise the retail dealer that upon the accumulation of three or more points pursuant to this section the department of taxation and finance shall suspend the~~

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

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~~dealer's registration.~~] If the enforcement officer determines after a hearing that a retail dealer was selling tobacco products while their registration was suspended or permanently revoked pursuant to subdivision three or four of this section, he or she shall impose a civil penalty of twenty-five hundred dollars.

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

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

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

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

~~(e) Suspension. If the department determines that a retail dealer has accumulated three points or more, the department shall direct the commissioner of taxation and finance to suspend such dealer's registration for one year. The three points serving as the basis for a suspension shall be erased upon the completion of the one year penalty.~~

~~(f) Surcharge. A two hundred fifty dollar surcharge to be assessed for every violation will be made available to enforcement officers and shall be used solely for compliance checks to be conducted to determine compliance with this section.~~

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

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

[~~5.~~] 4. The department shall publish a notification of the name and address of any retailer violating the provisions of this section and indicate the number of times the dealer has violated the provisions of

this section. The notification shall be published in a newspaper of general circulation in the locality in which the retailer is located.

[~~6. (a) In any proceeding pursuant to subdivision three of this section to assign points to a retail dealer's record, the retail dealer shall be assigned one point instead of two points where the~~]

5. (a) The retail dealer [~~demonstrates that the person~~] who committed [~~the~~] **a** violation [~~of~~] **pursuant to** section thirteen hundred ninety-nine-cc of this article [~~held~~] **may complete and receive** a valid certificate of completion from a state certified tobacco sales training program **to reduce the number of years such retail license is suspended. After the completion of such program, the retail dealer shall submit such certificate of completion to the commissioner of taxation and finance who shall determine whether to reduce such retail dealer's time of suspension**.

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

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

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

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

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

(5) means of identifying fraudulent identification of attempted underage purchasers;

(6) techniques used to refuse a sale;

(7) the penalties arising out of unlawful sales to underage individuals; and

(8) the significant disciplinary action or loss of employment that may be imposed by the retail dealer for a violation of the law or a deviation from the policies of the retail dealer in respect to compliance with such law.

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

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

(e) Entities authorized pursuant to paragraph (c) of this subdivision to give and administer a tobacco sales training program may submit a proposed curriculum, a facsimile of any training aids and materials, and a list of training locations to the department for review. Training aids may include the use of video, computer based instruction, printed materials and other formats deemed acceptable to the department. The department shall certify programs which provide instruction in the elements set forth in paragraph (b) of this subdivision in a clear and meaningful fashion. Programs approved by the department shall be certified for a

period of three years at which time an entity may reapply for certification. A non-refundable fee in the amount of three hundred dollars shall be paid to the department with each application.

§ 3. Paragraph 1 of subdivision h of section 1607 of the tax law, as amended by section 7 of part EE of chapter 56 of the laws of 2020, is amended to read as follows:

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

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