

Text of New York State Bill S07297

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

7297

I N S E N A T E

April 3, 2000

Introduced by Sens. FUSCHILLO, HANNON -- (at request of the Governor) -

to read twice and ordered printed, and when printed to be committed
to the Committee on Health

of AN ACT to amend the public health law, in relation to the shipment
for cigarettes; and to amend the tax law, in relation to penalties
violations of the cigarette tax

ASSEM- THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds and
declares
2 that the shipment of cigarettes sold via the internet or by telephone
or
3 by mail order to residents of this state poses a serious threat
to
4 public health, safety, and welfare, to the funding of health care
pursu-
5 ant to the health care reform act of 2000, and to the economy of
the
6 state. The legislature also finds that when cigarettes are
shipped
7 directly to a consumer, adequate proof that the purchaser is of
legal
8 age cannot be obtained by the vendor, which enables minors to avoid
the
9 provisions of article 13-F of the public health law. It is also
the
10 legislature's finding that by preventing shipment of cigarettes
directly
11 to consumers, the State will be better able to measure and monitor
ciga-
12 rette consumption and to better determine the public health and
fiscal
13 consequences of smoking. The legislature further finds that
existing

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14 penalties for cigarette bootlegging are inadequate. Therefore, the
bill
15 enhances existing penalties for possession of unstamped or
unlawfully
16 stamped cigarettes.
17 S 2. The public health law is amended by adding a new section 1399-
11
18 to read as follows:
19 S 1399-LL. UNLAWFUL SHIPMENT OR TRANSPORT OF CIGARETTES. 1.
IT
20 SHALL BE UNLAWFUL FOR ANY PERSON ENGAGED IN THE BUSINESS OF
SELLING
21 CIGARETTES TO SHIP OR CAUSE TO BE SHIPPED ANY CIGARETTES TO ANY
PERSON
22 IN THIS STATE WHO IS NOT: (A) A PERSON LICENSED AS A CIGARETTE TAX
AGENT
23 OR WHOLESALE DEALER UNDER ARTICLE TWENTY OF THE TAX LAW OR
REGISTERED
24 RETAIL DEALER UNDER SECTION FOUR HUNDRED EIGHTY-A OF THE TAX LAW; (B)
AN
25 EXPORT WAREHOUSE PROPRIETOR PURSUANT TO CHAPTER 52 OF THE
INTERNAL
26 REVENUE CODE OR AN OPERATOR OF A CUSTOMS BONDED WAREHOUSE PURSUANT
TO
27 SECTION 1311 OR 1555 OF TITLE 19 OF THE UNITED STATES CODE; OR (C)
A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets

{ } is old law to be omitted.

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1 PERSON WHO IS AN OFFICER, EMPLOYEE OR AGENT OF THE UNITED STATES
GOVERN-
2 MENT, THIS STATE OR A DEPARTMENT, AGENCY, INSTRUMENTALITY OR
POLITICAL
3 SUBDIVISION OF THE UNITED STATES OR THIS STATE, WHEN SUCH PERSON
IS
4 ACTING IN ACCORDANCE WITH HIS OR HER OFFICIAL DUTIES. FOR PURPOSES
OF
5 THIS SUBDIVISION, A PERSON IS A LICENSED OR REGISTERED AGENT OR
DEALER
6 DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION IF HIS OR HER
NAME
7 APPEARS ON A LIST OF LICENSED OR REGISTERED AGENTS OR DEALERS
PUBLISHED
8 BY THE DEPARTMENT OF TAXATION AND FINANCE, OR IF SUCH PERSON IS
LICENSED
9 OR REGISTERED AS AN AGENT OR DEALER UNDER ARTICLE TWENTY OR SECTION
FOUR
10 HUNDRED EIGHTY-A OF THE TAX LAW.
11 2. IT SHALL BE UNLAWFUL FOR ANY COMMON OR CONTRACT CARRIER OR
ANY
12 OTHER PERSON TO KNOWINGLY TRANSPORT CIGARETTES TO ANY PERSON IN
THIS
13 STATE, OTHER THAN TO A PERSON DESCRIBED IN PARAGRAPH (A), (B) OR (C)
OF

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14 SUBDIVISION ONE OF THIS SECTION. NOTHING IN THIS SUBDIVISION SHALL
BE
15 CONSTRUED TO PROHIBIT A PERSON OTHER THAN A COMMON OR CONTRACT
CARRIER
16 FROM TRANSPORTING NOT MORE THAN EIGHT HUNDRED CIGARETTES TO ANY
PERSON
17 IN THIS STATE.
18 3. WHEN A PERSON ENGAGED IN THE BUSINESS OF SELLING CIGARETTES
SHIPS
19 OR CAUSES TO BE SHIPPED ANY CIGARETTES TO ANY PERSON IN THIS
STATE,
20 OTHER THAN IN THE CIGARETTE MANUFACTURER'S ORIGINAL CONTAINER OR
WRAP-
21 PING, THE CONTAINER OR WRAPPING MUST BE PLAINLY AND VISIBLY MARKED
WITH
22 THE WORD "CIGARETTES".
23 4. WHENEVER A POLICE OFFICER DESIGNATED IN SECTION 1.20 OF THE
CRIMI-
24 NAL PROCEDURE LAW OR A PEACE OFFICER DESIGNATED IN SUBDIVISION FOUR
OF
25 SECTION 2.10 OF SUCH LAW, ACTING PURSUANT TO HIS OR HER SPECIAL
DUTIES,
26 OR A PUBLIC HEALTH ENFORCEMENT OFFICER, SHALL DISCOVER ANY
CIGARETTES
27 WHICH HAVE BEEN OR WHICH ARE BEING SHIPPED OR TRANSPORTED IN
VIOLATION
28 OF THIS SECTION, SUCH PERSON IS HEREBY EMPOWERED AND AUTHORIZED TO
SEIZE
29 AND TAKE POSSESSION OF SUCH CIGARETTES, AND SUCH CIGARETTES SHALL
BE
30 SUBJECT TO FORFEITURE TO THE STATE PURSUANT TO ARTICLE THIRTEEN-A OF
THE
31 CIVIL PRACTICE LAW AND RULES.
32 5. ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OR
TWO
33 OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR AND FOR
A
34 SECOND OR SUBSEQUENT VIOLATION SHALL BE GUILTY OF A CLASS E FELONY.
IN
35 ADDITION TO THE CRIMINAL PENALTY, THE COMMISSIONER MAY IMPOSE A
CIVIL
36 FINE NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH SUCH VIOLATION ON
ANY
37 PERSON WHO VIOLATES SUBDIVISION ONE OR TWO OF THIS SECTION. THE
COMMIS-
38 SIONER MAY IMPOSE A CIVIL FINE NOT TO EXCEED FIVE THOUSAND DOLLARS
FOR
39 EACH VIOLATION OF SUBDIVISION THREE OF THIS SECTION ON ANY
PERSON
40 ENGAGED IN THE BUSINESS OF SELLING CIGARETTES WHO SHIPS OR CAUSES TO
BE
41 SHIPPED ANY CIGARETTES TO ANY PERSON IN THIS STATE.
42 S 3. Paragraph (k) of subdivision 1 of section 480 of the tax law,
as
43 amended by chapter 629 of the laws of 1996, is amended to read
as
44 follows:
45 (k) No agent shall sell cigarettes and no distributor shall
sell

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46 tobacco products to an unlicensed wholesale dealer, or to a
wholesale
47 dealer whose license has been suspended or revoked, or to a retail
deal-
48 er who (has been forbidden to continue selling cigarettes or
tobacco
49 products, as the case may be) IS NOT REGISTERED UNDER SECTION
FOUR
50 HUNDRED EIGHTY-A OF THIS ARTICLE, OR WHOSE REGISTRATION HAS
BEEN
51 SUSPENDED, and no wholesale dealer shall sell cigarettes or
tobacco
52 products to a retail dealer (so forbidden after notice of the
prohibi-
53 tion) WHO IS NOT REGISTERED UNDER SECTION FOUR HUNDRED EIGHTY-A OF
THIS
54 ARTICLE, OR WHOSE REGISTRATION HAS BEEN SUSPENDED, and no retail
dealer
55 (so forbidden) shall (continue selling) SELL cigarettes or
tobacco

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1 products UNLESS SUCH DEALER IS REGISTERED UNDER SECTION FOUR
HUNDRED
2 EIGHTY-A OF THIS ARTICLE.
3 S 4. Subdivision 3 of section 480-a of the tax law, as added by
chap-
4 ter 190 of the laws of 1990, paragraph (a) as amended by chapter 629
of
5 the laws of 1996, is amended to read as follows:
6 3. In addition to any other penalty imposed by this chapter: (a)
Any
7 retail dealer who violates the provisions of this section shall,
after
8 due notice and an opportunity for a hearing, for a first violation
be
9 liable for a civil fine not LESS THAN ONE THOUSAND DOLLARS BUT NOT
to
10 exceed (one) TWO thousand FIVE HUNDRED dollars and for a second
or
11 subsequent violation within three years following a prior finding
of
12 violation be liable for a civil fine not LESS THAN TWO THOUSAND BUT
NOT
13 to exceed (two) THREE thousand five hundred dollars; or
14 (b) Any person who owns or, if the owner is not the operator, then
any
15 person who operates one or more vending machines through which
ciga-
16 rettes or tobacco products are sold in this state and who violates
the
17 provisions of this section shall, after due notice and an
opportunity
18 for a hearing, for a first violation be liable for a civil fine not
LESS
19 THAN ONE HUNDRED DOLLARS BUT NOT to exceed (one) TWO hundred
FIFTY
20 dollars and for a second or subsequent violation within three
years

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21 following a prior finding of violation be liable for a civil fine
not
22 LESS THAN THREE HUNDRED BUT NOT to exceed (three) SIX hundred dollars.
23 S 5. Paragraph (d) of subdivision 4 of section 480-a of the tax
law,
24 as added by chapter 629 of the laws of 1996, is amended to read
as
25 follows:
26 (d) After review of the suspension or revocation of registration
by
27 the commissioner or his designee is complete, or the time within which
a
28 retail dealer may request such review has expired without such a
request
29 having been made, notice of the suspension or revocation of a
retail
30 dealer registration pursuant to this subdivision shall be given by
the
31 commissioner to the head of the division of the lottery for the
purpose
32 of enforcement of section sixteen hundred seven of this chapter AND
SUCH
33 DIVISION SHALL SUSPEND OR REVOKE ANY LICENSE ISSUED WITH RESPECT TO
A
34 LOTTERY AGENT'S SPECIFIC LOCATION PURSUANT TO ARTICLE THIRTY-FOUR
OF
35 THIS CHAPTER IF SUCH LOTTERY AGENT IS A RETAIL DEALER OF
CIGARETTES
36 WHOSE REGISTRATION FOR SUCH LOCATION IS SUSPENDED OR REVOKED PURSUANT
TO
37 THIS SECTION. In addition, notice of such suspension or
revocation
38 shall also be given to the division of alcoholic beverage control
and
39 such suspension or revocation shall constitute cause, for purposes
of
40 section one hundred eighteen of the alcoholic beverage control law,
for
41 revocation, cancellation or suspension of any license or permit
issued
42 pursuant to such law AND SUCH DIVISION SHALL REVOKE, CANCEL OR
SUSPEND
43 ANY LICENSE OR PERMIT ISSUED UNDER THE ALCOHOLIC BEVERAGE CONTROL
LAW
44 FOR ANY PREMISES OF A RETAIL DEALER OF CIGARETTES WHOSE RETAIL
DEALER
45 REGISTRATION FOR SUCH PREMISES IS SUSPENDED OR REVOKED PURSUANT TO
THIS
46 SECTION.
47 S 6. Paragraph (b) of subdivision 1 of section 481 of the tax law,
as
48 amended by chapter 61 of the laws of 1989, is amended to read
as
49 follows:
50 (b) In addition to any other penalty imposed by this article,
the
51 commissioner (of taxation and finance) may impose a penalty of
not
52 (more) LESS than one hundred dollars BUT NOT MORE THAN TWO
HUNDRED

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53 DOLLARS for each two hundred cigarettes or fraction thereof in excess
of
54 {two} ONE thousand cigarettes in unstamped or unlawfully stamped
pack-
55 ages in the possession or under the control of any person. In
addition,
56 the commissioner may impose a penalty of not {more} LESS than
fifty

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1 dollars BUT NOT MORE THAN ONE HUNDRED DOLLARS for each fifty cigars
or
2 one pound of tobacco or fraction thereof in excess of two hundred
fifty
3 cigars or five pounds of tobacco in the possession or under the
control
4 of any person and a penalty of not {more} LESS than one hundred
dollars
5 BUT NOT MORE THAN TWO HUNDRED DOLLARS for each fifty cigars or pound
of
6 tobacco or fraction thereof in excess of five hundred cigars or
ten
7 pounds of tobacco in the possession or under the control of any
person,
8 with respect to which the tobacco products tax has not been paid
or
9 assumed by a distributor or tobacco products dealer; provided,
however,
10 that any such penalty imposed shall not exceed {five} TEN
thousand
11 dollars in the aggregate. The commissioner may impose a penalty of
not
12 {more} LESS than fifty dollars BUT NOT MORE THAN ONE HUNDRED DOLLARS
for
13 each fifty cigars or one pound of tobacco, or fraction thereof,
in
14 excess of fifty cigars or one pound of tobacco in the possession
or
15 under the control of any tobacco products dealer or
distributor
16 appointed by the commissioner, and a penalty of not {more} LESS than
one
17 hundred dollars BUT NOT MORE THAN TWO HUNDRED DOLLARS for each
fifty
18 cigars or pound of tobacco, or fraction thereof, in excess of
two
19 hundred fifty cigars or five pounds of tobacco in the possession
or
20 under the control of any such dealer or distributor, with respect
to
21 which the tobacco products tax has not been paid or assumed by
a
22 distributor or a tobacco products dealer; provided, however, that
any
23 such penalty imposed shall not exceed {ten} TWENTY thousand dollars
in
24 the aggregate. Any penalty provided for in this paragraph shall
be

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25 determined as provided in section four hundred seventy-eight of
this
26 chapter, and may be reviewed only pursuant to such section. Such
penal-
27 ty shall be collected in the same manner as the taxes imposed by
this
28 article. The commissioner (of taxation and finance), in (his)
THE
29 COMMISSIONER'S discretion, may remit all or part of such penalty.
Such
30 penalty shall be paid to the department (of taxation and finance)
and
31 disposed of as hereinafter provided with respect to moneys derived
from
32 the tax.

33 S 7. Subdivision (d) of section 1814 of the tax law, as added by
chap-
34 ter 65 of the laws of 1985, is amended to read as follows:

35 (d) Any person, other than an agent (so authorized) LICENSED by
the
36 (tax commission) COMMISSIONER, who possesses or transports for
the
37 purpose of sale any unstamped or unlawfully stamped packages of
ciga-
38 rettes subject to tax imposed by section four hundred seventy-one
of
39 this chapter, or who sells or offers for sale unstamped or
unlawfully

40 stamped packages of cigarettes in violation of the provisions of
article
41 twenty of this chapter shall be guilty of a misdemeanor. ANY PERSON
WHO
42 VIOLATES THE PROVISIONS OF THIS SUBDIVISION AFTER HAVING PREVIOUSLY
BEEN
43 CONVICTED OF A VIOLATION OF THIS SUBDIVISION SHALL BE GUILTY OF A
CLASS
44 E FELONY.

45 S 8. Subdivision (e) of section 1814 of the tax law, as added by
chap-
46 ter 65 of the laws of 1985, is amended to read as follows:

47 (e) (1) Any person, other than an agent (so authorized) LICENSED
by
48 the (tax commission) COMMISSIONER, who (willfully) possesses or
trans-
49 ports for the purpose of sale twenty thousand or more cigarettes
subject

50 to the tax imposed by section four hundred seventy-one of this
chapter
51 in any unstamped or unlawfully stamped packages or who (willfully)
sells
52 or offers for sale twenty thousand or more cigarettes in any
unstamped
53 or unlawfully stamped packages in violation of article twenty of
this
54 chapter shall be guilty of a class E felony.

55 (2) ANY PERSON, OTHER THAN AN AGENT LICENSED BY THE COMMISSIONER,
WHO
56 POSSESSES OR TRANSPORTS FOR THE PURPOSE OF SALE THIRTY THOUSAND OR
MORE

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1 CIGARETTES SUBJECT TO THE TAX IMPOSED BY SECTION FOUR
HUNDRED
2 SEVENTY-ONE OF THIS CHAPTER IN ANY UNSTAMPED OR UNLAWFULLY STAMPED
PACK-
3 AGES OR WHO SELLS OR OFFERS FOR SALE THIRTY THOUSAND OR MORE
CIGARETTES
4 IN ANY UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES IN VIOLATION OF
ARTICLE
5 TWENTY OF THIS CHAPTER SHALL BE GUILTY OF A CLASS D FELONY.
6 S 9. Subdivision (a) of section 1846 of the tax law, as added by
chap-
7 ter 65 of the laws of 1985, is amended to read as follows:
8 (a) Whenever a police officer designated in section 1.20 of the
crimi-
9 nal procedure law or a peace officer designated in subdivision four
of
10 section 2.10 of such law, acting pursuant to his special duties,
shall
11 discover any cigarettes subject to tax provided by article twenty
of
12 this chapter, and upon which the tax has not been paid or the stamps
not
13 affixed as required by such article, they are hereby authorized
and
14 empowered forthwith to seize and take possession of such
cigarettes,
15 together with any vending machine or receptacle in which they are
held
16 for sale. Such cigarettes, vending machine or receptacle seized by
a
17 police officer or such peace officer shall be turned over to the
{tax
18 commission} COMMISSIONER. Such seized cigarettes, vending machine
or
19 receptacle, not including money contained in such vending machine
or
20 receptacle, shall be forfeited to the state. The {tax
commission}
21 COMMISSIONER may, within a reasonable time thereafter, upon
publication
22 of a notice to such effect for at least five successive days, before
the
23 day of sale, in a newspaper published or circulated in the county
where
24 the seizure was made, sell such forfeited cigarettes and
vending
25 machines or receptacles at public sale and pay the NET proceeds OF
ANY
26 SUCH SALE, AFTER DEDUCTION OF THE LAWFUL EXPENSES INCURRED, into
the
27 state treasury to the credit of the general fund. Cigarettes so
seized
28 and sold shall be sold only to an agent under article twenty of
this
29 chapter and the notice of sale shall contain a provision to this
effect.
30 Notwithstanding any other provision of this section, the {tax
commis-

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31 sion} COMMISSIONER may enter into an agreement with any city of
this
32 state which is authorized to impose a tax similar to that imposed
by
33 article twenty of this chapter to provide for the disposition
between
34 the state and any such city of the proceeds from any such sale.
35 S 10. The tax law is amended by adding a new section 1847-a to
read

36 as follows:
37 S 1847-A. EXPENSES OF DETECTION OF CIGARETTES WHICH ARE IN
VIOLATION
38 OF LAW. THE COMMISSIONER, UNDER REGULATIONS PRESCRIBED BY THE
COMMIS-
39 SIONER, IS AUTHORIZED TO PAY SUCH SUMS AS THE COMMISSIONER DEEMS
NECES-
40 SARY, WITHIN THE LIMITS OF FUNDS APPROPRIATED THEREFOR, UP TO A
MAXIMUM
41 AMOUNT OF FOUR DOLLARS PER CARTON, FOR (A) DETECTION AND SEIZURE OF
(1)
42 UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES OF CIGARETTES WHICH ARE
IN
43 VIOLATION OF ARTICLE TWENTY OF THIS CHAPTER. (2) CIGARETTES WHICH
ARE
44 MARKED FOR EXPORT WHICH HAVE BEEN IMPORTED INTO THIS STATE OR STAMPED
IN
45 VIOLATION OF SECTION FOUR HUNDRED SEVENTY-THREE-B OF THIS CHAPTER,
OR
46 (3) CIGARETTES WHICH HAVE BEEN SHIPPED OR TRANSPORTED IN THIS STATE
IN
47 VIOLATION OF SECTION THIRTEEN HUNDRED NINETY-NINE-LL OF THE
PUBLIC
48 HEALTH LAW; AND (B) DETECTION AND BRINGING TO TRIAL AND
PUNISHMENT
49 PERSONS GUILTY OF VIOLATING THE TAX LAW OR SECTION THIRTEEN
HUNDRED
50 NINETY-NINE-LL OF THE PUBLIC HEALTH LAW BY REASON OF
VIOLATIONS
51 DESCRIBED IN SUBDIVISION (A) OF THIS SECTION. ANY AMOUNTS PAYABLE
UNDER
52 THE PRECEDING SENTENCE SHALL BE PAID FROM THE PROCEEDS OF
AMOUNTS
53 COLLECTED FROM THE SALE OF SEIZED CIGARETTES AS PROVIDED IN
SECTION
54 EIGHTEEN HUNDRED FORTY-SIX OF THIS ARTICLE;
55 S 11. Severability clause. If any clause, sentence,
paragraph,
56 subdivision, section or part of this act shall be adjudged by any
court

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1 of competent jurisdiction to be invalid, such judgment shall not
affect,
2 impair, or invalidate the remainder thereof, but shall be confined
in
3 its operation to the clause, sentence, paragraph, subdivision,
section
4 or part thereof directly involved in the controversy in which such
judg-

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5 ment shall have been rendered. It is hereby declared to be the
intent
6 of the legislature that this act would have been enacted even if
such
7 invalid provisions had not been included herein.
8 S 12. This act shall take effect on the ninetieth day after it
shall
9 have become a law.
.SO DOC S 7297 *END* BTXT 1999

Bill S07297

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