

3202

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. BENJAMIN, SCARBOROUGH, FINCH, McDONOUGH, JAFFEE, GREENE, BENEDETTO, FIELDS, ROBINSON, ALFANO, BALL, ERRIGO, KOLB, CLARK, WALKER -- Multi-Sponsored by -- M. of A. ABBATE, BACALLES, BARRA, BOYLAND, CALHOUN, DIAZ, DUPREY, GALEF, HYER-SPENCER, JOHN, LANCMAN, MAGNARELLI, MAISEL, McKEVITT, PERRY, PHEFFER, QUINN, SAYWARD, WEISENBERG, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the correction law, the criminal procedure law, the civil rights law, the executive law, the family court act, the mental hygiene law, the multiple dwelling law, the public health law, the real property actions and proceedings law, the real property law and the vehicle and traffic law, in relation to prostitution offenses and creating the crime of sexual exploitation of a child

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

1 Section 1. Section 230.00 of the penal law, as amended by chapter 169
2 of the laws of 1969, is amended to read as follows:
3 S 230.00 [Prostitution] CRIMINAL PROSTITUTION.
4 A person is guilty of CRIMINAL prostitution when, BEING SEVENTEEN
5 YEARS OLD OR MORE, such person engages or agrees or offers to engage in
6 sexual conduct with another person in return for a fee.
7 [Prostitution] CRIMINAL PROSTITUTION is a class B Misdemeanor.
8 S 2. The penal law is amended by adding a new section 230.01 to read
9 as follows:
10 S 230.01 UNLAWFUL PROSTITUTION.
11 A PERSON IS GUILTY OF UNLAWFUL PROSTITUTION WHEN, BEING LESS THAN
12 SEVENTEEN YEARS OLD, SUCH PERSON ENGAGES OR AGREES OR OFFERS TO ENGAGE
13 IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR A FEE.
14 UNLAWFUL PROSTITUTION IS A VIOLATION, PROVIDED, HOWEVER, THAT ANY
15 PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME DEFINED IN THIS
16 ARTICLE OR SECTION 240.37 OF THIS PART SHALL BE GUILTY OF A CLASS B
17 MISDEMEANOR.

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

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1 S 3. Sections 230.05 and 230.06 of the penal law, as added by chapter
2 627 of the laws of 1978, are amended to read as follows:

3 S 230.05 Patronizing a prostitute in the second degree.

4 A person is guilty of patronizing a prostitute in the second degree
5 when, being [over eighteen] TWENTY-ONE years of age OR MORE, he patron-
6 izes a prostitute and the person patronized is less than [fourteen]
7 SEVENTEEN years of age.

8 Patronizing a prostitute in the second degree is a class E felony.

9 S 230.06 Patronizing a prostitute in the first degree.

10 A person is guilty of patronizing a prostitute in the first degree
11 when, BEING EIGHTEEN YEARS OF AGE OR MORE, he patronizes a prostitute
12 and the person patronized is less than [eleven] FIFTEEN years of age.

13 Patronizing a prostitute in the first degree is a class D felony.

14 S 4. The penal law is amended by adding a new section 230.06-a to read
15 as follows:

16 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

17 A PERSON IS GUILTY OF SEXUAL EXPLOITATION OF A CHILD WHEN:

18 1. BEING EIGHTEEN YEARS OF AGE OR MORE HE PATRONIZES A PROSTITUTE AND
19 THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OF AGE; OR

20 2. HE PATRONIZES A PROSTITUTE AND THE PERSON PATRONIZED IS LESS THAN
21 ELEVEN YEARS OF AGE.

22 SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

23 S 5. Section 230.07 of the penal law, as amended by chapter 74 of the
24 laws of 2007, is amended to read as follows:

25 S 230.07 Patronizing a prostitute; defense.

26 In any prosecution for patronizing a prostitute in the first or second
27 degrees OR SEXUAL EXPLOITATION OF A CHILD, it is [a] AN AFFIRMATIVE
28 defense that the defendant did not have reasonable grounds to believe
29 that the person was less than the age specified.

30 S 6. The opening paragraph of section 230.10 of the penal law is
31 amended to read as follows:

32 In any prosecution for SEXUAL EXPLOITATION OF A CHILD, prostitution or
33 patronizing a prostitute, the sex of the two parties or prospective
34 parties to the sexual conduct engaged in, contemplated or solicited is
35 immaterial, and it is no defense that:

36 S 7. The penal law is amended by adding a new section 230.11 to read
37 as follows:

38 S 230.11 PROSTITUTION; DEFENSE.

39 IN ANY PROSECUTION FOR UNLAWFUL PROSTITUTION OR CRIMINAL PROSTITUTION,
40 IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A VICTIM OF SEX TRAF-
41 FICKING.

42 S 8. Subdivision 2 of section 230.30 of the penal law, as amended by
43 chapter 627 of the laws of 1978, is amended to read as follows:

44 2. Advances or profits from prostitution of a person less than
45 [sixteen] SEVENTEEN years old.

46 S 9. Section 230.33 of the penal law, as added by chapter 450 of the
47 laws of 2005, is amended to read as follows:

48 S 230.33 Compelling prostitution.

49 A person is guilty of compelling prostitution when, being twenty-one
50 years of age or older, he or she knowingly advances prostitution by
51 compelling a person less than [sixteen] SEVENTEEN years old, by force or
52 intimidation, to engage in prostitution.

53 Compelling prostitution is a class B felony.

54 S 10. Subdivision 2 of section 240.37 of the penal law, as added by
55 chapter 344 of the laws of 1976, is amended to read as follows:

1 2. Any person who remains or wanders about in a public place and
2 repeatedly beckons to, or repeatedly stops, or repeatedly attempts to
3 stop, or repeatedly attempts to engage passers-by in conversation, or
4 repeatedly stops or attempts to stop motor vehicles, or repeatedly
5 interferes with the free passage of other persons, for the purpose of
6 prostitution, or of patronizing a prostitute as those terms are defined
7 in article two hundred thirty of [the penal law] THIS CHAPTER, shall be
8 guilty of a violation and is guilty of a class B misdemeanor if such
9 person has previously been convicted of a violation of this section or
10 of [sections] SECTION 230.00, 230.01 or 230.05 of [the penal law] THIS
11 CHAPTER.

12 S 11. Section 60.13 of the penal law, as added by chapter 7 of the
13 laws of 2007, is amended to read as follows:

14 S 60.13 Authorized dispositions; felony sex offenses.

15 When a person is to be sentenced upon a conviction for any felony
16 defined in article one hundred thirty of this chapter, including a sexu-
17 ally motivated felony, or patronizing a prostitute in the first degree
18 as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A
19 CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the
20 second degree as defined in section 255.26 of this chapter, or incest in
21 the first degree as defined in section 255.27 of this chapter, or a
22 felony attempt or conspiracy to commit any of these crimes, the court
23 must sentence the defendant in accordance with the provisions of section
24 70.80 of this title.

25 S 12. Paragraph (a) of subdivision 1 of section 70.80 of the penal
26 law, as added by chapter 7 of the laws of 2007, is amended to read as
27 follows:

28 (a) For the purposes of this section, a "felony sex offense" means a
29 conviction of any felony defined in article one hundred thirty of this
30 chapter, including a sexually motivated felony, or patronizing a prosti-
31 tute in the first degree as defined in section 230.06 of this chapter,
32 incest in the second degree as defined in section 255.26 of this chap-
33 ter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF
34 THIS CHAPTER, or incest in the first degree as defined in section 255.27
35 of this chapter, or a felony attempt or conspiracy to commit any of the
36 above.

37 S 13. Subparagraph (i) of paragraph (a) of subdivision 2 of section
38 168-a of the correction law, as amended by chapter 405 of the laws of
39 2008, is amended to read as follows:

40 (i) a conviction of or a conviction for an attempt to commit any of
41 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
42 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
43 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20
44 or 135.25 of such law relating to kidnapping offenses, provided the
45 victim of such kidnapping or related offense is less than seventeen
46 years old and the offender is not the parent of the victim, or section
47 230.04, where the person patronized is in fact less than seventeen years
48 of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section
49 230.30, or section 230.32 or 230.33 of the penal law, or

50 S 14. Subdivision 2 of section 60.42 of the criminal procedure law, as
51 added by chapter 230 of the laws of 1975, is amended to read as follows:

52 2. proves or tends to prove that the victim has been convicted of an
53 offense under section 230.00 OR 230.01 of the penal law within three
54 years prior to the sex offense which is the subject of the prosecution;
55 or

1 S 15. Paragraph (e) of subdivision 1 of section 160.10 of the criminal
2 procedure law, as added by chapter 344 of the laws of 1976, is amended
3 and a new paragraph (f) is added to read as follows:

4 (e) Loitering for the purpose of engaging in a prostitution offense
5 as defined in subdivision two of section 240.37 of the penal law[.]; OR

6 (F) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL
7 LAW.

8 S 16. Subdivision 6 of section 380.50 of the criminal procedure law,
9 as amended by chapter 320 of the laws of 2006, is amended to read as
10 follows:

11 6. Regardless of whether the victim requests to make a statement with
12 regard to the defendant's sentence, where the defendant is sentenced for
13 a violent felony offense as defined in section 70.02 of the penal law or
14 a felony defined in article one hundred twenty-five of such law or any
15 of the following provisions of such law sections 130.25, 130.30, 130.40,
16 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,
17 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or
18 230.32, the prosecutor shall, within sixty days of the imposition of
19 sentence, provide the victim with a form on which the victim may indi-
20 cate a demand to be informed of any petition to change the name of such
21 defendant. Such forms shall be maintained by such prosecutor. Upon
22 receipt of a notice of a petition to change the name of any such defend-
23 ant, pursuant to subdivision two of section sixty-two of the civil
24 rights law, the prosecutor shall promptly notify the victim at the most
25 current address or telephone number provided by such victim in the most
26 reasonable and expedient possible manner of the time and place such
27 petition will be presented to the court.

28 S 17. Subdivision 2 of section 61 of the civil rights law, as amended
29 by chapter 320 of the laws of 2006, is amended to read as follows:

30 2. If the petitioner stands convicted of a violent felony offense as
31 defined in section 70.02 of the penal law or a felony defined in article
32 one hundred twenty-five of such law or any of the following provisions
33 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
34 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
35 230.06-A, subdivision two of section 230.30 or 230.32, and is currently
36 confined as an inmate in any correctional facility or currently under
37 the supervision of the state division of parole or a county probation
38 department as a result of such conviction, the petition shall for each
39 such conviction specify such felony conviction, the date of such
40 conviction or convictions, and the court in which such conviction or
41 convictions were entered.

42 S 18. Subdivision 2 of section 62 of the civil rights law, as amended
43 by chapter 320 of the laws of 2006, is amended to read as follows:

44 2. If the petition be to change the name of a person currently
45 confined as an inmate in any correctional facility or currently under
46 the supervision of the state division of parole or a county probation
47 department as a result of a conviction for a violent felony offense as
48 defined in section 70.02 of the penal law or a felony defined in article
49 one hundred twenty-five of such law or any of the following provisions
50 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
51 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
52 230.06-A, subdivision two of section 230.30 or 230.32, notice of the
53 time and place when and where the petition will be presented shall be
54 served, in like manner as a notice of a motion upon an attorney in an
55 action, upon the district attorney of every county in which such person
56 has been convicted of such felony and upon the court or courts in which

1 the sentence for such felony was entered. Unless a shorter period of
2 time is ordered by the court, said notice shall be served upon each such
3 district attorney and court or courts not less than sixty days prior to
4 the date on which such petition is noticed to be heard.

5 S 19. The closing paragraph of section 64 of the civil rights law, as
6 separately amended by chapters 258, 320 and 481 of the laws of 2006, is
7 amended to read as follows:

8 Upon compliance with the order and the filing of the affidavit of the
9 publication, as provided in this section, the clerk of the court in
10 which the order has been entered shall certify that the order has been
11 complied with; and, if the petition states that the petitioner stands
12 convicted of a violent felony offense as defined in section 70.02 of the
13 penal law or a felony defined in article one hundred twenty-five of such
14 law or any of the following provisions of such law sections 130.25,
15 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred
16 sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two
17 of section 230.30 or 230.32, such clerk (1) shall deliver, by first
18 class mail, a copy of such certified order to the division of criminal
19 justice services at its office in the county of Albany and (2) upon the
20 clerk of the court reviewing the petitioner's application for name
21 change and subsequent in-court inquiry, may, in the clerk's discretion,
22 deliver, by first class mail, the petitioner's new name with such certi-
23 fied order to the court of competent jurisdiction which imposed the
24 orders of support. Such certification shall appear on the original
25 order and on any certified copy thereof and shall be entered in the
26 clerk's minutes of the proceeding.

27 S 20. Paragraph (d) of subdivision 7 of section 995 of the executive
28 law, as amended by chapter 2 of the laws of 2006, is amended to read as
29 follows:

30 (d) any of the following felonies, or an attempt thereof where such
31 attempt is a felony offense:

32 aggravated assault upon a person less than eleven years old, as
33 defined in section 120.12 of the penal law; menacing in the first
34 degree, as defined in section 120.13 of the penal law; reckless endan-
35 germent in the first degree, as defined in section 120.25 of the penal
36 law; stalking in the second degree, as defined in section 120.55 of the
37 penal law; criminally negligent homicide, as defined in section 125.10
38 of the penal law; vehicular manslaughter in the second degree, as
39 defined in section 125.12 of the penal law; vehicular manslaughter in
40 the first degree, as defined in section 125.13 of the penal law;
41 persistent sexual abuse, as defined in section 130.53 of the penal law;
42 aggravated sexual abuse in the fourth degree, as defined in section
43 130.65-a of the penal law; female genital mutilation, as defined in
44 section 130.85 of the penal law; facilitating a sex offense with a
45 controlled substance, as defined in section 130.90 of the penal law;
46 unlawful imprisonment in the first degree, as defined in section 135.10
47 of the penal law; custodial interference in the first degree, as defined
48 in section 135.50 of the penal law; criminal trespass in the first
49 degree, as defined in section 140.17 of the penal law; criminal tamper-
50 ing in the first degree, as defined in section 145.20 of the penal law;
51 tampering with a consumer product in the first degree, as defined in
52 section 145.45 of the penal law; robbery in the third degree as defined
53 in section 160.05 of the penal law; identity theft in the second degree,
54 as defined in section 190.79 of the penal law; identity theft in the
55 first degree, as defined in section 190.80 of the penal law; promoting
56 prison contraband in the first degree, as defined in section 205.25 of

1 the penal law; tampering with a witness in the third degree, as defined
2 in section 215.11 of the penal law; tampering with a witness in the
3 second degree, as defined in section 215.12 of the penal law; tampering
4 with a witness in the first degree, as defined in section 215.13 of the
5 penal law; criminal contempt in the first degree, as defined in subdivi-
6 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
7 criminal contempt, as defined in section 215.52 of the penal law; bail
8 jumping in the second degree, as defined in section 215.56 of the penal
9 law; bail jumping in the first degree, as defined in section 215.57 of
10 the penal law; patronizing a prostitute in the second degree, as defined
11 in section 230.05 of the penal law; patronizing a prostitute in the
12 first degree, as defined in section 230.06 of the penal law; SEXUAL
13 EXPLOITATION OF A CHILD, AS DEFINED IN SECTION 230.06-A OF THE PENAL
14 LAW; promoting prostitution in the second degree, as defined in section
15 230.30 of the penal law; promoting prostitution in the first degree, as
16 defined in section 230.32 of the penal law; compelling prostitution, as
17 defined in section 230.33 of the penal law; disseminating indecent
18 [materials] MATERIAL to minors in the second degree, as defined in
19 section 235.21 of the penal law; disseminating indecent [materials]
20 MATERIAL to minors in the first degree, as defined in section 235.22 of
21 the penal law; riot in the first degree, as defined in section 240.06 of
22 the penal law; criminal anarchy, as defined in section 240.15 of the
23 penal law; aggravated harassment of an employee by an inmate, as defined
24 in section 240.32 of the penal law; unlawful surveillance in the second
25 degree, as defined in section 250.45 of the penal law; unlawful surveil-
26 lance in the first degree, as defined in section 250.50 of the penal
27 law; endangering the welfare of a vulnerable elderly person in the
28 second degree, as defined in section 260.32 of the penal law; endanger-
29 ing the welfare of a vulnerable elderly person in the first degree, as
30 defined in section 260.34 of the penal law; use of a child in a sexual
31 performance, as defined in section 263.05 of the penal law; promoting an
32 obscene sexual performance by a child, as defined in section 263.10 of
33 the penal law; possessing an obscene sexual performance by a child, as
34 defined in section 263.11 of the penal law; promoting a sexual perform-
35 ance by a child, as defined in section 263.15 of the penal law; possess-
36 ing a sexual performance by a child, as defined in section 263.16 of the
37 penal law; criminal possession of a weapon in the third degree, as
38 defined in section 265.02 of the penal law; criminal sale of a firearm
39 in the third degree, as defined in section 265.11 of the penal law;
40 criminal sale of a firearm to a minor, as defined in section 265.16 of
41 the penal law; unlawful wearing of a body vest, as defined in section
42 270.20 of the penal law; hate crimes as defined in section 485.05 of the
43 penal law; and crime of terrorism, as defined in section 490.25 of the
44 penal law; or

45 S 21. Subdivision 2 of section 344.4 of the family court act, as added
46 by chapter 761 of the laws of 1987, is amended to read as follows:

47 2. proves or tends to prove that the victim has been convicted of an
48 offense under section 230.00 OR 230.01 of the penal law within three
49 years prior to the sex offense which is the subject of the juvenile
50 delinquency proceeding; or

51 S 22. Subdivision (p) of section 10.03 of the mental hygiene law, as
52 added by chapter 7 of the laws of 2007, is amended to read as follows:

53 (p) "Sex offense" means an act or acts constituting: (1) any felony
54 defined in article one hundred thirty of the penal law, including a
55 sexually motivated felony; (2) patronizing a prostitute in the first
56 degree as defined in section 230.06 of the penal law, incest in the

second degree as defined in section 255.26 of the penal law, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THE PENAL LAW, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

S 23. Subdivision 2 of section 353 of the multiple dwelling law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

2. If there be two or more convictions in such dwelling within a period of six months, under sections 230.00, 230.01, 230.25, or 230.40 of the penal law.

S 24. Subdivision 1 of section 2302 of the public health law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

1. Every person arrested charged with a violation of section 230.00, 230.01 or 230.40 of the penal law, or arrested for failure to comply with the order of a judge or justice issued pursuant to the provisions of section two thousand three hundred one of this chapter, or any person arrested for frequenting disorderly houses or houses of prostitution, shall be reported within twenty-four hours by the court or magistrate before whom such person is arraigned to the health officer of the health district in which the alleged offense occurred, and shall be examined in accordance with the provisions of section two thousand three hundred of this chapter.

S 25. Section 2324-a of the public health law, as amended by chapter 260 of the laws of 1978, is amended to read as follows:

S 2324-a. Presumptive evidence. For the purposes of this title, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 26. Subdivision 2 of section 715 of the real property actions and proceedings law, as added by chapter 494 of the laws of 1976, is amended to read as follows:

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 27. Subdivision 3 of section 231 of the real property law, as amended by chapter 203 of the laws of 1980, is amended to read as follows:

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30, or 230.40 of the penal law arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be

1 presumptive evidence of unlawful use of such premises and of the owners
2 knowledge of the same.

3 S 28. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
4 and traffic law, as amended by chapter 345 of the laws of 2007, is
5 amended to read as follows:

6 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
7 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
8 of this section that result in disqualification for a period of five
9 years shall include a conviction under sections 100.10, 105.13, 115.05,
10 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14,
11 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25,
12 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16,
13 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.01, 230.05,
14 230.06, 230.06-A, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06,
15 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section
16 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10,
17 265.12, 265.35 of the penal law or an attempt to commit any of the afor-
18 esaid offenses under section 110.00 of the penal law, or any similar
19 offenses committed under a former section of the penal law, or any
20 offenses committed under a former section of the penal law which would
21 constitute violations of the aforesaid sections of the penal law, or any
22 offenses committed outside this state which would constitute violations
23 of the aforesaid sections of the penal law.

24 S 29. This act shall take effect on the ninetieth day after it shall
25 have become a law.