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

498

2009-2010 Regular Sessions

I N  A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the criminal sale of marihuana

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

Section 1. Section 221.40 of the penal law, as added by chapter 360 of the laws of 1977, is amended to read as follows:

S 221.40 Criminal sale of marihuana in the fourth degree.

A person is guilty of criminal sale of marihuana in the fourth degree when he OR SHE:

1. knowingly and unlawfully sells marihuana except as provided in section 221.35 of this article; OR

2. COMMITS THE OFFENSE OF CRIMINAL SALE OF MARIHUANA IN THE FIFTH DEGREE IN VIOLATION OF SECTION 221.35 OF THIS ARTICLE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE LAST FIVE YEARS OF VIOLATING THIS SECTION OR SECTION 221.35, 221.45, 221.50, OR 221.55 OF THIS ARTICLE.

Criminal sale of marihuana in the fourth degree is a class A misdemeanor.

S 2. Section 221.45 of the penal law, as amended by chapter 265 of the laws of 1979, the opening paragraph as amended by chapter 75 of the laws of 1995, is amended to read as follows:

S 221.45 Criminal sale of marihuana in the third degree.

A person is guilty of criminal sale of marihuana in the third degree when he OR SHE:

1. knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams; OR

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

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2. COMMITS THE OFFENSE OF CRIMINAL SALE OF MARIHUANA IN THE FOURTH DEGREE IN VIOLATION OF SECTION 221.40 OF THIS ARTICLE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE LAST FIVE YEARS OF VIOLATING THIS SECTION OR SECTION 221.40, 221.50, OR 221.55 OF THIS ARTICLE.

Criminal sale of marihuana in the third degree is a class E felony.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.