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

6221

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. BARRA -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the alcoholic beverage control law, in relation to authorizing the impoundment of motor vehicles operated by underage persons illegally in possession of an alcoholic beverage

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

Section 1. Section 65-c of the alcoholic beverage control law is amended by adding a new subdivision 7 to read as follows:

7. (A) WHENEVER A PEACE OFFICER AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW OR POLICE OFFICER AS DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW SHALL OBSERVE A PERSON UNDER TWENTY-ONE YEARS OF AGE OPENLY IN POSSESSION OF AN ALCOHOLIC BEVERAGE AS DEFINED IN THIS CHAPTER, WITH THE INTENT TO CONSUME SUCH BEVERAGE IN VIOLATION OF THIS SECTION, AND ENGAGED IN OPERATION OF A MOTOR VEHICLE, SAID OFFICER SHALL IMPOUND SUCH MOTOR VEHICLE, AND SHALL DELIVER IT TO THE CUSTODY OF HIS OR HER DEPARTMENT. A VEHICLE SO IMPOUNDED SHALL BE RELEASED TO ITS OWNER, LESSEE, OR TO ANOTHER PERSON LAWFULLY ENTITLED TO POSSESSION THEREOF NO SOONER THAN TWENTY-FOUR HOURS AFTER SUCH IMPOUNDMENT. SUCH VEHICLE SHALL NOT BE RELEASED TO SUCH OWNER, LESSEE, OR OTHER PERSON UNTIL SUCH OWNER, LESSEE, OR OTHER PERSON PAYS A CHARGE THEREFOR, TO BE FIXED BY THE MUNICIPALITY IN WHICH SUCH VEHICLE IS IMPOUNDED, WHICH CHARGE SHALL NOT BE IN EXCESS OF TWO HUNDRED FIFTY DOLLARS INCLUSIVE OF TOWING AND STORAGE CHARGES. ADDITIONAL STORAGE CHARGES MAY BE IMPOSED IF SUCH VEHICLE IS STORED FOR MORE THAN FORTY-EIGHT HOURS. IF SUCH MOTOR VEHICLE IS SEIZED FROM A PERSON UNDER THE AGE OF EIGHTEEN YEARS, THE PARENT OR LEGAL GUARDIAN OF SUCH PERSON SHALL PROMPTLY BE SO NOTIFIED BY SAID OFFICER.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "ENGAGED IN OPERATION OF A MOTOR VEHICLE" SHALL HAVE THE FOLLOWING MEANING: PHYSICAL CONTROL OF A MOTOR VEHICLE. IT INCLUDES THE OPERATION OR CONTROL OF A

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

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MOTOR VEHICLE WHETHER ON PRIVATE OR PUBLIC LAND. TO BE IN PHYSICAL CONTROL, A PERSON NEED NOT BE ACTUALLY OPERATING THE MOTOR VEHICLE, NOR NEED THE MOTOR VEHICLE BE RUNNING OR ON. IF THERE IS ONLY ONE PERSON INSIDE A MOTOR VEHICLE, THAT PERSON SHALL BE PRESUMED TO BE IN PHYSICAL CONTROL REGARDLESS OF SUCH PERSON'S PHYSICAL LOCATION WITHIN THE VEHICLE. IF THERE IS ONLY ONE PERSON IN A FRONT SEAT OR FRONT PASSENGER AREA OF A MOTOR VEHICLE, THAT PERSON SHALL BE PRESUMED TO BE IN PHYSICAL CONTROL REGARDLESS OF THE PERSON'S LOCATION IN THE FRONT PASSENGER AREA. IF THERE ARE PERSONS IN THE VEHICLE, BUT NOT IN THE FRONT PASSENGER AREA, THE OWNER, LESSEE, OR OTHER PERSON LAWFULLY ENTITLED TO POSSESSION OF THE VEHICLE OR THE PERSON TO WHOM PERMISSION WAS GIVEN TO OPERATE THE VEHICLE SHALL BE PRESUMED TO BE IN PHYSICAL CONTROL OF THE VEHICLE.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.