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I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. GABRYSZAK, CUSICK, MILLMAN, FIELDS, MAISEL, ROBINSON -- Multi-Sponsored by -- M. of A. ALFANO, BROOK-KRASNY, HOOPER, HYER-SPENCER, McDONOUGH, PEOPLES-STOKES, SWEENEY, TITONE, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the unlawful sale to a child and unlawful purchase of tobacco products by a child

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

1 Section 1. Section 260.21 of the penal law, as added by chapter 362 of
2 the laws of 1992, the opening paragraph of subdivision 1 as amended by
3 chapter 478 of the laws of 1996, is amended to read as follows:
4 S 260.21 Unlawfully dealing with a child in the second degree.
5 A person is guilty of unlawfully dealing with a child in the second
6 degree when:
7 1. Being an owner, lessee, manager or employee of a place where alco-
8 holic beverages are sold or given away, he OR SHE permits a child less
9 than sixteen years old to enter or remain in such place unless:
10 (a) The child is accompanied by his OR HER parent, guardian or an
11 adult authorized by a parent or guardian; or
12 (b) The entertainment or activity is being conducted for the benefit
13 or under the auspices of a non-profit school, church or other educa-
14 tional or religious institution; or
15 (c) Otherwise permitted by law to do so; or
16 (d) The establishment is closed to the public for a specified period
17 of time to conduct an activity or entertainment, during which the child
18 is in or remains in such establishment, and no alcoholic beverages are
19 sold, served, given away or consumed at such establishment during such
20 period. The state liquor authority shall be notified in writing by the
21 licensee of such establishment, of the intended closing of such estab-
22 lishment, to conduct any such activity or entertainment, not less than
23 ten days prior to any such closing; or
24 2. He OR SHE marks the body of a child less than eighteen years old
25 with indelible ink or pigments by means of tattooing[; or

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

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1 3. He sells or causes to be sold tobacco in any form to a child less
2 than eighteen years old.

3 It is no defense to a prosecution pursuant to subdivision three of
4 this section that the child acted as the agent or representative of
5 another person or that the defendant dealt with the child as such].

6 Unlawfully dealing with a child in the second degree is a class B
7 misdemeanor.

8 S 2. The penal law is amended by adding a new section 260.22 to read
9 as follows:

10 S 260.22 UNLAWFUL SALE OF TOBACCO PRODUCTS TO A CHILD.

11 1. A PERSON IS GUILTY OF UNLAWFUL SALE OF TOBACCO PRODUCTS TO A CHILD
12 WHEN:

13 HE OR SHE SELLS OR CAUSES TO BE SOLD TOBACCO IN ANY FORM TO A CHILD
14 LESS THAN EIGHTEEN YEARS OLD.

15 2. IT IS NO DEFENSE TO A PROSECUTION PURSUANT TO SUBDIVISION ONE OF
16 THIS SECTION THAT THE CHILD ACTED AS THE AGENT OR REPRESENTATIVE OF
17 ANOTHER PERSON OR THAT THE DEFENDANT DEALT WITH THE CHILD AS SUCH.

18 UNLAWFUL SALE OF TOBACCO PRODUCTS TO A CHILD IS A CLASS B MISDEMEANOR.

19 S 3. The penal law is amended by adding a new section 260.23 to read
20 as follows:

21 S 260.23 UNLAWFUL PURCHASE OR POSSESSION OF TOBACCO PRODUCTS BY A CHILD;
22 USE OF FALSE IDENTIFICATION TO PURCHASE TOBACCO PRODUCTS BY A
23 CHILD.

24 1. A CHILD LESS THAN EIGHTEEN YEARS OLD IS GUILTY OF UNLAWFUL PURCHASE
25 OR POSSESSION OF TOBACCO PRODUCTS WHEN:

26 HE OR SHE PURCHASES A TOBACCO PRODUCT, POSSESSES A TOBACCO PRODUCT OR
27 ATTEMPTS TO PURCHASE OR POSSESS A TOBACCO PRODUCT UNLESS:

28 (A) THE CHILD IS ENGAGED IN LAW ENFORCEMENT ACTIVITY; OR

29 (B) THE CHILD IS HANDLING OR TRANSPORTING A TOBACCO PRODUCT UNDER THE
30 TERMS OF HIS OR HER EMPLOYMENT.

31 2. A CHILD LESS THAN EIGHTEEN YEARS OLD IS GUILTY OF USE OF FALSE
32 IDENTIFICATION WHEN:

33 HE OR SHE PRESENTS OR OFFERS TO ANOTHER PERSON A DRIVER'S LICENSE,
34 NON-DRIVER'S IDENTIFICATION CARD ISSUED BY A STATE OR FEDERAL GOVERN-
35 MENTAL AGENCY OR PASSPORT WHICH IS FALSE, FRAUDULENT OR NOT ACTUALLY HIS
36 OR HER OWN DRIVER'S LICENSE, NON-DRIVER'S IDENTIFICATION CARD OR PASS-
37 PORT, FOR THE PURPOSE OF ATTEMPTING TO PURCHASE OR POSSESS A TOBACCO
38 PRODUCT.

39 UNLAWFUL PURCHASE OR POSSESSION OF TOBACCO PRODUCTS BY A CHILD AND USE
40 OF FALSE IDENTIFICATION BY A CHILD SHALL RESULT IN THE FORFEITURE OF ANY
41 TOBACCO PRODUCT AND/OR DRIVER'S LICENSE, NON-DRIVER'S IDENTIFICATION
42 CARD ISSUED BY A STATE OR FEDERAL GOVERNMENTAL AGENCY OR PASSPORT IN HIS
43 OR HER POSSESSION TO ANY ENFORCEMENT OFFICER, POLICE OFFICER DESIGNATED
44 BY SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW OR A PEACE OFFICER DESIG-
45 NATED BY SUBDIVISION FOUR OF SECTION 2.10 OF SUCH LAW UPON REQUEST, AND
46 SUCH CHILD SHALL BE LIABLE FOR A FINE OF NOT MORE THAN FIFTY DOLLARS
47 AND/OR AN APPROPRIATE AMOUNT OF COMMUNITY SERVICE NOT TO EXCEED EIGHT
48 HOURS.

49 S 4. This act shall take effect immediately.