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

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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:

Section 1. Section 260.21 of the penal law, as added by chapter 362 of the laws of 1992, the opening paragraph of subdivision 1 as amended by chapter 478 of the laws of 1996, is amended to read as follows:

S 260.21 Unlawfully dealing with a child in the second degree.

A person is guilty of unlawfully dealing with a child in the second degree when:

1. Being an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away, he OR SHE permits a child less than sixteen years old to enter or remain in such place unless:

(a) The child is accompanied by his OR HER parent, guardian or an adult authorized by a parent or guardian; or

(b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or

(c) Otherwise permitted by law to do so; or

(d) The establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are sold, served, given away or consumed at such establishment during such period. The state liquor authority shall be notified in writing by the licensee of such establishment, of the intended closing of such establishment, to conduct any such activity or entertainment, not less than ten days prior to any such closing; or

2. He OR SHE marks the body of a child less than eighteen years old 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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3. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

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

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

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

S 260.22 UNLAWFUL SALE OF TOBACCO PRODUCTS TO A CHILD.

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

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

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

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

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

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

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

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

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

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

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

HE OR SHE PRESENTS OR OFFERS TO ANOTHER PERSON A DRIVER'S LICENSE, NON-DRIVER'S IDENTIFICATION CARD ISSUED BY A STATE OR FEDERAL GOVERNMENTAL AGENCY OR PASSPORT WHICH IS FALSE, FRAUDULENT OR NOT ACTUALLY HIS OR HER OWN DRIVER'S LICENSE, NON-DRIVER'S IDENTIFICATION CARD OR PASSPORT, FOR THE PURPOSE OF ATTEMPTING TO PURCHASE OR POSSESS A TOBACCO PRODUCT.

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

S 4. This act shall take effect immediately.