

10899

I N A S S E M B L Y

April 29, 2010

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

AN ACT to amend the penal law and the alcoholic beverage control law, in
relation to imposing additional fines when a person fails to pay his
or her fines or fails to complete counseling or community service when
mandated

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

1 Section 1. Section 221.05 of the penal law, as added by chapter 360 of
2 the laws of 1977, is amended to read as follows:
3 S 221.05 Unlawful possession of marihuana.
4 1. A person is guilty of unlawful possession of marihuana when he OR
5 SHE knowingly and unlawfully possesses marihuana.
6 Unlawful possession of marihuana is a violation punishable only by a
7 fine of not more than one hundred dollars. However, where the defendant
8 has previously been convicted of an offense defined in this article or
9 article [220] TWO HUNDRED TWENTY of this chapter, committed within the
10 three years immediately preceding such violation, it shall be punishable
11 (a) only by a fine of not more than two hundred dollars, if the defend-
12 ant was previously convicted of one such offense committed during such
13 period, and (b) by a fine of not more than two hundred fifty dollars or
14 a term of imprisonment not in excess of fifteen days or both, if the
15 defendant was previously convicted of two such offenses committed during
16 such period.
17 2. IN THE EVENT A PERSON WHO HAS BEEN CONVICTED OF UNLAWFUL POSSESSION
18 OF MARIHUANA FAILS TO PAY SUCH FINE AS MAY BE SET BY THE COURT WITHIN
19 ONE HUNDRED TWENTY DAYS AFTER THE DECISION OF THE COURT, THEN IN ADDI-
20 TION TO SUCH FINE, THE COURT MAY IMPOSE AN ADDITIONAL FINE OF NOT MORE
21 THAN TWO HUNDRED FIFTY DOLLARS.
22 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, SECTION
23 120.20 OF THE CRIMINAL PROCEDURE LAW SHALL APPLY IN THE EVENT A PERSON
24 WHO HAS BEEN CHARGED WITH A VIOLATION OF THIS SECTION FAILS TO APPEAR
25 BEFORE THE COURT ON THE DATE SET BY THE ACCUSATORY INSTRUMENT; ARTICLES
26 FOUR HUNDRED TEN AND FOUR HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW

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

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1 AND ARTICLE TWENTY OF THE JUDICIARY LAW SHALL APPLY IN THE EVENT A
2 PERSON WHO HAS BEEN FOUND TO HAVE VIOLATED THIS SECTION FAILS TO PAY
3 SUCH FINE AS MAY BE SET BY THE COURT WITHIN ONE HUNDRED TWENTY DAYS
4 AFTER THE DECISION OF THE COURT.

5 S 2. Subdivision 3 of section 65-c of the alcoholic beverage control
6 law, as amended by chapter 137 of the laws of 2001, is amended to read
7 as follows:

8 3. (A) Any person who unlawfully possesses an alcoholic beverage with
9 intent to consume may be summoned before and examined by a court having
10 jurisdiction of that charge; provided, however, that nothing contained
11 herein shall authorize, or be construed to authorize, a peace officer as
12 defined in subdivision thirty-three of section 1.20 of the criminal
13 procedure law or a police officer as defined in subdivision thirty-four
14 of section 1.20 of such law to arrest a person who unlawfully possesses
15 an alcoholic beverage with intent to consume. If a determination is made
16 sustaining such charge the court may impose a fine not exceeding fifty
17 dollars and/or completion of an alcohol awareness program established
18 pursuant to section 19.25 of the mental hygiene law and/or an appropri-
19 ate amount of community service not to exceed thirty hours.

20 (B) IN THE EVENT A PERSON WHO HAS BEEN DETERMINED TO HAVE UNLAWFULLY
21 POSSESSED AN ALCOHOLIC BEVERAGE WITH INTENT TO CONSUME FAILS TO PAY SUCH
22 FINE AS MAY BE SET BY THE COURT, OR COMPLETE AN ALCOHOL AWARENESS
23 PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE MENTAL HYGIENE LAW
24 AND/OR COMMUNITY SERVICE AS REQUIRED BY THE COURT WITHIN ONE HUNDRED
25 TWENTY DAYS AFTER THE DECISION OF THE COURT, THEN IN ADDITION TO SUCH
26 FINE, PROGRAM AND/OR COMMUNITY SERVICE, THE COURT MAY IMPOSE AN ADDI-
27 TIONAL FINE OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS.

28 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,
29 SECTION 120.20 OF THE CRIMINAL PROCEDURE LAW SHALL APPLY IN THE EVENT A
30 PERSON WHO HAS BEEN ALLEGED TO HAVE VIOLATED THIS SECTION FAILS TO
31 APPEAR BEFORE THE COURT ON THE DATE SET BY THE COURT; ARTICLES FOUR
32 HUNDRED TEN AND FOUR HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW AND
33 ARTICLE TWENTY OF THE JUDICIARY LAW SHALL APPLY IN THE EVENT A PERSON
34 WHO HAS BEEN FOUND TO HAVE UNLAWFULLY POSSESSED AN ALCOHOLIC BEVERAGE
35 WITH INTENT TO CONSUME IN VIOLATION OF THIS SECTION FAILS TO PAY SUCH
36 FINE AS MAY BE SET BY THE COURT, OR COMPLETE AN ALCOHOL AWARENESS
37 PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE MENTAL HYGIENE LAW
38 AND/OR COMMUNITY SERVICE AS REQUIRED BY THE COURT, WITHIN ONE HUNDRED
39 TWENTY DAYS AFTER THE DECISION OF THE COURT.

40 S 3. This act shall take effect on the ninetieth day after it shall
41 have become a law.