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

1782

2009-2010 Regular Sessions

I N A S S E M B L Y

January 12, 2009

Introduced by M. of A. CALHOUN, ALFANO -- Multi-Sponsored by -- M. of A. CROUCH, OAKS, TEDISCO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to sale or display to minors of indecent materials

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

Section 1. The penal law is amended by adding a new section 260.35 to read as follows:

S 260.35 SALE OR DISPLAY TO MINORS OF INDECENT MATERIALS.

A. FOR THE PURPOSES OF THIS SECTION:

1. "DESCRIPTION OR DEPICTIONS OF ILLICIT SEX OR SEXUAL IMMORALITY" SHALL MEAN:

(A) HUMAN GENITALS IN A STATE OF SEXUAL STIMULATION OR AROUSAL;

(B) ACTS OF HUMAN MASTURBATION, SEXUAL INTERCOURSE OR SODOMY; AND

(C) FONDLING OR OTHER EROTIC TOUCHING OF HUMAN GENITALS, PUBIC REGION, BUTTOCK OR FEMALE BREAST.

2. "NUDE OR PARTIALLY DENUDED FIGURES" SHALL MEAN:

(A) LESS THAN COMPLETELY AND OPAQUELY COVERED: HUMAN GENITALS, PUBIC REGIONS, BUTTOCK AND IMMEDIATELY ABOVE THE TOP OF THE AREOLA; AND

(B) HUMAN MALE GENITALS IN A DISCERNIBLY TURGID STATE, EVEN IF COMPLETELY AND OPAQUELY COVERED.

3. "KNOWINGLY" SHALL MEAN HAVING KNOWLEDGE OF THE CHARACTER AND CONTENT OF THE PUBLICATION OR FAILURE ON NOTICE TO EXERCISE REASONABLE INSPECTION WHICH WOULD DISCLOSE THE CONTENT AND CHARACTER OF THE SAME.

4. "PERSON" SHALL MEAN AN INDIVIDUAL, FIRM, CORPORATION, COPARTNERSHIP, JOINT VENTURE, JOINT ADVENTURERS OR UNINCORPORATED ASSOCIATION, AND THE PLURAL AS WELL AS THE SINGULAR NUMBER.

B. IT SHALL BE UNLAWFUL FOR ANY PERSON TO WILFULLY OR KNOWINGLY ENGAGE IN THE BUSINESS OF SELLING, LENDING, GIVING AWAY, SHOWING, ADVERTISING FOR SALE OR DISTRIBUTING TO ANY PERSON UNDER THE AGE OF SEVENTEEN YEARS

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

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OR WHO HAS IN HIS POSSESSION WITH INTENT TO ENGAGE IN THE SAID BUSINESS OR TO OTHERWISE OFFER FOR SALE OR COMMERCIAL DISTRIBUTION TO ANY INDIVIDUAL UNDER THE AGE OF SEVENTEEN YEARS OR WHO SHALL DISPLAY AT NEWSSTANDS OR ANY OTHER BUSINESS ESTABLISHMENT FREQUENTED BY MINORS UNDER THE AGE OF SEVENTEEN YEARS OR WHERE SAID MINORS ARE OR MAY BE INVITED AS A PART OF THE GENERAL PUBLIC ANY MOTION PICTURE, OR ANY STILL PICTURE OR PHOTOGRAPH OR ANY BOOK, POCKET BOOK, PAMPHLET OR MAGAZINE, THE COVER OR CONTENT OF WHICH EXPLOITS, IS DEVOTED TO, OR IS PRINCIPALLY MADE UP OF DESCRIPTIONS OR DEPICTIONS OF ILLICIT SEX OR SEXUAL IMMORALITY OR WHICH IS LEWD, LASCIVIOUS OR INDECENT OR WHICH CONSISTS OF PICTURES OF NUDE OR PARTIALLY DENUDED FIGURES POSED OR PRESENTED IN A MANNER TO PROVOKE OR AROUSE LUST OR PASSION OR TO EXPLOIT SEX, LUST OR PERVERSION FOR COMMERCIAL GAIN OR ANY ARTICLE OR INSTRUMENT CAPABLE OF INDECENT OR IMMORAL USE.

SALE OR DISPLAY TO MINORS OF INDECENT MATERIALS IS A CLASS A MISDEMEANOR.

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