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

4328

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

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

AN ACT to amend the penal law, in relation to prohibiting the possession of salvia divinorum by persons in New York state

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 article 222 to read as follows:

ARTICLE 222

POSSESSION OF SALVIA DIVINORUM

SECTION 222.00 POSSESSION OF SALVIA DIVINORUM.

S 222.00 POSSESSION OF SALVIA DIVINORUM.

1. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY SHALL POSSESS SALVIA DIVINORUM, COMMONLY KNOWN AS SALVIA WITHIN NEW YORK STATE, EXCEPT AS AUTHORIZED BY SUBDIVISION THREE OF THIS SECTION.

2. FOR PURPOSES OF THIS SECTION, THE TERM SALVIA DIVINORUM SHALL MEAN THE HERB FREQUENTLY REFERRED TO AS "SKA MARIA PASTORA" AND "DIVINER'S SAGE" WHICH IS A PERENNIAL HERB IN THE MINT FAMILY THAT RESEMBLES SAGE.

3. NOTHING IN THIS SECTION SHALL APPLY TO NONPRESCRIPTION OVER-THE-COUNTER DRUGS APPROVED OR REGULATED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION.

4. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT VIOLATES THE PROVISIONS OF THIS SECTION BY POSSESSING SALVIA DIVINORUM, SHALL BE SUBJECT TO A VIOLATION PUNISHABLE BY A FINE OF NOT MORE THAN FIFTY DOLLARS PER VIOLATION, RECOVERABLE IN AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICIPALITY OR POLITICAL SUBDIVISION.

5. IT SHALL BE A DEFENSE THAT ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT POSSESSED, DUE TO EITHER A RETAIL OR WHOLESALE PROMOTION, SALVIA DIVINO-

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

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RUM, AND SUCH PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY DID NOT HAVE KNOWLEDGE THAT IT WAS SALVIA DIVINORUM, AND SUCH KNOWLEDGE WAS NOT REASONABLY DISCOVERABLE.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.