

4738

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 5, 2009

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Introduced by M. of A. CLARK, ALFANO, ORTIZ -- Multi-Sponsored by -- M.  
of A. BARRA, CROUCH, FINCH, GABRYSZAK, LANCMAN, MAYERSOHN, McDONOUGH,  
McENENY, TOWNS, WALKER -- read once and referred to the Committee on  
Codes

AN ACT to amend the penal law, in relation to possession of gambling  
devices and promoting certain gambling activities

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

1     Section 1. Section 225.30 of the penal law, as amended by section 4 of  
2 part B of chapter 383 of the laws of 2001, subdivision c as added by  
3 chapter 498 of the laws of 2003, is amended to read as follows:  
4 S 225.30 Possession of a gambling device IN THE SECOND DEGREE.  
5     a. A person is guilty of possession of a gambling device IN THE SECOND  
6 DEGREE when, with knowledge of the character thereof, he or she manufac-  
7 tures, sells, transports, places or possesses, or conducts or negotiates  
8 any transaction affecting or designed to affect ownership, custody or  
9 use of:  
10     1. A slot machine, unless such possession is permitted pursuant to  
11 article nine-A of the general municipal law; or  
12     2. Any other gambling device, believing that the same is to be used in  
13 the advancement of unlawful gambling activity; or  
14     3. A coin operated gambling device with intent to use such device in  
15 the advancement of unlawful gambling activity.  
16     b. Possession of a slot machine shall not be unlawful where such  
17 possession and use is pursuant to a gaming compact, duly executed by the  
18 governor and an Indian tribe or Nation, under the Indian Gaming Regula-  
19 tory Act, as codified at 25 U.S.C. SSSS 2701-2721 and 18 U.S.C. SSSS  
20 1166-1168, where the use of such slot machine or machines is consistent  
21 with such gaming compact and where the state receives a negotiated  
22 percentage of the net drop (defined as gross money wagered after payout,  
23 but before expenses) from any such slot machine or machines.

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

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1 c. Transportation and possession of a slot machine shall not be unlaw-  
2 ful where such transportation and possession is necessary to facilitate  
3 the training of persons in the repair and reconditioning of such  
4 machines as are used or are to be used for operations in those casinos  
5 authorized pursuant to a tribal-state compact as provided for pursuant  
6 to section eleven hundred seventy-two of title fifteen of the United  
7 States Code in the state of New York.

8 Possession of a gambling device IN THE SECOND DEGREE is a class A  
9 misdemeanor.

10 S 2. The penal law is amended by adding a new section 225.31 to read  
11 as follows:

12 S 225.31 POSSESSION OF A GAMBLING DEVICE IN THE FIRST DEGREE.

13 A. A PERSON IS GUILTY OF POSSESSION OF A GAMBLING DEVICE IN THE FIRST  
14 DEGREE WHEN, WITH KNOWLEDGE OF THE CHARACTER THEREOF, HE OR SHE MANUFAC-  
15 TURES, SELLS, TRANSPORTS, PLACES OR POSSESSES, OR CONDUCTS OR NEGOTIATES  
16 ANY TRANSACTION AFFECTING OR DESIGNED TO AFFECT OWNERSHIP, CUSTODY OR  
17 USE OF FIVE OR MORE OF ANY OF THE FOLLOWING DEVICES:

18 1. A SLOT MACHINE, UNLESS SUCH POSSESSION IS PERMITTED PURSUANT TO  
19 ARTICLE NINE-A OF THE GENERAL MUNICIPAL LAW; OR

20 2. ANY OTHER GAMBLING DEVICE, BELIEVING THAT THE SAME IS TO BE USED IN  
21 THE ADVANCEMENT OF UNLAWFUL GAMBLING ACTIVITY; OR

22 3. A COIN OPERATED GAMBLING DEVICE WITH INTENT TO USE SUCH DEVICE IN  
23 THE ADVANCEMENT OF UNLAWFUL GAMBLING ACTIVITY.

24 B. POSSESSION OF A SLOT MACHINE SHALL NOT BE UNLAWFUL WHERE SUCH  
25 POSSESSION AND USE IS PURSUANT TO A GAMING COMPACT, DULY EXECUTED BY THE  
26 GOVERNOR AND AN INDIAN TRIBE OR NATION, UNDER THE INDIAN GAMING REGULA-  
27 TORY ACT, AS CODIFIED AT 25 U.S.C. SSSS 2701-2721 AND 18 U.S.C. SSSS  
28 1166-1168, WHERE THE USE OF SUCH SLOT MACHINE OR MACHINES IS CONSISTENT  
29 WITH SUCH GAMING COMPACT AND WHERE THE STATE RECEIVES A NEGOTIATED  
30 PERCENTAGE OF THE NET DROP (DEFINED AS GROSS MONEY WAGERED AFTER PAYOUT,  
31 BUT BEFORE EXPENSES) FROM ANY SUCH SLOT MACHINE OR MACHINES.

32 C. TRANSPORTATION AND POSSESSION OF A SLOT MACHINE SHALL NOT BE UNLAW-  
33 FUL WHERE SUCH TRANSPORTATION AND POSSESSION IS NECESSARY TO FACILITATE  
34 THE TRAINING OF PERSONS IN THE REPAIR AND RECONDITIONING OF SUCH  
35 MACHINES AS ARE USED OR ARE TO BE USED FOR OPERATIONS IN THOSE CASINOS  
36 AUTHORIZED PURSUANT TO A TRIBAL-STATE COMPACT AS PROVIDED FOR PURSUANT  
37 TO SECTION ELEVEN HUNDRED SEVENTY-TWO OF TITLE FIFTEEN OF THE UNITED  
38 STATES CODE IN THE STATE OF NEW YORK.

39 POSSESSION OF A GAMBLING DEVICE IN THE FIRST DEGREE IS A CLASS E FELO-  
40 NY.

41 S 3. Subdivision 1 of section 225.32 of the penal law, as amended by  
42 chapter 346 of the laws of 1998, is amended to read as follows:

43 1. In any prosecution for possession of a gambling device specified in  
44 subdivision [one] A of section 225.30 OR IN SUBDIVISION A OF SECTION  
45 225.31 of this [chapter] ARTICLE, it is an affirmative defense that: (a)  
46 the slot machine possessed by the defendant was neither used nor  
47 intended to be used in the operation or promotion of unlawful gambling  
48 activity or enterprise and that such slot machine is an antique; for  
49 purposes of this section proof that a slot machine was manufactured  
50 prior to nineteen hundred forty-one shall be conclusive proof that such  
51 a machine is an antique; (b) the slot machine possessed by the defendant  
52 was manufactured or assembled by the defendant for the sole purpose of  
53 transporting such slot machine in a sealed container to a jurisdiction  
54 outside this state for purposes which are lawful in such outside juris-  
55 diction; (c) the slot machine possessed by the defendant was neither  
56 used nor intended to be used in the operation or promotion of unlawful

1 gambling activity or enterprise, is more than thirty years old, and such  
2 possession takes place in the defendant's home; or (d) the slot machine  
3 was transported into this state in a sealed container for the purpose of  
4 product development, research, or additional manufacture or assembly,  
5 and such slot machine will be or has been transported in a sealed  
6 container to a jurisdiction outside of this state for purposes which are  
7 lawful in such outside jurisdiction.

8 S 4. Section 225.10 of the penal law is amended to read as follows:

9 S 225.10 Promoting gambling in the first degree.

10 A person is guilty of promoting gambling in the first degree when he  
11 knowingly advances or profits from unlawful gambling activity by:

12 1. Engaging in bookmaking to the extent that he OR SHE receives or  
13 accepts in any one day more than five bets totaling more than five thou-  
14 sand dollars; or

15 2. Receiving, in connection with a lottery or policy scheme or enter-  
16 prise, (a) money or written records from a person other than a player  
17 whose chances or plays are represented by such money or records, or (b)  
18 more than five hundred dollars in any one day of money played in such  
19 scheme or enterprise; OR

20 3. RECEIVING FROM ANY UNLAWFUL GAMBLING ACTIVITIES, OTHER THAN THOSE  
21 DESCRIBED IN SUBDIVISION ONE OR TWO OF THIS SECTION, MORE THAN FIVE  
22 THOUSAND DOLLARS IN ANY ONE DAY.

23 Promoting gambling in the first degree is a class E felony.

24 S 5. This act shall take effect on the first of November next succeed-  
25 ing the date on which it shall have become a law.