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

5129

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Housing

AN ACT to amend the real property law and the real property actions and proceedings law, in relation to facilitating the elimination of illegal businesses from residential dwellings

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

Section 1. Section 231 of the real property law, as amended by chapter 203 of the laws of 1980, subdivisions 5 and 6 as added by chapter 206 of the laws of 1980, is amended to read as follows:

S 231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose. 1. Whenever the lessee OF ANY PREMISES, or occupant OF SUCH PREMISES other than the owner [of any building or premises], shall use or occupy [the same,] SUCH PREMISES or any part thereof[,] for any illegal trade, manufacture or other business, the lease or agreement for the letting or occupancy of such [building or] premises[,] or any part thereof shall thereupon become void, and the [landlord of such lessee or occupant] OWNER may enter upon the premises so let or occupied.

2. The owner of [real property] ANY PREMISES, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

3. For the purposes of this section, THE FOLLOWING SHALL BE PRESUMPTIVE EVIDENCE OF THE USE OF A DWELLING, AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR OF THE MULTIPLE DWELLING LAW, FOR AN ILLEGAL TRADE OR BUSINESS, AND OF THE OWNER OF SUCH DWELLING'S KNOWLEDGE OF SUCH USE:

(A) two or more convictions of any person or persons [had,] within a period of one year, for any of the offenses described in [section

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

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230.00, 230.05, 230.20, 230.25, 230.30, or 230.40] ARTICLE TWO HUNDRED THIRTY of the penal law, arising out of conduct engaged in at [the same premises consisting of a] SUCH dwelling [as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owners knowledge of the same.]; OR

(B) TWO OR MORE CONVICTIONS OF ANY PERSON OR PERSONS WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLE TWO HUNDRED TWENTY-FIVE OF THE PENAL LAW, ARISING OUT OF CONDUCT ENGAGED IN AT SUCH DWELLING; OR

(C) TWO OR MORE CONVICTIONS OF ANY PERSON OR PERSONS WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN SUBDIVISION ONE OF SECTION 220.06, SUBDIVISION THIRTEEN OF SECTION 220.09, SUBDIVISIONS ONE THROUGH SEVEN OF SECTION 220.16, SECTION 220.31, 220.34, 220.39, 220.41, 220.43, SUBDIVISION TWO OR THREE OF SECTION 220.50, SECTION 220.55 (WHERE SUCH CONVICTION IS BASED UPON THE COMMISSION OF AN OFFENSE DESCRIBED IN SUBDIVISION TWO OR THREE OF SECTION 220.50), 221.35, 221.40, 221.45, 221.50 OR 221.55 OF THE PENAL LAW, ARISING OUT OF CONDUCT ENGAGED IN AT SUCH DWELLING.

4. [Any lease or agreement hereafter executed for the letting or occupancy of real property or any portion thereof, to be used by the lessee as a residence, which contains therein a provision pledging personal property exempt by law from levy and sale by virtue of an execution, as security for the payment of rent due or to become due thereunder, is void as to such provision.

5. The attorney general may commence an action or proceeding in the supreme court to enjoin the continued unlawful trade, manufacture or business in such premises.

5. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.

6. Any] THE ATTORNEY GENERAL, OR AN owner or tenant, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling, of any premises within two hundred feet of [the demised real property] PREMISES USED FOR ANY UNLAWFUL TRADE, MANUFACTURE OR OTHER BUSINESS, may commence an action or proceeding in supreme court to enjoin the continued unlawful trade, manufacture or other business in such premises.

S 2. The real property law is amended by adding a new section 238-a to read as follows:

S 238-A. LEASE PROVISION PLEDGING PERSONAL PROPERTY AS SECURITY, WHEN VOID. ANY LEASE OR AGREEMENT EXECUTED FOR THE LETTING OR OCCUPANCY OF REAL PROPERTY OR ANY PORTION THEREOF, TO BE USED BY THE LESSEE AS A RESIDENCE, WHICH CONTAINS THEREIN A PROVISION PLEDGING PERSONAL PROPERTY EXEMPT BY LAW FROM LEVY AND SALE BY VIRTUE OF AN EXECUTION, AS SECURITY FOR THE PAYMENT OF RENT DUE OR TO BECOME DUE THEREUNDER, IS VOID AS TO SUCH PROVISION.

S 3. Subdivisions 2 and 3 of section 715 of the real property actions and proceedings law, subdivision 2 as added by chapter 494 of the laws of 1976 and subdivision 3 as added by chapter 206 of the laws of 1980, are amended to read as follows:

2. For purposes of this section, two or more convictions of any person or persons [had,] within a period of one year, for any of the offenses described in [section 230.00, 230.05, 230.20, 230.25, 230.30 or 230.40] ARTICLE TWO HUNDRED THIRTY of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

3. For the purposes of this section, THE FOLLOWING SHALL BE PRESUMPTIVE EVIDENCE OF THE USE OR OCCUPATION OF A DWELLING, AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR OF THE MULTIPLE DWELLING LAW, FOR AN ILLEGAL TRADE, MANUFACTURE OR BUSINESS:

(A) two or more convictions of any person or persons [had,] within a period of one year, for any of the offenses described in [section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40] ARTICLE TWO HUNDRED TWENTY-FIVE of the penal law, arising out of conduct engaged in at [the same premises consisting of a] SUCH dwelling [as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.]; OR

(B) TWO OR MORE CONVICTIONS OF ANY PERSON OR PERSONS WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN SUBDIVISION ONE OF SECTION 220.06, SUBDIVISION THIRTEEN OF SECTION 220.09, SUBDIVISIONS ONE THROUGH SEVEN OF SECTION 220.16, SECTION 220.31, 220.34, 220.39, 220.41, 220.43, SUBDIVISION TWO OR THREE OF SECTION 220.50, SECTION 220.55 (WHERE SUCH CONVICTION IS BASED UPON THE COMMISSION OF AN OFFENSE DESCRIBED IN SUBDIVISION TWO OR THREE OF SECTION 220.50), 221.35, 221.40, 221.45, 221.50 OR 221.55 OF THE PENAL LAW, ARISING OUT OF CONDUCT ENGAGED IN AT SUCH DWELLING.

S 4. This act shall take effect immediately.