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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. COLTON, LANCMAN, ERRIGO, WALKER -- Multi-Sponsored by -- M. of A. HIKIND, MENG, TOWNS, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to criminalizing the theft of motor fuel from a motor vehicle

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 165.12 to read as follows:

S 165.12 THEFT OF MOTOR FUEL.

1. A PERSON IS GUILTY OF THEFT OF MOTOR FUEL WHEN, KNOWING THAT HE OR SHE DOES NOT HAVE THE CONSENT OF THE OWNER OF A VEHICLE TO DO SO, HE OR SHE SIPHONS, DRAINS OR OTHERWISE REMOVES MOTOR FUEL FROM THE FUEL TANK OF SUCH VEHICLE OR FROM A STORAGE CONTAINER LOCATED IN OR ON SUCH VEHICLE. A PERSON WHO ENGAGES IN ANY SUCH CONDUCT WITHOUT THE CONSENT OF THE OWNER OF THE VEHICLE IS PRESUMED TO KNOW THAT HE OR SHE DOES NOT HAVE SUCH CONSENT.

2. IT IS A DEFENSE TO SUCH CHARGE THAT SUCH PERSON WAS AUTHORIZED TO REMOVE THE MOTOR FUEL PURSUANT TO LAW OR BY PERMISSION OF THE OWNER.

3. AS USED IN THIS SECTION: A. "MOTOR VEHICLE" MEANS ANY VEHICLE PROPELLED IN WHOLE OR IN PART BY COMBUSTION OR OTHER USE OF MOTOR FUEL, INCLUDING VEHICLES PERMITTED UNDER THE VEHICLE AND TRAFFIC LAW TO OPERATE ON PUBLIC HIGHWAYS, BOATS, SNOWMOBILES, JET-SKIS, OFF-ROAD VEHICLES, ALL-TERRAIN VEHICLES, ROAD BUILDING MACHINERY, POWER SHOVELS, TRACTOR CRANES AND TRACTORS USED EXCLUSIVELY FOR AGRICULTURAL PURPOSES; AND

B. "MOTOR FUEL" MEANS ANY PETROLEUM PRODUCT WHICH IS USED FOR THE PROPULSION OF ANY MOTOR VEHICLE, AND INCLUDES GASOLINE, BENZOL OR OTHER PRODUCT, EXCEPT KEROSENE AND CRUDE OIL, WHICH IS SUITABLE FOR USE IN OPERATION OF A MOTOR VEHICLE ENGINE, PROVIDED THAT IF KEROSENE OR CRUDE OIL IS COMPOUNDED OR MIXED WITH ANY OTHER PRODUCT OR PRODUCTS, AND THE RESULTING COMPOUND OR MIXTURE IS SUITABLE FOR USE IN THE OPERATION OF

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

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ANY SUCH MOTOR VEHICLE ENGINE, SUCH RESULTING COMPOUND OR MIXTURE IN ITS ENTIRETY SHALL BE A "MOTOR FUEL".

THEFT OF MOTOR FUEL IS A CLASS E FELONY. WHEN A PERSON IS CONVICTED OF AN OFFENSE AS DEFINED IN THIS SECTION, THE COURT SHALL IMPOSE A FINE OF ONE THOUSAND DOLLARS AND MAY IMPOSE A DEFINITE SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FOUR OF SECTION 70.00 OF THIS CHAPTER; OR IF SUCH PERSON HAS PREVIOUSLY BEEN CONVICTED OF AN OFFENSE AS DEFINED IN THIS SECTION, THE COURT SHALL IMPOSE A FINE OF TWO THOUSAND DOLLARS AND MAY IMPOSE A DEFINITE SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FOUR OF SECTION 70.00 OF THIS CHAPTER.

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