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

2505

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. CLARK, ORTIZ -- Multi-Sponsored by -- M. of A. CROUCH, FINCH, GABRYSZAK, LANCMAN, MAYERSOHN, McDONOUGH, McENENY, TOWNS -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 225.30 of the penal law, as amended by section 4 of part B of chapter 383 of the laws of 2001, subdivision c as added by chapter 498 of the laws of 2003 and subdivision d as added by chapter 321 of the laws of 2010, is amended to read as follows:

S 225.30 Possession of a gambling device IN THE SECOND DEGREE.

a. A person is guilty of possession of a gambling device IN THE SECOND DEGREE when, with knowledge of the character thereof, he or she manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

1. A slot machine, unless such possession is permitted pursuant to article nine-A of the general municipal law; or

2. Any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity; or

3. A coin operated gambling device with intent to use such device in the advancement of unlawful gambling activity.

b. Possession of a slot machine shall not be unlawful where such possession and use is pursuant to a gaming compact, duly executed by the governor and an Indian tribe or Nation, under the Indian Gaming Regulatory Act, as codified at 25 U.S.C. SSSS 2701-2721 and 18 U.S.C. SSSS 1166-1168, where the use of such slot machine or machines is consistent with such gaming compact and where the state receives a negotiated percentage of the net drop (defined as gross money wagered after payout, 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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c. Transportation and possession of a slot machine shall not be unlawful where such transportation and possession is necessary to facilitate the training of persons in the repair and reconditioning of such machines as are used or are to be used for operations in those casinos authorized pursuant to a tribal-state compact as provided for pursuant to section eleven hundred seventy-two of title fifteen of the United States Code in the state of New York.

d. Transportation and possession of a slot machine shall not be unlawful where such slot machine was transported into this state in a sealed container and possessed for the purpose of product development, research, or additional manufacture or assembly, and such slot machine will be or has been transported in a sealed container to a jurisdiction outside of this state for purposes which are lawful in such outside jurisdiction.

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

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

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

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

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

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

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

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

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

POSSESSION OF A GAMBLING DEVICE IN THE FIRST DEGREE IS A CLASS E FELONY.

S 3. Subdivision 1 of section 225.32 of the penal law, as amended by chapter 321 of the laws of 2010, is amended to read as follows:

1. In any prosecution for possession of a gambling device specified in subdivision [one] A of section 225.30 OR IN SUBDIVISION A OF SECTION 225.31 of this article, it is an affirmative defense that: (a) the slot machine possessed by the defendant was neither used nor intended to be used in the operation or promotion of unlawful gambling activity or enterprise and that such slot machine is an antique; for purposes of this section proof that a slot machine was manufactured prior to nine-

teen hundred forty-one shall be conclusive proof that such a machine is an antique; (b) the slot machine possessed by the defendant was manufactured or assembled by the defendant for the sole purpose of transporting such slot machine in a sealed container to a jurisdiction outside this state for purposes which are lawful in such outside jurisdiction; or (c) the slot machine possessed by the defendant was neither used nor intended to be used in the operation or promotion of unlawful gambling activity or enterprise, is more than thirty years old, and such possession takes place in the defendant's home.

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

S 225.10 Promoting gambling in the first degree.

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

1. Engaging in bookmaking to the extent that he OR SHE receives or accepts in any one day more than five bets totaling more than five thousand dollars; or

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

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

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

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.