

4508

2013-2014 Regular Sessions

I N A S S E M B L Y

February 5, 2013

Introduced by M. of A. SCHIMMINGER, GIGLIO, HAWLEY, JOHNS, RA -- Multi-Sponsored by -- M. of A. BARCLAY, CERETTO, CORWIN, GUNTHER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the alcoholic beverage control law, in relation to imposing additional fines when a person fails to pay his or her fines or fails to complete counseling or community service when mandated

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

1 Section 1. Section 221.05 of the penal law, as added by chapter 360 of
2 the laws of 1977, is amended to read as follows:
3 S 221.05 Unlawful possession of marihuana.
4 1. A person is guilty of unlawful possession of marihuana when he OR
5 SHE knowingly and unlawfully possesses marihuana.
6 Unlawful possession of marihuana is a violation punishable only by a
7 fine of not more than one hundred dollars. However, where the defendant
8 has previously been convicted of an offense defined in this article or
9 article [220] TWO HUNDRED TWENTY of this chapter, committed within the
10 three years immediately preceding such violation, it shall be punishable
11 (a) only by a fine of not more than two hundred dollars, if the defend-
12 ant was previously convicted of one such offense committed during such
13 period, and (b) by a fine of not more than two hundred fifty dollars or
14 a term of imprisonment not in excess of fifteen days or both, if the
15 defendant was previously convicted of two such offenses committed during
16 such period.
17 2. IN THE EVENT A PERSON WHO HAS BEEN CONVICTED OF UNLAWFUL POSSESSION
18 OF MARIHUANA FAILS TO PAY SUCH FINE AS MAY BE SET BY THE COURT WITHIN
19 ONE HUNDRED TWENTY DAYS AFTER THE DECISION OF THE COURT, THEN IN ADDI-
20 TION TO SUCH FINE, THE COURT MAY IMPOSE AN ADDITIONAL FINE OF NOT MORE
21 THAN TWO HUNDRED FIFTY DOLLARS.

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

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1 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, SECTION
2 120.20 OF THE CRIMINAL PROCEDURE LAW SHALL APPLY IN THE EVENT A PERSON
3 WHO HAS BEEN CHARGED WITH A VIOLATION OF THIS SECTION FAILS TO APPEAR
4 BEFORE THE COURT ON THE DATE SET BY THE ACCUSATORY INSTRUMENT; ARTICLES
5 FOUR HUNDRED TEN AND FOUR HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW
6 AND ARTICLE TWENTY OF THE JUDICIARY LAW SHALL APPLY IN THE EVENT A
7 PERSON WHO HAS BEEN FOUND TO HAVE VIOLATED THIS SECTION FAILS TO PAY
8 SUCH FINE AS MAY BE SET BY THE COURT WITHIN ONE HUNDRED TWENTY DAYS
9 AFTER THE DECISION OF THE COURT.

10 S 2. Subdivision 3 of section 65-c of the alcoholic beverage control
11 law, as amended by chapter 137 of the laws of 2001, is amended to read
12 as follows:

13 3. (A) Any person who unlawfully possesses an alcoholic beverage with
14 intent to consume may be summoned before and examined by a court having
15 jurisdiction of that charge; provided, however, that nothing contained
16 herein shall authorize, or be construed to authorize, a peace officer as
17 defined in subdivision thirty-three of section 1.20 of the criminal
18 procedure law or a police officer as defined in subdivision thirty-four
19 of section 1.20 of such law to arrest a person who unlawfully possesses
20 an alcoholic beverage with intent to consume. If a determination is made
21 sustaining such charge the court may impose a fine not exceeding fifty
22 dollars and/or completion of an alcohol awareness program established
23 pursuant to section 19.25 of the mental hygiene law and/or an appropri-
24 ate amount of community service not to exceed thirty hours.

25 (B) IN THE EVENT A PERSON WHO HAS BEEN DETERMINED TO HAVE UNLAWFULLY
26 POSSESSED AN ALCOHOLIC BEVERAGE WITH INTENT TO CONSUME FAILS TO PAY SUCH
27 FINE AS MAY BE SET BY THE COURT, OR COMPLETE AN ALCOHOL AWARENESS
28 PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE MENTAL HYGIENE LAW
29 AND/OR COMMUNITY SERVICE AS REQUIRED BY THE COURT WITHIN ONE HUNDRED
30 TWENTY DAYS AFTER THE DECISION OF THE COURT, THEN IN ADDITION TO SUCH
31 FINE, PROGRAM AND/OR COMMUNITY SERVICE, THE COURT MAY IMPOSE AN ADDI-
32 TIONAL FINE OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS.

33 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,
34 SECTION 120.20 OF THE CRIMINAL PROCEDURE LAW SHALL APPLY IN THE EVENT A
35 PERSON WHO HAS BEEN ALLEGED TO HAVE VIOLATED THIS SECTION FAILS TO
36 APPEAR BEFORE THE COURT ON THE DATE SET BY THE COURT; ARTICLES FOUR
37 HUNDRED TEN AND FOUR HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW AND
38 ARTICLE TWENTY OF THE JUDICIARY LAW SHALL APPLY IN THE EVENT A PERSON
39 WHO HAS BEEN FOUND TO HAVE UNLAWFULLY POSSESSED AN ALCOHOLIC BEVERAGE
40 WITH INTENT TO CONSUME IN VIOLATION OF THIS SECTION FAILS TO PAY SUCH
41 FINE AS MAY BE SET BY THE COURT, OR COMPLETE AN ALCOHOL AWARENESS
42 PROGRAM ESTABLISHED PURSUANT TO SECTION 19.25 OF THE MENTAL HYGIENE LAW
43 AND/OR COMMUNITY SERVICE AS REQUIRED BY THE COURT, WITHIN ONE HUNDRED
44 TWENTY DAYS AFTER THE DECISION OF THE COURT.

45 S 3. This act shall take effect on the ninetieth day after it shall
46 have become a law.