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

7195

I N S E N A T E

May 5, 2014

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the alcoholic beverage control law, in relation to prohibiting the sale of powdered alcohol and prohibiting the possession of powdered distilled alcohol by persons under the age of twenty-one

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

Section 1. The alcoholic beverage control law is amended by adding a new section 117-c to read as follows:

S 117-C. SALE OF POWDERED DISTILLED ALCOHOL PROHIBITED. 1. NO PERSON, CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY SHALL KNOWINGLY SELL OR OFFER FOR SALE POWDERED DISTILLED ALCOHOL.

2. A VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE AN OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS. A VIOLATION OF THE PROVISIONS OF THIS SECTION AFTER HAVING BEEN PREVIOUSLY CONVICTED OF SUCH AN OFFENSE WITHIN THE PREVIOUS FIVE YEARS SHALL BE A CLASS B MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN TEN THOUSAND DOLLARS.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE AUTHORITY FROM INSTITUTING PROCEEDINGS TO SUSPEND, CANCEL, OR REVOKE A LICENSE AS PROVIDED IN SECTION SEVENTEEN OF THIS CHAPTER.

S 2. Section 65-c of the alcoholic beverage control law, as added by chapter 592 of the laws of 1989, subdivision 3 as amended by chapter 137 of the laws of 2001, is amended to read as follows:

S 65-c. Unlawful possession of an alcoholic beverage OR POWDERED DISTILLED ALCOHOL with the intent to consume by persons under the age of twenty-one years. 1. Except as hereinafter provided, no person under the age of twenty-one years shall possess any alcoholic beverage, as defined in this chapter, OR POWDERED DISTILLED ALCOHOL with the intent to consume such beverage OR POWDERED DISTILLED ALCOHOL.

2. A person under the age of twenty-one years may possess any alcoholic beverage with intent to consume if the alcoholic beverage is given:

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

LBD14835-02-4

(a) to a person who is a student in a curriculum licensed or registered by the state education department and the student is required to taste or imbibe alcoholic beverages in courses which are a part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during class conducted pursuant to such curriculum; or

(b) to the person under twenty-one years of age by that person's parent or guardian.

3. Any person who unlawfully possesses an alcoholic beverage OR POWDERED DISTILLED ALCOHOL with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage OR POWDERED DISTILLED ALCOHOL with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars and/or completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law and/or an appropriate amount of community service not to exceed thirty hours.

4. No such determination shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction.

5. Whenever a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law shall observe a person under twenty-one years of age openly in possession of an alcoholic beverage as defined in this chapter, OR POWDERED DISTILLED ALCOHOL with the intent to consume such beverage OR POWDERED DISTILLED ALCOHOL in violation of this section, said officer may seize the beverage OR POWDERED DISTILLED ALCOHOL, and shall deliver it to the custody of his or her department.

6. Any alcoholic beverage OR POWDERED DISTILLED ALCOHOL seized in violation of this section is hereby declared a nuisance. The official to whom the beverage OR POWDERED DISTILLED ALCOHOL has been delivered shall, no earlier than three days following the return date for initial appearance on the summons, dispose of or destroy the alcoholic beverage OR POWDERED DISTILLED ALCOHOL seized or cause it to be disposed of or destroyed. Any person claiming ownership of an alcoholic beverage OR POWDERED DISTILLED ALCOHOL seized under this section may, on the initial return date of the summons or earlier on five days notice to the official or department in possession of the beverage OR POWDERED DISTILLED ALCOHOL, apply to the court for an order preventing the destruction or disposal of the alcoholic beverage OR POWDERED DISTILLED ALCOHOL seized and ordering the return of that beverage OR POWDERED DISTILLED ALCOHOL. The court may order the beverage OR POWDERED DISTILLED ALCOHOL returned if it is determined that return of the beverage OR POWDERED DISTILLED ALCOHOL would be in the interest of justice or that the beverage OR POWDERED DISTILLED ALCOHOL was improperly seized.

S 3. This act shall take effect immediately.