STATE OF NEW YORK

5372

2021-2022 Regular Sessions

IN SENATE

March 3, 2021

Introduced by Sens. OBERACKER, O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to posting private property

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 140.00 of the penal law, as amended by chapter 698 of the laws of 1979, is amended to read as follows:

5. "Enter or remain unlawfully." **(a)** A person "enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. A person who enters or remains in or about a school building without written permission from someone authorized to issue such permission or without a legitimate reason which includes a relationship involving custody of or responsibility for a pupil or student enrolled in the school or without legitimate business or a purpose relating to the operation of the school does so without license and privilege.

(b) An owner or lessee of any real property may post such property by placing identifying purple marks on trees or posts around the area to be

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

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posted. Each purple mark shall be: (i) a vertical line of at least eight inches in length and the bottom of the mark shall be no less than three feet nor more than five feet high. Such marks shall be placed no more than one hundred feet apart and shall be readily visible to any person approaching the property; or (ii) a post capped or otherwise marked on at least its top two inches. The bottom of the cap or mark shall be not less than three feet but not more than five feet six inches high. Posts so marked shall be placed not more than thirty-six feet apart and shall be readily visible to any person approaching the property. Prior to applying a cap or mark which is visible from both sides of a fence shared by different property owners or lessees, all such owners or lessees shall concur in the decision to post their own property. Nothing in this subdivision shall be construed to authorize the owner or lessee of any real property to place any purple marks on any tree or post or to install any post or fence if doing so would violate any applicable law, rule, ordinance, order, covenant, bylaw, declaration, regulation, restriction, contract, or instrument.

§ 2. The department of agriculture and markets shall conduct a public information campaign concerning the provisions of this act. Such department may prepare a brochure or disseminate the information through the agency website. Such information shall include the requirements set forth in paragraph (b) of subdivision 5 of section 140.00 of the penal law, including information regarding the size requirements of the markings as well as the manner in which the markings shall be displayed.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.