

5243

2015-2016 Regular Sessions

I N A S S E M B L Y

February 13, 2015

Introduced by M. of A. RODRIGUEZ -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the executive law, the penal law and the state finance
law, in relation to minority and women-owned businesses post
completion certification, duties of the director, the crime of scheme
to defraud and creating the minority and women-owned business fund

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

1 Section 1. The executive law is amended by adding a new section 314-a
2 to read as follows:

3 S 314-A. POST COMPLETION CERTIFICATION. THE DIRECTOR, IN COLLABORATION
4 WITH THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT AND THE
5 DEPARTMENT OF SMALL BUSINESS SERVICES, SHALL DEVELOP THE FOLLOWING
6 STANDARDIZED CERTIFICATION FORMS THAT MUST BE COMPLETED UNDER PENALTY OF
7 PERJURY PRIOR TO THE PRIME CONTRACTOR BEING PAID:

8 1. CERTIFICATION FROM A REPRESENTATIVE OF THE PRIME CONTRACTOR THAT
9 THE MINORITY OR WOMEN-OWNED BUSINESS IN FACT PERFORMED THE SERVICES OR
10 PROVIDED THE MATERIALS THAT THEY WERE CONTRACTED TO PERFORM OR PROVIDE;
11 AND

12 2. CERTIFICATION FROM A REPRESENTATIVE OF THE MINORITY OR WOMEN-OWNED
13 BUSINESS THAT THEY IN FACT PERFORMED THE SERVICES OR PROVIDED THE MATE-
14 RIALS THAT THEY WERE CONTRACTED TO PERFORM OR PROVIDE.

15 S 2. Paragraphs (f), (h) and (i) of subdivision 3 of section 311 of
16 the executive law, paragraph (f) as added by chapter 261 of the laws of
17 1988, paragraph (h) as amended and paragraph (i) as added by section 1
18 of part BB of chapter 59 of the laws of 2006, are amended and three new
19 paragraphs (j), (k) and (l) are added to read as follows:

20 (f) to prepare and update periodically a directory of certified minor-
21 ity and women-owned business enterprises which shall, wherever practica-
22 ble, be divided into categories of labor, services, supplies, equipment,
23 materials and recognized construction trades and which shall indicate

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

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1 areas or locations of the state where such enterprises are available to
2 perform services, AND TO USE THIS INFORMATION TO CREATE AN INTERNET
3 BASED, SEARCHABLE, CENTRALIZED STATE REGISTRY DETAILING CERTIFICATIONS,
4 DENIALS, AND ALL DOCUMENTS SUBMITTED DURING THE LIFE OF THE CONTRACT;

5 (h) notwithstanding the provisions of section two hundred ninety-six
6 of this chapter, to file a complaint pursuant to the provisions of
7 section two hundred ninety-seven of this chapter where the director has
8 knowledge that a contractor may have violated the provisions of para-
9 graph (a), (b) or (c) of subdivision one of section two hundred ninety-
10 six of this chapter where such violation is unrelated, separate or
11 distinct from the state contract as expressed by its terms; [and]

12 (i) to streamline the state certification process to accept federal
13 and municipal corporation certifications[.];

14 (J) TO PERFORM INSPECTIONS OF MINORITY OR WOMEN-OWNED BUSINESS'S PLACE
15 OF BUSINESS , WAREHOUSE OR STORAGE FACILITY TO CONFIRM THE EXISTENCE OF
16 A WORKFORCE, EQUIPMENT AND SUPPLIES;

17 (K) TO PERFORM INSPECTIONS OF FINANCIAL RECORDS OF MINORITY OR WOMEN-
18 OWNED BUSINESS'S FOR EVIDENCE OF FRAUD; AND

19 (L) TO ENSURE THE PROTECTION OF INDIVIDUALS WHO REPORT WRONGDOING ON
20 THE PART OF A MINORITY OR WOMEN-OWNED BUSINESS.

21 S 3. Section 190.60 of the penal law, as amended by chapter 491 of the
22 laws of 1992, subdivision 1 as amended by chapter 357 of the laws of
23 1996, is amended to read as follows:

24 S 190.60 Scheme to defraud in the [second] FIFTH degree.

25 1. A person is guilty of a scheme to defraud in the [second] FIFTH
26 degree when he engages in a scheme constituting a systematic ongoing
27 course of conduct with intent to defraud more than one person or to
28 obtain property from more than one person by false or fraudulent
29 pretenses, representations or promises, and so obtains property from one
30 or more of such persons.

31 2. In any prosecution under this section, it shall be necessary to
32 prove the identity of at least one person from whom the defendant so
33 obtained property, but it shall not be necessary to prove the identity
34 of any other intended victim.

35 Scheme to defraud in the [second] FIFTH degree is a class A misdemea-
36 nor.

37 S 4. Section 190.65 of the penal law, as amended by chapter 291 of the
38 laws of 2008, is amended to read as follows:

39 S 190.65 Scheme to defraud in the [first] FOURTH degree.

40 1. A person is guilty of a scheme to defraud in the [first] FOURTH
41 degree when he or she: (a) engages in a scheme constituting a systematic
42 ongoing course of conduct with intent to defraud ten or more persons or
43 to obtain property from ten or more persons by false or fraudulent
44 pretenses, representations or promises, and so obtains property from one
45 or more of such persons; or (b) engages in a scheme constituting a
46 systematic ongoing course of conduct with intent to defraud more than
47 one person or to obtain property from more than one person by false or
48 fraudulent pretenses, representations or promises, and so obtains prop-
49 erty with a value in excess of one thousand dollars from one or more
50 such persons; or (c) engages in a scheme constituting a systematic ongo-
51 ing course of conduct with intent to defraud more than one person, more
52 than one of whom is a vulnerable elderly person as defined in subdivi-
53 sion three of section [260.30] 260.31 of this chapter or to obtain prop-
54 erty from more than one person, more than one of whom is a vulnerable
55 elderly person as defined in subdivision three of section [260.30]
56 260.31 of this chapter, by false or fraudulent pretenses, representa-

1 tions or promises, and so obtains property from one or more such
2 persons.

3 2. In any prosecution under this section, it shall be necessary to
4 prove the identity of at least one person from whom the defendant so
5 obtained property, but it shall not be necessary to prove the identity
6 of any other intended victim, provided that in any prosecution under
7 paragraph (c) of subdivision one of this section, it shall be necessary
8 to prove the identity of at least one such vulnerable elderly person as
9 defined in subdivision three of section [260.30] 260.31 of this chapter.
10 Scheme to defraud in the [first] FOURTH degree is a class E felony.

11 S 5. The penal law is amended by adding three new sections 190.66,
12 190.67 and 190.68 to read as follows:

13 S 190.66 SCHEME TO DEFRAUD IN THE THIRD DEGREE.

14 1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE THIRD DEGREE WHEN
15 HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING
16 COURSE OF CONDUCT WITH INTENT TO DEFRAUD TWENTY-FIVE OR MORE PERSONS OR
17 TO OBTAIN PROPERTY FROM TWENTY-FIVE OR MORE PERSONS BY FALSE OR FRAUDU-
18 LENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY
19 FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUT-
20 ING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE
21 THAN ONE PERSON OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON BY FALSE
22 OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS
23 PROPERTY WITH A VALUE IN EXCESS OF THREE THOUSAND DOLLARS FROM ONE OR
24 MORE SUCH PERSONS.

25 2. IN ANY PROSECUTION UNDER THIS SECTION, IT SHALL BE NECESSARY TO
26 PROVE THE IDENTITY OF AT LEAST ONE PERSON FROM WHOM THE DEFENDANT SO
27 OBTAINED PROPERTY, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY
28 OF ANY OTHER INTENDED VICTIM.

29 SCHEME TO DEFRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

30 S 190.67 SCHEME TO DEFRAUD IN THE SECOND DEGREE.

31 1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE SECOND DEGREE WHEN
32 HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING
33 COURSE OF CONDUCT WITH INTENT TO DEFRAUD ONE HUNDRED OR MORE PERSONS OR
34 TO OBTAIN PROPERTY FROM ONE HUNDRED OR MORE PERSONS BY FALSE OR FRAUDU-
35 LENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY
36 FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUT-
37 ING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE
38 THAN ONE PERSON OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON BY FALSE
39 OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS
40 PROPERTY WITH A VALUE IN EXCESS OF FIFTY THOUSAND DOLLARS FROM ONE OR
41 MORE SUCH PERSONS.

42 2. IN ANY PROSECUTION UNDER THIS SECTION, IT SHALL BE NECESSARY TO
43 PROVE THE IDENTITY OF AT LEAST ONE PERSON FROM WHOM THE DEFENDANT SO
44 OBTAINED PROPERTY, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY
45 OF ANY OTHER INTENDED VICTIM.

46 SCHEME TO DEFRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

47 S 190.68 SCHEME TO DEFRAUD IN THE FIRST DEGREE.

48 1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE FIRST DEGREE WHEN
49 HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING
50 COURSE OF CONDUCT WITH INTENT TO DEFRAUD ONE THOUSAND OR MORE PERSONS OR
51 TO OBTAIN PROPERTY FROM ONE THOUSAND OR MORE PERSONS BY FALSE OR FRAUDU-
52 LENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY
53 FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUT-
54 ING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE
55 THAN ONE PERSON OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON BY FALSE
56 OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS

1 PROPERTY WITH A VALUE IN EXCESS OF ONE MILLION DOLLARS FROM ONE OR MORE
2 SUCH PERSONS.

3 2. IN ANY PROSECUTION UNDER THIS SECTION, IT SHALL BE NECESSARY TO
4 PROVE THE IDENTITY OF AT LEAST ONE PERSON FROM WHOM THE DEFENDANT SO
5 OBTAINED PROPERTY, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY
6 OF ANY OTHER INTENDED VICTIM.

7 SCHEME TO DEFRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

8 S 6. Paragraph c of subdivision 1 of section 80.00 of the penal law,
9 as amended by section 27 of subpart A of part H of chapter 55 of the
10 laws of 2014, is amended and a new paragraph d is added to read as
11 follows:

12 c. if the conviction is for any felony defined in article two hundred
13 twenty or two hundred twenty-one of this chapter, according to the
14 following schedule:

15 (i) for A-I felonies, one hundred thousand dollars;

16 (ii) for A-II felonies, fifty thousand dollars;

17 (iii) for B felonies, thirty thousand dollars;

18 (iv) for C felonies, fifteen thousand dollars.

19 When imposing a fine pursuant to the provisions of this paragraph, the
20 court shall consider the profit gained by defendant's conduct, whether
21 the amount of the fine is disproportionate to the conduct in which
22 defendant engaged, its impact on any victims, and defendant's economic
23 circumstances, including the defendant's ability to pay, the effect of
24 the fine upon his or her immediate family or any other persons to whom
25 the defendant owes an obligation of support[.]; OR

26 D. IF THE CONVICTION IS FOR ANY FELONY DEFINED IN SECTION 190.65,
27 190.66, 190.67, OR 190.68, AND THE FRAUD INVOLVES A MINORITY OR
28 WOMEN-OWNED BUSINESS, DOUBLE THE AMOUNT THAT SHOULD HAVE BEEN PAID TO
29 THE MINORITY OR WOMEN-OWNED BUSINESS FOR BONA FIDE WORK OR MATERIALS
30 UNDER THE CONTRACT.

31 S 7. Section 80.00 of the penal law is amended by adding a new subdi-
32 vision 8 to read as follows:

33 8. ALL MONEYS RECEIVED OR COLLECTED IN PAYMENT OF A FINE IMPOSED
34 PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION ARE THE
35 PROPERTY OF THE STATE AND THE STATE COMPTROLLER SHALL DEPOSIT ALL SUCH
36 FINES TO THE MINORITY AND WOMEN-OWNED BUSINESS FUND ESTABLISHED PURSUANT
37 TO SECTION NINETY-SEVEN-J OF THE STATE FINANCE LAW.

38 S 8. The state finance law is amended by adding a new section 97-j to
39 read as follows:

40 S 97-J. MINORITY AND WOMEN-OWNED BUSINESS FUND. 1. THERE IS HEREBY
41 ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE
42 COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE
43 "MINORITY AND WOMEN-OWNED BUSINESS FUND".

44 2. SUCH FUNDS SHALL CONSIST OF ALL FINES RECEIVED FROM ANY COURT OF
45 THE UNIFIED COURT SYSTEM PURSUANT TO THE PROVISIONS OF SUBDIVISION EIGHT
46 OF SECTION 80.00 OF THE PENAL LAW.

47 3. MONIES OF THE FUND, WHEN ALLOCATED, SHALL BE DISBURSED TO ACQUIRE
48 SOFTWARE, EMPLOY PERSONNEL TO AUDIT, INVESTIGATE AND PROSECUTE MINORITY
49 AND WOMEN-OWNED BUSINESS FRAUD AND TO UNDERWRITE MINORITY AND
50 WOMEN-OWNED BUSINESS PROGRAMS TO ASSIST MINORITY AND WOMEN BUSINESS
51 OWNERS TO DEVELOP SUSTAINABLE BUSINESSES.

52 S 9. This act shall take effect immediately, provided, however, that
53 the amendments to article 15-A of the executive law made by sections one
54 and two of this act shall not affect the expiration of such article and
55 shall be deemed to expire therewith.