

STATE OF NEW YORK

6758

2019-2020 Regular Sessions

IN SENATE

October 2, 2019

Introduced by Sens. KAMINSKY, BROOKS, GAUGHRAN, KAPLAN, MARTINEZ, THOMAS, BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law and the environmental conservation law, in relation to the disposal, possession and acceptance of solid waste and hazardous materials and to establishing crimes related to sand mining

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

Section 1. The penal law is amended by adding seven new sections 145.71, 145.72, 145.73, 145.74, 145.75, 145.76 and 145.77 to read as follows:

§ 145.71 Criminal disposal in the fourth degree.

A person is guilty of criminal disposal in the fourth degree when:

1. with intent to dispose of solid waste as defined in paragraph b of subdivision one of section 19-0306 of the environmental conservation law on the property of another, he or she disposes solid waste on such property; or

2. with intent to dispose of construction and demolition material on the property of another, he or she disposes such material on such property.

Criminal disposal in the fourth degree is a class A misdemeanor.

§ 145.72 Criminal disposal in the third degree.

A person is guilty of criminal disposal in the third degree when:

1. with intent to dispose of solid waste on the property of another, he or she disposes of either ten cubic yards or more, or twenty thousand pounds or more, of solid waste as defined in paragraph b of subdivision one of section 19-0306 of the environmental conservation law on such property; or

2. with intent to dispose of construction and demolition material on the property of another, he or she disposes of either ten cubic yards or

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

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1 more, or twenty thousand pounds or more of such material on such proper-
2 ty.

3 Criminal disposal in the third degree is a class E felony.

4 § 145.73 Criminal disposal in the second degree.

5 A person is guilty of criminal disposal in the second degree when:

6 1. with intent to dispose of solid waste as defined in paragraph b of
7 subdivision one of section 19-0306 of the environmental conservation law
8 on the property of another, he or she disposes of either seventy cubic
9 yards or more or one hundred forty thousand pounds or more of solid
10 waste on such property; or

11 2. with intent to dispose of construction and demolition material on
12 the property of another, he or she disposes of either seventy cubic
13 yards or more or one hundred forty thousand pounds or more of such mate-
14 rial on such property.

15 Criminal disposal in the second degree is a class D felony.

16 § 145.74 Criminal disposal in the first degree.

17 A person is guilty of criminal disposal in the first degree when:

18 1. with intent to dispose of a hazardous substance as defined by the
19 department of environmental conservation on the property of another, he
20 or she disposes of a hazardous substance on such property; or

21 2. he or she recklessly disposes of an acutely hazardous substance as
22 defined by the department of environmental conservation on the property
23 of another.

24 Criminal disposal in the first degree is a class C felony.

25 § 145.75 Aggravated criminal disposal.

26 A person is guilty of aggravated criminal disposal when, with intent
27 to dispose of an acutely hazardous substance as defined by the depart-
28 ment of environmental conservation on the property of another, he or she
29 disposes of an acutely hazardous substance on such property.

30 Aggravated criminal disposal is a class B felony.

31 § 145.76 Presumptions.

32 1. For the purposes of this article, it shall be a rebuttable presump-
33 tion that the presence of a hazardous or acutely hazardous substance as
34 defined in article thirty-seven of the environmental conservation law in
35 any material released into the environment is evidence of the knowing
36 release of such substance by any person who caused or attempted to cause
37 the release of such substance.

38 2. For the purposes of this article, the possession of an aggregate
39 amount of ten or more cubic yards or twenty thousand pounds of material
40 containing a hazardous or acutely hazardous substance as defined in
41 article thirty-seven of the environmental conservation law without the
42 documentation required by section 27-0305 of the environmental conserva-
43 tion law is presumptive evidence that the defendant knowingly possessed
44 such substance.

45 § 145.77 Enhanced penalties.

46 1. When a person is convicted of a crime defined in sections 145.71,
47 145.72, 145.73, 145.74, 145.80, 145.81, 145.85, 145.86 or 145.87, and
48 such conduct resulted in the contamination of groundwater, whether or
49 not such contamination resulted in injury to any person or further
50 damage to property, such crime shall be deemed to be one category higher
51 than the offense the defendant committed.

52 2. When a person is convicted of a crime defined in section 145.75,
53 notwithstanding any other provision of law:

54 (a) the maximum term of the indeterminate sentence must be at least
55 six years if the defendant is sentenced pursuant to section 70.00 of
56 this chapter;

(b) the maximum term of the indeterminate sentence must be at least four years if the defendant is sentenced pursuant to section 70.05 of this chapter; and

(c) the maximum term of the indeterminate sentence must be at least ten years if the defendant is sentenced pursuant to section 70.06 of this chapter.

§ 2. Section 145.13 of the penal law, as amended by chapter 45 of the laws of 2009, is amended to read as follows:

§ 145.13 Definitions.

1. (a) For the purposes of sections 145.00, 145.05, 145.10 [and], 145.12, 145.71, 145.72, 145.73, 145.74 and 145.75 of this article[+], "[Property] property of another" shall include all property in which another person has an ownership interest, whether or not a person who damages such property, or any other person, may also have an interest in such property.

(b) Notwithstanding paragraph (a) of this subdivision, for purposes of sections 145.71, 145.72, 145.73, 145.74 and 145.75 of this article, "property of another" shall not include any landfills, recycling, and/or transfer stations that are permitted or registered with the department of environmental conservation to receive solid waste, hazardous waste, or acutely hazardous waste.

2. For the purposes of sections 145.71, 145.72, 145.73, 145.81 and 145.85 of this article, "construction and demolition material" shall mean materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any man-made structure, including houses, buildings, industrial or commercial facilities and roadways.

§ 3. The penal law is amended by adding two new sections 190.66 and 190.68 to read as follows:

§ 190.66 Scheme to defraud by disposal of solid waste.

1. A person is guilty of a scheme to defraud by disposal of solid waste when he or she engages in a systematic ongoing course of conduct with intent to defraud more than one person by disposing solid waste as defined in paragraph b of subdivision one of section 19-0306 of the environmental conservation law on such person's property under false or fraudulent pretenses, representations or promises, and so damages the property of one or more of such persons.

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person on whose property the defendant disposed of solid waste pursuant to subdivision one of this section, but it shall not be necessary to prove the identity of any other victim or intended victim.

Scheme to defraud by disposal of solid waste is a class E felony.

§ 190.68 Scheme to defraud by sand mining.

A person is guilty of scheme to defraud by sand mining when he or she engages in a scheme constituting an ongoing course of conduct with intent to defraud more than one person by extracting naturally-occurring sand from property belonging to such other persons under false or fraudulent pretenses, representations or promises, and so removes such sand from such property.

It is necessary to prove the identity of at least one person from whose property the defendant fraudulently extracted sand, but it is not necessary to prove the identity of any other victim.

Scheme to defraud by sand mining is a class E felony.

§ 4. The penal law is amended by adding five new sections 145.80, 145.81, 145.85, 145.86 and 145.87 to read as follows:

§ 145.80 Criminal possession of solid waste in the second degree.

1 A person is guilty of criminal possession of solid waste in the second
2 degree when he or she knowingly and unlawfully possesses solid waste as
3 defined in paragraph b of subdivision one of section 19-0306 of the
4 environmental conservation law outside of the city of New York, with the
5 intent to dispose of such solid waste in contravention of the environ-
6 mental conservation law or applicable regulations.

7 Criminal possession of solid waste in the second degree is a class A
8 misdemeanor.

9 § 145.81 Criminal possession of solid waste in the first degree.

10 A person is guilty of criminal possession of solid waste in the first
11 degree when he or she commits the crime of criminal possession of solid
12 waste in the second degree or criminal acceptance of solid waste or
13 construction and demolition material, and has previously been convicted
14 of any crime in section 145.71, 145.72, 145.73, 145.74, 145.75, 145.80,
15 145.81, 145.85, 145.86, 145.87 or 190.66 of this part.

16 Criminal possession of solid waste in the first degree is a class D
17 felony.

18 § 145.85 Criminal acceptance of solid waste or construction and demoli-
19 tion material.

20 A person is guilty of criminal acceptance of solid waste or
21 construction and demolition material when, knowing that he or she does
22 not possess a permit or registration as required by the department of
23 environmental conservation to receive or store solid waste as defined in
24 paragraph b of subdivision one of section 19-0306 of the environmental
25 conservation law or construction and demolition material, he or she
26 solicits, accepts or agrees to accept solid waste or construction and
27 demolition material from another person. For purposes of this section, a
28 proprietor, director, manager, agent, or employee of a corporation,
29 partnership, or other business entity shall be presumed to be operating
30 knowingly if such proprietor, director, manager, agent, or employee of a
31 corporation, partnership, or other business entity fails to possess a
32 permit or registration as required by the department of environmental
33 conservation, and knows or reasonably should have known that such permit
34 or registration is required for acceptance of such material.

35 Criminal acceptance of solid waste or construction and demolition
36 material is a class A misdemeanor.

37 § 145.86 Criminal acceptance of a hazardous substance.

38 1. A person is guilty of criminal acceptance of a hazardous substance
39 when he or she solicits, accepts or agrees to accept material containing
40 a hazardous substance as defined by the department of environmental
41 conservation and thereby causes such substance to be released into the
42 environment.

43 2. In any prosecution for criminal acceptance of a hazardous
44 substance, it is no defense that the defendant has been issued a permit
45 or registration to operate a solid waste facility by the department of
46 environmental conservation.

47 Criminal acceptance of a hazardous substance is a class D felony.

48 § 145.87 Criminal acceptance of an acutely hazardous substance.

49 1. A person is guilty of criminal acceptance of an acutely hazardous
50 substance when he or she solicits, accepts or agrees to accept material
51 containing an acutely hazardous substance as defined by the department
52 of environmental conservation and thereby causes such substance to be
53 released into the environment.

54 2. In any prosecution for criminal acceptance of an acutely hazardous
55 substance, it is no defense that the defendant has been issued a permit

1 or registration to operate a solid waste facility by the department of
2 environmental conservation.

3 Criminal acceptance of an acutely hazardous substance is a class C
4 felony.

5 § 6. Section 105.10 of the penal law, as amended by chapter 489 of the
6 laws of 2000, is amended to read as follows:

7 § 105.10 Conspiracy in the fourth degree.

8 A person is guilty of conspiracy in the fourth degree when, with
9 intent that conduct constituting:

10 1. a class B or class C felony be performed, he or she agrees with one
11 or more persons to engage in or cause the performance of such conduct;
12 or

13 2. a felony be performed, he or she, being over eighteen years of age,
14 agrees with one or more persons under sixteen years of age to engage in
15 or cause the performance of such conduct; or

16 3. the felony of money laundering in the third degree as defined in
17 section 470.10 of this chapter, be performed, he or she agrees with one
18 or more persons to engage in or cause the performance of such
19 conduct[-]; or

20 4. a felony related to criminal disposal as defined in section 145.72,
21 145.73 or 145.74 of this part be performed, he or she agrees with one or
22 more persons to engage in or cause the performance of such conduct.

23 Conspiracy in the fourth degree is a class E felony.

24 § 7. Section 27-0305 of the environmental conservation law is amended
25 by adding a new subdivision 13 to read as follows:

26 13. Any individual, corporation, or any other public or private entity
27 registered or permitted by the department to remove, transport, accept,
28 store, or dispose of solid waste, construction and demolition material,
29 limited use fill, and restricted use fill shall document the movement of
30 such material from the point at which the individual, corporation or
31 entity receives such material to the point in which the individual,
32 corporation or entity provides that material to another individual,
33 corporation or entity or to its point of final disposition.

34 § 8. Subdivision 4 of section 175.05 of the penal law is amended and a
35 new subdivision 5 is added to read as follows:

36 4. Prevents the making of a true entry or causes the omission thereof
37 in the business records of an enterprise[-]; or

38 5. Makes or causes a false entry in a solid waste tracking document
39 required by section 27-0305 of the environmental conservation law.

40 § 9. The penal law is amended by adding a new section 175.50 to read
41 as follows:

42 § 175.50 Failure to maintain solid waste tracking documents.

43 An individual, corporation, or any other public or private entity
44 registered or permitted by the department of environmental conservation
45 to remove, transport, accept, store, or dispose of solid waste,
46 construction and demolition material, limited use fill, and restricted
47 use fill is guilty of failure to maintain solid waste tracking documents
48 when such individual, corporation or entity fails to maintain proper
49 documentation detailing the movement of such material from the point at
50 which the individual, corporation or entity receives such material to
51 the point in which the individual, corporation or entity provides that
52 material to another individual, corporation or entity or to its point of
53 final disposition.

54 Failure to maintain solid waste tracking documents is a class A misde-
55 meanor.

§ 10. Paragraph (b) of subdivision 2 of section 175.35 of the penal law, as added by chapter 490 of the laws of 2013, is amended and a new subdivision 3 is added to read as follows:

(b) such instrument is a financing statement the contents of which are prescribed by section 9--502 of the uniform commercial code, the collateral asserted to be covered in such statement is the property of a person who is a state or local officer as defined by section two of the public officers law or who otherwise is a judge or justice of the unified court system, such financing statement does not relate to an actual transaction, and he or she filed such financing statement in retaliation for the performance of official duties by such person[~~+~~]; or

3. with the intent to use property for another purpose that would otherwise require a permit from a state agency, he or she presents a written instrument to receive a permit for agricultural or building purposes for such property to a public office, public servant, public authority, or public benefit corporation, with the intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office.

§ 11. The penal law is amended by adding seven new sections 270.40, 270.45, 270.50, 270.55, 270.60, 270.65 and 270.70 to read as follows:

§ 270.40 Criminal sand mining in the second degree.

A person is guilty of criminal sand mining in the second degree when, with intent to remove more than one thousand tons or seven hundred fifty cubic yards of sand from any residential, commercial, industrial or farm land where the sand is naturally occurring, he or she removes, directs, importunes or intentionally aids another to extract sand from such property, without a valid mining permit or registration issued by the department of environmental conservation.

Criminal sand mining in the second degree is a class E felony.

§ 270.45 Criminal sand mining in the first degree.

A person is guilty of criminal sand mining in the first degree when, with intent to remove more than one thousand tons or seven hundred fifty cubic yards of sand from any residential, commercial, industrial or farm land where the sand is naturally occurring, he or she removes, directs, importunes or intentionally aids another to extract sand from such property, without a valid mining permit or registration from the department of environmental conservation, and he or she has previously been convicted of the crime of criminal sand mining in the first or second degree, or criminal disposal incident to sand mining in the first, second, third or fourth degree within the preceding ten years.

Criminal sand mining in the first degree is a class D felony.

§ 270.50 Criminal disposal incident to sand mining in the fourth degree.

A person is guilty of criminal disposal incident to sand mining in the fourth degree when, except as otherwise permitted by law:

1. with intent to dispose of solid waste on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of solid waste on such property; or

2. with intent to dispose of liquid waste on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of liquid waste on such property; or

3. with intent to dispose of vegetative organic waste on property of where the extraction and removal of sand occurred, he or she disposes

1 of, or directs, importunes, or intentionally aids another to dispose of
2 vegetative organic waste on such property.

3 Criminal disposal incident to sand mining in the fourth degree is a
4 class E felony.

5 § 270.55 Criminal disposal incident to sand mining in the third degree.

6 A person is guilty of criminal disposal incident to sand mining in the
7 third degree when, except as otherwise permitted by law:

8 1. with intent to dispose of a hazardous substance on property where
9 the extraction and removal of sand occurred, he or she disposes of, or
10 directs, importunes, or intentionally aids another to dispose of hazard-
11 ous substances on such property; or

12 2. with intent to dispose of solid waste, liquid waste, or vegetative
13 organic waste on property where the extraction and removal of sand
14 occurred, he or she disposes of, or directs, importunes, or inten-
15 tionally aids another to dispose of solid waste, liquid waste or vegeta-
16 tive waste on such property, and has previously been convicted of the
17 crime of criminal sand mining in the first or second degree, or criminal
18 disposal incident to sand mining in the first, second, third or fourth
19 degree in the preceding ten years.

20 Criminal disposal incident to sand mining in the third degree is a
21 class D felony.

22 § 270.60 Criminal disposal incident to sand mining in the second degree.

23 A person is guilty of criminal disposal incident to sand mining in the
24 second degree when, except as otherwise permitted by law:

25 1. with intent to dispose of a hazardous substance on property where
26 the extraction and removal of sand occurred, he or she disposes of,
27 directs, importunes, or intentionally aids another to dispose of hazard-
28 ous substances on such property; or

29 2. with intent to dispose of a hazardous substance on property where
30 the extraction and removal of sand occurred, he or she disposes of, or
31 directs, importunes, or intentionally aids another to dispose of a
32 hazardous substance on such property and has previously been convicted
33 of the crime of criminal sand mining in the first or second degree, or
34 criminal disposal incident to sand mining in the first, second, third or
35 fourth degree in the preceding ten years.

36 Criminal disposal incident to sand mining in the second degree is a
37 class C felony.

38 § 270.65 Criminal disposal incident to sand mining in the first degree.

39 A person is guilty of criminal disposal incident to sand mining in the
40 first degree when, except as otherwise permitted by law, with intent to
41 dispose of an acutely hazardous substance on property where the
42 extraction and removal of sand occurred, he or she disposes of, or
43 directs, importunes, or intentionally aids another to dispose of an
44 acutely hazardous substance on such property.

45 Criminal disposal incident to sand mining in the first degree is a
46 class B felony.

47 § 270.70 Presumption.

48 For the purposes of this article, the lack of a permit or registration
49 required by the department of environmental conservation is presumptive
50 evidence that all proprietors, directors, managers, agents and employees
51 of any corporation, partnership or business entity, and any accomplices
52 or accessories, are knowingly operating without said permit or registra-
53 tion.

54 § 12. Subdivisions 9, 10, and 11 of section 155.30 of the penal law,
55 subdivision 9 as amended by chapter 479 of the laws of 2010, subdivision
56 10 as added by chapter 491 of the laws of 1992, and subdivision 11 as

1 added by chapter 394 of the laws of 2005, are amended and a new subdivi-
2 sion 12 is added to read as follows:

3 9. The property consists of a scroll, religious vestment, a vessel, an
4 item comprising a display of religious symbols which forms a represen-
5 tative expression of faith, or other miscellaneous item of property
6 which:

7 (a) has a value of at least one hundred dollars; and

8 (b) is kept for or used in connection with religious worship in any
9 building, structure or upon the curtilage of such building or structure
10 used as a place of religious worship by a religious corporation, as
11 incorporated under the religious corporations law or the education
12 law~~[-]~~; or

13 10. The property consists of an access device which the person intends
14 to use unlawfully to obtain telephone service~~[-]~~; or

15 11. The property consists of anhydrous ammonia or liquified ammonia
16 gas and the actor intends to use, or knows another person intends to
17 use, such anhydrous ammonia or liquified ammonia gas to manufacture
18 methamphetamine~~[-]~~; or

19 12. The property, regardless of its value, consists of sand naturally
20 occurring on the land from which the sand was taken.

21 § 13. This act shall take effect on the first of November next
22 succeeding the date on which it shall have become a law.