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

4484

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. ESPAILLAT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to crimes against a delivery person

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 a new section 120.65 to read as follows:

S 120.65 CRIMES AGAINST A DELIVERY PERSON.

1. A PERSON COMMITS A CRIME AGAINST A DELIVERY PERSON WHEN HE OR SHE COMMITS A SPECIFIED OFFENSE AND EITHER:

(A) INTENTIONALLY SELECTS THE PERSON AGAINST WHOM THE OFFENSE IS COMMITTED OR IS INTENDED TO BE COMMITTED IN WHOLE OR IN SUBSTANTIAL PART BECAUSE OF SUCH PERSON'S STATUS AS A DELIVERY PERSON AS DEFINED IN THIS SECTION; OR

(B) INTENTIONALLY LURES SUCH DELIVERY PERSON INTO THE LOCATION WHERE THE SPECIFIED OFFENSE WAS COMMITTED.

2. PROOF OF INTENT MAY INCLUDE, BUT NOT BE LIMITED TO, THE USE OF A TELEPHONE OR FACSIMILE, OR ANY OTHER MANNER TO CONVEY AN ORDER OF FOOD, TO REQUEST THE SERVICE OF A DELIVERY PERSON AT THE LOCATION WHERE THE SPECIFIED OFFENSE WAS COMMITTED.

3. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: ASSAULT IN THE THIRD DEGREE, ASSAULT IN THE SECOND DEGREE, ASSAULT IN THE FIRST DEGREE, MENACING IN THE FIRST DEGREE, MENACING IN THE SECOND DEGREE, MENACING IN THE THIRD DEGREE, RECKLESS ENDANGERMENT IN THE FIRST DEGREE, RECKLESS ENDANGERMENT IN THE SECOND DEGREE, MANSLAUGHTER IN THE SECOND DEGREE, MANSLAUGHTER IN THE FIRST DEGREE, MURDER IN THE SECOND DEGREE, ROBBERY IN THE THIRD DEGREE, ROBBERY IN THE SECOND DEGREE, AND ROBBERY IN THE FIRST DEGREE, GANG ASSAULT IN THE FIRST DEGREE, OR GANG ASSAULT IN THE SECOND DEGREE, OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

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

LBD07547-01-9

4. FOR PURPOSES OF THIS SECTION:

(A) "DELIVERY PERSON" SHALL MEAN A PERSON EMPLOYED BY A RESTAURANT OR PUT INTO SERVICE BY A RESTAURANT TO DELIVER PREPARED FOOD TO A LOCATION OUTSIDE THE RESTAURANT PURSUANT TO AN ORDER PLACED BY THE PURPORTED RECIPIENT OF THE FOOD.

(B) "RESTAURANT" MEANS ANY COFFEE SHOP, CAFETERIA, LUNCHEONETTE, SANDWICH STAND, DINER, SHORT ORDER CAFE, FAST FOOD ESTABLISHMENT, SODA FOUNTAIN, AND ANY OTHER EATING OR BEVERAGE ESTABLISHMENT WHICH PROVIDES FOOD DELIVERY SERVICE AS AN ADVERTISED PART OF ITS BUSINESS OPERATION.

5. FOR PURPOSES OF SENTENCING:

(A) WHEN A PERSON IS CONVICTED OF A CRIME AGAINST A DELIVERY PERSON PURSUANT TO THIS SECTION AND THE SPECIFIED OFFENSE IS A MISDEMEANOR OR A CLASS C, D OR E FELONY, THE CRIME AGAINST A DELIVERY PERSON SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS CONVICTED OF A CRIME AGAINST A DELIVERY PERSON PURSUANT TO THIS SECTION AND THE SPECIFIED OFFENSE IS A CLASS B FELONY:

(I) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST FIVE YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF THIS CHAPTER;

(II) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST SEVEN YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

(III) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST ELEVEN YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;

(IV) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST THREE YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF THIS CHAPTER; AND

(V) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST NINE YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS CONVICTED OF A CRIME AGAINST A DELIVERY PERSON PURSUANT TO THIS SECTION AND THE SPECIFIED OFFENSE IS A CLASS A-I FELONY, THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE SHALL BE NOT LESS THAN NINETEEN YEARS.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.