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

5536

2009-2010 Regular Sessions

I N S E N A T E

May 14, 2009

Introduced by Sen. FOLEY -- 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 burglary in buildings containing an automated teller machine

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

Section 1. Section 140.25 of the penal law, paragraph (c) of subdivision 1 as added by chapter 791 of the laws of 1967, paragraph (d) of subdivision 1 as amended by chapter 374 of the laws of 1973 and subdivision 2 as amended by chapter 361 of the laws of 1981, is amended to read as follows:

S 140.25 Burglary in the second degree.

A person is guilty of burglary in the second degree when he OR SHE knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when:

1. In effecting entry or while in the building or in immediate flight therefrom, he OR SHE or another participant in the crime:

(a) Is armed with explosives or a deadly weapon; or

(b) Causes physical injury to any person who is not a participant in the crime; or

(c) Uses or threatens the immediate use of a dangerous instrument; or

(d) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. The building is a dwelling[.]; OR

3. THE BUILDING CONTAINS AN AUTOMATED TELLER MACHINE.

Burglary in the second degree is a class C felony.

S 2. The penal law is amended by adding two new sections 140.31 and 140.32 to read as follows:

S 140.31 BURGLARY OF AN AUTOMATED TELLER MACHINE.

A PERSON IS GUILTY OF BURGLARY OF AN AUTOMATED TELLER MACHINE WHEN HE OR SHE KNOWINGLY ENTERS OR REMAINS UNLAWFULLY IN A BUILDING AND

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

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POSSESSES ANY TOOL, INSTRUMENT, OR ARTICLE WHICH EVIDENCES AN INTENT TO STEAL MONEY FROM AN AUTOMATED TELLER MACHINE.

BURGLARY OF AN AUTOMATED TELLER MACHINE IS A CLASS D FELONY.

S 140.32 AGGRAVATED BURGLARY OF AN AUTOMATED TELLER MACHINE.

A PERSON IS GUILTY OF AGGRAVATED BURGLARY OF AN AUTOMATED TELLER MACHINE WHEN HE OR SHE KNOWINGLY ENTERS OR REMAINS UNLAWFULLY IN A BUILDING AND POSSESSES ANY TOOL, INSTRUMENT OR ARTICLE WHICH EVIDENCES AN INTENT TO STEAL MONEY FROM AN AUTOMATED TELLER MACHINE AND HAS PREVIOUSLY BEEN CONVICTED WITHIN THE PAST FIVE YEARS OF THE CRIME OF BURGLARY OF AN AUTOMATED TELLER MACHINE.

AGGRAVATED BURGLARY OF AN AUTOMATED TELLER MACHINE IS A CLASS C FELONY.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.