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I N   S E N A T E

January 27, 2010

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Introduced by Sens. LEIBELL, MAZIARZ, MORAHAN, PADAVAN, SEWARD, VOLKER  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the executive law and the penal law, in relation to the  
prevention of terrorist attacks; and providing for the repeal of such  
provisions upon the expiration thereof

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

1     Section 1. Legislative findings. The legislature finds and declares  
2     that preventing terrorist attacks on our citizens - including not only  
3     possible deaths and injuries, but also crushing economic harm or even  
4     chaos - is a compelling governmental interest.  
5     The legislature further finds and declares that since both law  
6     enforcement resources and the time necessary to make an initial decision  
7     regarding stopping and questioning are very limited, this compelling  
8     governmental interest demands that law enforcement must be afforded the  
9     means of identification of potential terrorist suspects as effectively  
10    and efficiently as possible so that they may be stopped, questioned,  
11    frisked, and/or searched.  
12    The legislature also finds and declares that homeland security experts  
13    have suggested that, while no one single factor is definitive, a wide  
14    variety of factors, such as the following, can help identify potential  
15    terrorism suspects:  
16       1. wearing heavy clothing in warm weather;  
17       2. carrying a briefcase, duffle bag or backpack with protrusions or  
18    visible wires;  
19       3. displaying nervousness and/or inappropriate sweating;  
20       4. an inability or unwillingness to make eye contact;  
21       5. chemical burns on clothing or stains on hands.  
22    For this reason, law enforcement personnel are often asked to look for  
23    and consider such factors in determining which persons to stop, ques-  
24    tion, frisk and/or search.  
25    The legislature additionally finds and declares that many homeland  
26    security experts have suggested, and the history of modern terrorism has

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

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1 confirmed, that the national origin of a person can also be a very  
2 important, if not crucial factor, along with others, in identifying  
3 potential terrorist suspects. Accordingly, homeland security experts  
4 have suggested, and such experience has confirmed, that many terrorist  
5 acts are performed by radical individuals with national origins from  
6 countries such as Afghanistan, Pakistan, Iran, Syria, Yemen, Lebanon,  
7 Iraq, Egypt, Saudi Arabia, Libya, Nigeria, Somalia, Algeria, Russia,  
8 Peru, Philippines, Mali, Indonesia, and Malaysia. As a result, the use  
9 of ethnicity serves a compelling governmental interest in helping law  
10 enforcement personnel to determine effectively and efficiently, along  
11 with other factors, which persons to stop, question, frisk and/or  
12 search.

13 The legislature further finds and determines, that the good faith  
14 questioning or searching of a suspicious terrorist suspect, has only  
15 momentary consequences for innocent persons, and can prevent monumental  
16 and enormous public harm and injury, unlike other governmental decisions  
17 upheld by the Supreme Court of the United States, which have lasting and  
18 very significant adverse consequences for the compelling interest use of  
19 ethnic or racial decisions.

20 Therefore, the legislature finds that, in the interest of ensuring the  
21 most effective terrorist prevention which meets United States and New  
22 York State constitutional protections, it is necessary to enact a law  
23 which will authorize law enforcement personnel to consider national  
24 origin as one of many factors which could be used in identifying persons  
25 who can be initially stopped, questioned, frisked and/or searched.

26 S 2. The executive law is amended by adding a new section 837-s to  
27 read as follows:

28 S 837-S. POTENTIAL TERRORIST SUSPECT PROFILE. 1. FOR PURPOSES OF THIS  
29 SECTION, "POTENTIAL TERRORIST SUSPECT PROFILE" SHALL MEAN MULTIPLE  
30 FACTORS WHICH DETERMINE THE EXISTENCE OF A REASONABLE INDIVIDUALIZED  
31 SUSPICION AND/OR PROBABLE CAUSE AND PROVIDE CAUSE FOR A PEACE OFFICER OR  
32 POLICE OFFICER TO LAWFULLY JUSTIFY THE STOPPING OF A MOTOR VEHICLE, THE  
33 STOPPING AND QUESTIONING OF AN INDIVIDUAL, AND/OR THE STOPPING AND  
34 FRISKING OF AN INDIVIDUAL, IN FURTHERANCE OF THE GOVERNMENT'S COMPELLING  
35 INTEREST IN DETERRING TERRORIST ATTACKS. ONE OF THESE FACTORS MAY BE THE  
36 NATIONAL ORIGIN OF THE INDIVIDUAL, PARTICULARLY A GOOD FAITH SUSPICION  
37 THAT THE INDIVIDUAL TO BE STOPPED, QUESTIONED, FRISKED OR SEARCHED HAS  
38 TIES TO ANY COUNTRY WHICH HAS HAD A HISTORY OF MAINTAINING A TERRORIST  
39 ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, AFGHANISTAN, PAKISTAN,  
40 IRAN, SYRIA, YEMEN, LEBANON, IRAQ, EGYPT, SAUDI ARABIA, LIBYA, NIGERIA,  
41 SOMALIA, ALGERIA, RUSSIA, PERU, PHILIPPINES, MALI, INDONESIA, OR MALAY-  
42 SIA.

43 2. FOR PURPOSES OF THIS SECTION "NATIONAL ORIGIN" SHALL INCLUDE  
44 "ANCESTRY".

45 3. NOTWITHSTANDING ANY STATE OR LOCAL LAW, RULE OR REGULATION TO THE  
46 CONTRARY, A PEACE OFFICER OR POLICE OFFICER, AS DEFINED IN SECTION 1.20  
47 OF THE CRIMINAL PROCEDURE LAW, MAY CONSIDER THE NATIONAL ORIGIN OF A  
48 SUSPECT AS ONE OF MANY FACTORS IN A POTENTIAL TERRORIST SUSPECT PROFILE  
49 WHICH HE OR SHE COULD USE TO IDENTIFY PERSONS WHO COULD BE STOPPED,  
50 QUESTIONED, FRISKED AND/OR SEARCHED IN FURTHERANCE OF THE GOVERNMENT'S  
51 COMPELLING INTEREST IN DETERRING TERRORIST ATTACKS; PROVIDED, HOWEVER,  
52 THAT SUCH NATIONAL ORIGIN MAY NOT BE THE SOLE CRITERIA UTILIZED FOR  
53 MAKING THE DECISION. RATHER, THE NATIONAL ORIGIN OF THE INDIVIDUAL MAY  
54 BE UTILIZED AS ONLY ONE OF SEVERAL FACTORS, AND SUCH PEACE OFFICERS OR  
55 POLICE OFFICERS SHALL ENGAGE IN A HIGHLY INDIVIDUALIZED, HOLISTIC  
56 CONSIDERATION OF EACH PERSON'S TOTALITY OF CHARACTERISTICS AND FACTORS

1 IN CARRYING OUT HIS OR HER LAW ENFORCEMENT FUNCTIONS, INCLUDING DETER-  
2 MINING WHOM TO STOP, QUESTION, FRISK AND/OR SEARCH.

3 S 3. The penal law is amended by adding a new section 490.02 to read  
4 as follows:

5 S 490.02 LIABILITY PROTECTION FOR NATIONAL ORIGIN PROFILING.

6 1. ANY PERSON WHO STOPS, QUESTIONS, FRISKS OR SEARCHES AN INDIVIDUAL,  
7 WITH THE INTENTION OF PREVENTING AN ACT OF TERRORISM, UPON A GOOD FAITH  
8 SUSPICION THAT THE INDIVIDUAL TO BE STOPPED, QUESTIONED, FRISKED OR  
9 SEARCHED, HAS TIES TO ANY COUNTRY WHICH HAS HAD A HISTORY OF MAINTAINING  
10 A TERRORIST ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, AFGHANISTAN,  
11 PAKISTAN, IRAN, SYRIA, YEMEN, LEBANON, IRAQ, EGYPT, SAUDI ARABIA, LIBYA,  
12 NIGERIA, SOMALIA, ALGERIA, RUSSIA, PERU, PHILIPPINES, MALI, INDONESIA,  
13 OR MALAYSIA, SHALL BE IMMUNE FROM CIVIL AND CRIMINAL LIABILITY FOR SUCH  
14 STOP, QUESTIONING, FRISK OR SEARCH.

15 2. AN ACTION ALLEGING THAT A STOP, QUESTIONING, FRISK OR SEARCH BY A  
16 PERSON OF AN INDIVIDUAL, WITH THE INTENTION OF PREVENTING AN ACT OF  
17 TERRORISM, UPON A GOOD FAITH SUSPICION THAT THE INDIVIDUAL TO BE  
18 STOPPED, QUESTIONED, FRISKED OR SEARCHED, HAS TIES TO ANY COUNTRY WHICH  
19 HAS HAD A HISTORY OF MAINTAINING A TERRORIST ORGANIZATION, INCLUDING,  
20 BUT NOT LIMITED TO, AFGHANISTAN, PAKISTAN, IRAN, SYRIA, YEMEN, LEBANON,  
21 IRAQ, EGYPT, SAUDI ARABIA, LIBYA, NIGERIA, SOMALIA, ALGERIA, RUSSIA,  
22 PERU, PHILIPPINES, MALI, INDONESIA, OR MALAYSIA, WAS NOT MADE IN GOOD  
23 FAITH, MUST BE PLED WITH PARTICULARITY PURSUANT TO SUBDIVISION (B) OF  
24 RULE THREE THOUSAND SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES.

25 S 4. This act shall take effect immediately and shall expire and be  
26 deemed repealed 5 years after such date.