

1505

2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

Introduced by M. of A. TEDISCO, RAIA, TOBACCO, BOYLE, HAWLEY -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, FINCH, FITZPATRICK, GIGLIO, HAYES, JORDAN, KOLB, P. LOPEZ, McDONOUGH, McKEVITT, J. MILLER, MOLINARO, OAKS, RABBITT, REILICH, SALADINO, SAYWARD, SPANO, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to crimes against vulnerable elderly or disabled persons

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

1 Section 1. Section 260.31 of the penal law, as added by chapter 381 of  
2 the laws of 1998, subdivision 1 as amended, subdivision 4 as added and  
3 such section as renumbered by chapter 14 of the laws of 2010, and subdi-  
4 vision 2 as amended by chapter 193 of the laws of 2010, is amended to  
5 read as follows:

6 S 260.31 Vulnerable elderly persons; definitions.

7 For the purpose of sections 260.32 and 260.34 of this article, the  
8 following definitions shall apply:

9 1. ["Caregiver" means a person who (i) assumes responsibility for the  
10 care of a vulnerable elderly person, or an incompetent or physically  
11 disabled person pursuant to a court order; or (ii) receives monetary or  
12 other valuable consideration for providing care for a vulnerable elderly  
13 person, or an incompetent or physically disabled person.

14 2.] "Sexual contact" means any touching of the sexual or other inti-  
15 mate parts of a person for the purpose of gratifying sexual desire of  
16 either party. It includes the touching of the actor by the victim, as  
17 well as the touching of the victim by the actor, whether directly or  
18 through clothing, as well as the emission of ejaculate by the actor upon  
19 any part of the victim, clothed or unclothed.

20 [3.] 2. "Vulnerable elderly person" means a person sixty years of age  
21 or older who is suffering from a disease or infirmity associated with

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

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1 advanced age and manifested by demonstrable physical, mental or  
2 emotional dysfunction to the extent that the person is incapable of  
3 adequately providing for his or her own health or personal care OR A  
4 PERSON SEVENTY YEARS OF AGE OR OLDER.

5 [4.] 3. "Incompetent or physically disabled person" means an individ-  
6 ual who is unable to care for himself or herself because of physical  
7 disability, mental disease or defect.

8 S 2. The opening paragraph and subdivision 4 of section 260.32 of the  
9 penal law, as amended by chapter 14 of the laws of 2010, are amended to  
10 read as follows:

11 A person is guilty of endangering the welfare of a vulnerable elderly  
12 person, or an incompetent or physically disabled person in the second  
13 degree when[, being a caregiver for a vulnerable elderly person, or an  
14 incompetent or physically disabled person]:

15 4. He or she subjects such person to sexual contact without the  
16 latter's consent. Lack of consent under this subdivision results from  
17 forcible compulsion or incapacity to consent, as those terms are defined  
18 in article one hundred thirty of this [chapter] PART, or any other  
19 circumstances in which the vulnerable elderly person, or an incompetent  
20 or physically disabled person does not expressly or impliedly acquiesce  
21 [in the caregiver's conduct]. In any prosecution under this subdivision  
22 in which the victim's alleged lack of consent results solely from inca-  
23 pacity to consent because of the victim's mental disability or mental  
24 incapacity, the provisions of section 130.16 of this [chapter] PART  
25 shall apply. In addition, in any prosecution under this subdivision in  
26 which the victim's lack of consent is based solely upon his or her inca-  
27 pacity to consent because he or she was mentally disabled, mentally  
28 incapacitated or physically helpless, it is an affirmative defense that  
29 the defendant, at the time he or she engaged in the conduct constituting  
30 the offense, did not know of the facts or conditions responsible for  
31 such incapacity to consent.

32 S 3. The opening paragraph of section 260.34 of the penal law, as  
33 amended by chapter 14 of the laws of 2010, is amended to read as  
34 follows:

35 A person is guilty of endangering the welfare of a vulnerable elderly  
36 person, or an incompetent or physically disabled person in the first  
37 degree when[, being a caregiver for a vulnerable elderly person, or an  
38 incompetent or physically disabled person]:

39 S 4. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of the  
40 penal law, paragraph (c) as amended by chapter 405 of the laws of 2010  
41 and paragraph (d) as amended by chapter 7 of the laws of 2007, are  
42 amended to read as follows:

43 (c) Class D violent felony offenses: an attempt to commit any of the  
44 class C felonies set forth in paragraph (b); reckless assault of a child  
45 as defined in section 120.02, assault in the second degree as defined in  
46 section 120.05, menacing a police officer or peace officer as defined in  
47 section 120.18, stalking in the first degree, as defined in subdivision  
48 one of section 120.60, strangulation in the second degree as defined in  
49 section 121.12, rape in the second degree as defined in section 130.30,  
50 criminal sexual act in the second degree as defined in section 130.45,  
51 sexual abuse in the first degree as defined in section 130.65, course of  
52 sexual conduct against a child in the second degree as defined in  
53 section 130.80, aggravated sexual abuse in the third degree as defined  
54 in section 130.66, facilitating a sex offense with a controlled  
55 substance as defined in section 130.90, criminal possession of a weapon  
56 in the third degree as defined in subdivision five, six, seven or eight

1 of section 265.02, criminal sale of a firearm in the third degree as  
 2 defined in section 265.11, intimidating a victim or witness in the  
 3 second degree as defined in section 215.16, ENDANGERING THE WELFARE OF A  
 4 VULNERABLE ELDERLY PERSON IN THE FIRST DEGREE AS DEFINED IN SECTION  
 5 260.34, soliciting or providing support for an act of terrorism in the  
 6 second degree as defined in section 490.10, and making a terroristic  
 7 threat as defined in section 490.20, falsely reporting an incident in  
 8 the first degree as defined in section 240.60, placing a false bomb or  
 9 hazardous substance in the first degree as defined in section 240.62,  
 10 placing a false bomb or hazardous substance in a sports stadium or  
 11 arena, mass transportation facility or enclosed shopping mall as defined  
 12 in section 240.63, and aggravated unpermitted use of indoor pyrotechnics  
 13 in the first degree as defined in section 405.18.

14 (d) Class E violent felony offenses: ENDANGERING THE WELFARE OF A  
 15 VULNERABLE ELDERLY PERSON IN THE SECOND DEGREE AS DEFINED IN SECTION  
 16 260.32, an attempt to commit any of the felonies of criminal possession  
 17 of a weapon in the third degree as defined in subdivision five, six,  
 18 seven or eight of section 265.02 as a lesser included offense of that  
 19 section as defined in section 220.20 of the criminal procedure law,  
 20 persistent sexual abuse as defined in section 130.53, aggravated sexual  
 21 abuse in the fourth degree as defined in section 130.65-a, falsely  
 22 reporting an incident in the second degree as defined in section 240.55  
 23 and placing a false bomb or hazardous substance in the second degree as  
 24 defined in section 240.61.

25 S 5. Part 4 of the penal law is amended by adding a new title Y-2 to  
 26 read as follows:

27 TITLE Y-2  
 28 CRIMES AGAINST THE  
 29 ELDERLY OR DISABLED  
 30 ARTICLE 495  
 31 CRIMES AGAINST THE  
 32 ELDERLY OR DISABLED

33 SECTION 495.00 CRIMES AGAINST THE ELDERLY OR DISABLED.

34 495.05 SENTENCING.

35 S 495.00 CRIMES AGAINST THE ELDERLY OR DISABLED.

36 1. A PERSON COMMITS A CRIME AGAINST THE ELDERLY OR DISABLED WHEN HE OR  
 37 SHE COMMITS A SPECIFIED OFFENSE AND EITHER:

38 (A) INTENTIONALLY SELECTS THE PERSON AGAINST WHOM THE OFFENSE IS  
 39 COMMITTED OR INTENDED TO BE COMMITTED IN WHOLE OR IN SUBSTANTIAL PART  
 40 BECAUSE OF A BELIEF OR PERCEPTION REGARDING THE DISABILITY STATUS OR AGE  
 41 RELATED INFIRMITY OR DISEASE OF A PERSON, REGARDLESS OF WHETHER THE  
 42 BELIEF OR PERCEPTION IS CORRECT; OR

43 (B) INTENTIONALLY COMMITS THE ACT OR ACTS CONSTITUTING THE OFFENSE IN  
 44 WHOLE OR IN SUBSTANTIAL PART BECAUSE OF A BELIEF OR PERCEPTION REGARDING  
 45 DISABILITY STATUS OR AGE RELATED INFIRMITY OR DISEASE OF A PERSON,  
 46 REGARDLESS OF WHETHER THE BELIEF OR PERCEPTION IS CORRECT.

47 2. FOR THE PURPOSE OF THIS SECTION: (A) WHEN A PERSON REASONABLY  
 48 APPEARS TO HAVE A DISABILITY OR AN AGE RELATED INFIRMITY OR DISEASE,  
 49 THERE SHALL BE A REBUTTABLE PRESUMPTION THE DEFENDANT SELECTED THE  
 50 PERSON AGAINST WHOM THE OFFENSE OR ACT IS COMMITTED OR INTENDED TO BE  
 51 COMMITTED, IN WHOLE OR IN PART BECAUSE OF A BELIEF OR PERCEPTION REGARD-  
 52 ING THE DISABILITY STATUS OR AGE RELATED INFIRMITY OR DISEASE OF SUCH  
 53 PERSON; AND (B) WHEN A PERSON IS SEVENTY YEARS OLD OR MORE, THERE SHALL  
 54 BE A REBUTTABLE PRESUMPTION THAT SUCH PERSON APPEARS TO HAVE A DISABILI-  
 55 TY OR AN AGE RELATED INFIRMITY.

1 3. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING  
2 PROVISIONS OF THIS CHAPTER: SECTION 120.00 (ASSAULT IN THE THIRD  
3 DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND DEGREE); SECTION 120.10  
4 (ASSAULT IN THE FIRST DEGREE); SECTION 120.12 (AGGRAVATED ASSAULT UPON A  
5 PERSON LESS THAN ELEVEN YEARS OLD); SECTION 120.13 (MENACING IN THE  
6 FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND DEGREE); SECTION  
7 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20 (RECKLESS ENDAN-  
8 GERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS ENDANGERMENT IN  
9 THE FIRST DEGREE); SECTION 120.45 (STALKING IN THE FOURTH DEGREE);  
10 SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION 120.55 (STALKING  
11 IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE FIRST DEGREE);  
12 SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE);  
13 SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE  
14 FIRST DEGREE); SECTION 125.25 (MURDER IN THE SECOND DEGREE); SUBDIVISION  
15 ONE OF SECTION 130.35 (RAPE IN THE FIRST DEGREE); SUBDIVISION ONE OF  
16 SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SUBDIVISION  
17 ONE OF SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); PARAGRAPH (A)  
18 OF SUBDIVISION ONE OF SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE  
19 SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.70  
20 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 135.05 (UNLAWFUL  
21 IMPRISONMENT IN THE SECOND DEGREE); SECTION 135.10 (UNLAWFUL IMPRISON-  
22 MENT IN THE FIRST DEGREE); SECTION 135.20 (KIDNAPPING IN THE SECOND  
23 DEGREE); SECTION 135.25 (KIDNAPPING IN THE FIRST DEGREE); SECTION 135.60  
24 (COERCION IN THE SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST  
25 DEGREE); SECTION 140.10 (CRIMINAL TRESPASS IN THE THIRD DEGREE); SECTION  
26 140.15 (CRIMINAL TRESPASS IN THE SECOND DEGREE); SECTION 140.17 (CRIMI-  
27 NAL TRESPASS IN THE FIRST DEGREE); SECTION 140.20 (BURGLARY IN THE THIRD  
28 DEGREE); SECTION 140.25 (BURGLARY IN THE SECOND DEGREE); SECTION 140.30  
29 (BURGLARY IN THE FIRST DEGREE); SECTION 145.00 (CRIMINAL MISCHIEF IN THE  
30 FOURTH DEGREE); SECTION 145.05 (CRIMINAL MISCHIEF IN THE THIRD DEGREE);  
31 SECTION 145.10 (CRIMINAL MISCHIEF IN THE SECOND DEGREE); SECTION 145.12  
32 (CRIMINAL MISCHIEF IN THE FIRST DEGREE); SECTION 150.05 (ARSON IN THE  
33 FOURTH DEGREE); SECTION 150.10 (ARSON IN THE THIRD DEGREE); SECTION  
34 150.15 (ARSON IN THE SECOND DEGREE); SECTION 150.20 (ARSON IN THE FIRST  
35 DEGREE); SECTION 155.25 (PETIT LARCENY); SECTION 155.30 (GRAND LARCENY  
36 IN THE FOURTH DEGREE); SECTION 155.35 (GRAND LARCENY IN THE THIRD  
37 DEGREE); SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION  
38 155.42 (GRAND LARCENY IN THE FIRST DEGREE); SECTION 160.05 (ROBBERY IN  
39 THE THIRD DEGREE); SECTION 160.10 (ROBBERY IN THE SECOND DEGREE);  
40 SECTION 160.15 (ROBBERY IN THE FIRST DEGREE); SECTION 240.25 (HARASSMENT  
41 IN THE FIRST DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30  
42 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE); OR ANY ATTEMPT OR CONSPIR-  
43 ACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

44 4. FOR THE PURPOSES OF THIS SECTION:

45 (A) A PERSON HAS AN AGE RELATED INFIRMITY OR DISEASE WHEN, BEING SIXTY  
46 YEARS OLD OR MORE, SUCH PERSON HAS A PHYSICAL OR MENTAL DISEASE OR  
47 INFIRMITY, TYPICALLY ASSOCIATED WITH ADVANCED AGE, WHICH SUBSTANTIALLY  
48 LIMITS A MAJOR LIFE ACTIVITY;

49 (B) THE TERM "SUBSTANTIAL PART" INCLUDES BUT IS NOT LIMITED TO CIRCUM-  
50 STANCES IN WHICH A DEFENDANT SELECTS A PERSON AGAINST WHOM TO COMMIT OR  
51 ATTEMPT TO COMMIT A CRIME DUE TO A BELIEF OR PERCEPTION THAT SUCH PERSON  
52 IS LESS LIKELY TO RESIST OR BE ABLE TO RESIST SUCH CRIME DUE TO THEIR  
53 DISABILITY OR AGE RELATED INFIRMITY OR DISEASE, REGARDLESS OF WHETHER  
54 SUCH BELIEF OR PERCEPTION IS CORRECT;

55 (C) THE TERM "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT THAT  
56 SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY; AND

1 (D) THE TERM "RESIST" INCLUDES, IN ADDITION TO ITS REGULAR MEANING,  
2 REPORTING SUCH CRIME TO LAW ENFORCEMENT, OBSERVING, RECALLING, OR  
3 REPORTING KEY FEATURES OF ANY ACT OR CHARACTERISTIC OF A DEFENDANT  
4 RELATED TO SUCH CRIME, OR PROVIDING EVIDENCE TO AID IN THE INVESTIGATION  
5 OR PROSECUTION OF SUCH CRIME.

6 S 495.05 SENTENCING.

7 1. WHEN A PERSON IS CONVICTED OF A CRIME AGAINST THE ELDERLY OR DISA-  
8 BLED PURSUANT TO THIS ARTICLE, AND THE SPECIFIED OFFENSE IS A VIOLENT  
9 FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE CRIME  
10 AGAINST THE ELDERLY OR DISABLED SHALL BE DEEMED A VIOLENT FELONY  
11 OFFENSE.

12 2. WHEN A PERSON IS CONVICTED OF A CRIME AGAINST THE ELDERLY OR DISA-  
13 BLED PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR  
14 OR A CLASS C, D OR E FELONY, THE CRIME AGAINST THE ELDERLY OR DISABLED  
15 SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE  
16 DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL  
17 APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO  
18 COMMIT A SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

19 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS  
20 CONVICTED OF A CRIME AGAINST THE ELDERLY OR DISABLED PURSUANT TO THIS  
21 ARTICLE AND THE SPECIFIED OFFENSE IS A CLASS B FELONY OFFENSE:

22 (A) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST  
23 SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF  
24 THIS CHAPTER;

25 (B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS  
26 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

27 (C) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS  
28 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;

29 (D) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST  
30 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF  
31 THIS CHAPTER; AND

32 (E) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE  
33 DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS  
34 SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

35 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS  
36 CONVICTED OF CRIME AGAINST THE ELDERLY OR DISABLED PURSUANT TO THIS  
37 ARTICLE AND THE SPECIFIED OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM  
38 PERIOD OF THE INDETERMINATE SENTENCE SHALL BE NOT LESS THAN TWENTY  
39 YEARS.

40 S 6. Subdivisions 4 and 7 of section 200.50 of the criminal procedure  
41 law, as amended by chapter 7 of the laws of 2007, are amended to read as  
42 follows:

43 4. A statement in each count that the grand jury, or, where the accu-  
44 satory instrument is a superior court information, the district attor-  
45 ney, accuses the defendant or defendants of a designated offense,  
46 provided that in any prosecution under article four hundred eighty-five  
47 of the penal law, the designated offense shall be the specified offense,  
48 as defined in subdivision three of section 485.05 of the penal law,  
49 followed by the phrase "as a hate crime", [and] provided further that in  
50 any prosecution under section 490.25 of the penal law, the designated  
51 offense shall be the specified offense, as defined in subdivision three  
52 of section 490.05 of the penal law, followed by the phrase "as a crime  
53 of terrorism"; AND PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER  
54 SECTION 495.00 OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE  
55 SPECIFIED OFFENSE, AS DEFINED IN SUBDIVISION THREE OF SECTION 495.00 OF  
56 THE PENAL LAW, FOLLOWED BY THE PHRASE "AS A CRIME AGAINST THE ELDERLY OR

1 DISABLED"; and provided further that in any prosecution under section  
2 130.91 of the penal law, the designated offense shall be the specified  
3 offense, as defined in subdivision two of section 130.91 of the penal  
4 law, followed by the phrase "as a sexually motivated felony"; and

5 7. A plain and concise factual statement in each count which, without  
6 allegations of an evidentiary nature,

7 (a) asserts facts supporting every element of the offense charged and  
8 the defendant's or defendants' commission thereof with sufficient preci-  
9 sion to clearly apprise the defendant or defendants of the conduct which  
10 is the subject of the accusation; and

11 (b) in the case of any armed felony, as defined in subdivision forty-  
12 one of section 1.20, states that such offense is an armed felony and  
13 specifies the particular implement the defendant or defendants  
14 possessed, were armed with, used or displayed or, in the case of an  
15 implement displayed, specifies what the implement appeared to be; and

16 (c) in the case of any hate crime, as defined in section 485.05 of the  
17 penal law, specifies, as applicable, that the defendant or defendants  
18 intentionally selected the person against whom the offense was committed  
19 or intended to be committed; or intentionally committed the act or acts  
20 constituting the offense, in whole or in substantial part because of a  
21 belief or perception regarding the race, color, national origin, ances-  
22 try, gender, religion, religious practice, age, disability or sexual  
23 orientation of a person; and

24 (d) in the case of a crime of terrorism, as defined in section 490.25  
25 of the penal law, specifies, as applicable, that the defendant or  
26 defendants acted with intent to intimidate or coerce a civilian popu-  
27 lation, influence the policy of a unit of government by intimidation or  
28 coercion, or affect the conduct of a unit of government by murder,  
29 assassination or kidnapping; and

30 (e) in the case of a sexually motivated felony, as defined in section  
31 130.91 of the penal law, asserts facts supporting the allegation that  
32 the offense was sexually motivated; and

33 (F) IN THE CASE OF ANY CRIME AGAINST THE ELDERLY OR DISABLED, AS  
34 DEFINED IN SECTION 495.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE,  
35 THAT THE DEFENDANT OR DEFENDANTS INTENTIONALLY SELECTED THE PERSON  
36 AGAINST WHOM THE OFFENSE WAS COMMITTED OR INTENDED TO BE COMMITTED; OR  
37 INTENTIONALLY COMMITTED THE ACT OR ACTS CONSTITUTING THE OFFENSE, IN  
38 WHOLE OR IN SUBSTANTIAL PART BECAUSE OF A BELIEF OR PERCEPTION REGARDING  
39 THE DISABILITY STATUS OR AGE RELATED INFIRMITY OR DISEASE OF A PERSON;  
40 AND

41 S 7. This act shall take effect on the first of November next succeed-  
42 ing the date on which it shall have become a law.