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

1104--A

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

Introduced by Sens. PARKER, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing the crime of inmate fraud, to amend the correction law, in relation to freezing accounts of inmates and to amend the state finance law, in relation to establishing the victims of inmate fraud fund

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

Section 1. This act shall be known and may be cited as "the inmate fraud act".

S 2. Section 10.00 of the penal law is amended by adding a new subdivision 21 to read as follows:

21. FOR PURPOSES OF SECTION 190.87 OF THIS CHAPTER, THE TERM "INMATE" SHALL MEAN A PERSON WHO IS CONFINED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION, A SHERIFF, A COUNTY JAIL OR A SECURE JUVENILE FACILITY.

S 3. The penal law is amended by adding a new section 190.87 to read as follows:

S 190.87 INMATE FRAUD.

AN INMATE WHO, WITH THE INTENT OF OBTAINING MONEY OR OTHER PROPERTY FROM A PERSON WHO IS NOT AN INMATE, KNOWINGLY OR INTENTIONALLY MAKES A MISREPRESENTATION TO A PERSON WHO IS NOT AN INMATE AND OBTAINS OR ATTEMPTS TO OBTAIN MONEY OR OTHER PROPERTY FROM THE PERSON WHO IS NOT AN INMATE; OR OBTAINS OR ATTEMPTS TO OBTAIN MONEY OR OTHER PROPERTY FROM THE PERSON WHO IS NOT AN INMATE THROUGH A MISREPRESENTATION MADE BY ANOTHER PERSON IS GUILTY OF INMATE FRAUD.

INMATE FRAUD IS A CLASS C FELONY.

S 4. The correction law is amended by adding a new section 80 to read as follows:

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

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S 80. INMATE FRAUD; FREEZING INMATE ACCOUNTS. 1. IF THE DEPARTMENT HAS REASONABLE SUSPICION THAT MONEY IN AN INMATE'S ACCOUNT WAS DERIVED FROM THE COMMISSION OF INMATE FRAUD, AS DEFINED IN SECTION 190.87 OF THE PENAL LAW, THE DEPARTMENT MAY FREEZE ALL OR A PART OF THE INMATE'S ACCOUNT FOR NOT MORE THAN ONE HUNDRED EIGHTY DAYS WHILE THE DEPARTMENT CONDUCTS AN INVESTIGATION TO DETERMINE WHETHER MONEY IN THE INMATE'S ACCOUNT DERIVES FROM INMATE FRAUD. IF THE DEPARTMENT FREEZES THE ACCOUNT OF AN INMATE UNDER THIS SECTION, THE DEPARTMENT SHALL NOTIFY THE INMATE IN WRITING.

2. IF THE DEPARTMENT'S INVESTIGATION REVEALS THAT NO MONEY IN THE INMATE'S ACCOUNT WAS DERIVED FROM INMATE FRAUD, THE DEPARTMENT SHALL UNFREEZE THE ACCOUNT AT THE CONCLUSION OF THE INVESTIGATION.

3. IF THE DEPARTMENT'S INVESTIGATION REVEALS THAT MONEY IN THE INMATE'S ACCOUNT MAY HAVE BEEN DERIVED FROM THE COMMISSION OF INMATE FRAUD, THE DEPARTMENT SHALL NOTIFY THE PROSECUTING ATTORNEY OF THE RESULTS OF THE DEPARTMENT'S INVESTIGATION.

4. IF THE PROSECUTING ATTORNEY CHARGES THE INMATE WITH INMATE FRAUD, THE DEPARTMENT SHALL FREEZE THE INMATE'S ACCOUNT UNTIL THE CASE REACHES FINAL JUDGMENT.

5. IF THE PROSECUTING ATTORNEY DOES NOT CHARGE THE INMATE WITH INMATE FRAUD, OR IF THE INMATE IS ACQUITTED OF THE CHARGE OF INMATE FRAUD, THE DEPARTMENT SHALL UNFREEZE THE INMATE'S ACCOUNT.

6. IF THE INMATE IS CONVICTED OF INMATE FRAUD, THE DEPARTMENT, IN CONSULTATION WITH THE PROSECUTING ATTORNEY, SHALL LOCATE THE MONEY OR PROPERTY DERIVED FROM INMATE FRAUD AND RETURN IT TO THE RIGHTFUL OWNER.

7. IF, NINETY DAYS AFTER THE DATE OF AN INMATE'S CONVICTION FOR INMATE FRAUD, THE DEPARTMENT HAS LOCATED THE MONEY OR PROPERTY DERIVED FROM THE COMMISSION OF INMATE FRAUD BUT IS UNABLE TO RETURN THE MONEY TO THE RIGHTFUL OWNER, THE DEPARTMENT SHALL DEPOSIT THE MONEY IN THE VICTIMS OF INMATE FRAUD FUND ESTABLISHED BY SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.

8. CONFIDENTIAL INFORMATION HELD BY THE DEPARTMENT ABOUT A PERSON WHO HAS BEEN COMMITTED TO THE DEPARTMENT SHALL BE DISCLOSED TO A PERSON WHO IS OR MAY BE THE VICTIM OF INMATE FRAUD IF THE COMMISSIONER DETERMINES THAT THE INTEREST IN DISCLOSURE OVERRIDES THE INTEREST TO BE SERVED BY NONDISCLOSURE OR IF THE COMMISSIONER DETERMINES THERE EXISTS A COMPELLING PUBLIC INTEREST FOR DISCLOSURE WHICH OVERRIDES THE INTEREST TO BE SERVED BY NONDISCLOSURE.

S 5. The state finance law is amended by adding a new section 99-u to read as follows:

S 99-U. VICTIMS OF INMATE FRAUD FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "VICTIMS OF INMATE FRAUD FUND".

2. THE VICTIMS OF INMATE FRAUD FUND SHALL CONSIST OF MONEYS DEPOSITED THEREIN PURSUANT TO SUBDIVISION SEVEN OF SECTION EIGHTY OF THE CORRECTION LAW.

3. THE MONEYS IN THE VICTIMS OF INMATE FRAUD FUND SHALL BE KEPT SEPARATE FROM AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE STATE COMPTROLLER. SUCH MONEYS SHALL BE ALLOCATED TO AND EXPENDED BY THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION SOLELY FOR THE PURPOSE OF ADMINISTERING SECTION EIGHTY OF THE CORRECTION LAW.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.