

9768--A

I N A S S E M B L Y

April 2, 2012

Introduced by M. of A. PRETLOW -- Multi-Sponsored by -- M. of A. ABINANTI, RAIA -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to criminalizing acting as a runner or soliciting or employing a runner to procure patients or clients

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

1 Section 1. Section 176.00 of the penal law is amended by adding four
2 new subdivisions 6, 7, 8 and 9 to read as follows:
3 6. "PROVIDER" MEANS AN ATTORNEY, A HEALTH CARE PROFESSIONAL, AN OWNER
4 OR OPERATOR OF A HEALTH CARE PRACTICE OR FACILITY, ANY PERSON WHO
5 CREATES THE IMPRESSION THAT HE OR SHE, OR HIS OR HER PRACTICE CAN
6 PROVIDE LEGAL OR HEALTH CARE SERVICES, ANY PERSON EMPLOYED OR ACTING ON
7 BEHALF OF ANY SUCH PERSON, OR ANY PERSON PROVIDING MANAGEMENT OR
8 CONSULTING SERVICES TO ANY SUCH PERSON.
9 7. "PUBLIC MEDIA" MEANS TELEPHONE DIRECTORIES, PROFESSIONAL DIRECTORIES,
10 NEWSPAPERS AND OTHER PERIODICALS, RADIO AND TELEVISION, BILL-
11 BOARDS, AND MAILED OR ELECTRONICALLY TRANSMITTED WRITTEN COMMUNICATIONS
12 THAT DO NOT INVOLVE DIRECT CONTACT WITH A SPECIFIC PROSPECTIVE CLIENT,
13 PATIENT, OR CUSTOMER.
14 8. "RUNNER" MEANS A PERSON WHO, FOR A PECUNIARY BENEFIT, PROCURES OR
15 ATTEMPTS TO PROCURE A CLIENT, PATIENT OR CUSTOMER AT THE DIRECTION OF,
16 REQUEST OF OR IN COOPERATION WITH A PROVIDER WHOSE PURPOSE IS TO SEEK TO
17 OBTAIN BENEFITS UNDER A CONTRACT OF INSURANCE OR ASSERT A CLAIM AGAINST
18 AN INSURED OR AN INSURANCE CARRIER FOR PROVIDING SERVICES TO THE CLIENT,
19 PATIENT OR CUSTOMER, OR TO OBTAIN BENEFITS UNDER OR ASSERT A CLAIM
20 AGAINST A STATE OR FEDERAL HEALTH CARE BENEFITS PROGRAM OR PRESCRIPTION
21 DRUG ASSISTANCE PROGRAM. "RUNNER" SHALL NOT INCLUDE (A) A PERSON WHO
22 PROCURES OR ATTEMPTS TO PROCURE CLIENTS, PATIENTS OR CUSTOMERS FOR A
23 PROVIDER THROUGH PUBLIC MEDIA; (B) A PERSON WHO REFERS CLIENTS, PATIENTS
24 OR CUSTOMERS AS OTHERWISE AUTHORIZED BY LAW; OR (C) A PERSON WHO, AS AN
25 AGENT, BROKER OR EMPLOYEE OF A HEALTH MAINTENANCE ORGANIZATION AS

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

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DEFINED IN SECTION FORTY-FOUR HUNDRED ONE OF THE PUBLIC HEALTH LAW, SEEKS TO SELL HEALTH MAINTENANCE ORGANIZATION COVERAGE OR HEALTH INSURANCE COVERAGE TO AN INDIVIDUAL OR GROUP.

9. "PECUNIARY BENEFIT" MEANS GOODS, MONEY, PROPERTY, SERVICES OR ANYTHING OF VALUE, OR AN AGREEMENT TO CONFER OR RECEIVE ANY SUCH GOODS, MONEY, PROPERTY, SERVICES, OR THING OF VALUE.

S 2. The penal law is amended by adding three new sections 176.75, 176.80 and 176.85 to read as follows:

S 176.75 UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE THIRD DEGREE.

A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE THIRD DEGREE WHEN HE OR SHE KNOWINGLY:

1. ACTS AS A RUNNER ON ONE OR MORE OCCASIONS; OR

2. USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ANOTHER PERSON TO ACT AS A RUNNER ON ONE OR MORE OCCASIONS.

UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

S 176.80 UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE SECOND DEGREE.

A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE SECOND DEGREE WHEN HE OR SHE KNOWINGLY:

1. ACTS AS A RUNNER ON ONE OR MORE OCCASIONS FOR A PECUNIARY BENEFIT THAT IN THE AGGREGATE EXCEEDS TWO THOUSAND FIVE HUNDRED DOLLARS IN VALUE OR ACTS AS A RUNNER ON FIVE OR MORE OCCASIONS; OR

2. USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ONE OR MORE PERSONS TO ACT AS A RUNNER ON ONE OR MORE OCCASIONS FOR A PECUNIARY BENEFIT THAT IN THE AGGREGATE EXCEEDS TWO THOUSAND FIVE HUNDRED DOLLARS IN VALUE OR USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ONE OR MORE PERSONS TO ACT AS A RUNNER ON FIVE OR MORE OCCASIONS.

UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE SECOND DEGREE IS A CLASS E FELONY.

S 176.85 UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE FIRST DEGREE.

A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE FIRST DEGREE WHEN HE OR SHE KNOWINGLY:

1. ACTS AS A RUNNER ON ONE OR MORE OCCASIONS FOR A PECUNIARY BENEFIT THAT IN THE AGGREGATE EXCEEDS FIVE THOUSAND DOLLARS IN VALUE OR ACTS AS A RUNNER ON TEN OR MORE OCCASIONS; OR

2. USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ONE OR MORE PERSONS TO ACT AS A RUNNER ON ONE OR MORE OCCASIONS FOR A PECUNIARY BENEFIT THAT IN THE AGGREGATE EXCEEDS FIVE THOUSAND DOLLARS OR USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ONE OR MORE PERSONS TO ACT AS A RUNNER ON TEN OR MORE OCCASIONS.

UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE FIRST DEGREE IS A CLASS D FELONY.

S 3. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to

1 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
2 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
3 care fraud; article one hundred sixty relating to robbery; sections
4 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
5 stolen property; sections 165.72 and 165.73 relating to trademark coun-
6 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
7 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
8 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
9 176.30 relating to insurance fraud; SECTIONS 176.80 AND 176.85 RELATING
10 TO UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS; sections
11 178.20 and 178.25 relating to criminal diversion of prescription medica-
12 tions and prescriptions; sections 180.03, 180.08, 180.15, 180.25,
13 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20,
14 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery;
15 sections 187.10, 187.15, 187.20 and 187.25 relating to residential mort-
16 gage fraud, sections 190.40 and 190.42 relating to criminal usury;
17 section 190.65 relating to schemes to defraud; sections 205.60 and
18 205.65 relating to hindering prosecution; sections 210.10, 210.15, and
19 215.51 relating to perjury and contempt; section 215.40 relating to
20 tampering with physical evidence; sections 220.06, 220.09, 220.16,
21 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55,
22 220.60 and 220.77 relating to controlled substances; sections 225.10 and
23 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relat-
24 ing to promoting prostitution; section 230.34 relating to sex traffick-
25 ing; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;
26 sections 263.10 and 263.15 relating to promoting a sexual performance by
27 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the
28 provisions of section 265.10 which constitute a felony relating to
29 firearms and other dangerous weapons; and sections 265.14 and 265.16
30 relating to criminal sale of a firearm; and section 275.10, 275.20,
31 275.30, or 275.40 relating to unauthorized recordings; and sections
32 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

33 S 4. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
34 procedure law, as amended by chapter 405 of the laws of 2010, is amended
35 to read as follows:

36 (b) Any of the following felonies: assault in the second degree as
37 defined in section 120.05 of the penal law, assault in the first degree
38 as defined in section 120.10 of the penal law, reckless endangerment in
39 the first degree as defined in section 120.25 of the penal law, promot-
40 ing a suicide attempt as defined in section 120.30 of the penal law,
41 strangulation in the second degree as defined in section 121.12 of the
42 penal law, strangulation in the first degree as defined in section
43 121.13 of the penal law, criminally negligent homicide as defined in
44 section 125.10 of the penal law, manslaughter in the second degree as
45 defined in section 125.15 of the penal law, manslaughter in the first
46 degree as defined in section 125.20 of the penal law, murder in the
47 second degree as defined in section 125.25 of the penal law, murder in
48 the first degree as defined in section 125.27 of the penal law, abortion
49 in the second degree as defined in section 125.40 of the penal law,
50 abortion in the first degree as defined in section 125.45 of the penal
51 law, rape in the third degree as defined in section 130.25 of the penal
52 law, rape in the second degree as defined in section 130.30 of the penal
53 law, rape in the first degree as defined in section 130.35 of the penal
54 law, criminal sexual act in the third degree as defined in section
55 130.40 of the penal law, criminal sexual act in the second degree as
56 defined in section 130.45 of the penal law, criminal sexual act in the

1 first degree as defined in section 130.50 of the penal law, sexual abuse
2 in the first degree as defined in section 130.65 of the penal law,
3 unlawful imprisonment in the first degree as defined in section 135.10
4 of the penal law, kidnapping in the second degree as defined in section
5 135.20 of the penal law, kidnapping in the first degree as defined in
6 section 135.25 of the penal law, labor trafficking as defined in section
7 135.35 of the penal law, custodial interference in the first degree as
8 defined in section 135.50 of the penal law, coercion in the first degree
9 as defined in section 135.65 of the penal law, criminal trespass in the
10 first degree as defined in section 140.17 of the penal law, burglary in
11 the third degree as defined in section 140.20 of the penal law, burglary
12 in the second degree as defined in section 140.25 of the penal law,
13 burglary in the first degree as defined in section 140.30 of the penal
14 law, criminal mischief in the third degree as defined in section 145.05
15 of the penal law, criminal mischief in the second degree as defined in
16 section 145.10 of the penal law, criminal mischief in the first degree
17 as defined in section 145.12 of the penal law, criminal tampering in the
18 first degree as defined in section 145.20 of the penal law, arson in the
19 fourth degree as defined in section 150.05 of the penal law, arson in
20 the third degree as defined in section 150.10 of the penal law, arson in
21 the second degree as defined in section 150.15 of the penal law, arson
22 in the first degree as defined in section 150.20 of the penal law, grand
23 larceny in the fourth degree as defined in section 155.30 of the penal
24 law, grand larceny in the third degree as defined in section 155.35 of
25 the penal law, grand larceny in the second degree as defined in section
26 155.40 of the penal law, grand larceny in the first degree as defined in
27 section 155.42 of the penal law, health care fraud in the fourth degree
28 as defined in section 177.10 of the penal law, health care fraud in the
29 third degree as defined in section 177.15 of the penal law, health care
30 fraud in the second degree as defined in section 177.20 of the penal
31 law, health care fraud in the first degree as defined in section 177.25
32 of the penal law, robbery in the third degree as defined in section
33 160.05 of the penal law, robbery in the second degree as defined in
34 section 160.10 of the penal law, robbery in the first degree as defined
35 in section 160.15 of the penal law, unlawful use of secret scientific
36 material as defined in section 165.07 of the penal law, criminal
37 possession of stolen property in the fourth degree as defined in section
38 165.45 of the penal law, criminal possession of stolen property in the
39 third degree as defined in section 165.50 of the penal law, criminal
40 possession of stolen property in the second degree as defined by section
41 165.52 of the penal law, criminal possession of stolen property in the
42 first degree as defined by section 165.54 of the penal law, trademark
43 counterfeiting in the second degree as defined in section 165.72 of the
44 penal law, trademark counterfeiting in the first degree as defined in
45 section 165.73 of the penal law, forgery in the second degree as defined
46 in section 170.10 of the penal law, forgery in the first degree as
47 defined in section 170.15 of the penal law, criminal possession of a
48 forged instrument in the second degree as defined in section 170.25 of
49 the penal law, criminal possession of a forged instrument in the first
50 degree as defined in section 170.30 of the penal law, criminal
51 possession of forgery devices as defined in section 170.40 of the penal
52 law, falsifying business records in the first degree as defined in
53 section 175.10 of the penal law, tampering with public records in the
54 first degree as defined in section 175.25 of the penal law, offering a
55 false instrument for filing in the first degree as defined in section
56 175.35 of the penal law, issuing a false certificate as defined in

1 section 175.40 of the penal law, UNLAWFUL PROCUREMENT OF CLIENTS,
2 PATIENTS OR CUSTOMERS IN THE SECOND DEGREE AS DEFINED IN SECTION 176.80
3 OF THE PENAL LAW, UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS
4 IN THE FIRST DEGREE AS DEFINED IN SECTION 176.85 OF THE PENAL LAW, crim-
5 inal diversion of prescription medications and prescriptions in the
6 second degree as defined in section 178.20 of the penal law, criminal
7 diversion of prescription medications and prescriptions in the first
8 degree as defined in section 178.25 of the penal law, residential mort-
9 gage fraud in the fourth degree as defined in section 187.10 of the
10 penal law, residential mortgage fraud in the third degree as defined in
11 section 187.15 of the penal law, residential mortgage fraud in the
12 second degree as defined in section 187.20 of the penal law, residential
13 mortgage fraud in the first degree as defined in section 187.25 of the
14 penal law, escape in the second degree as defined in section 205.10 of
15 the penal law, escape in the first degree as defined in section 205.15
16 of the penal law, absconding from temporary release in the first degree
17 as defined in section 205.17 of the penal law, promoting prison contra-
18 band in the first degree as defined in section 205.25 of the penal law,
19 hindering prosecution in the second degree as defined in section 205.60
20 of the penal law, hindering prosecution in the first degree as defined
21 in section 205.65 of the penal law, sex trafficking as defined in
22 section 230.34 of the penal law, criminal possession of a weapon in the
23 third degree as defined in subdivisions two, three and five of section
24 265.02 of the penal law, criminal possession of a weapon in the second
25 degree as defined in section 265.03 of the penal law, criminal
26 possession of a weapon in the first degree as defined in section 265.04
27 of the penal law, manufacture, transport, disposition and defacement of
28 weapons and dangerous instruments and appliances defined as felonies in
29 subdivisions one, two, and three of section 265.10 of the penal law,
30 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
31 of weapons as defined in subdivision two of section 265.35 of the penal
32 law, relating to firearms and other dangerous weapons, or failure to
33 disclose the origin of a recording in the first degree as defined in
34 section 275.40 of the penal law;
35 S 5. This act shall take effect on the first of November next succeed-
36 ing the date upon which it shall have become a law.