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

2004--A

2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

Introduced by Sens. SKELOS, SEWARD, GOLDEN -- read twice and ordered printed, and when printed to be committed 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, in relation to establishing the crime of unlawful procurement of clients, patients or customers

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

Section 1. Section 176.00 of the penal law is amended by adding three new subdivisions 6, 7 and 8 to read as follows:

6. "PROVIDER" MEANS A HEALTH CARE PROFESSIONAL, AN OWNER OR OPERATOR OF A HEALTH CARE PRACTICE OR FACILITY OR AN ATTORNEY.

7. "PUBLIC MEDIA" MEANS ANY OF THE FOLLOWING MEANS OF COMMUNICATION, PROVIDED THAT THE USE OF SUCH COMMUNICATION DOES NOT INVOLVE IN-PERSON CONTACT WITH A SPECIFIC PROSPECTIVE CLIENT, PATIENT OR CUSTOMER FOR THE PURPOSE OF RETENTION, TREATMENT OR REPRESENTATION IN A PARTICULAR MATTER: TELEPHONE DIRECTORIES, PROFESSIONAL DIRECTORIES, NEWSPAPERS AND OTHER PERIODICALS, RADIO AND TELEVISION, BILLBOARDS, BROCHURES, BUSINESS CARDS, NEWSLETTERS, ANNOUNCEMENTS, PROMOTIONAL ITEMS BRANDING MATERIALS, ADVERTISEMENTS, WEBSITES AND MAILED OR ELECTRONICALLY TRANSMITTED WRITTEN COMMUNICATIONS, ADVERTISEMENTS AND BRANDINGS.

8. "RUNNER" MEANS A PERSON, NOT A PROVIDER, WHO WITH THE INTENT TO OBTAIN A MATERIAL PECUNIARY BENEFIT, PROCURES OR ATTEMPTS TO PROCURE A CLIENT, PATIENT OR CUSTOMER AT THE DIRECTION OF, REQUEST OF, IN COOPERATION WITH, WHILE EMPLOYED BY, OR WITH INTENT TO SOLICIT A FEE FROM, A PROVIDER OR FROM ANY PERSON WHO CREATES THE IMPRESSION THAT HE OR SHE OR HIS OR HER PRACTICE CAN PROVIDE LEGAL OR HEALTH CARE SERVICES. SUCH TERM SHALL NOT INCLUDE A PERSON WHO PROCURES OR ATTEMPTS TO PROCURE CLIENTS, PATIENTS OR CUSTOMERS FOR A PROVIDER THROUGH PUBLIC MEDIA OR WHO REFERS CLIENTS, PATIENTS OR CUSTOMERS AS AUTHORIZED OR PERMITTED BY LAW OR IN ACCORDANCE WITH EXISTING PROFESSIONAL CODES OF CONDUCT GOVERNING THE

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

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PROFESSIONAL PRACTICE OF A PROVIDER. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO PROHIBIT AN AGENT, BROKER OR EMPLOYEE OF A HEALTH MAINTENANCE ORGANIZATION FROM SEEKING TO SELL HEALTH MAINTENANCE ORGANIZATION COVERAGE OR HEALTH INSURANCE COVERAGE TO AN INDIVIDUAL OR GROUP.

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 MORE THAN ONE OCCASION DURING ANY TWELVE-MONTH PERIOD; OR

2. AS A PROVIDER, IN VIOLATION OF LAW OR EXISTING PROFESSIONAL CODES OF CONDUCT GOVERNING THE PROFESSIONAL PRACTICE OF THE PROVIDER, USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ANOTHER PERSON TO ACT AS A RUNNER ON MORE THAN ONE OCCASION OVER ANY TWELVE-MONTH PERIOD AND PROVIDES A MATERIAL PECUNIARY BENEFIT.

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.

1. A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE SECOND DEGREE WHEN HE OR SHE KNOWINGLY ACTS AS A RUNNER ON FIVE OR MORE OCCASIONS OVER ANY TWELVE-MONTH PERIOD, OR FOR A PECUNIARY BENEFIT THAT IN THE AGGREGATE EXCEEDS FIVE THOUSAND DOLLARS IN VALUE; OR

2. AS A PROVIDER, IN VIOLATION OF LAW OR EXISTING PROFESSIONAL CODES OF CONDUCT GOVERNING THE PROFESSIONAL PRACTICE OF THE PROVIDER, KNOWINGLY USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ONE OR MORE PERSONS TO ACT AS A RUNNER ON FIVE OR MORE OCCASIONS OVER ANY TWELVE-MONTH PERIOD, OR PROVIDES A PECUNIARY BENEFIT TO THE RUNNER THAT IN THE AGGREGATE EXCEEDS FIVE THOUSAND DOLLARS IN VALUE.

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.

1. A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IN THE FIRST DEGREE WHEN HE OR SHE KNOWINGLY ACTS AS A RUNNER ON TEN OR MORE OCCASIONS OVER ANY TWELVE-MONTH PERIOD, OR FOR A PECUNIARY BENEFIT THAT IN THE AGGREGATE EXCEEDS TWENTY THOUSAND DOLLARS IN VALUE; OR

2. AS A PROVIDER, IN VIOLATION OF LAW OR EXISTING PROFESSIONAL CODES OF CONDUCT GOVERNING THE PROFESSIONAL PRACTICE OF THE PROVIDER, KNOWINGLY USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ONE OR MORE PERSONS TO ACT AS A RUNNER ON TEN OR MORE OCCASIONS OVER ANY TWELVE-MONTH PERIOD, OR PROVIDES A PECUNIARY BENEFIT TO THE RUNNER THAT IN THE AGGREGATE EXCEEDS TWENTY THOUSAND DOLLARS IN VALUE.

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

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.