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I N   A S S E M B L Y

February 12, 2014

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Introduced by M. of A. SCHIMMINGER, SIMOTAS, ENGLEBRIGHT, GUNTHER,  
JAFFEE, OTIS, ROSA, CLARK, COOK -- Multi-Sponsored by -- M. of A.  
JACOBS, MAGEE, MARKEY, PEOPLES-STOKES, PERRY, SKARTADOS, STECK, SWEE-  
NEY, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to larceny

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

1     Section 1. Paragraph (d) of subdivision 2 of section 155.05 of the  
2     penal law is amended to read as follows:  
3     (d) By false promise.  
4     A person obtains property by false promise when, pursuant to a scheme  
5     to defraud, he obtains property of another by means of a representation,  
6     express or implied, that he or a third person will in the future engage  
7     in particular conduct, and when he does not intend to engage in such  
8     conduct or, as the case may be, does not believe that the third person  
9     intends to engage in such conduct.  
10    In any prosecution for larceny based upon a false promise, the defend-  
11    ant's intention or belief that the promise would not be performed may  
12    not be established by or inferred from the fact alone that such promise  
13    was not performed. Such a finding may be based only upon evidence estab-  
14    lishing that the facts and circumstances of the case are wholly consist-  
15    ent with guilty intent or belief and wholly inconsistent with innocent  
16    intent or belief, and excluding to a moral certainty every hypothesis  
17    except that of the defendant's intention or belief that the promise  
18    would not be performed; PROVIDED THAT PARTIAL PERFORMANCE OF SUCH PROM-  
19    ISE DOES NOT, BY ITSELF, PRECLUDE A REASONABLE JURY FROM MAKING SUCH  
20    FINDING FROM ALL THE FACTS AND CIRCUMSTANCES;  
21    S 2. This act shall take effect immediately.

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

LBD13773-01-4