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

3575

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. RODRIGUEZ -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the penal law and the state finance law, in relation to minority and women-owned businesses post completion certification, duties of the director, the crime of scheme to defraud and creating the minority and women-owned business fund

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

Section 1. The executive law is amended by adding a new section 314-a to read as follows:

S 314-A. POST COMPLETION CERTIFICATION. THE DIRECTOR, IN COLLABORATION WITH THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT AND THE DEPARTMENT OF SMALL BUSINESS SERVICES, SHALL DEVELOP THE FOLLOWING STANDARDIZED CERTIFICATION FORMS THAT MUST BE COMPLETED UNDER PENALTY OF PERJURY PRIOR TO THE PRIME CONTRACTOR BEING PAID:

1. CERTIFICATION FROM A REPRESENTATIVE OF THE PRIME CONTRACTOR THAT THE MINORITY OR WOMEN-OWNED BUSINESS IN FACT PERFORMED THE SERVICES OR PROVIDED THE MATERIALS THAT THEY WERE CONTRACTED TO PERFORM OR PROVIDE; AND

2. CERTIFICATION FROM A REPRESENTATIVE OF THE MINORITY OR WOMEN-OWNED BUSINESS THAT THEY IN FACT PERFORMED THE SERVICES OR PROVIDED THE MATERIALS THAT THEY WERE CONTRACTED TO PERFORM OR PROVIDE.

S 2. Paragraphs (f), (h) and (i) of subdivision 3 of section 311 of the executive law, paragraph (f) as added by chapter 261 of the laws of 1988, paragraph (h) as amended and paragraph (i) as added by section 1 of part BB of chapter 59 of the laws of 2006, are amended and three new paragraphs (j), (k) and (l) are added to read as follows:

(f) to prepare and update periodically a directory of certified minority and women-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate

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

LBD07144-02-5

areas or locations of the state where such enterprises are available to perform services, AND TO USE THIS INFORMATION TO CREATE AN INTERNET BASED, SEARCHABLE, CENTRALIZED STATE REGISTRY DETAILING CERTIFICATIONS, DENIALS, AND ALL DOCUMENTS SUBMITTED DURING THE LIFE OF THE CONTRACT;

(h) notwithstanding the provisions of section two hundred ninety-six of this chapter, to file a complaint pursuant to the provisions of section two hundred ninety-seven of this chapter where the director has knowledge that a contractor may have violated the provisions of paragraph (a), (b) or (c) of subdivision one of section two hundred ninety-six of this chapter where such violation is unrelated, separate or distinct from the state contract as expressed by its terms; [and]

(i) to streamline the state certification process to accept federal and municipal corporation certifications[.];

(J) TO PERFORM INSPECTIONS OF MINORITY OR WOMEN-OWNED BUSINESS' PLACE OF BUSINESS, WAREHOUSE OR STORAGE FACILITY TO CONFIRM THE EXISTENCE OF A WORKFORCE, EQUIPMENT AND SUPPLIES;

(K) TO PERFORM INSPECTIONS OF FINANCIAL RECORDS OF MINORITY OR WOMEN-OWNED BUSINESS' FOR EVIDENCE OF FRAUD; AND

(L) TO ENSURE THE PROTECTION OF INDIVIDUALS WHO REPORT WRONGDOING ON THE PART OF A MINORITY OR WOMEN-OWNED BUSINESS.

S 3. Section 190.60 of the penal law, as amended by chapter 491 of the laws of 1992, subdivision 1 as amended by chapter 357 of the laws of 1996, is amended to read as follows:

S 190.60 Scheme to defraud in the [second] FIFTH degree.

1. A person is guilty of a scheme to defraud in the [second] FIFTH degree when he OR SHE engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property OR SERVICES, AS DEFINED IN SECTION 155.00 OF THIS PART, from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property OR SERVICES from one or more of such persons.

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property OR SERVICES, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the [second] FIFTH degree is a class A misdemeanor.

S 4. Section 190.65 of the penal law, as amended by chapter 291 of the laws of 2008, is amended to read as follows:

S 190.65 Scheme to defraud in the first degree.

1. A person is guilty of a scheme to defraud in the first degree when he or she: (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud [ten] ONE THOUSAND or more persons or to obtain property OR SERVICES, AS DEFINED IN SECTION 155.00 OF THIS PART, from [ten] ONE THOUSAND or more persons by false or fraudulent pretenses, representations or promises, and so obtains property OR SERVICES from one or more of such persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property OR SERVICES from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property OR SERVICES with a value in excess of one [thousand] MILLION dollars from one or more such persons[; or (c) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person, more than one of whom is a vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter or to obtain property from more than one person,

more than one of whom is a vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter, by false or fraudulent pretenses, representations or promises, and so obtains property from one or more such persons].

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property OR SERVICES, but it shall not be necessary to prove the identity of any other intended victim[, provided that in any prosecution under paragraph (c) of subdivision one of this section, it shall be necessary to prove the identity of at least one such vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter].

Scheme to defraud in the first degree is a class E felony.

S 5. The penal law is amended by adding three new sections 190.61, 190.62 and 190.63 to read as follows:

S 190.61 SCHEME TO DEFRAUD IN THE FOURTH DEGREE.

1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE FOURTH DEGREE WHEN HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD TEN OR MORE PERSONS OR TO OBTAIN PROPERTY OR SERVICES, AS DEFINED IN SECTION 155.00 OF THIS PART, FROM TEN OR MORE PERSONS BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY OR SERVICES FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE THAN ONE PERSON OR TO OBTAIN PROPERTY OR SERVICES FROM MORE THAN ONE PERSON BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY OR SERVICES WITH A VALUE IN EXCESS OF ONE THOUSAND DOLLARS FROM ONE OR MORE SUCH PERSONS; OR (C) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE THAN ONE PERSON, MORE THAN ONE OF WHOM IS A VULNERABLE ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF SECTION 260.31 OF THIS CHAPTER OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON, MORE THAN ONE OF WHOM IS A VULNERABLE ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF SECTION 260.31 OF THIS CHAPTER, BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY FROM ONE OR MORE SUCH PERSONS.

2. IN ANY PROSECUTION UNDER THIS SECTION, IT SHALL BE NECESSARY TO PROVE THE IDENTITY OF AT LEAST ONE PERSON FROM WHOM THE DEFENDANT SO OBTAINED PROPERTY OR SERVICES, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY OF ANY OTHER INTENDED VICTIM, PROVIDED THAT IN ANY PROSECUTION UNDER PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION, IT SHALL BE NECESSARY TO PROVE THE IDENTITY OF AT LEAST ONE SUCH VULNERABLE ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF SECTION 260.31 OF THIS CHAPTER.

SCHEME TO DEFRAUD IN THE FOURTH DEGREE IS A CLASS D FELONY.

S 190.62 SCHEME TO DEFRAUD IN THE THIRD DEGREE.

1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE THIRD DEGREE WHEN HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD TWENTY-FIVE OR MORE PERSONS OR TO OBTAIN PROPERTY OR SERVICES, AS DEFINED IN SECTION 155.00 OF THIS PART, FROM TWENTY-FIVE OR MORE PERSONS BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY OR SERVICES FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE THAN ONE PERSON OR TO OBTAIN PROPERTY OR SERVICES FROM MORE THAN ONE PERSON BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO

OBTAINS PROPERTY OR SERVICES WITH A VALUE IN EXCESS OF THREE THOUSAND DOLLARS FROM ONE OR MORE SUCH PERSONS.

2. IN ANY PROSECUTION UNDER THIS SECTION, IT SHALL BE NECESSARY TO PROVE THE IDENTITY OF AT LEAST ONE PERSON FROM WHOM THE DEFENDANT SO OBTAINED PROPERTY OR SERVICES, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY OF ANY OTHER INTENDED VICTIM.

SCHEME TO DEFRAUD IN THE THIRD DEGREE IS A CLASS C FELONY.

S 190.63 SCHEME TO DEFRAUD IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE SECOND DEGREE WHEN HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD ONE HUNDRED OR MORE PERSONS OR TO OBTAIN PROPERTY OR SERVICES, AS DEFINED IN SECTION 155.00 OF THIS PART, FROM ONE HUNDRED OR MORE PERSONS BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY OR SERVICES FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE THAN ONE PERSON OR TO OBTAIN PROPERTY OR SERVICES FROM MORE THAN ONE PERSON BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY OR SERVICES WITH A VALUE IN EXCESS OF FIFTY THOUSAND DOLLARS FROM ONE OR MORE SUCH PERSONS.

2. IN ANY PROSECUTION UNDER THIS SECTION, IT SHALL BE NECESSARY TO PROVE THE IDENTITY OF AT LEAST ONE PERSON FROM WHOM THE DEFENDANT SO OBTAINED PROPERTY OR SERVICES, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY OF ANY OTHER INTENDED VICTIM.

SCHEME TO DEFRAUD IN THE SECOND DEGREE IS A CLASS B FELONY.

S 6. Paragraph c of subdivision 1 of section 80.00 of the penal law, as amended by section 27 of subpart A of part H of chapter 55 of the laws of 2014, is amended and a new paragraph d is added to read as follows:

c. if the conviction is for any felony defined in article two hundred twenty or two hundred twenty-one of this chapter, according to the following schedule:

(i) for A-I felonies, one hundred thousand dollars;

(ii) for A-II felonies, fifty thousand dollars;

(iii) for B felonies, thirty thousand dollars;

(iv) for C felonies, fifteen thousand dollars.

When imposing a fine pursuant to the provisions of this paragraph, the court shall consider the profit gained by defendant's conduct, whether the amount of the fine is disproportionate to the conduct in which defendant engaged, its impact on any victims, and defendant's economic circumstances, including the defendant's ability to pay, the effect of the fine upon his or her immediate family or any other persons to whom the defendant owes an obligation of support[.]; OR

D. IF THE CONVICTION IS FOR ANY FELONY DEFINED IN SECTION 190.61, 190.62, 190.63, OR 190.65 AND THE FRAUD INVOLVES A MINORITY OR WOMEN-OWNED BUSINESS, DOUBLE THE AMOUNT THAT SHOULD HAVE BEEN PAID TO THE MINORITY OR WOMEN-OWNED BUSINESS FOR BONA FIDE WORK OR MATERIALS UNDER THE CONTRACT.

S 7. Section 80.00 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. ALL MONEYS RECEIVED OR COLLECTED IN PAYMENT OF A FINE IMPOSED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION ARE THE PROPERTY OF THE STATE AND THE STATE COMPTROLLER SHALL DEPOSIT ALL SUCH FINES TO THE MINORITY AND WOMEN-OWNED BUSINESS FUND ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-J OF THE STATE FINANCE LAW.

S 8. The state finance law is amended by adding a new section 97-j to read as follows:

S 97-J. MINORITY AND WOMEN-OWNED BUSINESS FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "MINORITY AND WOMEN-OWNED BUSINESS FUND".

2. SUCH FUNDS SHALL CONSIST OF ALL FINES RECEIVED FROM ANY COURT OF THE UNIFIED COURT SYSTEM PURSUANT TO THE PROVISIONS OF SUBDIVISION EIGHT OF SECTION 80.00 OF THE PENAL LAW.

3. MONIES OF THE FUND, WHEN ALLOCATED, SHALL BE DISBURSED TO ACQUIRE SOFTWARE, EMPLOY PERSONNEL TO AUDIT, INVESTIGATE AND PROSECUTE MINORITY AND WOMEN-OWNED BUSINESS FRAUD AND TO UNDERWRITE MINORITY AND WOMEN-OWNED BUSINESS PROGRAMS TO ASSIST MINORITY AND WOMEN BUSINESS OWNERS TO DEVELOP SUSTAINABLE BUSINESSES.

S 9. This act shall take effect immediately, provided, however, that the amendments to article 15-A of the executive law made by sections one and two of this act shall not affect the expiration of such article and shall be deemed to expire therewith.