

5577--A

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. AVELLA -- 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 making technical corrections to the descriptions of certain bribery offenses and defenses; to amend the penal law, in relation to commercial bribing; to amend the penal law and the criminal procedure law, in relation to the crime of official misconduct and to abuse of public trust crimes; and to amend the penal law, in relation to undisclosed self-dealing

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

- 1 Section 1. Section 200.00 of the penal law, as amended by chapter 833
2 of the laws of 1986, is amended to read as follows:
3 S 200.00 Bribery in the third degree.
4 A person is guilty of bribery in the third degree when he OR SHE
5 confers, or offers or agrees to confer, any benefit upon a public serv-
6 ant [upon an agreement or understanding that] WITH THE INTENT TO INFLU-
7 ENCE such public servant's vote, opinion, judgment, action, decision or
8 exercise of discretion as a public servant [will thereby be influenced].
9 Bribery in the third degree is a class D felony.
10 S 2. Section 200.03 of the penal law, as amended by section 18 of
11 subpart A of part H of chapter 55 of the laws of 2014, is amended to
12 read as follows:
13 S 200.03 Bribery in the second degree.
14 A person is guilty of bribery in the second degree when he OR SHE
15 confers, or offers or agrees to confer, any benefit valued in excess of
16 five thousand dollars upon a public servant [upon an agreement or under-
17 standing that] WITH THE INTENT TO INFLUENCE such public servant's vote,

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

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1 opinion, judgment, action, decision or exercise of discretion as a
2 public servant [will thereby be influenced].

3 Bribery in the second degree is a class C felony.

4 S 3. Section 200.04 of the penal law, as amended by section 19 of
5 subpart A of part H of chapter 55 of the laws of 2014, is amended to
6 read as follows:

7 S 200.04 Bribery in the first degree.

8 A person is guilty of bribery in the first degree when the person
9 confers, or offers or agrees to confer: (1) any benefit upon a public
10 servant [upon an agreement or understanding that] WITH THE INTENT TO
11 INFLUENCE such public servant's vote, opinion, judgment, action, deci-
12 sion or exercise of discretion as a public servant [will thereby be
13 influenced] in the investigation, arrest, detention, prosecution or
14 incarceration of any person for the commission or alleged commission of
15 a class A felony defined in article two hundred twenty of this part or
16 an attempt to commit any such class A felony; or (2) any benefit valued
17 in excess of one hundred thousand dollars upon a public servant [upon an
18 agreement or understanding that] WITH THE INTENT TO INFLUENCE such
19 public servant's vote, opinion, judgment, action, decision or exercise
20 of discretion as a public servant [will thereby be influenced].

21 Bribery in the first degree is a class B felony.

22 S 4. Section 200.05 of the penal law is amended to read as follows:

23 S 200.05 Bribery; defense.

24 In any prosecution for bribery[,]: (1) it is a defense that the
25 defendant conferred or agreed to confer the benefit involved upon the
26 public servant involved as a result of conduct of the latter constitut-
27 ing larceny committed by means of extortion, or an attempt to commit the
28 same, or coercion, or an attempt to commit coercion[.]; AND (2) IT IS
29 ALSO A DEFENSE THAT THE BENEFIT THAT THE DEFENDANT CONFERRED, OR OFFERED
30 OR AGREED TO CONFER, UPON THE PUBLIC SERVANT WAS A LEGITIMATE CAMPAIGN
31 CONTRIBUTION, UNLESS SUCH CONTRIBUTION WAS MADE UPON AN AGREEMENT OR
32 UNDERSTANDING THAT SUCH PUBLIC SERVANT'S VOTE, OPINION, JUDGMENT,
33 ACTION, DECISION OR EXERCISE OF DISCRETION AS A PUBLIC SERVANT WOULD
34 THEREBY BE INFLUENCED.

35 S 5. Section 180.03 of the penal law, as amended by chapter 577 of the
36 laws of 1983, is amended to read as follows:

37 S 180.03 Commercial bribing in the first degree.

38 A person is guilty of commercial bribing in the first degree when he
39 OR SHE confers, or offers or agrees to confer, any benefit upon any
40 employee, agent or fiduciary without the consent of the latter's employ-
41 er or principal, with intent to influence his OR HER conduct in relation
42 to his OR HER employer's or principal's affairs, and when the value of
43 the benefit conferred or offered or agreed to be conferred exceeds one
44 thousand dollars [and causes economic harm to the employer or principal
45 in an amount exceeding two hundred fifty dollars].

46 Commercial bribing in the first degree is a class E felony.

47 S 6. Section 180.08 of the penal law, as amended by chapter 577 of the
48 laws of 1983, is amended to read as follows:

49 S 180.08 Commercial bribe receiving in the first degree.

50 An employee, agent or fiduciary is guilty of commercial bribe receiv-
51 ing in the first degree when, without the consent of his OR HER employer
52 or principal, he OR SHE solicits, accepts or agrees to accept any bene-
53 fit from another person upon an agreement or understanding that such
54 benefit will influence his OR HER conduct in relation to his OR HER
55 employer's or principal's affairs, and when the value of the benefit
56 solicited, accepted or agreed to be accepted exceeds one thousand

dollars [and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars].

Commercial bribe receiving in the first degree is a class E felony.

S 7. Section 195.00 of the penal law, as amended by chapter 906 of the laws of 1990, is amended to read as follows:

S 195.00 Official misconduct IN THE THIRD DEGREE.

A public servant is guilty of official misconduct IN THE THIRD DEGREE when, with intent to obtain a benefit or deprive another person of a benefit:

1. He OR SHE commits an act relating to his OR HER office but constituting an unauthorized exercise of his OR HER official functions, knowing that such act is unauthorized; or

2. He OR SHE knowingly refrains from performing a duty which is imposed upon him OR HER by law or is clearly inherent in the nature of his OR HER office.

Official misconduct IN THE THIRD DEGREE is a class A misdemeanor.

S 8. The penal law is amended by adding two new sections 195.01 and 195.03 to read as follows:

S 195.01 OFFICIAL MISCONDUCT IN THE SECOND DEGREE.

A PUBLIC SERVANT IS GUILTY OF OFFICIAL MISCONDUCT IN THE SECOND DEGREE WHEN HE OR SHE COMMITS THE CRIME OF OFFICIAL MISCONDUCT IN THE THIRD DEGREE AND HE OR SHE OBTAINS ANY BENEFIT OR DEPRIVES ANOTHER PERSON OF A BENEFIT VALUED IN EXCESS OF ONE THOUSAND DOLLARS.

OFFICIAL MISCONDUCT IN THE SECOND DEGREE IS A CLASS E FELONY.

S 195.03 OFFICIAL MISCONDUCT IN THE FIRST DEGREE.

A PUBLIC SERVANT IS GUILTY OF OFFICIAL MISCONDUCT IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF OFFICIAL MISCONDUCT IN THE THIRD DEGREE AND HE OR SHE OBTAINS ANY BENEFIT OR DEPRIVES ANOTHER PERSON OF A BENEFIT VALUED IN EXCESS OF THREE THOUSAND DOLLARS.

OFFICIAL MISCONDUCT IN THE FIRST DEGREE IS A CLASS D FELONY.

S 9. The penal law is amended by adding a new article 196 to read as follows:

ARTICLE 196

ABUSE OF PUBLIC TRUST

SECTION 196.00 ABUSE OF PUBLIC TRUST CRIME.

S 196.00 ABUSE OF PUBLIC TRUST CRIME.

1. (A) A PERSON COMMITS AN ABUSE OF PUBLIC TRUST CRIME WHEN HE OR SHE COMMITS A FELONY OFFENSE AND EITHER:

(I) INTENTIONALLY USES HIS OR HER POSITION AS A PUBLIC SERVANT IN A MANNER THAT SIGNIFICANTLY FACILITATES THE COMMISSION OR CONCEALMENT OF THE OFFENSE; OR

(II) ATTEMPTS, CONSPIRES OR SOLICITS ANOTHER TO COMMIT ANY FELONY, AND IN SUCH ATTEMPT, CONSPIRACY OR SOLICITATION INTENTIONALLY USES HIS OR HER POSITION AS A PUBLIC SERVANT TO SIGNIFICANTLY FACILITATE THE COMMISSION OR CONCEALMENT OF THE OFFENSE.

(B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, AN ABUSE OF PUBLIC TRUST CRIME SHALL NOT INCLUDE ANY OFFENSE FOR WHICH THE OFFENDER'S STATUS AS A PUBLIC SERVANT CONSTITUTES AN ELEMENT OF THE OFFENSE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING PROVISIONS OF THIS CHAPTER: PARAGRAPH (G) OF SUBDIVISION FOUR OF SECTION 135.35 (LABOR TRAFFICKING); SUBDIVISION EIGHT OF SECTION 135.60 (COERCION IN THE SECOND DEGREE); PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION 135.65 (COERCION IN THE FIRST DEGREE); PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION 175.40 (ISSUING A FALSE CERTIFICATE); SECTION 195.00 (OFFICIAL MISCONDUCT IN THE THIRD DEGREE); SECTION 195.01 (OFFICIAL MISCONDUCT IN THE SECOND

1 DEGREE); SECTION 195.03 (OFFICIAL MISCONDUCT IN THE FIRST DEGREE);
2 SECTION 200.10 (BRIBE RECEIVING IN THE THIRD DEGREE); SECTION 200.11
3 (BRIBE RECEIVING IN THE SECOND DEGREE); SECTION 200.12 (BRIBE RECEIVING
4 IN THE FIRST DEGREE); SECTION 200.25 (RECEIVING REWARD FOR OFFICIAL
5 MISCONDUCT IN THE SECOND DEGREE); SECTION 200.27 (RECEIVING REWARD FOR
6 OFFICIAL MISCONDUCT IN THE FIRST DEGREE); SECTION 200.35 (RECEIVING
7 UNLAWFUL GRATUITIES); SECTION 200.50 (BRIBE RECEIVING FOR PUBLIC
8 OFFICE); PARAGRAPH (G) OF SUBDIVISION FIVE OF SECTION 230.34 (SEX TRAF-
9 FICKING); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING
10 OFFENSES.

11 2. WHEN A PERSON IS CONVICTED OF AN ABUSE OF PUBLIC TRUST CRIME PURSU-
12 ANT TO SUBDIVISION ONE OF THIS SECTION AND THE SPECIFIED OFFENSE IS A
13 CLASS C, D OR E FELONY, THE CRIME SHALL BE DEEMED TO BE ONE CATEGORY
14 HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT COMMITTED, OR ONE CATE-
15 GORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S
16 CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SPECIFIED OFFENSE,
17 WHICHEVER IS APPLICABLE.

18 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
19 CONVICTED OF A CRIME PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THE
20 SPECIFIED OFFENSE IS A CLASS B FELONY:

21 (A) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
22 SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF
23 THIS CHAPTER;

24 (B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS
25 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

26 (C) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS
27 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;

28 (D) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
29 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF
30 THIS CHAPTER; AND

31 (E) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE
32 DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS
33 SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

34 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
35 CONVICTED OF A CRIME PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THE
36 SPECIFIED OFFENSE IS A CLASS A-I FELONY, THE MINIMUM PERIOD OF THE INDE-
37 TERMINATE SENTENCE SHALL BE NOT LESS THAN TWENTY YEARS.

38 S 10. Subdivision 4 of section 200.50 of the criminal procedure law,
39 as amended by section 15 of subpart A of part H of chapter 55 of the
40 laws of 2014, is amended to read as follows:

41 4. A statement in each count that the grand jury, or, where the accu-
42 satory instrument is a superior court information, the district attor-
43 ney, accuses the defendant or defendants of a designated offense,
44 provided that in any prosecution under article four hundred eighty-five
45 of the penal law, the designated offense shall be the specified offense,
46 as defined in subdivision three of section 485.05 of the penal law,
47 followed by the phrase "as a hate crime", and provided further that in
48 any prosecution under section 490.25 of the penal law, the designated
49 offense shall be the specified offense, as defined in subdivision three
50 of section 490.05 of the penal law, followed by the phrase "as a crime
51 of terrorism"; and provided further that in any prosecution under
52 section 130.91 of the penal law, the designated offense shall be the
53 specified offense, as defined in subdivision two of section 130.91 of
54 the penal law, followed by the phrase "as a sexually motivated felony";
55 and provided further that in any prosecution under section 496.06 of the
56 penal law, the designated offense shall be the specified offense, as

defined in subdivision two of such section, followed by the phrase "as a public corruption crime"; AND PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER ARTICLE ONE HUNDRED NINETY-SIX OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE DESIGNATED FELONY OFFENSE, AS DEFINED IN SUBDIVISION TWO OF SECTION 196.00 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS AN ABUSE OF PUBLIC TRUST CRIME"; and

S 11. Subdivision 7 of section 200.50 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(F) IN THE CASE OF AN ABUSE OF PUBLIC TRUST CRIME, AS DEFINED IN SECTION 196.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE DEFENDANT OR DEFENDANTS COMMITTED, OR ATTEMPTED, CONSPIRED OR SOLICITED ANOTHER TO COMMIT, A FELONY AND INTENTIONALLY USED HIS OR HER POSITION AS A PUBLIC SERVANT IN A MANNER THAT SIGNIFICANTLY FACILITATED THE COMMISSION OR CONCEALMENT OF THE OFFENSE; AND

S 12. The penal law is amended by adding two new sections 195.30 and 195.35 to read as follows:

S 195.30 UNDISCLOSED SELF-DEALING IN THE SECOND DEGREE.

A PERSON IS GUILTY OF UNDISCLOSED SELF-DEALING IN THE SECOND DEGREE WHEN, BEING A PUBLIC SERVANT, HE OR SHE INTENTIONALLY ENGAGES IN CONDUCT OR A COURSE OF CONDUCT IN HIS OR HER OFFICIAL CAPACITY IN CONNECTION WITH THE AWARD OF A PUBLIC CONTRACT OR PUBLIC GRANT OR OTHER EFFORT TO OBTAIN OR RETAIN PUBLIC BUSINESS OR PUBLIC FUNDS THAT IS INTENDED TO CONFER AN UNDISCLOSED BENEFIT ON HIMSELF, HERSELF, A SPOUSE, DOMESTIC PARTNER, CHILD, PARENT, OR SIBLING OF THE PUBLIC SERVANT, A PERSON WITH WHOM A PUBLIC SERVANT HAS A BUSINESS OR OTHER FINANCIAL RELATIONSHIP, OR A FIRM IN WHICH THE PUBLIC SERVANT HAS A PRESENT OR POTENTIAL INTEREST AND THEREBY OBTAINS OR ATTEMPTS TO OBTAIN A BENEFIT FOR HIMSELF, HERSELF, A SPOUSE, DOMESTIC PARTNER, CHILD, PARENT, OR SIBLING OF THE PUBLIC SERVANT, A PERSON WITH WHOM A PUBLIC SERVANT HAS A BUSINESS OR OTHER FINANCIAL RELATIONSHIP, OR A FIRM IN WHICH THE PUBLIC SERVANT HAS A PRESENT OR POTENTIAL INTEREST WITH A VALUE IN EXCESS OF THREE THOUSAND DOLLARS. A BENEFIT IS DISCLOSED IF ITS EXISTENCE IS MADE KNOWN PRIOR TO THE ALLEGED WRONGFUL CONDUCT TO EITHER (I) THE RELEVANT STATE OR LOCAL ETHICS COMMISSION OR (II) THE OFFICIAL RESPONSIBLE FOR THE PUBLIC SERVANT'S APPOINTMENT TO HIS OR HER POSITION, PROVIDED THAT PERSON IS NOT A PARTICIPANT IN THE ALLEGED WRONGFUL CONDUCT.

UNDISCLOSED SELF-DEALING IN THE SECOND DEGREE IS A CLASS D FELONY.

S 195.35 UNDISCLOSED SELF-DEALING IN THE FIRST DEGREE.

A PERSON IS GUILTY OF UNDISCLOSED SELF-DEALING IN THE FIRST DEGREE WHEN, BEING A PUBLIC SERVANT, HE OR SHE INTENTIONALLY ENGAGES IN CONDUCT OR A COURSE OF CONDUCT IN HIS OR HER OFFICIAL CAPACITY IN CONNECTION WITH THE AWARD OF A PUBLIC CONTRACT OR PUBLIC GRANT OR OTHER EFFORT TO OBTAIN OR RETAIN PUBLIC BUSINESS OR PUBLIC FUNDS THAT IS INTENDED TO CONFER AN UNDISCLOSED BENEFIT ON HIMSELF, HERSELF, A SPOUSE, DOMESTIC PARTNER, CHILD, PARENT, OR SIBLING OF THE PUBLIC SERVANT, A PERSON WITH WHOM A PUBLIC SERVANT HAS A BUSINESS OR OTHER FINANCIAL RELATIONSHIP, OR A FIRM IN WHICH THE PUBLIC SERVANT HAS A PRESENT OR POTENTIAL INTEREST AND THEREBY OBTAINS OR ATTEMPTS TO OBTAIN A BENEFIT FOR HIMSELF, HERSELF, A SPOUSE, DOMESTIC PARTNER, CHILD, PARENT, OR SIBLING OF THE PUBLIC SERVANT, A PERSON WITH WHOM A PUBLIC SERVANT HAS A BUSINESS OR OTHER FINANCIAL RELATIONSHIP, OR A FIRM IN WHICH THE PUBLIC SERVANT HAS A PRESENT OR POTENTIAL INTEREST WITH A VALUE IN EXCESS OF TEN THOUSAND DOLLARS. A BENEFIT IS DISCLOSED IF ITS EXISTENCE IS MADE KNOWN PRIOR TO THE ALLEGED WRONGFUL CONDUCT TO EITHER (I) THE RELEVANT STATE OR LOCAL ETHICS COMMISSION OR (II) THE OFFICIAL RESPONSIBLE FOR THE PUBLIC SERV-

1 ANT'S APPOINTMENT TO HIS OR HER POSITION, PROVIDED THAT PERSON IS NOT A
2 PARTICIPANT IN THE ALLEGED WRONGFUL CONDUCT.
3 UNDISCLOSED SELF-DEALING IN THE FIRST DEGREE IS A CLASS C FELONY.
4 S 13. This act shall take effect on the first of November next
5 succeeding the date on which it shall have become a law.