

4470

2015-2016 Regular Sessions

I N A S S E M B L Y

February 2, 2015

Introduced by M. of A. SCHIMMINGER, SIMOTAS, ENGLEBRIGHT, GUNTHER, JAFFEE, OTIS, CLARK, COOK, BRONSON -- Multi-Sponsored by -- M. of A. MAGEE, MARKEY, PEOPLES-STOKES, PERRY, SKARTADOS, STECK, 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 ASSEMBLY, 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 OR SHE obtains property of another by means of a repre-
6 sentation, express or implied, that he, SHE or a third person will in
7 the future engage in particular conduct, and when he OR SHE does not
8 intend to engage in such conduct or, as the case may be, does not
9 believe that the third person 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.

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