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I N   S E N A T E

May 6, 2016

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Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed,  
and when printed to be committed to the Committee on Finance

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:

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

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

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

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

15    S 2. Paragraphs (f), (h) and (i) of subdivision 3 of section 311 of  
16    the executive law, paragraph (f) as added by chapter 261 of the laws of  
17    1988, paragraph (h) as amended and paragraph (i) as added by section 1  
18    of part BB of chapter 59 of the laws of 2006, are amended and three new  
19    paragraphs (j), (k) and (l) are added to read as follows:

20    (f) to prepare and update periodically a directory of certified minor-  
21    ity and women-owned business enterprises which shall, wherever practica-  
22    ble, be divided into categories of labor, services, supplies, equipment,  
23    materials and recognized construction trades and which shall indicate  
24    areas or locations of the state where such enterprises are available to  
25    perform services, AND TO USE THIS INFORMATION TO CREATE AN INTERNET

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

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1 BASED, SEARCHABLE, CENTRALIZED STATE REGISTRY DETAILING CERTIFICATIONS,  
2 DENIALS, AND ALL DOCUMENTS SUBMITTED DURING THE LIFE OF THE CONTRACT;

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

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

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

15 (K) TO PERFORM INSPECTIONS OF FINANCIAL RECORDS OF MINORITY OR WOMEN-  
16 OWNED BUSINESSES FOR EVIDENCE OF FRAUD; AND

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

19 S 3. Section 190.60 of the penal law, as amended by chapter 491 of the  
20 laws of 1992, subdivision 1 as amended by chapter 357 of the laws of  
21 1996, is amended to read as follows:

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

23 1. A person is guilty of a scheme to defraud in the [second] FIFTH  
24 degree when he engages in a scheme constituting a systematic ongoing  
25 course of conduct with intent to defraud more than one person or to  
26 obtain property from more than one person by false or fraudulent  
27 pretenses, representations or promises, and so obtains property from one  
28 or more of such persons.

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

33 Scheme to defraud in the [second] FIFTH degree is a class A misdemea-  
34 nor.

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

37 S 190.65 Scheme to defraud in the [first] FOURTH degree.

38 1. A person is guilty of a scheme to defraud in the [first] FOURTH  
39 degree when he or she: (a) engages in a scheme constituting a systematic  
40 ongoing course of conduct with intent to defraud ten or more persons or  
41 to obtain property from ten or more persons by false or fraudulent  
42 pretenses, representations or promises, and so obtains property from one  
43 or more of such persons; or (b) engages in a scheme constituting a  
44 systematic ongoing course of conduct with intent to defraud more than  
45 one person or to obtain property from more than one person by false or  
46 fraudulent pretenses, representations or promises, and so obtains prop-  
47 erty with a value in excess of one thousand dollars from one or more  
48 such persons; or (c) engages in a scheme constituting a systematic ongo-  
49 ing course of conduct with intent to defraud more than one person, more  
50 than one of whom is a vulnerable elderly person as defined in subdivi-  
51 sion three of section [260.30] 260.31 of this chapter or to obtain prop-  
52 erty from more than one person, more than one of whom is a vulnerable  
53 elderly person as defined in subdivision three of section [260.30]  
54 260.31 of this chapter, by false or fraudulent pretenses, representa-  
55 tions or promises, and so obtains property from one or more such  
56 persons.

1 2. In any prosecution under this section, it shall be necessary to  
2 prove the identity of at least one person from whom the defendant so  
3 obtained property, but it shall not be necessary to prove the identity  
4 of any other intended victim, provided that in any prosecution under  
5 paragraph (c) of subdivision one of this section, it shall be necessary  
6 to prove the identity of at least one such vulnerable elderly person as  
7 defined in subdivision three of section [260.30] 260.31 of this chapter.

8 Scheme to defraud in the [first] FOURTH degree is a class E felony.

9 S 5. The penal law is amended by adding four new sections 190.66,  
10 190.67, 190.68 and 190.69 to read as follows:

11 S 190.66 SCHEME TO DEFRAUD IN THE THIRD DEGREE.

12 1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE THIRD DEGREE WHEN  
13 HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING  
14 COURSE OF CONDUCT WITH INTENT TO DEFRAUD TWENTY-FIVE OR MORE PERSONS OR  
15 TO OBTAIN PROPERTY FROM TWENTY-FIVE OR MORE PERSONS BY FALSE OR FRAUDU-  
16 LENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY  
17 FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUT-  
18 ING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE  
19 THAN ONE PERSON OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON BY FALSE  
20 OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS  
21 PROPERTY WITH A VALUE IN EXCESS OF THREE THOUSAND DOLLARS FROM ONE OR  
22 MORE SUCH PERSONS.

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

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

28 S 190.67 SCHEME TO DEFRAUD IN THE SECOND DEGREE.

29 1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE SECOND DEGREE WHEN  
30 HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING  
31 COURSE OF CONDUCT WITH INTENT TO DEFRAUD ONE HUNDRED OR MORE PERSONS OR  
32 TO OBTAIN PROPERTY FROM ONE HUNDRED OR MORE PERSONS BY FALSE OR FRAUDU-  
33 LENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY  
34 FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUT-  
35 ING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE  
36 THAN ONE PERSON OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON BY FALSE  
37 OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS  
38 PROPERTY WITH A VALUE IN EXCESS OF FIFTY THOUSAND DOLLARS FROM ONE OR  
39 MORE SUCH PERSONS.

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

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

45 S 190.68 SCHEME TO DEFRAUD IN THE FIRST DEGREE.

46 1. A PERSON IS GUILTY OF A SCHEME TO DEFRAUD IN THE FIRST DEGREE WHEN  
47 HE OR SHE: (A) ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING  
48 COURSE OF CONDUCT WITH INTENT TO DEFRAUD ONE THOUSAND OR MORE PERSONS OR  
49 TO OBTAIN PROPERTY FROM ONE THOUSAND OR MORE PERSONS BY FALSE OR FRAUDU-  
50 LENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS PROPERTY  
51 FROM ONE OR MORE OF SUCH PERSONS; OR (B) ENGAGES IN A SCHEME CONSTITUT-  
52 ING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO DEFRAUD MORE  
53 THAN ONE PERSON OR TO OBTAIN PROPERTY FROM MORE THAN ONE PERSON BY FALSE  
54 OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES, AND SO OBTAINS  
55 PROPERTY WITH A VALUE IN EXCESS OF ONE MILLION DOLLARS FROM ONE OR MORE  
56 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, BUT IT SHALL NOT BE NECESSARY TO PROVE THE IDENTITY OF ANY OTHER INTENDED VICTIM.

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

S 190.69 THREE CONVICTIONS FOR SCHEME TO DEFRAUD BY AN OSTENSIBLE MINORITY OR WOMEN-OWNED BUSINESS.

UPON THREE CONVICTIONS FOR ANY OFFENSE DEFINED IN SECTION 190.60, 190.65, 190.66, 190.67, OR 190.68 INVOLVING A MINORITY OR WOMEN-OWNED BUSINESS, AN INDIVIDUAL SHALL BE BARRED FROM DOING BUSINESS WITH THE STATE.

S 6. Paragraphs a and 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, are amended and a new paragraph d is added to read as follows:

a. [five] FIFTY thousand dollars; or

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 190.65, 190.66, 190.67, OR 190.68, 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 OUT OF THE MISUSE OF A MINORITY OR WOMEN-OWNED BUSINESS 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. Subdivision 4 of section 80.00 of the penal law, as amended by chapter 338 of the laws of 1989, is amended to read as follows:

4. Exception. The provisions of this section shall not apply to a [corporation] NON-NATURAL PERSON.

S 9. Section 80.10 of the penal law, subdivision 1 as amended by section 28 of subpart A of part H of chapter 55 of the laws of 2014, is amended to read as follows:

S 80.10 Fines for [corporations] NON-NATURAL PERSONS.

1. In general. A sentence to pay a fine, when imposed on a [corporation] NON-NATURAL PERSON for an offense defined in this chapter or for an offense defined outside this chapter for which no special [corporate] fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

1 (a) [Ten] ONE HUNDRED thousand dollars, when the conviction is of a  
2 felony;

3 (b) Five thousand dollars, when the conviction is of a class A misde-  
4 meanor or of an unclassified misdemeanor for which a term of imprison-  
5 ment in excess of three months is authorized;

6 (c) Two thousand dollars, when the conviction is of a class B misde-  
7 meanor or of an unclassified misdemeanor for which the authorized term  
8 of imprisonment is not in excess of three months;

9 (d) Five hundred dollars, when the conviction is of a violation;

10 (e) Any higher amount not exceeding double the amount of the [corpo-  
11 ration's] NON-NATURAL PERSON'S gain from the commission of the offense  
12 or, if the [corporation] NON-NATURAL PERSON is convicted of a crime  
13 defined in article four hundred ninety-six of this chapter, any higher  
14 amount not exceeding three times the amount of the [corporation's] NON-  
15 NATURAL PERSON'S gain from the commission of such offense.

16 2. Exception. In the case of an offense defined outside this chapter,  
17 if a special fine [for a corporation] is expressly specified in the law  
18 or ordinance that defines the offense, the fine fixed by the court shall  
19 be as follows:

20 (a) An amount within the limits specified in the law or ordinance that  
21 defines the offense; or

22 (b) Any higher amount not exceeding double the amount of the [corpo-  
23 ration's] NON-NATURAL PERSON'S gain from the commission of the offense.

24 3. Determination of amount or value. When the court imposes the fine  
25 authorized by paragraph (e) of subdivision one or paragraph (b) of  
26 subdivision two OF THIS SECTION for any offense the provisions of subdi-  
27 vision three of section 80.00 OF THIS ARTICLE shall be applicable to the  
28 sentence.

29 S 10. The state finance law is amended by adding a new section 97-j to  
30 read as follows:

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

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

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

43 S 11. Section 316 of the executive law, as amended by chapter 175 of  
44 the laws of 2010, is amended to read as follows:

45 S 316. Enforcement. 1. Upon receipt by the director of a complaint by  
46 a contracting agency that a contractor has violated the provisions of a  
47 state contract which have been included to comply with the provisions of  
48 this article or of a contractor that a contracting agency has violated  
49 such provisions or has failed or refused to issue a waiver where one has  
50 been applied for pursuant to subdivision six of section three hundred  
51 thirteen of this article or has denied such application, the director  
52 shall attempt to resolve the matter giving rise to such complaint. If  
53 efforts to resolve such matter to the satisfaction of all parties are  
54 unsuccessful, the director shall refer the matter, within thirty days of  
55 the receipt of the complaint, to the division's hearing officers. Upon  
56 conclusion of the administrative hearing, the hearing officer shall

1 submit to the director his or her decision regarding the alleged  
2 violation of the contract and recommendations regarding the imposition  
3 of sanctions, fines or penalties. The director, within ten days of  
4 receipt of the decision, shall file a determination of such matter and  
5 shall cause a copy of such determination along with a copy of this arti-  
6 cle to be served upon the contractor by personal service or by certified  
7 mail return receipt requested. The decision of the hearing officer shall  
8 be final and may only be vacated or modified as provided in article  
9 seventy-eight of the civil practice law and rules upon an application  
10 made within the time provided by such article. The determination of the  
11 director as to the imposition of any fines, sanctions or penalties shall  
12 be reviewable pursuant to article seventy-eight of the civil practice  
13 law and rules. The penalties imposed for any violation which is premised  
14 upon either a fraudulent or intentional misrepresentation by the  
15 contractor or the contractor's willful and intentional disregard of the  
16 minority and women-owned participation requirement included in the  
17 contract may include a determination that the contractor shall be ineli-  
18 gible to submit a bid to any contracting agency or be awarded any such  
19 contract for a period not to exceed one year following the final deter-  
20 mination; provided however, if a contractor has previously been deter-  
21 mined to be ineligible to submit a bid pursuant to this section, the  
22 penalties imposed for any subsequent violation, if such violation occurs  
23 within five years of the first violation, may include a determination  
24 that the contractor shall be ineligible to submit a bid to any contract-  
25 ing agency or be awarded any such contract for a period not to exceed  
26 five years following the final determination. The division of minority  
27 and women's business development shall maintain a website listing all  
28 contractors that have been deemed ineligible to submit a bid pursuant to  
29 this section and the date after which each contractor shall once again  
30 become eligible to submit bids.

31 2. THE COMPTROLLER SHALL, FROM TIME TO TIME BUT AT LEAST ANNUALLY,  
32 CONDUCT AN AUDIT OF EVERY MINORITY AND WOMEN-OWNED BUSINESSES.

33 S 12. This act shall take effect immediately, provided, however, that  
34 the amendments to article 15-A of the executive law made by sections  
35 one, two and eleven of this act shall not affect the expiration of such  
36 article and shall be deemed to expire therewith.