STATE OF NEW YORK

1873

2017-2018 Regular Sessions

IN SENATE

January 11, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

Section 1. Section 200.00 of the penal law, as amended by chapter 833 of the laws of 1986, is amended to read as follows:

§ 200.00 Bribery in the third degree.

A person is guilty of bribery in the third degree when he **or she** confers, or offers or agrees to confer, any benefit upon a public servant [~~upon an agreement or understanding that~~] **with the intent to influence** such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant [~~will thereby be influenced~~].

Bribery in the third degree is a class D felony.

§ 2. Section 200.03 of the penal law, as amended by section 18 of subpart A of part H of chapter 55 of the laws of 2014, is amended to read as follows:

§ 200.03 Bribery in the second degree.

A person is guilty of bribery in the second degree when he **or she** confers, or offers or agrees to confer, any benefit valued in excess of five thousand dollars upon a public servant [~~upon an agreement or understanding that~~] **with the intent to influence** such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant [~~will thereby be influenced~~].

Bribery in the second degree is a class C felony.

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

§ 200.04 Bribery in the first degree.

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

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A person is guilty of bribery in the first degree when the person confers, or offers or agrees to confer: (1) any benefit upon a public servant [~~upon an agreement or understanding that~~] **with the intent to influence** such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant [~~will thereby be influenced~~] in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of this part or an attempt to commit any such class A felony; or (2) any benefit valued in excess of one hundred thousand dollars upon a public servant [~~upon an agreement or understanding that~~] **with the intent to influence** such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant [~~will thereby be influenced~~].

Bribery in the first degree is a class B felony.

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

§ 200.05 Bribery; defense.

In any prosecution for bribery[~~,~~]**: (1)** it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion[~~.~~]**; and (2) it is also a defense that the benefit that the defendant conferred, or offered or agreed to confer, upon the public servant was a legitimate campaign contribution, unless such contribution was made upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant would thereby be influenced.**

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

§ 180.03 Commercial bribing in the first degree.

A person is guilty of commercial bribing in the first degree when he **or she** confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his **or her** conduct in relation to his **or her** employer's or principal's affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars [~~and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars~~].

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

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

§ 180.08 Commercial bribe receiving in the first degree.

An employee, agent or fiduciary is guilty of commercial bribe receiving in the first degree when, without the consent of his **or her** employer or principal, he **or she** solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his **or her** conduct in relation to his **or her** employer's or principal's affairs, and when the value of the benefit 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.

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

§ 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.

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

§ 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.

§ 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.

§ 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.

§ 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 degree); section 195.03 (official misconduct in the first degree); section 200.10 (bribe receiving in the third degree); section 200.11 (bribe receiving in the second degree); section 200.12 (bribe receiving in the first degree); section 200.25 (receiving reward for official misconduct in the second degree); section 200.27 (receiving reward for official misconduct in the first degree); section 200.35 (receiving

unlawful gratuities); section 200.50 (bribe receiving for public office); paragraph (g) of subdivision five of section 230.34 (sex trafficking); or any attempt or conspiracy to commit any of the foregoing offenses.

2. When a person is convicted of an abuse of public trust crime pursuant to subdivision one of this section and the specified offense is a class C, D or E felony, the crime shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.

3. Notwithstanding any other provision of law, when a person is convicted of a crime pursuant to subdivision one of this section and the specified offense is a class B felony:

(a) the maximum term of the indeterminate sentence must be at least six years if the defendant is sentenced pursuant to section 70.00 of this chapter;

(b) the term of the determinate sentence must be at least eight years if the defendant is sentenced pursuant to section 70.02 of this chapter;

(c) the term of the determinate sentence must be at least twelve years if the defendant is sentenced pursuant to section 70.04 of this chapter;

(d) the maximum term of the indeterminate sentence must be at least four years if the defendant is sentenced pursuant to section 70.05 of this chapter; and

(e) the maximum term of the indeterminate sentence or the term of the determinate sentence must be at least ten years if the defendant is sentenced pursuant to section 70.06 of this chapter.

4. Notwithstanding any other provision of law, when a person is convicted of a crime pursuant to subdivision one of this section and the specified offense is a class A-I felony, the minimum period of the indeterminate sentence shall be not less than twenty years.

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

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; and provided further that in any prosecution under section 130.91 of the penal law, the designated offense shall be the specified offense, as defined in subdivision two of section 130.91 of the penal law, followed by the phrase "as a sexually motivated felony"; and provided further that in any prosecution under section 496.06 of the 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

§ 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

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

§ 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.

§ 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 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 first degree is a class C felony.

§ 13. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.