STATE OF NEW YORK

10803--A

IN ASSEMBLY

July 11, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Englebright, Stern, Ramos, Griffin, D'Urso, Otis) -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the disposal of construction and demolition waste; and to amend the penal law, in relation to creating the crime of scheme to defraud by disposal of solid waste

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 71-2702 of the environmental conservation law is amended by adding a new subdivision 15 to read as follows:

15. For the purposes of section 27-3101 of this chapter and subdivision five of section 71-2712, subdivisions seven, eight and nine of section 71-2713 and subdivision three of section 71-2714 of this title:

(a) "property of another" shall include all property in which another person has an ownership interest, whether or not a person who disposes on such property, or any other person, may also have an interest in such property; and

(b) "construction and demolition waste" shall mean waste resulting from the alteration, construction, destruction, rehabilitation, or repair of any man-made structure, including houses, buildings, industrial or commercial facilities and roadways and restricted or limited use fill and shall not include municipal solid waste.

§ 2. Subdivision 4 of section 71-2712 of the environmental conservation law, as amended by chapter 26 of the laws of 1998, is amended and a new subdivision 5 is added to read as follows:

4. He **or she** knowingly engages in conduct which causes the release of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment[~~.~~]**; or**

5. With intent to dispose of construction and demolition waste on the property of another and having no right to do so nor any reasonable

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

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grounds to believe he or she has such right, he or she unlawfully disposes of either ten cubic yards or more, or twenty thousand pounds or more, of construction and demolition waste, as defined in section 71-2702 of this title, on such property.

§ 3. Subdivision 6 of section 71-2713 of the environmental conservation law, as amended by chapter 26 of the laws of 1998, is amended and three new subdivisions 7, 8 and 9 are added to read as follows:

6. He or she knowingly or recklessly engages in conduct which causes the release of a substance hazardous to public health, safety or the environment and such substance enters a primary water supply[~~.~~]; or

7. With intent to dispose of construction and demolition waste on the property of another and having no right to do so nor any reasonable grounds to believe he or she has such right, he or she unlawfully disposes of either seventy cubic yards or more, or one hundred forty thousand pounds or more, of construction and demolition waste, as defined in section 71-2702 of this title, on such property; or

8. With intent to dispose of a hazardous substance on the property of another and having no right to do so nor any reasonable grounds to believe he or she has such right, he or she unlawfully disposes of a hazardous substance; or

9. He or she recklessly disposes of any acutely hazardous substance on the property of another.

§ 4. Subdivision 2 of section 71-2714 of the environmental conservation law, as amended by chapter 26 of the laws of 1998, is amended and a new subdivision 3 is added to read as follows:

2. He or she knowingly engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he or she knows to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103 of this chapter and such release causes physical injury to any person who is not a participant in the crime[~~.~~]~~;~~

3. With intent to dispose of an acutely hazardous substance on the property of another and having no right to do so nor any reasonable grounds to believe he or she has such right, he or she unlawfully disposes of an acutely hazardous substance on such property.

§ 5. Article 27 of the environmental conservation law is amended by adding a new title 31 to read as follows:

TITLE 31
CONSTRUCTION AND DEMOLITION WASTE

Section 27-3101. Waste tracking documents.

§ 27-3101. Waste tracking documents.

1. All generators in a city with a population of one million or more that generate construction and demolition waste, as defined in section 71-2702 of this chapter, shall provide waste transporters with a waste tracking document for each construction and demolition waste shipment, in a form prescribed or approved by the department, specifying the quantity and type of construction and demolition waste, and signed and dated by an authorized representative of the generator. The waste tracking documentation shall state: "I certify, under penalty of law, that the information provided in this waste tracking document has been prepared under my direction and supervision and further certify that the information contained herein is true and accurate. I am aware that any false statement made on this form is punishable pursuant to section 210.45 of the Penal Law."

2. All transporters of construction and demolition waste generated in a city with a population of one million or more shall:

(a) not accept a shipment of waste that does not match the quantity or type listed on the waste tracking document;

(b) have the waste tracking document signed by the receiving location or facility upon delivery of the solid waste and provide a copy of the tracking document to the receiving location or facility.

3. Failure to maintain such tracking documents is a class A misdemeanor.

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

§ 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 or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property 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 from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property 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 [~~260.30~~] **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 [~~260.30~~] **260.31** of this chapter, by false or fraudulent pretenses, representations or promises, and so obtains property from one or more such persons**; or (d) engages in a systematic ongoing course of conduct, with intent to defraud more than one person by false or fraudulent pretenses, representations or promises, by disposing of solid waste as defined in section 27-0701 of the environmental conservation law on such persons' property, and so damages the property of one or more of such persons in an amount in excess of one thousand dollars**.

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, 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~~] **260.31** of this chapter.

3. In any prosecution under paragraph (d) of subdivision one of this section, it shall be necessary to prove the identity of at least one person on whose property the defendant fraudulently disposed of solid waste pursuant to such paragraph (d), but it shall not be necessary to prove the identity of any other victim or intended victim.

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

§ 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. Effective immediately any rules and regulations necessary to implement the provisions of this act on its effective date are authorized to be made and completed on or before such date.