# STATE OF NEW YORK

8672--A

2019-2020 Regular Sessions

# IN ASSEMBLY

October 23, 2019

Introduced by M. of A. STERN, RAMOS, GRIFFIN, JACOBSON, ORTIZ, ENGLEBRIGHT, DeSTEFANO, McDONOUGH, STECK, MONTESANO, D'URSO, GOTTFRIED, BURKE, GALEF, THIELE, SIMON, MIKULIN, SMITH, EPSTEIN, COLTON, LAVINE, DARLING, JEAN-PIERRE, M. L. MILLER, PALUMBO, LiPETRI, FITZPATRICK, GARBARINO, RA -- Multi-Sponsored by -- M. of A. LENTOL -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the environmental conservation law, in relation to the disposal, possession and acceptance of solid waste and hazardous materials and to establishing crimes related to sand mining

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

Section 1. The penal law is amended by adding seven new sections 145.71, 145.72, 145.73, 145.74, 145.75, 145.76 and 145.77 to read as follows:

**§ 145.71 Criminal disposal in the fourth degree.**

**A person is guilty of criminal disposal in the fourth degree when:**

**1. with intent to dispose of solid waste as defined in article twenty-seven of the environmental conservation law on the property of another, he or she disposes solid waste on such property; or**

**2. with intent to dispose of construction and demolition material on the property of another, he or she disposes such material on such property.**

**Criminal disposal in the fourth degree is a class A misdemeanor.**

**§ 145.72 Criminal disposal in the third degree.**

**A person is guilty of criminal disposal in the third degree when:**

**1. with intent to dispose of solid waste on the property of another, he or she disposes of either ten cubic yards or more, or twenty thousand**

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

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pounds or more, of solid waste as defined in article twenty-seven of the environmental conservation law on such property; or

2. with intent to dispose of construction and demolition material on the property of another, he or she disposes of either ten cubic yards or more, or twenty thousand pounds or more of such material on such property.

Criminal disposal in the third degree is a class E felony.

§ 145.73 Criminal disposal in the second degree.

A person is guilty of criminal disposal in the second degree when:

1. with intent to dispose of solid waste as defined in article twenty-seven of the environmental conservation law on the property of another, he or she disposes of either seventy cubic yards or more or one hundred forty thousand pounds or more of solid waste on such property; or

2. with intent to dispose of construction and demolition material on the property of another, he or she disposes of either seventy cubic yards or more or one hundred forty thousand pounds or more of such material on such property.

Criminal disposal in the second degree is a class D felony.

§ 145.74 Criminal disposal in the first degree.

A person is guilty of criminal disposal in the first degree when:

1. with intent to dispose of a hazardous substance as defined in article thirty-seven of the environmental conservation law on the property of another, he or she disposes of a hazardous substance on such property; or

2. he or she recklessly disposes of an acutely hazardous substance as defined by the department of environmental conservation on the property of another.

Criminal disposal in the first degree is a class C felony.

§ 145.75 Aggravated criminal disposal.

A person is guilty of aggravated criminal disposal when, with intent to dispose of an acutely hazardous substance as defined in article thirty-seven of the environmental conservation law on the property of another, he or she disposes of an acutely hazardous substance on such property.

Aggravated criminal disposal is a class B felony.

§ 145.76 Presumptions.

1. For the purposes of this article, it shall be a rebuttable presumption that the presence of a hazardous or acutely hazardous substance as defined in article thirty-seven of the environmental conservation law in any material released into the environment is evidence of the knowing release of such substance by any person who caused or attempted to cause the release of such substance.

2. For the purposes of this article, the possession of an aggregate amount of ten or more cubic yards or twenty thousand pounds of material containing a hazardous or acutely hazardous substance as defined in article thirty-seven of the environmental conservation law without the documentation required by section 27-0305 of the environmental conservation law is presumptive evidence that the defendant knowingly possessed such substance.

§ 145.77 Enhanced penalties.

1. When a person is convicted of a crime defined in sections 145.71, 145.72, 145.73, 145.74, 145.80, 145.81, 145.85, 145.86 or 145.87, and such conduct resulted in the contamination of groundwater, whether or not such contamination resulted in injury to any person or further

damage to property, such crime shall be deemed to be one category higher than the offense the defendant committed.

2. When a person is convicted of a crime defined in section 145.75, notwithstanding any other provision of law:

(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 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

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

§ 2. Section 145.13 of the penal law, as amended by chapter 45 of the laws of 2009, is amended to read as follows:

§ 145.13 Definitions.

1. (a) For the purposes of sections 145.00, 145.05, 145.10 [~~and~~], 145.12, 145.71, 145.72, 145.73, 145.74 and 145.75 of this article[~~:~~], "[~~Property~~] property of another" shall include all property in which another person has an ownership interest, whether or not a person who damages such property, or any other person, may also have an interest in such property.

(b) Notwithstanding paragraph (a) of this subdivision, for purposes of sections 145.71, 145.72, 145.73, 145.74 and 145.75 of this article, "property of another" shall not include any landfills, recycling, and/or transfer stations that are permitted or registered with the department of environmental conservation to receive solid waste, hazardous waste, or acutely hazardous waste.

2. For the purposes of sections 145.71, 145.72, 145.73, 145.81 and 145.85 of this article, "construction and demolition material" shall mean materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any man-made structure, including houses, buildings, industrial or commercial facilities and roadways.

§ 3. The penal law is amended by adding two new sections 190.66 and 190.68 to read as follows:

§ 190.66 Scheme to defraud by disposal of solid waste.

1. A person is guilty of a scheme to defraud by disposal of solid waste when he or she engages in a systematic ongoing course of conduct with intent to defraud more than one person by disposing solid waste as defined in article twenty-seven of the environmental conservation law on such person's property under false or fraudulent pretenses, representations or promises, and so damages the property of one or more of such persons.

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

Scheme to defraud by disposal of solid waste is a class E felony.

§ 190.68 Scheme to defraud by sand mining.

A person is guilty of scheme to defraud by sand mining when he or she engages in a scheme constituting an ongoing course of conduct with intent to defraud more than one person by extracting naturally-occurring sand from property belonging to such other persons under false or fraudulent pretenses, representations or promises, and so removes such sand from such property.

It is necessary to prove the identity of at least one person from whose property the defendant fraudulently extracted sand, but it is not necessary to prove the identity of any other victim.

Scheme to defraud by sand mining is a class E felony.

§ 4. The penal law is amended by adding five new sections 145.80, 145.81, 145.85, 145.86 and 145.87 to read as follows:

§ 145.80 Criminal possession of solid waste in the second degree.

A person is guilty of criminal possession of solid waste in the second degree when he or she knowingly and unlawfully possesses solid waste as defined in article twenty-seven of the environmental conservation law outside of the city of New York, with the intent to dispose of such solid waste in contravention of the environmental conservation law or applicable regulations.

Criminal possession of solid waste in the second degree is a class A misdemeanor.

§ 145.81 Criminal possession of solid waste in the first degree.

A person is guilty of criminal possession of solid waste in the first degree when he or she commits the crime of criminal possession of solid waste in the second degree or criminal acceptance of solid waste or construction and demolition material, and has previously been convicted of any crime in section 145.71, 145.72, 145.73, 145.74, 145.75, 145.80, 145.81, 145.85, 145.86, 145.87 or 190.66 of this part.

Criminal possession of solid waste in the first degree is a class D felony.

§ 145.85 Criminal acceptance of solid waste or construction and demolition material.

A person is guilty of criminal acceptance of solid waste or construction and demolition material when, knowing that he or she does not possess a permit or registration as required by the department of environmental conservation to receive or store solid waste as defined in article twenty-seven of the environmental conservation law or construction and demolition material, he or she solicits, accepts or agrees to accept solid waste or construction and demolition material from another person. For purposes of this section, a proprietor, director, manager, agent, or employee of a corporation, partnership, or other business entity shall be presumed to be operating knowingly if such proprietor, director, manager, agent, or employee of a corporation, partnership, or other business entity fails to possess a permit or registration as required by the department of environmental conservation, and knows or reasonably should have known that such permit or registration is required for acceptance of such material.

Criminal acceptance of solid waste or construction and demolition material is a class A misdemeanor.

§ 145.86 Criminal acceptance of solid waste containing a hazardous substance.

1. A person is guilty of criminal acceptance of solid waste containing a hazardous substance when he or she solicits, accepts or agrees to accept solid waste containing a hazardous substance as defined by the department of environmental conservation and thereby causes such substance to be released into the environment.

2. In any prosecution for criminal acceptance of solid waste containing a hazardous substance, it is no defense that the defendant has been issued a permit or registration to operate a solid waste facility by the department of environmental conservation.

Criminal acceptance of solid waste containing a hazardous substance is a class D felony.

§ 145.87 Criminal acceptance of solid waste containing an acutely hazardous substance.

1. A person is guilty of criminal acceptance of solid waste containing an acutely hazardous substance when he or she solicits, accepts or agrees to accept solid waste containing an acutely hazardous substance as defined in article thirty-seven of the environmental conservation law and thereby causes such substance to be released into the environment.

2. In any prosecution for criminal acceptance of solid waste containing an acutely hazardous substance, it is no defense that the defendant has been issued a permit or registration to operate a solid waste facility by the department of environmental conservation.

Criminal acceptance of solid waste containing an acutely hazardous substance is a class C felony.

§ 6. Section 105.10 of the penal law, as amended by chapter 489 of the laws of 2000, is amended to read as follows:

§ 105.10 Conspiracy in the fourth degree.

A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting:

1. a class B or class C felony be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct; or

2. a felony be performed, he or she, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct; or

3. the felony of money laundering in the third degree as defined in section 470.10 of this chapter, be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct[.]; or

4. a felony related to criminal disposal as defined in section 145.72, 145.73, 145.74 or 145.75 of this part be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the fourth degree is a class E felony.

§ 7. Section 27-0305 of the environmental conservation law is amended by adding a new subdivision 13 to read as follows:

13. Any individual, corporation, or any other public or private entity registered or permitted by the department to remove, transport, accept, store, or dispose of solid waste, construction and demolition material, limited use fill or equivalent, and restricted use fill or equivalent shall document the movement of such material from the point at which the individual, corporation or entity receives such material to the point in which the individual, corporation or entity provides that material to another individual, corporation or entity or to its point of final disposition.

§ 8. Subdivision 4 of section 175.05 of the penal law is amended and a new subdivision 5 is added to read as follows:

4. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise[.]; or

5. Makes or causes a false entry in a solid waste tracking document required by section 27-0305 of the environmental conservation law.

§ 9. The penal law is amended by adding a new section 175.50 to read as follows:

§ 175.50 Failure to maintain solid waste tracking documents.

An individual, corporation, or any other public or private entity registered or permitted by the department of environmental conservation to remove, transport, accept, store, or dispose of solid waste,

construction and demolition material, limited use fill or equivalent, and restricted use fill or equivalent is guilty of failure to maintain solid waste tracking documents when such individual, corporation or entity fails to maintain proper documentation as required by section 27-0305 of the environmental conservation law.

Failure to maintain solid waste tracking documents is a class A misdemeanor.

§ 10. Paragraph (b) of subdivision 2 of section 175.35 of the penal law, as added by chapter 490 of the laws of 2013, is amended and a new subdivision 3 is added to read as follows:

(b) such instrument is a financing statement the contents of which are prescribed by section 9--502 of the uniform commercial code, the collateral asserted to be covered in such statement is the property of a person who is a state or local officer as defined by section two of the public officers law or who otherwise is a judge or justice of the unified court system, such financing statement does not relate to an actual transaction, and he or she filed such financing statement in retaliation for the performance of official duties by such person[~~.~~]; or

3. he or she presents a written instrument to receive a permit for agricultural or building purposes for property to a public office, public servant, public authority, or public benefit corporation, with the intent to use such property for some other purposes that requires a different permit and with the intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state with the knowledge or belief that the written instrument will be filed with, registered or recorded in or otherwise become a part of the records of such public office.

§ 11. The penal law is amended by adding seven new sections 270.40, 270.45, 270.50, 270.55, 270.60, 270.65 and 270.70 to read as follows:

§ 270.40 Criminal sand mining in the second degree.

A person is guilty of criminal sand mining in the second degree when, with intent to remove more than one thousand tons or seven hundred fifty cubic yards of sand from any residential, commercial, industrial or farm land where the sand is naturally occurring, he or she removes, directs, importunes or intentionally aids another to extract sand from such property, without a valid mining permit or registration issued by the department of environmental conservation.

Criminal sand mining in the second degree is a class E felony.

§ 270.45 Criminal sand mining in the first degree.

A person is guilty of criminal sand mining in the first degree when, with intent to remove more than one thousand tons or seven hundred fifty cubic yards of sand from any residential, commercial, industrial or farm land where the sand is naturally occurring, he or she removes, directs, importunes or intentionally aids another to extract sand from such property, without a valid mining permit or registration from the department of environmental conservation, and he or she has previously been convicted of the crime of criminal sand mining in the first or second degree, or criminal disposal incident to sand mining in the first, second, third or fourth degree within the preceding ten years.

Criminal sand mining in the first degree is a class D felony.

§ 270.50 Criminal disposal incident to sand mining in the fourth degree.

A person is guilty of criminal disposal incident to sand mining in the fourth degree when, except as otherwise permitted by law:

1. with intent to dispose of solid waste on property where the extraction and removal of sand occurred, he or she disposes of, or

directs, importunes, or intentionally aids another to dispose of solid waste on such property; or

2. with intent to dispose of liquid waste on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of liquid waste on such property; or

3. with intent to dispose of vegetative organic waste on property of where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of vegetative organic waste on such property.

Criminal disposal incident to sand mining in the fourth degree is a class E felony.

§ 270.55 Criminal disposal incident to sand mining in the third degree.

A person is guilty of criminal disposal incident to sand mining in the third degree when, except as otherwise permitted by law:

1. with intent to dispose of solid waste containing a hazardous substance on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of solid waste containing hazardous substances on such property; or

2. with intent to dispose of solid waste, liquid waste, or vegetative organic waste on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of solid waste, liquid waste or vegetative waste on such property, and has previously been convicted of the crime of criminal sand mining in the first or second degree, or criminal disposal incident to sand mining in the first, second, third or fourth degree in the preceding ten years.

Criminal disposal incident to sand mining in the third degree is a class D felony.

§ 270.60 Criminal disposal incident to sand mining in the second degree.

A person is guilty of criminal disposal incident to sand mining in the second degree when, except as otherwise permitted by law:

1. with intent to dispose of solid waste containing a hazardous substance on property where the extraction and removal of sand occurred, he or she disposes of, directs, importunes, or intentionally aids another to dispose of hazardous substances on such property; or

2. with intent to dispose of solid waste containing a hazardous substance on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of solid waste containing a hazardous substance on such property and has previously been convicted of the crime of criminal sand mining in the first or second degree, or criminal disposal incident to sand mining in the first, second, third or fourth degree in the preceding ten years.

Criminal disposal incident to sand mining in the second degree is a class C felony.

§ 270.65 Criminal disposal incident to sand mining in the first degree.

A person is guilty of criminal disposal incident to sand mining in the first degree when, except as otherwise permitted by law, with intent to dispose of solid waste containing an acutely hazardous substance on property where the extraction and removal of sand occurred, he or she disposes of, or directs, importunes, or intentionally aids another to dispose of solid waste containing an acutely hazardous substance on such property.

**Criminal disposal incident to sand mining in the first degree is a class B felony.**

**§ 270.70 Presumption.**

**For the purposes of this article, the lack of a permit or registration required by the department of environmental conservation is presumptive evidence that all proprietors, directors, managers and agents of any corporation, partnership or business entity, and any accomplices or accessories, are knowingly operating without said permit or registration.**

§ 12. Subdivisions 9, 10, and 11 of section 155.30 of the penal law, subdivision 9 as amended by chapter 479 of the laws of 2010, subdivision 10 as added by chapter 491 of the laws of 1992, and subdivision 11 as added by chapter 394 of the laws of 2005, are amended and a new subdivision 12 is added to read as follows:

9. The property consists of a scroll, religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other miscellaneous item of property which:

(a) has a value of at least one hundred dollars; and

(b) is kept for or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law[~~.~~]**; or**

10. The property consists of an access device which the person intends to use unlawfully to obtain telephone service[~~.~~]**; or**

11. The property consists of anhydrous ammonia or liquified ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquified ammonia gas to manufacture methamphetamine[~~.~~]**; or**

**12. The property, regardless of its value, consists of sand naturally occurring on the land from which the sand was taken.**

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