S T A T E O F N E W Y O R K

3565

2009-2010 Regular Sessions

I N S E N A T E

March 24, 2009

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, the insurance law, the real property law and the executive law, in relation to disclosing examination questions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent and declaration of purpose. It is in the public interest to insure that individuals taking examinations used in the process of licensing professionals or occupations have a degree of opportunity to review actual past test questions. Such disclosure is important for test takers to be able to study and learn from the subject areas on past examinations and for independent researchers to review these tests for validity and fairness.

S 2. The education law is amended by adding a new section 6507-a to read as follows:

S 6507-A. LICENSING EXAMINATION AND RE-EXAMINATIONS. IN CONNECTION WITH ANY EXAMINATION PREPARED OR ADMINISTERED BY THE DEPARTMENT OR IN CONJUNCTION WITH THE DEPARTMENT FOR THE PURPOSE OF LICENSING OR CERTIFYING THE PROFESSIONS AND OCCUPATIONS DEFINED IN THIS ARTICLE:

A. THE DEPARTMENT, BOARD OR AGENCY SHALL PLACE ON FILE, AS PUBLIC RECORDS, WITH THE COMMISSIONER THE FOLLOWING:

(1) A COPY OF ALL QUESTIONS USED IN CALCULATING A TEST SUBJECT'S RAW SCORE FROM ONE EXAMINATION FORM ADMINISTERED DURING THE PERIOD SET FORTH BELOW;

(2) THE CORRESPONDING ACCEPTABLE ANSWERS; AND

(3) ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

(I) FOR EXAMINATIONS ADMINISTERED TO FIFTY THOUSAND OR MORE PEOPLE IN NEW YORK EVERY YEAR, ALL TESTS;

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

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(II) FOR EXAMINATIONS ADMINISTERED TO TEN THOUSAND OR MORE PEOPLE BUT FEWER THAN FIFTY THOUSAND PEOPLE IN NEW YORK EVERY YEAR, TWICE ANNUALLY;

(III) FOR EXAMINATIONS ADMINISTERED TO FIVE THOUSAND OR MORE PEOPLE BUT FEWER THAN TEN THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ANNUALLY;

(IV) FOR EXAMINATIONS ADMINISTERED TO TWO THOUSAND OR MORE PEOPLE BUT FEWER THAN FIVE THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY THREE YEARS;

(V) FOR EXAMINATIONS ADMINISTERED TO FEWER THAN TWO THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY FIVE YEARS.

B. THE DEPARTMENT OR BOARD SHALL PROMULGATE REGULATIONS:

(1) GIVING ANY EXAMINATION SUBJECT THE OPPORTUNITY TO SECURE THE EXAMINATIONS DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION SUBJECT'S EXAMINATION; AND

(2) TO IMPLEMENT THE PROVISIONS OF THIS SECTION. THE DEPARTMENT, BOARD OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR PROVIDING SUCH INFORMATION, NOT TO EXCEED THE DIRECT COST THEREOF.

C. THE DEPARTMENT, BOARD, OR EXAMINATION AGENCY SHALL PROVIDE, ALONG WITH THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION, THE FOLLOWING INFORMATION TO THE EXAMINATION SUBJECT:

(1) HOW THE EXAMINATION SUBJECT MAY OBTAIN THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION FOR WHICH THE EXAMINATION SUBJECT HAS REGISTERED;

(2) STATEMENTS DESIGNED TO PROVIDE INFORMATION FOR INTERPRETING EXAMINATION RESULTS, INCLUDING BUT NOT LIMITED TO, EXPLANATION OF ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION;

(3) A COMPLETE DESCRIPTION OF ANY PROMISES OR COVENANTS THAT THE DEPARTMENT, BOARD, OR EXAMINATION AGENCY MAKES TO ANY EXAMINATION SUBJECT WITH REGARD TO ACCURACY OF SCORING, TIMELY FORWARDING OF INFORMATION, POLICIES FOR NOTIFYING ANY EXAMINATION SUBJECT REGARDING INACCURACIES IN SCORING OR SCORE REPORTING, PROCEDURES FOR REVIEWING CHALLENGES BY ANY EXAMINATION SUBJECT TO THE KEYING, SCORING, WORDING OR ANY ASPECT OF AN EXAMINATION QUESTION OR QUESTIONS USED TO CALCULATE A TEST SUBJECT'S RAW SCORES AND PRIVACY OF INFORMATION RELATING TO THE EXAMINATION SUBJECT.

D. THE DEPARTMENT, BOARD OR EXAMINATION AGENCY SHALL GRANT EXAMINATION SUBJECTS WHO FAIL EXAMINATIONS THE FOLLOWING PROCEDURES:

(1) AN EXAMINATION SUBJECT SHALL HAVE SIXTY DAYS FROM THE DATE EXAMINATION RESULTS ARE REPORTED TO HIM TO REQUEST THAT HIS EXAMINATION BE RE-SCORED. SUCH RE-SCORING SHALL BE COMPLETED AND PROVIDED TO THE EXAMINATION SUBJECT WITHIN SIXTY DAYS. THE DEPARTMENT, BOARD OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR RE-SCORING, NOT TO EXCEED THE DIRECT COST THEREOF;

(2) AN EXAMINATION SUBJECT SHALL BE PROVIDED WITH AN OPPORTUNITY TO REVIEW THE EXAMINATION QUESTIONS USED IN CALCULATING THE EXAMINATION SUBJECT'S RAW SCORE, THE CORRECT ANSWER KEY FOR SUCH QUESTIONS AND THE EXAMINATION SUBJECT'S ANSWER SHEET. SUCH OPPORTUNITY SHALL BE PROVIDED WITHIN SIXTY DAYS FROM THE DATE THE EXAMINATION RESULTS ARE REPORTED TO THE EXAMINATION SUBJECT AND SHALL REMAIN AVAILABLE FOR AT LEAST A PERIOD OF ONE HUNDRED EIGHTY DAYS. THE DEPARTMENT, BOARD OR EXAMINATION AGENCY MAY REQUIRE THE EXAMINATION SUBJECT TO FOLLOW SUCH PROCEDURES AS ARE NECESSARY TO SAFEGUARD THE SECURITY OF EXAMINATION QUESTIONS WHICH ARE NOT DISCLOSED PURSUANT TO THIS SECTION. SUCH PROCEDURES SHALL NOT PROHIBIT THE EXAMINATION SUBJECT FROM PREPARING WRITTEN NOTES SUFFICIENT TO FILE AN APPEAL AS DEFINED IN PARAGRAPH THREE OF THIS SUBDIVISION;

(3) AN EXAMINATION SUBJECT MAY FILE AN APPEAL OF HIS SCORE TO THE DEPARTMENT, BOARD OR EXAMINATION AGENCY DURING THE PERIOD IN WHICH HE CAN REVIEW HIS EXAMINATION AND MUST RECEIVE A WRITTEN REPLY WITHIN NINETY DAYS;

(4) AN EXAMINATION SUBJECT SHALL BE NOTIFIED OF THESE PROCEDURES IN WRITING AT THE TIME HE REGISTERS FOR AN EXAMINATION, AT THE TIME AN EXAMINATION IS ADMINISTERED, AND AT THE TIME EXAMINATION SCORES ARE REPORTED TO HIM.

E. AS USED IN THIS SECTION:

(1) "EXAMINATION" MEANS ANY WRITTEN EXAMINATION GIVEN IN NEW YORK WHICH IS DESIGNED FOR USE AND USED IN THE PROCESS OF ADMISSION TO THE PRACTICE OF THE PROFESSIONS DEFINED IN SECTIONS SIX THOUSAND FIVE HUNDRED TWENTY THROUGH EIGHT THOUSAND TWO HUNDRED NINE OF THIS CHAPTER;

(2) "EXAMINATION SUBJECT" MEANS AN INDIVIDUAL TO WHOM AN EXAMINATION IS ADMINISTERED;

(3) "EXAMINATION AGENCY" MEANS ANY ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP, OR INDIVIDUAL OR PERSON THAT DEVELOPS, SPONSORS OR ADMINISTERS AN EXAMINATION.

S 3. The insurance law is amended by adding a new section 2137 to read as follows:

S 2137. TESTING. FOR ANY EXAMINATION PREPARED OR ADMINISTERED BY THE SUPERINTENDENT OR IN CONJUNCTION WITH THE SUPERINTENDENT FOR THE PURPOSE OF LICENSING INSURANCE AGENTS, INSURANCE BROKERS, INSURANCE CONSULTANTS OR INSURANCE ADJUSTERS AS DEFINED IN SECTIONS TWO THOUSAND ONE HUNDRED THREE, TWO THOUSAND ONE HUNDRED FOUR, TWO THOUSAND ONE HUNDRED SEVEN AND TWO THOUSAND ONE HUNDRED EIGHT OF THIS ARTICLE:

(A) THE SUPERINTENDENT OR EXAMINATION AGENCY SHALL PLACE ON FILE, AS PUBLIC RECORDS, WITH THE SUPERINTENDENT THE FOLLOWING:

(1) A COPY OF ALL QUESTIONS USED IN CALCULATING A TEST SUBJECT'S RAW SCORE FROM ONE EXAMINATION FORM ADMINISTERED DURING THE PERIOD SET FORTH BELOW;

(2) THE CORRESPONDING ACCEPTABLE ANSWERS; AND

(3) ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

(A) FOR EXAMINATIONS ADMINISTERED TO FIFTY THOUSAND OR MORE PEOPLE IN NEW YORK EVERY YEAR, ALL TESTS;

(B) FOR EXAMINATIONS ADMINISTERED TO TEN THOUSAND OR MORE PEOPLE BUT FEWER THAN FIFTY THOUSAND PEOPLE IN NEW YORK EVERY YEAR, TWICE ANNUALLY;

(C) FOR EXAMINATIONS ADMINISTERED TO FIVE THOUSAND OR MORE PEOPLE BUT FEWER THAN TEN THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ANNUALLY;

(D) FOR EXAMINATIONS ADMINISTERED TO TWO THOUSAND OR MORE PEOPLE BUT FEWER THAN FIVE THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY THREE YEARS;

(E) FOR EXAMINATIONS ADMINISTERED TO FEWER THAN TWO THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY FIVE YEARS.

(B) THE SUPERINTENDENT SHALL PROMULGATE REGULATIONS:

(1) GIVING ANY EXAMINATION SUBJECT THE OPPORTUNITY TO SECURE THE EXAMINATIONS DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION SUBJECT'S EXAMINATION; AND

(2) TO IMPLEMENT THE PROVISIONS OF THIS SECTION. THE SUPERINTENDENT OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR PROVIDING SUCH INFORMATION, NOT TO EXCEED THE DIRECT COST THEREOF.

(C) THE SUPERINTENDENT OR EXAMINATION AGENCY SHALL PROVIDE, ALONG WITH THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION, THE FOLLOWING INFORMATION TO THE EXAMINATION SUBJECT:

(1) HOW THE EXAMINATION SUBJECT MAY OBTAIN THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION FOR WHICH THE EXAMINATION SUBJECT HAS REGISTERED;

(2) STATEMENTS DESIGNED TO PROVIDE INFORMATION FOR INTERPRETING EXAMINATION RESULTS, INCLUDING BUT NOT LIMITED TO, EXPLANATION OF ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION;

(3) A COMPLETE DESCRIPTION OF ANY PROMISES OR COVENANTS THAT THE SUPERINTENDENT OR EXAMINATION AGENCY MAKES TO ANY EXAMINATION SUBJECT WITH REGARD TO ACCURACY OF SCORING, TIMELY FORWARDING OF INFORMATION, POLICIES FOR NOTIFYING ANY EXAMINATION SUBJECT REGARDING INACCURACIES IN SCORING OR SCORE REPORTING, PROCEDURES FOR REVIEWING CHALLENGES BY ANY EXAMINATION SUBJECT TO THE KEYING, SCORING, WORDING OR ANY ASPECT OF AN EXAMINATION QUESTION OR QUESTIONS USED TO CALCULATE A TEST SUBJECT'S RAW SCORES AND PRIVACY OF INFORMATION RELATING TO THE EXAMINATION SUBJECT.

(D) THE SUPERINTENDENT OR EXAMINATION AGENCY SHALL GRANT EXAMINATION SUBJECTS WHO FAIL EXAMINATIONS THE FOLLOWING PROCEDURES:

(1) AN EXAMINATION SUBJECT SHALL HAVE SIXTY DAYS FROM THE DATE EXAMINATION RESULTS ARE REPORTED TO HIM TO REQUEST THAT HIS EXAMINATION BE RE-SCORED. SUCH RE-SCORING SHALL BE COMPLETED AND PROVIDED TO THE EXAMINATION SUBJECT WITHIN SIXTY DAYS. THE SUPERINTENDENT OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR RE-SCORING, NOT TO EXCEED THE DIRECT COST THEREOF;

(2) AN EXAMINATION SUBJECT SHALL BE PROVIDED WITH AN OPPORTUNITY TO REVIEW THE EXAMINATION QUESTIONS USED IN CALCULATING THE EXAMINATION SUBJECT'S RAW SCORE, THE CORRECT ANSWER KEY FOR SUCH QUESTIONS, AND THE EXAMINATION SUBJECT'S ANSWER SHEET. SUCH OPPORTUNITY SHALL BE PROVIDED WITHIN SIXTY DAYS FROM THE DATE THE EXAMINATION RESULTS ARE REPORTED TO THE EXAMINATION SUBJECT AND SHALL REMAIN AVAILABLE FOR AT LEAST A PERIOD OF ONE HUNDRED EIGHTY DAYS. THE SUPERINTENDENT OR EXAMINATION AGENCY MAY REQUIRE THE EXAMINATION SUBJECT TO FOLLOW SUCH PROCEDURES AS ARE NECESSARY TO SAFEGUARD THE SECURITY OF EXAMINATION QUESTIONS WHICH ARE NOT DISCLOSED PURSUANT TO THIS SECTION. SUCH PROCEDURES SHALL NOT PROHIBIT THE EXAMINATION SUBJECT FROM PREPARING WRITTEN NOTES SUFFICIENT TO FILE AN APPEAL AS DEFINED IN PARAGRAPH THREE OF THIS SUBSECTION;

(3) AN EXAMINATION SUBJECT MAY FILE AN APPEAL OF HIS SCORE TO THE SUPERINTENDENT OR EXAMINATION AGENCY DURING THE PERIOD IN WHICH HE CAN REVIEW HIS EXAMINATION AND MUST RECEIVE A WRITTEN REPLY WITHIN NINETY DAYS;

(4) AN EXAMINATION SUBJECT SHALL BE NOTIFIED OF THESE PROCEDURES IN WRITING AT THE TIME HE REGISTERS FOR AN EXAMINATION, AT THE TIME AN EXAMINATION IS ADMINISTERED AND AT THE TIME EXAMINATION SCORES ARE REPORTED TO HIM.

(E) AS USED IN THIS SECTION:

(1) "EXAMINATION" MEANS ANY WRITTEN EXAMINATION GIVEN IN NEW YORK WHICH IS DESIGNED FOR USE AND USED IN THE PROCESS OF LICENSING OCCUPATIONS DEFINED IN SECTIONS TWO THOUSAND ONE HUNDRED THREE, TWO THOUSAND ONE HUNDRED FOUR, TWO THOUSAND ONE HUNDRED SEVEN AND TWO THOUSAND ONE HUNDRED EIGHT OF THIS ARTICLE;

(2) "EXAMINATION SUBJECT" MEANS AN INDIVIDUAL TO WHOM AN EXAMINATION IS ADMINISTERED;

(3) "EXAMINATION AGENCY" MEANS ANY ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP, OR INDIVIDUAL OR PERSON THAT DEVELOPS, SPONSORS OR ADMINISTERS AN EXAMINATION.

S 4. The real property law is amended by adding a new section 440-c to read as follows:

S 440-C. TESTING. FOR ANY EXAMINATION PREPARED OR ADMINISTERED BY THE DEPARTMENT OR IN CONJUNCTION WITH THE DEPARTMENT FOR THE PURPOSE OF LICENSING REAL ESTATE BROKERS OR REAL ESTATE SALESMEN AS DEFINED IN SECTION FOUR HUNDRED FORTY OF THIS ARTICLE:

1. THE DEPARTMENT OR EXAMINATION AGENCY SHALL PLACE ON FILE, AS PUBLIC RECORDS, WITH THE SECRETARY OF STATE THE FOLLOWING:

(A) A COPY OF ALL QUESTIONS USED IN CALCULATING A TEST SUBJECT'S RAW SCORE FROM ONE EXAMINATION FORM ADMINISTERED DURING THE PERIOD SET FORTH BELOW;

(B) THE CORRESPONDING ACCEPTABLE ANSWERS; AND

(C) ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

(I) FOR EXAMINATIONS ADMINISTERED TO FIFTY THOUSAND OR MORE PEOPLE IN NEW YORK EVERY YEAR, ALL TESTS;

(II) FOR EXAMINATIONS ADMINISTERED TO TEN THOUSAND OR MORE PEOPLE BUT FEWER THAN FIFTY THOUSAND PEOPLE IN NEW YORK EVERY YEAR, TWICE ANNUALLY;

(III) FOR EXAMINATIONS ADMINISTERED TO FIVE THOUSAND OR MORE PEOPLE BUT FEWER THAN TEN THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ANNUALLY;

(IV) FOR EXAMINATIONS ADMINISTERED TO TWO THOUSAND OR MORE PEOPLE BUT FEWER THAN FIVE THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY THREE YEARS;

(V) FOR EXAMINATIONS ADMINISTERED TO FEWER THAN TWO THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY FIVE YEARS.

2. THE DEPARTMENT SHALL PROMULGATE REGULATIONS:

(A) GIVING ANY EXAMINATION SUBJECT THE OPPORTUNITY TO SECURE THE EXAMINATIONS DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION SUBJECT'S EXAMINATION; AND

(B) TO IMPLEMENT THE PROVISIONS OF THIS SECTION. THE DEPARTMENT OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR PROVIDING SUCH INFORMATION, NOT TO EXCEED THE DIRECT COST THEREOF.

3. THE DEPARTMENT OR EXAMINATION AGENCY SHALL PROVIDE, ALONG WITH THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION, THE FOLLOWING INFORMATION TO THE EXAMINATION SUBJECT:

(A) HOW THE EXAMINATION SUBJECT MAY OBTAIN THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION FOR WHICH THE EXAMINATION SUBJECT HAS REGISTERED;

(B) STATEMENTS DESIGNED TO PROVIDE INFORMATION FOR INTERPRETING EXAMINATION RESULTS, INCLUDING BUT NOT LIMITED TO, EXPLANATION OF ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION;

(C) A COMPLETE DESCRIPTION OF ANY PROMISES OR COVENANTS THAT THE DEPARTMENT OR EXAMINATION AGENCY MAKES TO ANY EXAMINATION SUBJECT WITH REGARD TO ACCURACY OF SCORING, TIMELY FORWARDING OF INFORMATION, POLICIES FOR NOTIFYING ANY EXAMINATION SUBJECT REGARDING INACCURACIES IN SCORING OR SCORE REPORTING, PROCEDURES FOR REVIEWING CHALLENGES BY ANY EXAMINATION SUBJECT TO THE KEYING, SCORING, WORDING OR ANY ASPECT OF AN EXAMINATION QUESTION OR QUESTIONS USED TO CALCULATE A TEST SUBJECT'S RAW SCORES AND PRIVACY OF INFORMATION RELATING TO THE EXAMINATION SUBJECT.

4. THE DEPARTMENT OR EXAMINATION AGENCY SHALL GRANT EXAMINATION SUBJECTS WHO FAIL EXAMINATIONS THE FOLLOWING PROCEDURES:

(A) AN EXAMINATION SUBJECT SHALL HAVE SIXTY DAYS FROM THE DATE EXAMINATION RESULTS ARE REPORTED TO HIM TO REQUEST THAT HIS EXAMINATION BE RE-SCORED. SUCH RE-SCORING SHALL BE COMPLETED AND PROVIDED TO THE EXAMINATION SUBJECT WITHIN SIXTY DAYS. THE DEPARTMENT OR EXAMINATION AGENCY

MAY CHARGE A NOMINAL FEE FOR RE-SCORING, NOT TO EXCEED THE DIRECT COST THEREOF;

(B) AN EXAMINATION SUBJECT SHALL BE PROVIDED WITH AN OPPORTUNITY TO REVIEW THE EXAMINATION QUESTIONS USED IN CALCULATING THE EXAMINATION SUBJECT'S RAW SCORE, THE CORRECT ANSWER KEY FOR SUCH QUESTIONS, AND THE EXAMINATION SUBJECT'S ANSWER SHEET. SUCH OPPORTUNITY SHALL BE PROVIDED WITHIN SIXTY DAYS FROM THE DATE THE EXAMINATION RESULTS ARE REPORTED TO THE EXAMINATION SUBJECT AND SHALL REMAIN AVAILABLE FOR AT LEAST A PERIOD OF ONE HUNDRED EIGHTY DAYS. THE DEPARTMENT OR EXAMINATION AGENCY MAY REQUIRE THE EXAMINATION SUBJECT TO FOLLOW SUCH PROCEDURES AS ARE NECESSARY TO SAFEGUARD THE SECURITY OF EXAMINATION QUESTIONS WHICH ARE NOT DISCLOSED PURSUANT TO THIS SECTION. SUCH PROCEDURES SHALL NOT PROHIBIT THE EXAMINATION SUBJECT FROM PREPARING WRITTEN NOTES SUFFICIENT TO FILE AN APPEAL AS DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION;

(C) AN EXAMINATION SUBJECT MAY FILE AN APPEAL OF HIS SCORE TO THE DEPARTMENT OR EXAMINATION AGENCY DURING THE PERIOD IN WHICH HE CAN REVIEW HIS EXAMINATION AND MUST RECEIVE A WRITTEN REPLY WITHIN NINETY DAYS;

(D) AN EXAMINATION SUBJECT SHALL BE NOTIFIED OF THESE PROCEDURES IN WRITING AT THE TIME HE REGISTERS FOR AN EXAMINATION, AT THE TIME AN EXAMINATION IS ADMINISTERED, AND AT THE TIME EXAMINATION SCORES ARE REPORTED TO HIM.

5. AS USED IN THIS SECTION:

(A) "DEPARTMENT" MEANS THE DEPARTMENT OF STATE;

(B) "EXAMINATION" MEANS ANY WRITTEN EXAMINATION GIVEN IN NEW YORK WHICH IS DESIGNED FOR USE AND USED IN THE PROCESS OF LICENSING REAL ESTATE BROKERS OR REAL ESTATE SALESMEN AS DEFINED IN SECTION FOUR HUNDRED FORTY OF THIS ARTICLE;

(C) "EXAMINATION SUBJECT" MEANS AN INDIVIDUAL TO WHOM AN EXAMINATION IS ADMINISTERED;

(D) "EXAMINATION AGENCY" MEANS ANY ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP, OR INDIVIDUAL OR PERSON THAT DEVELOPS, SPONSORS OR ADMINISTERS AN EXAMINATION.

S 5. The executive law is amended by adding a new section 90-a to read as follows:

S 90-A. TESTING. FOR ANY EXAMINATION PREPARED OR ADMINISTERED BY THE DEPARTMENT OR IN CONJUNCTION WITH THE DEPARTMENT FOR THE PURPOSE OF LICENSING INDIVIDUALS FOR ANY OCCUPATIONS REGULATED BY THE DEPARTMENT:

1. THE DEPARTMENT OR EXAMINATION AGENCY SHALL PLACE ON FILE, AS PUBLIC RECORDS, WITH THE SECRETARY THE FOLLOWING:

(A) A COPY OF ALL QUESTIONS USED IN CALCULATING A TEST SUBJECT'S RAW SCORE FROM ONE EXAMINATION FORM ADMINISTERED DURING THE PERIOD SET FORTH BELOW;

(B) THE CORRESPONDING ACCEPTABLE ANSWERS; AND

(C) ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

(I) FOR EXAMINATIONS ADMINISTERED TO FIFTY THOUSAND OR MORE PEOPLE IN NEW YORK EVERY YEAR, ALL TESTS;

(II) FOR EXAMINATIONS ADMINISTERED TO TEN THOUSAND OR MORE PEOPLE BUT FEWER THAN FIFTY THOUSAND PEOPLE IN NEW YORK EVERY YEAR, TWICE ANNUALLY;

(III) FOR EXAMINATIONS ADMINISTERED TO FIVE THOUSAND OR MORE PEOPLE BUT FEWER THAN TEN THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ANNUALLY;

(IV) FOR EXAMINATIONS ADMINISTERED TO TWO THOUSAND OR MORE PEOPLE BUT FEWER THAN FIVE THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY THREE YEARS;

(V) FOR EXAMINATIONS ADMINISTERED TO FEWER THAN TWO THOUSAND PEOPLE IN NEW YORK EVERY YEAR, ONCE EVERY FIVE YEARS.

2. THE DEPARTMENT SHALL PROMULGATE REGULATIONS:

(A) GIVING ANY EXAMINATION SUBJECT THE OPPORTUNITY TO SECURE THE EXAMINATION DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION SUBJECT'S EXAMINATION; AND

(B) TO IMPLEMENT THE PROVISIONS OF THIS SECTION. THE DEPARTMENT OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR PROVIDING SUCH INFORMATION, NOT TO EXCEED THE DIRECT COST THEREOF.

3. THE DEPARTMENT OR EXAMINATION AGENCY SHALL PROVIDE, ALONG WITH THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION, THE FOLLOWING INFORMATION TO THE EXAMINATION SUBJECT:

(A) HOW THE EXAMINATION SUBJECT MAY OBTAIN THE EXAMINATION QUESTIONS ALREADY DISCLOSED UNDER THIS SECTION PRIOR TO THE ADMINISTRATION OF THE EXAMINATION FOR WHICH THE EXAMINATION SUBJECT HAS REGISTERED;

(B) STATEMENTS DESIGNED TO PROVIDE INFORMATION FOR INTERPRETING EXAMINATION RESULTS, INCLUDING BUT NOT LIMITED TO, EXPLANATION OF ALL RULES FOR DETERMINING A SCORE WHICH QUALIFIES AN EXAMINATION SUBJECT FOR LICENSURE OR CERTIFICATION;

(C) A COMPLETE DESCRIPTION OF ANY PROMISES OR COVENANTS THAT THE DEPARTMENT OR EXAMINATION AGENCY MAKES TO ANY EXAMINATION SUBJECT WITH REGARD TO ACCURACY OF SCORING, TIMELY FORWARDING OF INFORMATION, POLICIES FOR NOTIFYING ANY EXAMINATION SUBJECT REGARDING INACCURACIES IN SCORING OR SCORE REPORTING, PROCEDURES FOR REVIEWING CHALLENGES BY ANY EXAMINATION SUBJECT TO THE KEYING, SCORING, WORDING OR ANY ASPECT OF AN EXAMINATION QUESTION OR QUESTIONS USED TO CALCULATE A TEST SUBJECT'S RAW SCORES AND PRIVACY OF INFORMATION RELATING TO THE EXAMINATION SUBJECT.

4. THE DEPARTMENT OR EXAMINATION AGENCY SHALL GRANT EXAMINATION SUBJECTS WHO FAIL EXAMINATIONS THE FOLLOWING PROCEDURES:

(A) AN EXAMINATION SUBJECT SHALL HAVE SIXTY DAYS FROM THE DATE EXAMINATION RESULTS ARE REPORTED TO HIM TO REQUEST THAT HIS EXAMINATION BE RE-SCORED. SUCH RE-SCORING SHALL BE COMPLETED AND PROVIDED TO THE EXAMINATION SUBJECT WITHIN SIXTY DAYS. THE DEPARTMENT OR EXAMINATION AGENCY MAY CHARGE A NOMINAL FEE FOR RE-SCORING, NOT TO EXCEED THE DIRECT COST THEREOF;

(B) AN EXAMINATION SUBJECT SHALL BE PROVIDED WITH AN OPPORTUNITY TO REVIEW THE EXAMINATION QUESTIONS USED IN CALCULATING THE EXAMINATION SUBJECT'S RAW SCORE, THE CORRECT ANSWER KEY FOR SUCH QUESTIONS, AND THE EXAMINATION SUBJECT'S ANSWER SHEET. SUCH OPPORTUNITY SHALL BE PROVIDED WITHIN SIXTY DAYS FROM THE DATE THE EXAMINATION RESULTS ARE REPORTED TO THE EXAMINATION SUBJECT AND SHALL REMAIN AVAILABLE FOR AT LEAST A PERIOD OF ONE HUNDRED EIGHTY DAYS. THE DEPARTMENT OR EXAMINATION AGENCY MAY REQUIRE THE EXAMINATION SUBJECT TO FOLLOW SUCH PROCEDURES AS ARE NECESSARY TO SAFEGUARD THE SECURITY OF EXAMINATION QUESTIONS WHICH ARE NOT DISCLOSED PURSUANT TO THIS SECTION. SUCH PROCEDURE SHALL NOT PROHIBIT THE EXAMINATION SUBJECT FROM PREPARING WRITTEN NOTES SUFFICIENT TO FILE AN APPEAL AS DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION;

(C) AN EXAMINATION SUBJECT MAY FILE AN APPEAL OF HIS SCORE TO THE DEPARTMENT OR EXAMINATION AGENCY DURING THE PERIOD IN WHICH HE CAN REVIEW HIS EXAMINATION AND MUST RECEIVE A WRITTEN REPLY WITHIN NINETY DAYS;

(D) AN EXAMINATION SUBJECT SHALL BE NOTIFIED OF THESE PROCEDURES IN WRITING AT THE TIME HE REGISTERS FOR AN EXAMINATION, AT THE TIME AN EXAMINATION IS ADMINISTERED, AND AT THE TIME EXAMINATION SCORES ARE REPORTED TO HIM.

5. AS USED IN THIS SECTION:

(A) "EXAMINATION" MEANS ANY WRITTEN EXAMINATIONS GIVEN IN NEW YORK WHICH ARE DESIGNED FOR USE AND USED IN THE PROCESS OF LICENSING INDIVIDUALS FOR ANY OCCUPATIONS REGULATED BY THE DEPARTMENT;

(B) "EXAMINATION SUBJECT" MEANS AN INDIVIDUAL TO WHOM AN EXAMINATION IS ADMINISTERED;

(C) "EXAMINATION AGENCY" MEANS ANY ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP, OR INDIVIDUAL OR PERSON THAT DEVELOPS, SPONSORS OR ADMINISTERS AN EXAMINATION.

S 6. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.