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

4415

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law, the civil practice law and rules and the tax law, in relation to personal injury awards for injuries sustained by convicted violent felony offenders during the commission or as a direct result of a crime

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

Section 1. The executive law is amended by adding a new section 634-a to read as follows:

S 634-A. RECEIVERSHIP; CIVIL AWARDS CONVICTED VIOLENT FELONY OFFENDERS. 1. UPON RECEIPT OF A COPY OF A SUMMONS AND COMPLAINT AS PROVIDED IN SECTION ONE THOUSAND TWENTY-SEVEN OF THE CIVIL PRACTICE LAW AND RULES, THE BOARD SHALL IMMEDIATELY TAKE SUCH ACTIONS AS ARE NECESSARY TO NOTIFY ALL KNOWN VICTIMS, IF ANY, DURING THE TEN YEAR PERIOD PRIOR TO THE COMMENCEMENT OF THE ACTION, OF THE COMMENCEMENT OF THE CIVIL ACTION AND THEIR ABILITY TO FILE A CLAIM WITH THE BOARD UPON NOTICE OF AN AWARD IN SUCH ACTION, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, WHERE THE VICTIMS' NAMES AND ADDRESSES ARE KNOWN BY THE BOARD.

2. NOTWITHSTANDING ANY PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES TO THE CONTRARY, IN A CIVIL ACTION COMMENCED BY AN INDIVIDUAL CONVICTED OF A VIOLENT FELONY OFFENSE TO RECOVER FOR PERSONAL INJURIES SUSTAINED EITHER DURING THE COMMISSION OF SUCH OFFENSE, WHILE FLEEING FROM SUCH OFFENSE OR AS A DIRECT RESULT OF SUCH OFFENSE, THE BOARD SHALL BE APPOINTED BY THE COURT AS RECEIVER OF ANY AWARD IN SUCH ACTION FOR A PERIOD OF TEN YEARS, WHICH TERM CAN BE EXTENDED UPON THE BOARD'S APPLICATION FOR GOOD CAUSE SHOWN, FOR AN ADDITIONAL TEN YEAR PERIOD, AND THE BOARD SHALL RECEIVE A RECEIVERSHIP FEE OF TWENTY PERCENT OF SUCH AWARD AT THE TIME SUCH AWARD IS MADE. THE BOARD SHALL DEPOSIT THE BALANCE OF SUCH AWARD IN AN ESCROW ACCOUNT FOR THE BENEFIT AND PAYABLE TO ANY

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

LBD10957-01-9

VICTIM OR THE LEGAL REPRESENTATIVE OF ANY VICTIM OF CRIMES COMMITTED BY SUCH INDIVIDUAL.

3. THE BOARD SHALL UPON RECEIVING NOTICE FROM THE COURT OF AN AWARD IN SUCH CIVIL ACTION, NOTIFY THE VICTIMS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED OF THE AWARD, AND PROVIDE A CLAIM FORM FOR THE VICTIM TO FILE A CLAIM WITH THE BOARD.

4. THE BOARD SHALL AFTER TAKING ITS FEE AS RECEIVER DISTRIBUTE THE REMAINING FUNDS AS FOLLOWS:

(A) TWENTY PERCENT OF THE AWARD TO THE BOARD;

(B) ALL FEES DUE AND OWING THE ATTORNEYS HAVING REPRESENTED SUCH INDIVIDUAL IN THE CIVIL ACTION;

(C) REIMBURSE ALL HEALTH CARE INSURANCE PROVIDERS FOR PAYMENTS MADE TO MEDICAL PROVIDERS ON BEHALF OF SUCH INDIVIDUAL IN RELATION TO THE INJURIES ALLEGED IN THE CIVIL ACTION;

(D) REIMBURSE THE LOCAL AND STATE GOVERNMENT FOR THE FOLLOWING EXPENSES INCURRED DURING THE TEN YEARS PRIOR TO THE COMMENCEMENT OF THE CIVIL ACTION WITH RESPECT TO SUCH INDIVIDUAL:

(1) ALL EXPENSES RELATED TO REPRESENTATION BY THE PUBLIC DEFENDER;

(2) ALL COURT COSTS RELATED TO SUCH PROSECUTIONS;

(3) ALL COSTS RELATED TO INCARCERATION;

(4) ALL BENEFITS DISTRIBUTED BY SOCIAL SERVICES AGENCIES; AND

(5) ALL UNEMPLOYMENT INSURANCE BENEFITS;

(E) REIMBURSE THE LOCAL AND STATE GOVERNMENT FOR THE ANTICIPATED COSTS OF INCARCERATION OF SUCH INDIVIDUAL FROM THE TIME THE CIVIL ACTION IS COMMENCED UNTIL THE EXPIRATION OF THE TERM OF SUCH INDIVIDUAL'S SENTENCE OF IMPRISONMENT;

(F) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THE ESTATES, POWERS AND TRUSTS LAW OR THE CIVIL PRACTICE LAW AND RULES WITH RESPECT TO THE TIMELY BRINGING OF AN ACTION, TO THE VICTIM OF THE SPECIFIC CRIMINAL ACT INVOLVED IN THE CIVIL ACTION AN AMOUNT NOT TO EXCEED THREE AND ONE-HALF TIMES THE VICTIM'S ACTUAL OUT-OF-POCKET EXPENSES AND PAIN AND SUFFERING, LESS ANY AMOUNT PREVIOUSLY AWARDED BY THE BOARD;

(G) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THE ESTATES, POWERS AND TRUSTS LAW OR THE CIVIL PRACTICE LAW AND RULES WITH RESPECT TO THE TIMELY BRINGING OF AN ACTION, TO ALL VICTIMS OF CRIMES COMMITTED BY SUCH INDIVIDUAL IN THE TEN YEARS IMMEDIATELY PRECEDING THE COMMENCEMENT OF THE CIVIL ACTION AN AMOUNT NOT TO EXCEED THREE TIMES THEIR ACTUAL OUT-OF-POCKET EXPENSES, LESS ANY AMOUNT PREVIOUSLY AWARDED BY THE BOARD; AND

(H) THE BALANCE OF SUCH ESCROW ACCOUNT, LESS THE INTEREST ACCRUED BY SUCH ACCOUNT, TO THE INDIVIDUAL COMMENCING SUCH CIVIL ACTION.

5. THE BOARD SHALL ESTABLISH SUCH RULES AND REGULATIONS AS ARE NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION.

S 2. The civil practice law and rules is amended by adding a new section 1027 to read as follows:

S 1027. SERVICE OF SUMMONS AND COMPLAINT; CRIME VICTIMS BOARD. IN AN ACTION COMMENCED BY A PERSON CONVICTED OF A VIOLENT FELONY OFFENSE FOR PERSONAL INJURIES SUSTAINED EITHER DURING THE COMMISSION OF SUCH OFFENSE OR WHILE FLEEING SUCH OFFENSE, SUCH PERSON SHALL SERVE A COPY OF THE SUMMONS AND COMPLAINT ON THE CHAIRMAN OF THE CRIME VICTIMS BOARD.

S 3. The tax law is amended by adding a new section 612-a to read as follows:

S 612-A. LUMP SUM DISTRIBUTION CRIME VICTIMS BOARD. THERE IS HEREBY LEVIED AND IMPOSED A TAX ON THE FUNDS DISTRIBUTED TO A PERSON CONVICTED OF A VIOLENT FELONY OFFENSE PURSUANT TO SECTION SIX HUNDRED THIRTY-FOUR-A OF THE EXECUTIVE LAW IN THE AMOUNT OF TEN PERCENT OF THE

TOTAL AWARD IN SUCH ACTION. SUCH TAX SHALL BE DUE UPON DISTRIBUTION OF SUCH FUNDS.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, except that any rules and regulations necessary for the timely implementation of this act on its effective date are authorized and directed to be promulgated on or before such date.