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

4754

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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

AN ACT to amend the labor law, in relation to explosives and to establish a pyrotechnic review board

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

Section 1. Section 463 of the labor law, as amended by section 14 of part CC of chapter 57 of the laws of 2009, is amended to read as follows:

S 463. Review. 1. All questions of fact arising under this article shall be decided by the commissioner and there shall be no appeal from such decision on any such question of fact, BUT THERE SHALL BE A RIGHT OF REVIEW BY THE BOARD OF STANDARDS AND APPEALS OF ANY DECISION OF THE COMMISSIONER DENYING AN APPLICATION FOR A LICENSE OR CERTIFICATE, OR DENYING THE RENEWAL THEREOF, OR REVOKING A LICENSE OR CERTIFICATE AS PROVIDED IN ARTICLE THREE OF THIS CHAPTER. [Upon the entry of an order issued under sections four hundred fifty-nine and four hundred sixty of this article, any party aggrieved thereby may commence a proceeding for review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the commissioner. Said proceeding shall be commenced directly in the appellate division of the supreme court.] Nothing in this section shall in any way limit, qualify or prevent the commissioner from destroying explosives as provided under section four hundred sixty of this article.

2. TO ADVISE THE COMMISSIONER IN RELATION TO INDUSTRY STANDARDS FOR PYROTECHNIC DISPLAY ACTIVITIES AND HIS OR HER DUTIES AND POWERS PURSUANT TO THIS ARTICLE, AND TO REVIEW RULES AND REGULATIONS PROPOSED BY THE COMMISSIONER, THERE SHALL BE ESTABLISHED AN INDEPENDENT REVIEW BOARD, TO BE KNOWN AS THE "PYROTECHNIC REVIEW BOARD", CONSISTING OF FIVE MEMBERS TO BE APPOINTED AS FOLLOWS: ONE MEMBER SHALL BE APPOINTED BY THE GOVER-

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

LBD11458-01-9

NOR; ONE MEMBER SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; ONE MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY; ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY. THE MEMBERS OF SUCH REVIEW BOARD SHALL EACH BE A REPRESENTATIVE OF: BUSINESSES LEGALLY ENGAGED IN THE PRESENTATION OF DISPLAY PYROTECHNICS EVENTS; OR THE MANUFACTURE OF DISPLAY PYROTECHNICS FOR SUCH USE; OR THE DISTRIBUTION OF DISPLAY PYROTECHNICS OF ANY CLASS; OR CONSULTANTS OR LEGAL ASSISTANTS TO THE DISPLAY PYROTECHNICS INDUSTRY; OR PERSONS FROM THE GENERAL PUBLIC WITH PYROTECHNIC DISPLAY EXPERIENCE OR INTEREST. THERE SHALL ONLY BE ONE MEMBER APPOINTED TO THE REVIEW BOARD FROM ANY SINGLE BUSINESS ENGAGED IN THE PRESENTATION OF DISPLAY FIREWORKS, THE MANUFACTURE OF DISPLAY FIREWORKS, THE DISTRIBUTION OF DISPLAY FIREWORKS, AS CONSULTANTS OR LEGAL ASSISTANTS TO THE DISPLAY INDUSTRY OR FROM THE GENERAL PUBLIC WITH PYROTECHNIC DISPLAY EXPERIENCE OR INTEREST. THE GOVERNOR SHALL APPOINT THE CHAIR OF THE REVIEW BOARD FROM AMONGST THE MEMBERS APPOINTED, AND DESIGNATE AND IDENTIFY TO THE SECRETARY OF THE REVIEW BOARD A STAFF MEMBER IN THE GOVERNOR'S OFFICE WHO WILL SERVE AS LIAISON.

3. EACH MEMBER OF THE REVIEW BOARD SHALL SERVE A TERM OF THREE YEARS, OR UNTIL HIS OR HER SUCCESSOR IS APPOINTED. ANY MEMBER OF THE BOARD CHOSEN TO FILL A VACANCY OCCURRING OTHERWISE THAN BY EXPIRATION OF TERM SHALL BE APPOINTED FOR THE UNEXPIRED TERM OF THE MEMBER WHOM HE OR SHE IS TO SUCCEED.

4. EACH MEMBER OF THE REVIEW BOARD SHALL SERVE WITHOUT SALARY OR OTHER COMPENSATION, BUT SHALL BE ALLOWED, BY THE COMMISSIONER, NECESSARY AND ACTUAL TRANSPORTATION, MEALS AND LODGING EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER DUTIES.

5. THE REVIEW BOARD SHALL CONSIDER ALL MATTERS RELATING TO THE IMPLEMENTATION OF THE PROVISIONS OF THIS ARTICLE AND IS HEREBY AUTHORIZED AND DIRECTED TO REVIEW AND PRESCRIBE SUCH RULES AND REGULATIONS AS NECESSARY AND PROPER FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE WITH RESPECT TO PYROTECHNICS TRANSPORT, STORAGE, DISPLAY, SAFETY AND PYROTECHNICIAN CERTIFICATION, AND ADVISE THE COMMISSIONER WITH RESPECT THERETO, AND ON ITS OWN INITIATIVE MAY MAKE RECOMMENDATIONS TO THE COMMISSIONER AS TO ANY RULES, REGULATIONS AND STATUTES NECESSARY TO ASSURE PYROTECHNIC TRANSPORT, STORAGE, DISPLAY AND USE SAFETY. AT ITS VOLITION AND AS CIRCUMSTANCES MAY REQUIRE, THE REVIEW BOARD MAY ISSUE REPORTS TO THE GOVERNOR'S OFFICE ON MATTERS BEFORE IT.

6. THE REVIEW BOARD SHALL BE AVAILABLE, UPON PETITION BY AFFECTED PARTIES, FOR REVIEW OF FACT AND ADVISEMENT TO THE BOARD OF STANDARDS AND APPEALS IN MATTERS OF LICENSE OR CERTIFICATION DENIAL OR REVOCATION, OR CIVIL OR CRIMINAL PENALTIES AS MAY BE ADJUDICATED BY THE COMMISSIONER UNDER THE PROVISIONS OF THIS ARTICLE.

7. THE COMMISSIONER SHALL DESIGNATE AN OFFICE OR EMPLOYEE OF THE DEPARTMENT TO ACT AS SECRETARY TO THE REVIEW BOARD, WHO SHALL NOT BE A MEMBER OF SUCH BOARD AND WHO SHALL NOT RECEIVE ANY ADDITIONAL COMPENSATION THEREFOR.

8. THE REVIEW BOARD MAY ADOPT BY-LAWS TO GOVERN ITS OWN PROCEEDINGS. THE SECRETARY OF THE BOARD SHALL KEEP A COMPLETE RECORD OF ALL PROCEEDINGS OF THE REVIEW BOARD WHICH SHOWS THE NAMES OF THE MEMBERS PRESENT AT EACH MEETING AND EVERY MATTER CONSIDERED BY THE REVIEW BOARD AND THE ACTION TAKEN THEREON. SUCH RECORDS SHALL BE FILED IN THE OFFICE OF THE DEPARTMENT.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.