

5773

2009-2010 Regular Sessions

I N S E N A T E

June 4, 2009

Introduced by Sens. SQUADRON, ADDABBO, KLEIN, KRUEGER, PERKINS, SAMPSON, SAVINO, SCHNEIDERMAN, STAVISKY, THOMPSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, the public officers law, the civil service law, the legislative law and the election law, in relation to financial disclosure by public officers; and to repeal certain provisions of the public officers law relating thereto

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

1 Section 1. Paragraph (f) of subdivision 9 of section 94 of the execu-  
2 tive law, as amended by chapter 14 of the laws of 2007, is amended to  
3 read as follows:

4 (f) Review financial disclosure statements in accordance with the  
5 provisions of this section AND SHALL CONDUCT A PROGRAM OF RANDOM AUDITS  
6 SUBJECT TO THE TERMS AND CONDITIONS OF THIS SECTION. ANY SUCH PROGRAM  
7 SHALL BE CARRIED OUT IN THE FOLLOWING MANNER, provided however, that the  
8 commission may delegate all or part of this review function to the exec-  
9 utive director who shall be responsible for completing staff review of  
10 such statements in a manner consistent with the terms of the commis-  
11 sion's delegation;

12 (I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS  
13 REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR  
14 AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH  
15 THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS  
16 SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF  
17 THEIR AGENTS PRIOR TO SELECTION.

18 (II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH  
19 RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS  
20 RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE

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

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1 FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE  
2 THAT DISCLOSURE FORMS ARE AUDITED IN A UNIFORM MANNER.

3 (III) THE COMMISSION SHALL CONTRACT WITH AN OUTSIDE ACCOUNTING ENTITY,  
4 WHICH SHALL MONITOR THE PROCESS PURSUANT TO WHICH THE COMMISSION SELECTS  
5 STATEMENTS OR REPORTS FOR AUDIT AND CARRIES OUT THE PROVISIONS OF  
6 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH  
7 PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

8 (IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH  
9 THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH,  
10 THE COMMISSION SHALL DETERMINE WHETHER THERE IS REASONABLE CAUSE TO  
11 BELIEVE THAT ANY SUCH STATEMENT OR REPORT IS INACCURATE OR INCOMPLETE.  
12 UPON A DETERMINATION THAT SUCH REASONABLE CAUSE EXISTS, THE COMMISSION  
13 MAY REQUIRE THE PRODUCTION OF FURTHER RECORDS, SUBPOENA WITNESSES,  
14 COMPEL THEIR ATTENDANCE AND TESTIMONY AND ADMINISTER OATHS OR AFFIRMA-  
15 TIONS, TO THE EXTENT THE COMMISSION DETERMINES SUCH ACTIONS ARE NECES-  
16 SARY TO OBTAIN INFORMATION RELEVANT AND MATERIAL TO INVESTIGATING SUCH  
17 INACCURACIES OR OMISSIONS.

18 (V) IN THE EVENT THAT THE COMMISSION FAILS TO CONDUCT RANDOM AUDITS AS  
19 REQUIRED BY THIS SUBDIVISION, EACH MEMBER OF THE COMMISSION SHALL BE  
20 ASSESSED A CIVIL PENALTY OF FIVE HUNDRED DOLLARS;

21 S 2. Subdivision 11 of section 94 of the executive law, as amended by  
22 chapter 14 of the laws of 2007, is amended to read as follows:

23 11. If a person required to file a financial disclosure statement with  
24 the commission has failed to file a disclosure statement or has filed a  
25 deficient statement, the commission shall notify the reporting person in  
26 writing, state the failure to file or detail the deficiency, provide the  
27 person with a fifteen day period to cure the deficiency, and advise the  
28 person of the penalties for failure to comply with the reporting  
29 requirements. Such notice shall be confidential. If the person fails to  
30 make such filing or fails to cure the deficiency within the specified  
31 time period, the commission shall send a notice of delinquency: (a) to  
32 the reporting person; (b) in the case of a statewide elected official,  
33 to the temporary president of the senate [and], the speaker of the  
34 assembly AND THE GOVERNOR; [and] (c) in the case of a state officer or  
35 employee, to the appointing authority for such person; AND (D) IN THE  
36 CASE OF A LEGISLATOR OR LEGISLATIVE EMPLOYEE, TO THE TEMPORARY PRESIDENT  
37 OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE GOVERNOR. Such  
38 notice of delinquency may be sent at any time during the reporting  
39 person's service as a [statewide] STATE elected official, state officer  
40 or employee, political party chair or while a candidate for [statewide]  
41 STATE office, or within one year after termination of such service or  
42 candidacy. The jurisdiction of the commission, when acting pursuant to  
43 subdivision thirteen of this section with respect to financial disclo-  
44 sure, shall continue notwithstanding that the reporting person separates  
45 from state service, or ceases to hold office as a [statewide] STATE  
46 elected official or political party chair, or ceases to be a candidate,  
47 provided the commission notifies such person of the alleged failure to  
48 file or deficient filing pursuant to this subdivision. FAILURE TO  
49 RESPOND TO THIS SECOND NOTICE OF DEFICIENCY SHALL REQUIRE THE COMMISSION  
50 TO MAKE PUBLIC ITS FILE IN THIS MATTER WITHIN SIXTY DAYS OF THE DATE OF  
51 THE SECOND NOTICE AND SHALL BE DEEMED A KNOWING AND WILLFUL FAILURE TO  
52 DISCLOSE FOR WHICH A CIVIL PENALTY MUST BE ASSESSED IN ADDITION TO OTHER  
53 REMEDY.

54 S 3. Paragraphs (f) and (g) of subdivision 2 of section 73-a of the  
55 public officers law are REPEALED.

S 4. The third undesignated paragraph of paragraph 3 of subdivision 3 of section 73-a of the public officers law, as added by chapter 813 of the laws of 1987, is amended to read as follows:

Whenever a "value" or "amount" is required to be reported herein, such value or amount shall be reported as being within one of the following Categories: Category A - under \$5,000; Category B - \$5,000 to under \$20,000; Category C - \$20,000 to under \$60,000; Category D - \$60,000 to under \$100,000; Category E - \$100,000 to under \$250,000; [and] Category F - \$250,000 TO UNDER \$1 MILLION; AND CATEGORY G - \$1 MILLION or over. A reporting individual shall indicate the Category by letter only.

S 5. Subparagraph (a) of paragraph 5 of subdivision 3 of section 73-a of the public officers law, as amended by chapter 242 of the laws of 1989, is amended to read as follows:

(a) List the name, address and description of any occupation, employment (other than the employment listed under Item 2 above), trade, business or profession engaged in by the reporting individual. If such activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency. IN ADDITION, LIST THE NAME AND ADDRESS OF EACH GOVERNMENTAL AGENCY, CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, ASSOCIATION, UNION, OR OTHER BUSINESS OR COMMERCIAL ENTITY FROM WHOM COMPENSATION HAS BEEN RECEIVED FOR ANY VALUE OF FIVE HUNDRED DOLLARS OR MORE; THE VALUE OF THE COMPENSATION; AND THE CONSIDERATION GIVEN OR PERFORMED IN EXCHANGE FOR THE COMPENSATION.

28				State or
29				Local
30	Position	Name & Address of Organization	Description	Agency
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32	<hr/>			
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S 6. Subparagraph (a) of paragraph 8 of subdivision 3 of section 73-a of the public officers law, as added by chapter 813 of the laws of 1987, is amended to read as follows:

(a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, OR WORKS AS A MEMBER OR EMPLOYEE OF A FIRM REQUIRED TO REGISTER WITH THE COMMISSION AS REQUIRED UNDER SECTION ONE-E OF THE LEGISLATIVE LAW, give a general description of the principal subject areas of matters undertaken by such individual. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients PROVIDED, HOWEVER THAT THE REPORTING INDIVIDUAL MUST LIST THE NAME AND ADDRESS OF EACH GOVERNMENTAL AGENCY, CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, ASSOCIATION, UNION, OR OTHER BUSINESS OR COMMERCIAL ENTITY FROM WHOM COMPENSATION HAS BEEN RECEIVED FOR ANY VALUE OF FIVE HUNDRED DOLLARS OR MORE;

1 THE VALUE OF THE COMPENSATION; AND THE CONSIDERATION GIVEN OR PERFORMED  
2 IN EXCHANGE FOR THE COMPENSATION.

3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 S 7. Subdivision 4 of section 73-a of the public officers law, as  
9 amended by chapter 242 of the laws of 1989, is amended to read as  
10 follows:

11 4. A reporting individual who knowingly and [wilfully] WILLFULLY fails  
12 to file an annual statement of financial disclosure or who knowingly and  
13 [wilfully] WILLFULLY with intent to deceive makes a false statement or  
14 gives information which such individual knows to be false on such state-  
15 ment of financial disclosure filed pursuant to this section shall be  
16 subject to a civil penalty in an amount not to BE LESS THAN FIVE HUNDRED  
17 DOLLARS AND NOT TO exceed ten thousand dollars. Assessment of a civil  
18 penalty hereunder shall be made by the [state ethics] commission ON  
19 PUBLIC INTEGRITY, or by the legislative ethics [committee] COMMISSION,  
20 as the case may be, with respect to persons subject to their respective  
21 jurisdictions. The [state ethics] commission ON PUBLIC INTEGRITY acting  
22 pursuant to subdivision thirteen of section ninety-four of the executive  
23 law, or the legislative ethics [committee] COMMISSION acting pursuant to  
24 subdivision twelve of section eighty of the legislative law, as the case  
25 may be, may, in lieu of a civil penalty, refer a violation to the appro-  
26 priate prosecutor and upon such conviction, but only after such refer-  
27 ral, such violation shall be punishable as a class A misdemeanor. A  
28 civil penalty for false filing may not be imposed hereunder in the event  
29 a category of "value" or "amount" reported hereunder is incorrect unless  
30 such reported information is falsely understated. [Notwithstanding any  
31 other provision of law to the contrary, no other penalty, civil or crim-  
32 inal may be imposed for a failure to file, or for a false filing, of  
33 such statement, except that the appointing authority may impose disci-  
34 plinary action as otherwise provided by law.] The [state ethics] commis-  
35 sion ON PUBLIC INTEGRITY, and the legislative ethics [committee] COMMIS-  
36 SION shall each be deemed to be an agency within the meaning of article  
37 three of the state administrative procedure act and shall adopt rules  
38 governing the conduct of adjudicatory proceedings and appeals relating  
39 to the assessment of the civil penalties herein authorized. Such rules,  
40 which shall not be subject to the approval requirements of the state  
41 administrative procedure act, shall provide for due process procedural  
42 mechanisms substantially similar to those set forth in such article  
43 three but such mechanisms need not be identical in terms or scope.  
44 Assessment of a civil penalty shall be final unless modified, suspended  
45 or vacated within thirty days of imposition and upon becoming final  
46 shall be subject to review at the instance of the affected reporting  
47 individual in a proceeding commenced against the [state ethics] commis-  
48 sion ON PUBLIC INTEGRITY or legislative ethics [committee] COMMISSION,  
49 pursuant to article seventy-eight of the civil practice law and rules.

50 S 8. The public officers law is amended by adding a new section 74-b  
51 to read as follows:

52 S 74-B. REPORTS OF BUSINESS DEALINGS WITH LOBBYISTS. 1. ANY PUBLIC  
53 OFFICER WHO RETAINS, EMPLOYS, DESIGNATES OR OTHERWISE DOES BUSINESS WITH  
54 A LOBBYIST OR LOBBYISTS SHALL, WITHIN THIRTY DAYS OF THE DATE UPON WHICH  
55 SUCH BUSINESS DEALINGS COMMENCE, FILE WITH THE COMMISSION ON PUBLIC

1 INTEGRITY CREATED BY SECTION NINETY-FOUR OF THE EXECUTIVE LAW, A REPORT  
2 OF SUCH BUSINESS DEALINGS.

3 2. SUCH REPORT SHALL BE FILED WITH THE COMMISSION ON PUBLIC INTEGRITY,  
4 ON FORMS SUPPLIED BY SUCH COMMISSION AND SHALL CONTAIN:

5 (A) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PUBLIC OFFICER;

6 (B) THE NAME, ADDRESS AND TELEPHONE NUMBER OF EACH LOBBYIST RETAINED,  
7 EMPLOYED OR DESIGNATED BY SUCH PUBLIC OFFICER OR WITH WHOM SUCH PUBLIC  
8 OFFICER DID BUSINESS;

9 (C) A DESCRIPTION OF THE GENERAL SUBJECT OR SUBJECTS OF THE TRANS-  
10 ACTIONS BETWEEN THE PUBLIC OFFICER AND THE LOBBYIST OR LOBBYISTS;

11 (D) THE COMPENSATION, INCLUDING EXPENSES, TO BE PAID BY VIRTUE OF THE  
12 BUSINESS DEALINGS.

13 3. (A) ALL SUCH REPORTS SHALL BE SUBJECT TO REVIEW BY THE COMMISSION  
14 ON PUBLIC INTEGRITY.

15 (B) SUCH REPORTS SHALL BE KEPT ON FILE FOR A PERIOD OF THREE YEARS AND  
16 SHALL BE OPEN TO PUBLIC INSPECTION DURING SUCH PERIOD.

17 (C) EACH REPORT FILED BY A PUBLIC OFFICER PURSUANT TO THIS SECTION  
18 SHALL BE ACCOMPANIED BY A FILING FEE OF FIFTY DOLLARS. IN ADDITION TO  
19 THE FILING FEES AUTHORIZED BY THIS ARTICLE, THE COMMISSION ON PUBLIC  
20 INTEGRITY MAY IMPOSE A FEE FOR LATE FILING OF A REPORT REQUIRED BY THIS  
21 SECTION NOT TO EXCEED TWENTY-FIVE DOLLARS FOR EACH DAY THAT THE REPORT  
22 REQUIRED TO BE FILED IS LATE, EXCEPT THAT IF THE PUBLIC OFFICER MAKING A  
23 LATE FILING HAS NOT PREVIOUSLY BEEN REQUIRED BY STATUTE TO FILE A  
24 REPORT, THE FEE FOR LATE FILING SHALL NOT EXCEED TEN DOLLARS FOR EACH  
25 DAY THAT THE REPORT REQUIRED TO BE FILED IS LATE.

26 S 9. Subdivision 5 of section 107 of the civil service law, as amended  
27 by chapter 14 of the laws of 2007, is amended to read as follows:

28 5. Violation of this section. Complaints alleging a violation of this  
29 section by a [statewide] STATE elected official or a state officer or  
30 employee, as defined in section seventy-three of the public officers  
31 law, may be directed to the commission on public integrity.

32 S 10. Section 60 of the legislative law, as amended by chapter 416 of  
33 the laws of 1954, is amended to read as follows:

34 S 60. Testimony before legislative committees. 1. A legislative  
35 committee may require the attendance of witnesses in this state whom the  
36 committee may wish to examine, or may issue a commission for the exam-  
37 ination of witnesses who are out of the state or unable to attend the  
38 committee or excused from attendance, which commission if directed by  
39 the house or legislature by which the committee is appointed may be  
40 executed during the recess of the legislature. A commission issued as  
41 provided by this section shall be in the form used in the courts of  
42 record of this state and shall be executed in like manner. Unless other-  
43 wise instructed by the committee appointing them the commissioners shall  
44 examine privately every witness attending before them and shall not make  
45 public the particulars of such examination. No committee of either house  
46 or a joint committee of both houses shall have the power to take testi-  
47 mony at a private hearing or at a public hearing unless at least two of  
48 its members are present at such hearing.

49 2. THE LEGISLATIVE COMMITTEES RESPONSIBLE FOR OVERSIGHT OF THE COMMIS-  
50 SION ON PUBLIC INTEGRITY CREATED PURSUANT TO SECTION NINETY-FOUR OF THE  
51 EXECUTIVE LAW SHALL HOLD HEARINGS REGARDING THE ANNUAL REPORT AND RECOM-  
52 MENDATIONS OF SUCH COMMISSION WITHIN THIRTY DAYS OF THE PUBLIC RELEASE  
53 OF SUCH COMMISSION'S ANNUAL REPORT.

54 S 11. Paragraph h of subdivision 7 of section 80 of the legislative  
55 law, as amended by chapter 14 of the laws of 2007, is amended to read as  
56 follows:

1 h. Review financial disclosure statements in accordance with the  
2 provisions of this section, AND SHALL CONDUCT A PROGRAM OF RANDOM AUDITS  
3 SUBJECT TO THE TERMS AND CONDITIONS OF THIS SECTION. ANY SUCH PROGRAM  
4 SHALL BE CARRIED OUT IN THE FOLLOWING MANNER, provided however, that the  
5 commission may delegate all or part of the review function relating to  
6 financial disclosure statements filed by legislative employees pursuant  
7 to sections seventy-three and seventy-three-a of the public officers law  
8 to the executive director who shall be responsible for completing staff  
9 review of such statements in a manner consistent with the terms of the  
10 commission's delegation;

11 (I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS  
12 REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR  
13 AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH  
14 THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS  
15 SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF  
16 THEIR AGENTS PRIOR TO SELECTION.

17 (II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH  
18 RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS  
19 RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE  
20 FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE  
21 THAT DISCLOSURE FORMS ARE AUDITED IN A UNIFORM MANNER.

22 (III) THE COMMISSION SHALL CONTRACT WITH AN OUTSIDE ACCOUNTING ENTITY,  
23 WHICH SHALL MONITOR THE PROCESS PURSUANT TO WHICH THE COMMISSION SELECTS  
24 STATEMENTS OR REPORTS FOR AUDIT AND CARRIES OUT THE PROVISIONS OF  
25 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH  
26 PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

27 (IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH  
28 THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH,  
29 THE COMMISSION SHALL DETERMINE WHETHER THERE IS REASONABLE CAUSE TO  
30 BELIEVE THAT ANY SUCH STATEMENT OR REPORT IS INACCURATE OR INCOMPLETE.  
31 UPON A DETERMINATION THAT SUCH REASONABLE CAUSE EXISTS, THE COMMISSION  
32 MAY REQUIRE THE PRODUCTION OF FURTHER RECORDS, SUBPOENA WITNESSES,  
33 COMPEL THEIR ATTENDANCE AND TESTIMONY AND ADMINISTER OATHS OR AFFIRMA-  
34 TIONS, TO THE EXTENT THE COMMISSION DETERMINES SUCH ACTIONS ARE NECES-  
35 SARY TO OBTAIN INFORMATION RELEVANT AND MATERIAL TO INVESTIGATING SUCH  
36 INACCURACIES OR OMISSIONS.

37 (V) IN THE EVENT THAT THE COMMISSION FAILS TO CONDUCT RANDOM AUDITS AS  
38 REQUIRED BY THIS SUBDIVISION, EACH MEMBER OF THE COMMISSION SHALL BE  
39 ASSESSED A CIVIL PENALTY OF FIVE HUNDRED DOLLARS;

40 S 12. Paragraph i of subdivision 7 of section 80 of the legislative  
41 law, as amended by chapter 14 of the laws of 2007, is amended to read as  
42 follows:

43 i. Permit any person required to file a financial disclosure statement  
44 to request the commission to delete from the copy thereof made available  
45 for public inspection and copying one or more items of information,  
46 which may be deleted by the commission upon a finding that the informa-  
47 tion which would otherwise be required to be disclosed will RESULT IN  
48 ECONOMIC OR PERSONAL HARDSHIP TO THE REPORTING PERSON AND WILL have no  
49 material bearing on the discharge of the reporting person's official  
50 duties;

51 S 13. Subdivision 1 of section 14-126 of the election law, as amended  
52 by chapter 128 of the laws of 1994, is amended to read as follows:

53 1. Any person who fails to file a statement required to be filed by  
54 this article shall be subject to a civil penalty, not [in excess of]  
55 LESS THAN five hundred dollars AND NOT TO EXCEED TEN THOUSAND DOLLARS,

1 to be recoverable in a special proceeding or civil action to be brought  
2 by the state board of elections or other board of elections.

3 S 14. The provisions of this act shall apply to the commission on  
4 public integrity, the legislative ethics commission and to the state  
5 board of elections and to any successor body to any of such entities.

6 S 15. Separability clause. If any clause, sentence, paragraph, section  
7 or part of this act shall be adjudged by any court of competent juris-  
8 diction to be invalid, such judgment shall not affect, impair or invali-  
9 date the remainder thereof, but shall be confined in its operation to  
10 the clause, sentence, paragraph, section or part thereof directly  
11 involved in the controversy in which such judgment shall have been  
12 rendered.

13 S 16. This act shall take effect January 1, 2010.