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

6161--B

2009-2010 Regular Sessions

I N S E N A T E

September 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the state administrative procedure act and the judiciary law, in relation to the denial of the renewal of professional licenses when the applicant has outstanding avoidance of state tax debt

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

Section 1. Section 32 of the executive law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

S 32. Authority not to renew. 1. For the purposes of this section[, "state]: (A) "STATE agency" shall mean any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity performing a governmental or proprietary function for the state, AND SHALL INCLUDE THE EDUCATION DEPARTMENT.

(B) "TAX DEBT" SHALL MEAN ALL LIABILITIES, INCLUDING UNPAID TAXES, INTEREST AND PENALTIES, THAT THE COMMISSIONER OF TAXATION AND FINANCE IS REQUIRED BY LAW TO COLLECT, AND THAT HAVE BEEN REDUCED TO JUDGMENT BY THE DOCKETING OF A NEW YORK STATE TAX WARRANT WITH A COUNTY CLERK OR BY THE FILING OF A COPY THEREOF WITH THE DEPARTMENT OF STATE, AND THE TAXPAYER DEBTOR HAS FAILED TO PAY SUCH LIABILITIES OR FAILED TO ENTER INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE TO SETTLE SUCH LIABILITIES.

2. Notwithstanding any other provision of law, when a state agency levies fees or assesses civil fines or penalties for licensing or regu-

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

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latory matters, such state agency shall, following consultation with the [state] department of law and after such appropriate due process as required by the provisions of law applicable to such state agency and to such licensing or regulatory matters, not be required to renew any license, permit, or certificate of qualification, authority[,] or operation, of any business, individual[,] or other entity, which is not a state agency, municipal corporation or district corporation, if such business, individual or other entity has failed to pay or enter into a written agreement to settle outstanding fees, civil penalties or fines assessed by such state agency.

3. (A) IT SHALL BE A CONDITION FOR THE RENEWAL OF ANY LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR TRADE THAT THE APPLICANT FOR RENEWAL ATTEST, UNDER THE PENALTY OF PERJURY, TO THE STATE AGENCY RENEWING THE LICENSE, PERMIT, CERTIFICATE OR REGISTRATION THAT THE APPLICANT DOES NOT HAVE A TAX DEBT.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY STATE AGENCY WHICH ISSUES A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR TRADE MAY DENY THE APPLICATION FOR THE RENEWAL OF ANY SUCH LICENSE, PERMIT, CERTIFICATE OR REGISTRATION TO ANY PERSON OR ENTITY WHICH HAS A TAX DEBT.

(C) EVERY APPLICATION FOR THE RENEWAL OF A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT A PROFESSION, BUSINESS OR TRADE SHALL PROVIDE NOTICE TO THE APPLICANT OF THE REQUIREMENTS OF THIS SUBDIVISION.

S 2. Section 401 of the state administrative procedure act, as amended by chapter 935 of the laws of 1976, subdivision 1 as amended by chapter 469 of the laws of 1985, subdivision 4 as added by chapter 236 of the laws of 1987, is amended to read as follows:

S 401. Licenses. 1. FOR THE PURPOSES OF THIS ARTICLE:

(A) "AGENCY" SHALL MEAN AND INCLUDE THE STATE JUDICIAL BRANCH, THE UNIFIED COURT SYSTEM, THE OFFICE OF COURT ADMINISTRATION AND THE MEANING ASCRIBED TO SUCH TERM BY SUBDIVISION ONE OF SECTION ONE HUNDRED TWO OF THIS ACT.

(B) "TAX DEBT" SHALL MEAN ALL LIABILITIES, INCLUDING UNPAID TAXES, INTEREST AND PENALTIES, THAT THE COMMISSIONER OF TAXATION AND FINANCE IS REQUIRED BY LAW TO COLLECT, AND THAT HAVE BEEN REDUCED TO JUDGMENT BY THE DOCKETING OF A NEW YORK STATE TAX WARRANT WITH A COUNTY CLERK OR BY THE FILING OF A COPY THEREOF WITH THE DEPARTMENT OF STATE, AND THE TAXPAYER DEBTOR HAS FAILED TO PAY SUCH LIABILITIES OR FAILED TO ENTER INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE TO SETTLE SUCH LIABILITIES.

2. When licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning adjudicatory proceedings apply. For purposes of this act, statutes providing an opportunity for hearing shall be deemed to include statutes providing an opportunity to be heard.

[2.] 3. (A) IT SHALL BE A CONDITION FOR THE RENEWAL OF ANY LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR TRADE THAT THE APPLICANT FOR RENEWAL ATTEST, UNDER THE PENALTY OF PERJURY, TO THE AGENCY RENEWING THE LICENSE, PERMIT, CERTIFICATE OR REGISTRATION THAT THE APPLICANT DOES NOT HAVE A TAX DEBT.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY AGENCY WHICH ISSUES A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY

AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR TRADE MAY DENY THE APPLICATION FOR THE RENEWAL OF ANY SUCH LICENSE, PERMIT, CERTIFICATE OR REGISTRATION TO ANY PERSON OR ENTITY WHICH HAS A TAX DEBT.

(C) EVERY APPLICATION FOR THE RENEWAL OF A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT A PROFESSION, BUSINESS OR TRADE SHALL PROVIDE NOTICE TO THE APPLICANT OF THE REQUIREMENTS OF THIS SUBDIVISION.

4. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license.

[3.] 5. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

[4.] 6. When the hearing seeks the revocation of a license or permit previously granted by the agency, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses, provided, however, the provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

S 3. Section 53 of the judiciary law is amended by adding a new subdivision 7 to read as follows:

7. (A) FOR THE PURPOSES OF THIS SUBDIVISION, "TAX DEBT" SHALL MEAN ALL LIABILITIES, INCLUDING UNPAID TAXES, INTEREST AND PENALTIES, THAT THE COMMISSIONER OF TAXATION AND FINANCE IS REQUIRED BY LAW TO COLLECT, AND THAT HAVE BEEN REDUCED TO JUDGMENT BY THE DOCKETING OF A NEW YORK STATE TAX WARRANT WITH A CLERK OR BY THE FILING OF A COPY THEREOF WITH THE DEPARTMENT OF STATE, AND THE TAXPAYER DEBTOR HAS FAILED TO PAY SUCH LIABILITIES OR FAILED TO ENTER INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE TO SETTLE SUCH LIABILITIES.

(B)(I) EVERY APPELLATE DIVISION MAY DENY THE APPLICATION FOR RENEWAL OF ADMISSION TO PRACTICE AS AN ATTORNEY AND COUNSELLOR AT LAW OF ANY PERSON WHO HAS A TAX DEBT.

(II) THE COURT OF APPEALS SHALL ADOPT RULES ESTABLISHING THAT IT SHALL BE A CONDITION FOR THE RENEWAL OF ADMISSION TO PRACTICE AS AN ATTORNEY AND COUNSELLOR AT LAW THAT THE APPLICANT ATTEST, UNDER THE PENALTY OF PERJURY, TO THE APPELLATE DIVISION THAT THE APPLICANT DOES NOT HAVE A TAX DEBT.

(III) EVERY APPLICATION FOR RENEWAL OF ADMISSION TO PRACTICE AS AN ATTORNEY AND COUNSELLOR AT LAW SHALL PROVIDE NOTICE TO THE APPLICANT OF THE REQUIREMENTS OF THIS PARAGRAPH.

S 4. This act shall take effect January 1, 2012.