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

3408

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. PHEFFER -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law and the executive law, in relation to requiring not-for-profit and exempt organizations and trustees to report annually whether or not moneys were spent to pay judgments or settle accusations related to harassment, assault or abuse allegedly committed by officers, directors, employees or agents of the organizations or trustees

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

Section 1. Section 8-1.4 of the estates, powers and trusts law is amended by adding a new paragraph (t) to read as follows:

(T) (1) NOTWITHSTANDING THE EXEMPTIONS FROM THE REGISTRATION AND REPORTING PROVISIONS OF THIS SECTION SPECIFIED IN PARAGRAPH (B) OF THIS SECTION, THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO A DESIGNATED "TRUSTEE", AS DEFINED IN PARAGRAPH (A) OF THIS SECTION, EXCEPT TO THE EXTENT, IF ANY, THAT THE APPLICATION OF THIS PARAGRAPH TO ANY PARTICULAR TRUSTEE IS FOUND BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION, AFTER ANY AND ALL APPEALS HAVE BEEN EXHAUSTED, TO BE VIOLATIVE OF THE FEDERAL OR STATE CONSTITUTION.

(2) A DESIGNATED TRUSTEE SHALL FILE ANNUALLY WITH THE ATTORNEY GENERAL ON A FORM PRESCRIBED BY THE ATTORNEY GENERAL AND ON SUCH DATE OR DATES AS THE ATTORNEY GENERAL SHALL REQUIRE, A DISCLOSURE STATEMENT, SETTING FORTH UNDER THE PENALTIES OF PERJURY WHETHER OR NOT ANY OF THE FUNDS ENTRUSTED TO SUCH BOARD OF TRUSTEES OR DESIGNATED TRUSTEE WERE EXPENDED DURING THE IMMEDIATELY PRECEDING FISCAL YEAR COVERED BY SUCH STATEMENT FOR THE PURPOSE OF SATISFYING ANY JUDGMENT OR PAYING THE AMOUNT OF ANY SETTLEMENT RELATED TO ONE OR MORE ALLEGATIONS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, OR CHILD ABUSE COMMITTED BY AN OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE BOARD OF TRUSTEES OR A DESIGNATED TRUSTEE. A TRUSTEE OTHERWISE REQUIRED TO FILE AN ANNUAL FINANCIAL REPORT PURSUANT

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

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TO THIS SECTION OR SECTION ONE HUNDRED SEVENTY-TWO-B OF THE EXECUTIVE LAW SHALL SATISFY THE FILING REQUIREMENT OF THIS PARAGRAPH BY INCLUDING SUCH ANNUAL DISCLOSURE STATEMENT WITH THE FILING OF THE TRUSTEE'S ANNUAL FINANCIAL REPORT OR AS A PART OF THE TRUSTEE'S ANNUAL FINANCIAL REPORT. THE FAILURE TO FILE OR TIMELY FILE SUCH ANNUAL DISCLOSURE STATEMENT OR TO INCLUDE IT AS A PART OF THE TRUSTEE'S ANNUAL FINANCIAL REPORT AS PERMITTED HEREIN SHALL SUBJECT THE TRUSTEE IN DEFAULT TO THE SAME FINES AND PENALTIES AS THOSE THAT ARE APPLICABLE TO FAILURE BY A TRUSTEE TO FILE OR TIMELY FILE THE TRUSTEE'S ANNUAL FINANCIAL REPORT.

S 2. Section 172-b of the executive law is amended by adding a new subdivision 9 to read as follows:

9. (A) NOTWITHSTANDING THE EXEMPTIONS FROM THE REGISTRATION AND REPORTING PROVISIONS OF THIS ARTICLE SPECIFIED IN SECTION ONE HUNDRED SEVENTY-TWO-A OF THIS ARTICLE, THE PROVISIONS OF THIS SUBDIVISION SHALL APPLY TO ALL "CHARITABLE ORGANIZATIONS" DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS ARTICLE AND TO ALL ENTITIES OTHERWISE EXEMPTED FROM THIS ARTICLE THAT ARE ENUMERATED IN SECTION ONE HUNDRED SEVENTY-TWO-A OF THIS ARTICLE, EXCEPT TO THE EXTENT, IF ANY, THAT THE APPLICATION OF THIS SUBDIVISION TO ANY PARTICULAR CHARITABLE ORGANIZATION IS FOUND BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION, AFTER ANY AND ALL APPEALS HAVE BEEN EXHAUSTED, TO BE VIOLATIVE OF THE FEDERAL OR STATE CONSTITUTION.

(B) EVERY CHARITABLE ORGANIZATION AND EVERY ENTITY THAT IS OTHERWISE EXEMPTED FROM THE APPLICATION OF THIS ARTICLE BY SECTION ONE HUNDRED SEVENTY-TWO-A OF THIS ARTICLE SHALL FILE ANNUALLY WITH THE ATTORNEY GENERAL ON A FORM PRESCRIBED BY THE ATTORNEY GENERAL AND ON SUCH DATE OR DATES AS THE ATTORNEY GENERAL SHALL REQUIRE, A DISCLOSURE STATEMENT, SETTING FORTH UNDER THE PENALTIES OF PERJURY WHETHER OR NOT ANY OF THE FUNDS ENTRUSTED TO SUCH CHARITABLE ORGANIZATION OR EXEMPTED ENTITY WERE EXPENDED DURING THE IMMEDIATELY PRECEDING FISCAL YEAR COVERED BY SUCH STATEMENT FOR THE PURPOSE OF SATISFYING ANY JUDGMENT OR PAYING THE AMOUNT OF ANY SETTLEMENT RELATED TO ONE OR MORE ALLEGATIONS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, OR CHILD ABUSE COMMITTED BY AN OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE CHARITABLE ORGANIZATION OR EXEMPTED ENTITY. A CHARITABLE ORGANIZATION OTHERWISE REQUIRED TO FILE AN ANNUAL FINANCIAL REPORT PURSUANT TO THIS ARTICLE OR SECTION 8-1.4 OF THE ESTATES, POWERS AND TRUSTS LAW MAY SATISFY THE ANNUAL FILING REQUIREMENT OF THIS SUBDIVISION BY INCLUDING SUCH ANNUAL DISCLOSURE STATEMENT WITH THE FILING OF THE CHARITABLE ORGANIZATION'S ANNUAL FINANCIAL REPORT OR AS A PART OF SUCH ORGANIZATION'S ANNUAL FINANCIAL REPORT. THE FAILURE TO FILE OR TIMELY FILE SUCH ANNUAL DISCLOSURE STATEMENT OR TO INCLUDE IT AS A PART OF A CHARITABLE ORGANIZATION'S ANNUAL FINANCIAL REPORT AS PERMITTED HEREIN SHALL SUBJECT THE CHARITABLE ORGANIZATION OR OTHERWISE EXEMPTED ENTITY IN DEFAULT TO THE SAME FINES AND PENALTIES AS THOSE THAT ARE APPLICABLE TO FAILURE BY A CHARITABLE ORGANIZATION TO FILE OR TIMELY FILE THE CHARITABLE ORGANIZATION'S ANNUAL FINANCIAL REPORT.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the attorney general on or before such effective date.