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

5750

2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. V. LOPEZ, MAYERSOHN -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, the penal law, the judiciary law and the correction law, in relation to the mandatory suspension and revocation of professional licenses for certain violations of articles 220 and 221 of the penal law

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

Section 1. Subdivision 7 of section 305 of the education law, as amended by chapter 181 of the laws of 2000, is amended to read as follows:

7. The commissioner may annul upon cause shown to his or her satisfaction any certificate of qualification granted to a teacher by any authority whatever or declare any diploma issued by a state teachers college and state colleges for teachers ineffective and null as a qualification to teach IN a public school within this state, and the commissioner may reconsider and reverse his or her action in any such matter. In a proceeding brought pursuant to this subdivision on charges against a certified teacher, the commissioner shall also be authorized to impose as a penalty:

a. suspension of a teaching certificate or license:

(1) wholly for a fixed period of time; or

(2) partially, until the teacher successfully completes a course of retraining in the area to which the suspension applies; or

(3) wholly, until the teacher successfully completes a course of therapy or treatment;

b. limitation of the scope of a teaching certificate through revocation of an extension to teach additional subjects or grades;

c. a fine not to exceed five thousand dollars; or

d. a requirement that the teacher pursue a course of continuing education or training.

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

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The attorney general shall, at the request of the commissioner or the director of the division of the budget, bring an action in the name of the people of the state of New York to enforce and collect any fine imposed pursuant to this subdivision. In any such action, the findings and determination of the hearing officer or hearing panel or of the commissioner shall be admissible evidence and shall be conclusive proof of the violation and the penalty assessed. For purposes of this subdivision, the term "teacher" shall mean any professional educator holding a teaching certificate or license, including but not limited to a classroom teacher, teaching assistant, pupil personnel services professional, school administrator or supervisor or superintendent of schools.

NOTWITHSTANDING ANY PROVISION OF THIS SUBDIVISION, WHEN A TEACHER IS SENTENCED UPON A CONVICTION OF ANY OFFENSE INVOLVING A CONTROLLED SUBSTANCE AS DEFINED BY ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, OTHER THAN AN OFFENSE INVOLVING MARIHUANA, A FELONY CONVICTION FOR ANY OFFENSE INVOLVING MARIHUANA AS DEFINED BY ARTICLE TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OR UPON A YOUTHFUL OFFENDER FINDING SUBSTITUTED FOR SUCH CONVICTION, THE COMMISSIONER SHALL ANNUL ANY SUCH CERTIFICATE OR DECLARE ANY SUCH DIPLOMA INEFFECTIVE AND NULL AS A QUALIFICATION TO TEACH IN A COMMON SCHOOL OR IN ANY PUBLIC SCHOOL WITHIN THE STATE, AND THE COMMISSIONER MAY RECONSIDER AND REVERSE HIS OR HER ACTION IN SUCH MATTER NO EARLIER THAN SIX MONTHS AFTER THE DATE OF SUCH ANNULMENT OR DECLARATION.

S 2. Paragraph d of subdivision 2 of section 6510 of the education law, as amended by chapter 1018 of the laws of 1984, is amended to read as follows:

d. Convictions of crimes or administrative violations. In cases of professional misconduct based solely upon a violation of subdivision five of section sixty-five hundred nine of this article, the professional conduct officer may prepare and serve the charges and may refer the matter directly to a regents review committee for its review and report of its findings, determination as to guilt, and recommendation as to the measure of discipline to be imposed. In such cases the notice of hearing shall state that the licensee may file a written answer, brief and affidavits; that the licensee may appear personally before the regents review committee, may be represented by counsel and may present evidence or sworn testimony on behalf of the licensee, and the notice may contain such other information as may be considered appropriate by the department. The department may also present evidence or sworn testimony at the hearing. A stenographic record of the hearing shall be made. Such evidence or sworn testimony offered at the meeting of the regents review committee shall be limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. The presiding officer at the meeting of the regents review committee may, in his or her discretion, reasonably limit the number of witnesses whose testimony will be received and the length of time any witness will be permitted to testify. In lieu of referring the matter to the board of regents, the regents review committee may refer any such matter for further proceedings pursuant to paragraph b or c of this subdivision or subdivision three of this section. SUCH REFERRAL SHALL NOT BE PERMITTED WHERE THE PENALTY FOR THE PROFESSIONAL MISCONDUCT IS PRESCRIBED BY SUBDIVISION TWO OF SECTION SIXTY-FIVE HUNDRED ELEVEN OF THIS ARTICLE.

S 3. Section 6511 of the education law, as amended by chapter 542 of the laws of 2000, is amended to read as follows:

S 6511. Penalties for professional misconduct. [The] 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, THE penalties which may be

imposed by the board of regents on a present or former licensee found guilty of professional misconduct (under the definitions and proceedings prescribed in sections sixty-five hundred nine and sixty-five hundred ten of this article) are:

[(1)] A. censure and reprimand,

[(2)] B. suspension of license, [(a)] (1) wholly, for a fixed period of time; [(b)] (2) partially, until the licensee successfully completes a course of retraining in the area to which the suspension applies; [(c)] (3) wholly, until the licensee successfully completes a course of therapy or treatment prescribed by the regents;

[(3)] C. revocation of license,

[(4)] D. annulment of license or registration,

[(5)] E. limitation on registration or issuance of any further license,

[(6)] F. a fine not to exceed ten thousand dollars, upon each specification of charges of which the respondent is determined to be guilty,

[(7)] G. a requirement that a licensee pursue a course of education or training, and

[(8)] H. a requirement that a licensee perform up to one hundred hours of public service, in a manner and at a time and place as directed by the board.

The board of regents may stay such penalties in whole or in part, may place the licensee on probation and may restore a license which has been revoked, provided, in the case of licensees subject to section two hundred thirty of the public health law, notice that the board is considering such restoration is given to the office of professional medical conduct at least thirty days before the date on which such restoration shall be considered. Upon the recommendation of the office of professional medical conduct, the board of regents may deny such restoration. Any fine imposed pursuant to this section or pursuant to subdivision two of section sixty-five hundred ten of this article may be sued for and recovered in the name of the people of the state of New York in an action brought by the attorney general. In such action the findings and determination of the board of regents or of the violations committee shall be admissible evidence and shall be conclusive proof of the violation and the penalty assessed.

2. THE PENALTY WHICH SHALL BE IMPOSED BY THE BOARD OF REGENTS IN ANY CASE WHERE A PRESENT LICENSEE HAS BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT (UNDER THE DEFINITIONS AND PROCEEDINGS PRESCRIBED IN SECTIONS SIXTY-FIVE HUNDRED NINE AND SIXTY-FIVE HUNDRED TEN OF THIS ARTICLE) CONSISTING OF CONDUCT FOR WHICH THE LICENSEE HAS BEEN CONVICTED OF ANY OFFENSE INVOLVING A CONTROLLED SUBSTANCE AS DEFINED BY ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, OTHER THAN AN OFFENSE INVOLVING MARIHUANA, A FELONY CONVICTION FOR ANY OFFENSE INVOLVING MARIHUANA AS DEFINED BY ARTICLE TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OR UPON A YOUTHFUL OFFENDER FINDING SUBSTITUTED FOR SUCH CONVICTION, SHALL INCLUDE, IN ADDITION TO ANY OTHER PENALTIES DESCRIBED IN SUBDIVISION ONE OF THIS SECTION WHICH THE BOARD SHALL DEEM APPROPRIATE, SUSPENSION OF SUCH LICENSE FOR A PERIOD OF NOT LESS THAN SIX MONTHS OR FOR SUCH LONGER PERIOD, OR PERMANENT REVOCATION OF SUCH LICENSE, AS THE BOARD OF REGENTS SHALL DEEM APPROPRIATE.

S 4. The penal law is amended by adding a new section 60.31 to read as follows:

S 60.31 NOTIFICATION OF CONVICTION OR YOUTHFUL OFFENDER FINDING IN CERTAIN CASES.

WHEN A PERSON IS SENTENCED UPON A CONVICTION OF ANY OFFENSE INVOLVING A CONTROLLED SUBSTANCE AS DEFINED BY ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER, OTHER THAN AN OFFENSE INVOLVING MARIHUANA, A FELONY CONVICTION FOR ANY OFFENSE INVOLVING MARIHUANA AS DEFINED BY ARTICLE TWO HUNDRED TWENTY-ONE OF THIS CHAPTER, OR UPON A YOUTHFUL OFFENDER FINDING SUBSTITUTED FOR SUCH CONVICTION, THE COURT SHALL ORDER THAT NOTIFICATION OF SUCH CONVICTION BE MADE TO THE NEW YORK BOARD OF REGENTS AND THE COMMISSIONER OF EDUCATION IF SUCH PERSON HOLDS ANY PROFESSIONAL LICENSE GRANTED PURSUANT TO THE PROVISIONS OF SECTIONS SIXTY-FIVE HUNDRED THROUGH EIGHTY-TWO HUNDRED EIGHT OF THE EDUCATION LAW; IF SUCH PERSON IS AN ATTORNEY AND COUNSELLOR-AT-LAW, THE COURT SHALL ORDER THAT NOTIFICATION OF SUCH CONVICTION BE MADE TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE DEPARTMENT IN WHICH SUCH PERSON WAS ADMITTED TO PRACTICE.

S 5. Paragraph d of subdivision 4 of section 90 of the judiciary law, as added by chapter 674 of the laws of 1979, is amended to read as follows:

d. For purposes of this subdivision, the term serious crime shall mean any criminal offense denominated a felony under the laws of any state, district or territory or of the United States which does not constitute a felony under the laws of this state, ANY MISDEMEANOR OFFENSE INVOLVING A CONTROLLED SUBSTANCE AS DEFINED BY ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, OTHER THAN AN OFFENSE INVOLVING MARIHUANA, and any other crime a necessary element of which, as determined by statutory or common law definition of such crime, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy or solicitation of another to commit a serious crime.

S 6. Paragraph f of subdivision 4 of section 90 of the judiciary law, as added by chapter 674 of the laws of 1979, is amended to read as follows:

f. (1) Any attorney and counsellor-at-law convicted of a serious crime, as defined in paragraph d of this subdivision, whether by plea of guilty or nolo contendere or from a verdict after trial or otherwise, shall be suspended upon the receipt by the appellate division of the supreme court of the record of such conviction until a final order is made pursuant to paragraph g of this subdivision.

Upon good cause shown the appellate division of the supreme court may, upon application of the attorney or on its own motion, set aside such suspension when it appears consistent with the maintenance of the integrity and honor of the profession, the protection of the public and the interest of justice.

(2) SUCH SUSPENSION SHALL NOT BE SET ASIDE PRIOR TO SIX MONTHS AFTER THE DATE SUCH SUSPENSION SHALL HAVE TAKEN EFFECT PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH WHERE AN ATTORNEY AND COUNSELLOR-AT-LAW HAS BEEN CONVICTED OF A SERIOUS CRIME CONSTITUTING A MISDEMEANOR OFFENSE INVOLVING A CONTROLLED SUBSTANCE AS DEFINED BY ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, OTHER THAN AN OFFENSE INVOLVING MARIHUANA.

S 7. Subdivision 2 of section 701 of the correction law, as amended by section 2 of chapter 235 of the laws of 2007, is amended to read as follows:

2. Notwithstanding any other provision of law, except (I) subdivision five of section twenty-eight hundred six of the public health law [or], (II) paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, (III) PARAGRAPH B OF SUBDIVISION SEVEN OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW, (IV) SUBDIVI-

SION TWO OF SECTION SIXTY-FIVE HUNDRED ELEVEN OF THE EDUCATION LAW, (V) PARAGRAPH A OF SUBDIVISION FOUR OF SECTION NINETY OF THE JUDICIARY LAW, WHEN THE FELONY CONVICTION INVOLVED IS FOR AN OFFENSE INVOLVING A CONTROLLED SUBSTANCE AS DEFINED BY ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, OR AN OFFENSE INVOLVING MARIHUANA AS DEFINED BY ARTICLE TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, AND (VI) SUBPARAGRAPH TWO OF PARAGRAPH F OF SUBDIVISION FOUR OF SECTION NINETY OF THE JUDICIARY LAW, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, other than a license issued pursuant to section 400.00 of the penal law to a person convicted of a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, permit, employment, or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by the certificate; provided, however, that a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law; and provided further, however, that a conviction for a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, shall impose a disability to apply for or receive a license or permit issued pursuant to section 400.00 of the penal law. A certificate of relief from a disability imposed pursuant to subparagraph (v) of paragraph b of subdivision two and paragraphs i and j of subdivision six of section five hundred ten of the vehicle and traffic law may only be issued upon a determination that compelling circumstances warrant such relief.

S 8. This act shall take effect on the ninetieth day after it shall have become a law, provided, however, that the amendments to subdivision 2 of section 701 of the correction law, made by section seven of this act, shall not affect the expiration of such subdivision, and shall be deemed to expire therewith.