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

3488

2009-2010 Regular Sessions

I N  S E N A T E

March 20, 2009

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

AN ACT to amend the judiciary law, the state finance law and the executive law, in relation to establishing the criminal defense loan assistance program

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

Section 1. Subdivision 4 of section 468-a of the judiciary law, as amended by section 17 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

4. The biennial registration fee shall be three hundred fifty dollars, sixty dollars of which shall be allocated to and be deposited in a fund established pursuant to the provisions of section ninety-seven-t of the state finance law, fifty dollars of which shall be allocated to and shall be deposited in a fund established pursuant to the provisions of section ninety-eight-b of the state finance law, AND ONE HUNDRED TWENTY DOLLARS OF WHICH SHALL BE ALLOCATED TO AND BE DEPOSITED IN A FUND ESTABLISHED PURSUANT TO THE PROVISIONS OF SECTION NINETY-FOUR-E OF THE STATE FINANCE LAW, and the remainder of which shall be deposited in the attorney licensing fund. Such fee shall be required of every attorney who is admitted and licensed to practice law in this state, whether or not the attorney is engaged in the practice of law in this state or elsewhere, except attorneys who certify to the chief administrator of the courts that they have retired from the practice of law.

S 2. The state finance law is amended by adding a new section 94-e to read as follows:

S 94-E. CRIMINAL DEFENSE LOAN ASSISTANCE PROGRAM FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "CRIMINAL DEFENSE LOAN ASSISTANCE PROGRAM FUND". THE FUND SHALL BE ADMINISTERED BY THE COMMISSIONER OF THE DIVISION OF

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

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CRIMINAL JUSTICE SERVICES, ACCORDING TO THE PROVISIONS SET FORTH IN ARTICLE THIRTY-SIX-B OF THE EXECUTIVE LAW.

2. THE FULL AMOUNT OF THE ALLOCABLE PORTION OF THE BIENNIAL REGISTRATION FEE COLLECTED PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SIXTY-EIGHT-A OF THE JUDICIARY LAW AND SUCH OTHER MONIES AS MAY BE CREDITED OR OTHERWISE TRANSFERRED FROM ANY OTHER FUND OR SOURCE, PURSUANT TO LAW, INCLUDING VOLUNTARY CONTRIBUTIONS, TOGETHER WITH ANY INTEREST ACCRUED THEREON, SHALL BE DEPOSITED TO THE CREDIT OF THE CRIMINAL DEFENSE LOAN ASSISTANCE PROGRAM FUND OF THE STATE OF NEW YORK.

S 3. The executive law is amended by adding a new article 36-B to read as follows:

ARTICLE 36-B

THE CRIMINAL DEFENSE LOAN ASSISTANCE PROGRAM

SECTION 846-N. DECLARATION OF POLICY AND LEGISLATIVE INTENT.
846-O. DEFINITIONS.
846-P. ADMINISTRATION OF FUNDS.

S 846-N. DECLARATION OF POLICY AND LEGISLATIVE INTENT. THE LEGISLATURE RECOGNIZES THAT ATTORNEYS IN THE PUBLIC SECTOR SERVING THE CRIMINAL JUSTICE SYSTEM OFTEN WISH TO MAKE A LONG-TERM COMMITMENT TO PUBLIC-SERVICE WORK AS PUBLIC DEFENDERS, LEGAL AID ATTORNEYS, OR THE EQUIVALENT. HOWEVER, BECAUSE THESE ATTORNEYS OFTEN CARRY SIGNIFICANT STUDENT LOAN DEBT, AND HAVE GRAVE DIFFICULTY IN REPAYING THIS DEBT ON A PUBLIC-SECTOR SALARY, MANY OF THE ATTORNEYS ARE FORCED TO LEAVE THE PUBLIC SECTOR. THE LOSS OF SO MANY CAPABLE PUBLIC-SECTOR ATTORNEYS HAS AN ADVERSE IMPACT ON THE CRIMINAL JUSTICE SYSTEM'S ABILITY TO PROVIDE THE CONSISTENTLY HIGH-QUALITY LEGAL DEFENSE SERVICES THE PEOPLE OF NEW YORK STATE DESERVE AND TO MAINTAIN PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM. THE LEGISLATURE RECOGNIZES THE VALUE OF RETAINING THESE ATTORNEYS IN THEIR PUBLIC-SECTOR POSITIONS WITHIN THE CRIMINAL JUSTICE SYSTEM, JUST AS THEIR TRAINING AND EXPERIENCE MAKES THEM MOST ABLE TO DEFEND, IN A COMPETENT AND PROFESSIONAL MANNER, THE MOST DIFFICULT AND COMPLEX CASES. TO RETAIN THE MUCH-NEEDED SERVICES THESE ATTORNEYS PROVIDE, THE LEGISLATURE FINDS THAT IT IS IN THE STATE'S BEST INTEREST TO OFFER FINANCIAL ASSISTANCE TO HELP THESE ATTORNEYS REPAY THEIR STUDENT LOANS, AND, ACCORDINGLY, THE LEGISLATURE ESTABLISHES THE CRIMINAL DEFENSE LOAN ASSISTANCE PROGRAM.

S 846-O. DEFINITIONS. 1. "ELIGIBLE ATTORNEY" MEANS AN ATTORNEY, ADMITTED TO PRACTICE LAW IN NEW YORK STATE, WHO IS A DEFENSE ATTORNEY AS DEFINED IN SUBDIVISION TWO OF THIS SECTION; AND WHO BOTH HAS HELD A DEGREE FROM A LAW SCHOOL FOR NOT MORE THAN ELEVEN YEARS AND WAS WITHIN THE ELIGIBLE PERIOD AS DEFINED IN SUBDIVISION THREE OF THIS SECTION DURING THE TIME FOR WHICH HE OR SHE IS SEEKING A STUDENT LOAN EXPENSE GRANT.

2. "DEFENSE ATTORNEY" MEANS AN ATTORNEY EMPLOYED BY ANY OF THE AGENCIES DESIGNATED BY SUBDIVISIONS ONE AND TWO OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW, AND WHO IS EMPLOYED FULL TIME AS A PROVIDER OF LEGAL SERVICES AND REPRESENTATION TO PERSONS CHARGED WITH A CRIME WHO ARE FINANCIALLY UNABLE TO OBTAIN COUNSEL.

3. "ELIGIBLE PERIOD" MEANS THE SIX-YEAR PERIOD AFTER COMPLETION OF THE THIRD YEAR AND BEFORE THE COMMENCEMENT OF THE TENTH YEAR OF EMPLOYMENT AS A DEFENSE ATTORNEY, AS DEFINED IN SUBDIVISION TWO OF THIS SECTION. FOR PURPOSES OF THIS SECTION, ALL PERIODS OF TIME DURING WHICH AN ADMITTED ATTORNEY WAS EMPLOYED AS A DEFENSE ATTORNEY AND ALL PERIODS OF TIME DURING WHICH A LAW-SCHOOL GRADUATE AWAITING ADMISSION TO THE NEW YORK STATE BAR WAS EMPLOYED BY A CRIMINAL DEFENSE AGENCY AS PERMITTED BY SECTION FOUR HUNDRED EIGHTY-FOUR OF THE JUDICIARY LAW SHALL BE COMBINED.

4. "STUDENT LOAN EXPENSE" MEANS THE TOTAL ANNUAL LOAN REPAYMENTS REQUIRED TO BE MADE BY THE ELIGIBLE ATTORNEY ON THE CUMULATIVE TOTAL OF THE ATTORNEY'S OUTSTANDING STUDENT LOANS COVERING THE COST OF ATTENDANCE AT AN UNDERGRADUATE INSTITUTION AND/OR LAW SCHOOL. INTEREST PAID OR DUE ON SUCH LOANS SHALL BE CONSIDERED ELIGIBLE FOR REIMBURSEMENT UNDER THIS PROGRAM. FOR PURPOSES OF THIS CALCULATION, THE AMOUNT OF THE STUDENT LOAN EXPENSE SHALL BE REDUCED BY ANY GRANTS, LOAN FORGIVENESS, OR SIMILAR REDUCTIONS TO THE ATTORNEY'S INDEBTEDNESS THAT THE ATTORNEY HAS RECEIVED OR SHALL RECEIVE, INCLUDING, BUT NOT LIMITED TO, LAW SCHOOL LOAN FORGIVENESS AND PUBLIC SERVICE SCHOLARSHIPS.

5. "YEAR OF QUALIFIED SERVICE" MEANS THE TWELVE-MONTH PERIOD MEASURED FROM THE ANNIVERSARY OF THE ATTORNEY'S EMPLOYMENT AS AN ELIGIBLE ATTORNEY, OR AS A LAW-SCHOOL GRADUATE AWAITING ADMISSION TO THE NEW YORK STATE BAR EMPLOYED BY A CRIMINAL DEFENSE AGENCY AS PERMITTED BY SECTION FOUR HUNDRED EIGHTY-FOUR OF THE JUDICIARY LAW, ADJUSTED FOR ANY INTERRUPTION IN EMPLOYMENT.

6. "COMMISSIONER" MEANS THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

S 846-P. ADMINISTRATION OF FUNDS. 1. THE COMMISSIONER SHALL BE CHARGED WITH THE ADMINISTRATION OF THE CRIMINAL DEFENSE LOAN ASSISTANCE PROGRAM FUND, AS SET FORTH IN SECTION NINETY-FOUR-E OF THE STATE FINANCE LAW.

2. (A) THE COMMISSIONER SHALL BE RESPONSIBLE FOR CALCULATING THE TOTAL FUNDS AVAILABLE FOR DISTRIBUTION UNDER THIS PROGRAM IN EACH YEAR, AND THE DOLLAR AMOUNT OF EACH STUDENT LOAN EXPENSE GRANT THAT ELIGIBLE ATTORNEYS MAY RECEIVE FROM THIS PROGRAM. IN NO EVENT IS A GRANT TO EXCEED FIVE HUNDRED DOLLARS PER MONTH OR SEVENTY-FIVE PERCENT OF THE APPLICANT'S STUDENT LOAN EXPENSE, WHICHEVER IS LESS.

(B) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS AND CREATE AN APPLICATION PROCESS FOR THE ADMINISTRATION OF THIS PROGRAM.

(C) ELIGIBLE ATTORNEYS SHALL APPLY FOR A STUDENT LOAN EXPENSE GRANT ACCORDING TO THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

(D) AN ELIGIBLE ATTORNEY MAY APPLY AFTER THE COMPLETION OF THE FOURTH YEAR OF QUALIFIED SERVICE, AND ANNUALLY THEREAFTER AFTER THE COMPLETION OF THE FIFTH THROUGH NINTH YEAR OF QUALIFIED SERVICE, AND MAY SEEK A STUDENT LOAN EXPENSE GRANT FOR ONLY THE PREVIOUS YEAR OF QUALIFIED SERVICE. AN ELIGIBLE ATTORNEY MAY RECEIVE STUDENT LOAN EXPENSE GRANTS FOR NO MORE THAN SIX YEARS OF QUALIFIED SERVICE.

(E) THE COMMISSIONER MAY, PURSUANT TO THE RULES AND REGULATIONS PROMULGATED BY HIM OR HER, DELEGATE TO THE ENTITIES EMPLOYING THE ELIGIBLE ATTORNEYS THE RESPONSIBILITY TO CERTIFY THE EMPLOYMENT STATUS, THE SALARIES, AND THE STUDENT LOAN EXPENSE OF THE APPLICANTS.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.