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

5257--C

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sens. CARLUCCI, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil service law, in relation to the physical or sexual abuse of people with developmental disabilities

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

Section 1. Section 75 of the civil service law is amended by adding a new subdivision 5 to read as follows:

5. DISCIPLINE OF AN EMPLOYEE FOR PHYSICAL OR SEXUAL ABUSE OF PEOPLE WITH DEVELOPMENTAL DISABILITIES. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE EVENT THAT AN EMPLOYEE OF A PROGRAM OR FACILITY OPERATED, CERTIFIED OR LICENSED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES IS IDENTIFIED IN AN INCIDENT REPORT AS THE PERPETRATOR OF AN ACT OF PHYSICAL OR SEXUAL ABUSE AGAINST A PERSON RECEIVING CARE IN SUCH PROGRAM OR FACILITY, SUCH EMPLOYEE SHALL BE PLACED ON ADMINISTRATIVE LEAVE IMMEDIATELY PENDING FURTHER INVESTIGATION. IN THE EVENT THAT THE INCIDENT REPORT IS SUBSTANTIATED, AND THE PHYSICAL OR SEXUAL ABUSE IS FOUND, THE EMPLOYEE SHALL BE TERMINATED AND SUCH TERMINATION DECISION SHALL BECOME FINAL.

(B) A PERSON WHO CAUSES A FALSE INCIDENT REPORT TO BE FILED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, SHALL BE SUBJECT TO SECTION 175.30 OF THE PENAL LAW.

(C) NOTWITHSTANDING SECTION TWO HUNDRED NINE-A OF THIS CHAPTER, FOR PURPOSES OF DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT, THIS SUBDIVISION SHALL ONLY APPLY TO DISCIPLINARY PROCEDURES

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

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IMPLEMENTED UNDER A COLLECTIVE BARGAINING AGREEMENT THAT TAKES EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION.

(D) THE COMMISSIONER SHALL PROMULGATE REGULATIONS TO IMPLEMENT THIS SUBDIVISION, INCLUDING A DEFINITION OF "PHYSICAL OR SEXUAL ABUSE" AND THE ESTABLISHMENT OF TIME FRAMES NOT TO EXCEED A TIME PERIOD SPECIFIED IN REGULATION FOR INVESTIGATION AND DETERMINING WHETHER ANY SUCH ALLEGATION IS SUBSTANTIATED.

(E) IN THE EVENT OF A SUBSTANTIATED REPORT OF PHYSICAL OR SEXUAL ABUSE AGAINST AN EMPLOYEE NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT, THE EMPLOYEE SHALL BE TERMINATED AND SUCH TERMINATION SHALL BE FINAL. HOWEVER, SUBSTANTIATION OF A REPORT OF PHYSICAL OR SEXUAL ABUSE BY SUCH EMPLOYEE SHALL NOT BE A PREREQUISITE FOR DISCIPLINARY ACTION, INCLUDING TERMINATION, NOR SHALL THIS SUBDIVISION SUPERSEDE EXISTING POLICIES, AGREEMENTS OR CONTRACTS AS APPLICABLE NOR SHALL ANYTHING IN THIS SUBDIVISION ABRIDGE THE AT-WILL STATUS OF INDIVIDUALS EMPLOYED IN SUCH CAPACITY.

S 2. This act shall take effect immediately.