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

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. REILICH, KOLB, CALHOUN, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, CROUCH, McDONOUGH, OAKS, TEDISCO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to making available to their victims the proceeds of civil recoveries obtained by prisoners against state and local governments

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

Section 1. The executive law is amended by adding a new section 632-b to read as follows:

S 632-B. PROCEEDS OF CIVIL RECOVERIES OBTAINED BY PRISONERS AGAINST STATE AND LOCAL GOVERNMENTS. 1. DEFINITIONS:

(A) "CRIME" SHALL MEAN ANY FELONY OR MISDEMEANOR DEFINED IN THE PENAL LAW OR ANY OTHER CHAPTER OF THE CONSOLIDATED LAWS OF THE STATE.

(B) "PRISONER" SHALL MEAN A PERSON CONVICTED OF A CRIME DEFINED IN THE PENAL LAW OR ANY OTHER CHAPTER OF THE CONSOLIDATED LAWS OF THE STATE, SERVING A SENTENCE OF INCARCERATION AT THE TIME A CAUSE OF ACTION ACCRUED.

(C) "VICTIM" SHALL MEAN (I) THE VICTIM OF ANY CRIME FOR WHICH THE PRISONER HAS BEEN CONVICTED; (II) THE REPRESENTATIVE OF ANY SUCH VICTIM, AS DEFINED IN SUBDIVISION SIX OF SECTION SIX HUNDRED TWENTY-ONE OF THIS ARTICLE; AND (III) THE OFFICE OF VICTIM SERVICES OR ANY OTHER GOVERNMENTAL AGENCY THAT HAS RECEIVED AN APPLICATION FOR OR PROVIDED FINANCIAL ASSISTANCE OR COMPENSATION TO SUCH VICTIM.

2. (A) UPON ENTRY OF JUDGMENT OR SETTLEMENT OF ANY CLAIM MADE BY A PRISONER PURSUANT TO SECTION TWENTY OF THE COURT OF CLAIMS ACT, SECTION SEVENTY OF THE GENERAL MUNICIPAL LAW OR SECTION SEVENTEEN OR EIGHTEEN OF THE PUBLIC OFFICERS LAW, WRITTEN NOTICE OF SUCH JUDGMENT OR SETTLEMENT SHALL BE GIVEN TO THE OFFICE OF VICTIM SERVICES BY THE ATTORNEY GENERAL IN CLAIMS INVOLVING THE STATE, OR THE ATTORNEY OF RECORD IN CLAIMS INVOLVING A COUNTY, CITY, TOWN, VILLAGE OR OTHER MUNICIPALITY.

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

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(B) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, THE PAYMENT TO A PRISONER OF ANY JUDGMENT OR SETTLEMENT OF ANY CLAIM PURSUANT TO SECTION TWENTY OF THE COURT OF CLAIMS ACT, SECTION SEVENTY OF THE GENERAL MUNICIPAL LAW OR SECTION SEVENTEEN OR EIGHTEEN OF THE PUBLIC OFFICERS LAW SHALL BE HELD IN ABEYANCE FOR SIXTY DAYS FOLLOWING THE SUBMISSION OF WRITTEN NOTICE OF THE JUDGMENT OR SETTLEMENT TO THE OFFICE OF VICTIM SERVICES.

(C) UPON RECEIPT OF WRITTEN NOTICE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE OFFICE SHALL TAKE SUCH PROMPT ACTION AS MAY BE APPROPRIATE TO (I) ASCERTAIN THE NAME AND ADDRESS OF EACH VICTIM, (II) PROVIDE WRITTEN NOTICE OF SUCH JUDGMENT OR SETTLEMENT AND THE PROVISIONS OF THIS SECTION TO EACH VICTIM, AND (III) PUBLISH AT LEAST ONCE AND IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHEREIN THE CRIME WAS COMMITTED AND IN THE COUNTIES CONTIGUOUS TO SUCH COUNTY, A LEGAL NOTICE ADVISING ANY VICTIM OF THE JUDGMENT OR SETTLEMENT AND OF THE PROVISIONS OF THIS SECTION.

3. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THE ESTATES, POWERS AND TRUSTS LAW OR THE CIVIL PRACTICE LAW AND RULES WITH RESPECT TO THE TIMELY BRINGING OF AN ACTION, A VICTIM SHALL HAVE THE RIGHT TO BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER MONEY DAMAGES FROM THE PRISONER OR THE LEGAL REPRESENTATIVE OF THE PRISONER WITHIN THREE YEARS OF THE RECEIPT OF THE NOTICE PROVIDED PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION. ANY DAMAGES SUBSEQUENTLY AWARDED IN SUCH ACTION SHALL BE RECOVERABLE ONLY UP TO THE AMOUNT OF THE PAYMENT SPECIFIED IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION.

4. UPON FILING AN ACTION PURSUANT TO SUBDIVISION THREE OF THIS SECTION, THE VICTIM SHALL GIVE WRITTEN NOTICE OF THE FILING TO THE OFFICE TOGETHER WITH A COPY OF THE SUMMONS AND COMPLAINT. THE VICTIM MAY ALSO GIVE WRITTEN NOTICE TO THE OFFICE OF THE VICTIM'S INTENTION TO FILE AN ACTION TO ALLOW THE OFFICE TO ASSIST THE VICTIM IN APPLYING FOR ANY APPROPRIATE PROVISIONAL REMEDY WHICH MAY BE AVAILABLE PRIOR TO THE COMMENCEMENT OF THE ACTION.

5. UPON RECEIPT OF THE WRITTEN NOTICE SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION, THE OFFICE SHALL TAKE SUCH PROMPT ACTION AS MAY BE APPROPRIATE TO:

(A) ASCERTAIN THE NAME AND ADDRESS OF EACH VICTIM,

(B) PROVIDE WRITTEN NOTICE OF THE PENDENCY OF THE ACTION, THE JUDGMENT OR SETTLEMENT, AND THE PROVISIONS OF THIS SECTION TO EACH VICTIM,

(C) PUBLISH AT LEAST ONCE AND IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHEREIN THE CRIME WAS COMMITTED AND IN THE COUNTIES CONTIGUOUS TO SUCH COUNTY, A LEGAL NOTICE ADVISING VICTIMS OF THE PENDENCY OF THE ACTION, THE JUDGMENT OR SETTLEMENT, AND THE PROVISIONS OF THIS SECTION, AND

(D) PROVIDE SUCH ASSISTANCE TO A VICTIM AS MAY PREVENT THE DISBURSEMENT OR SUBSEQUENT WASTING OF THE PAYMENT TO THE PRISONER OF THE JUDGMENT OR SETTLEMENT, IN ANY MANNER CONSISTENT WITH SUBDIVISION SIX OF THIS SECTION.

6. THE OFFICE, ACTING ON BEHALF OF ANY OR ALL VICTIMS, SHALL HAVE THE RIGHT TO APPLY TO A COURT OF COMPETENT JURISDICTION FOR ANY AND ALL PROVISIONAL REMEDIES THAT ARE ALSO OTHERWISE AVAILABLE TO A VICTIM.

(A) THE PROVISIONAL REMEDIES OF ATTACHMENT, INJUNCTION, RECEIVERSHIP AND NOTICE OF PENDENCY AVAILABLE TO A VICTIM UNDER THE CIVIL PRACTICE LAW AND RULES SHALL ALSO BE AVAILABLE TO THE OFFICE IN ALL ACTIONS UNDER THIS SECTION.

(B) ON A MOTION FOR A PROVISIONAL REMEDY, THE MOVING PARTY SHALL STATE WHETHER ANY OTHER PROVISIONAL REMEDY HAS PREVIOUSLY BEEN SOUGHT IN THE SAME ACTION AGAINST THE SAME DEFENDANT. THE COURT MAY REQUIRE THE MOVING PARTY TO ELECT BETWEEN THOSE REMEDIES TO WHICH IT WOULD OTHERWISE BE ENTITLED.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.