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

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Cal. No. 38

2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

Introduced by Sens. FUSCHILLO, AVELLA, DeFRANCISCO, HASSELL-THOMPSON, LARKIN, SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the judiciary law, in relation to practicing or appearing as an attorney-at-law without being admitted and registered

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

Section 1. Section 478 of the judiciary law, as amended by chapter 201 of the laws of 1993, is amended to read as follows:

S 478. Practicing or appearing as attorney-at-law without being admitted and registered. It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself OR HERSELF in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself OR HERSELF out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he OR SHE is a legal practitioner of law or in any manner to advertise that he OR SHE either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional

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

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oath. Provided, however, that nothing in this section shall be held to apply (1) to officers of societies for the prevention of cruelty to animals, duly appointed, when exercising the special powers conferred upon such corporations under section fourteen hundred three of the not-for-profit corporation law; or (2) to law students who have completed at least two semesters of law school or persons who have graduated from a law school, who have taken the examination for admittance to practice law in the courts of record in the state immediately available after graduation from law school, or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, acting under the supervision of a legal aid organization when such students and persons are acting under a program approved by the appellate division of the supreme court of the department in which the principal office of such organization is located and specifying the extent to which such students and persons may engage in activities otherwise prohibited by this statute; or (3) to law students who have completed at least two semesters of law school, or to persons who have graduated from a law school approved pursuant to the rules of the court of appeals for the admission of attorneys and counselors-at-law and who have taken the examination for admission to practice as an attorney and counselor-at-law immediately available after graduation from law school or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, when such students or persons are acting under the supervision of the state or a subdivision thereof or of any officer or agency of the state or a subdivision thereof, pursuant to a program approved by the appellate division of the supreme court of the department within which such activities are taking place and specifying the extent to which they may engage in activities otherwise prohibited by this statute and those powers of the supervising governmental entity or officer in connection with which they may engage in such activities; OR (4) AN ATTORNEY AND COUNSELOR-AT-LAW OR THE EQUIVALENT WHO IS ADMITTED TO THE BAR IN ANOTHER STATE, TERRITORY, DISTRICT OR FOREIGN COUNTRY AND WHO HAS BEEN ADMITTED TO PRACTICE PRO HAC VICE IN THE STATE OF NEW YORK.

S 2. Section 485 of the judiciary law, as added by chapter 1031 of the laws of 1965, is amended to read as follows:

S 485. Violation of certain preceding sections a misdemeanor. [Any] EXCEPT AS PROVIDED IN SECTION FOUR HUNDRED EIGHTY-FIVE-A OF THIS ARTICLE, ANY person violating the provisions of [sections] SECTION four hundred seventy-eight, four hundred seventy-nine, four hundred eighty, four hundred eighty-one, four hundred eighty-two, four hundred eighty-three or four hundred eighty-four OF THIS ARTICLE, shall be guilty of a misdemeanor.

S 3. The judiciary law is amended by adding a new section 485-a to read as follows:

S 485-A. VIOLATION OF CERTAIN SECTIONS A CLASS E FELONY. ANY PERSON WHO VIOLATES THE PROVISIONS OF SECTIONS FOUR HUNDRED SEVENTY-EIGHT, FOUR HUNDRED EIGHTY-FOUR, FOUR HUNDRED EIGHTY-SIX OR FOUR HUNDRED NINETY-FIVE OF THIS ARTICLE IS GUILTY OF A CLASS E FELONY WHEN HE OR SHE: (1) EITHER IMPERSONATES AN ATTORNEY OR OFFERS LEGAL SERVICES TO THE PUBLIC UNDER A TITLE OTHER THAN ATTORNEY; AND (2) CAUSES ANOTHER PERSON TO SUFFER MONETARY LOSS OR DAMAGES EXCEEDING ONE THOUSAND DOLLARS OR OTHER MATERIAL

DAMAGE RESULTING FROM IMPAIRMENT OF A LEGAL RIGHT TO WHICH HE OR SHE IS ENTITLED ACCORDING TO LAW.

S 4. Section 486 of the judiciary law, as added by chapter 1031 of the laws of 1965, is amended to read as follows:

S 486. Practice of law by attorney who has been disbarred, suspended, or convicted of a felony. Any person whose admission to practice as an attorney and counselor-at-law has been revoked or who has been removed from office as attorney and counselor-at-law or, being an attorney and counselor-at-law, has been convicted of a felony or has been suspended from practice and has not been duly and regularly reinstated, who does any act forbidden by the provisions of this article to be done by any person not regularly admitted to practice law in the courts of record of this state, unless the judgment, decree or order suspending him shall permit such act, shall be guilty of a misdemeanor UNLESS OTHERWISE PROVIDED BY SECTION FOUR HUNDRED EIGHTY-FIVE-A OF THIS ARTICLE.

S 5. Subdivision 3 of section 495 of the judiciary law, as added by chapter 1031 of the laws of 1965, is amended to read as follows:

3. No voluntary association or corporation shall ask or receive directly or indirectly, compensation for preparing deeds, mortgages, assignments, discharges, leases, or any other instruments affecting real estate, wills, codicils, or any other instruments affecting disposition of property after death or decedents' estates, or pleadings of any kind in actions or proceedings of any nature. Any association or corporation violating the provisions of this subdivision is guilty of a misdemeanor UNLESS OTHERWISE PROVIDED BY SECTION FOUR HUNDRED EIGHTY-FIVE-A OF THIS ARTICLE.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.