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

1591--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. GRISANTI, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to licensing of scrap producers in the state and certain cities

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

Section 1. Section 69-e of the general business law, as added by chapter 431 of the laws of 1976, is amended to read as follows:

S 69-e. Definitions. 1. "Scrap metal processing facility" shall mean an establishment engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap METAL, the end product of which is the production of raw material [for remelting purposes] for steel mills, [foundaries] FOUNDRIES, smelters, refiners, and similar users, BUT SHALL NOT INCLUDE A REDEMPTION CENTER, DEALER OR DISTRIBUTOR AS DEFINED IN SECTION 27-1003 OF THE ENVIRONMENTAL CONSERVATION LAW OR AN ELECTRONIC WASTE COLLECTION, CONSOLIDATION OR RECYCLING FACILITY AS DEFINED IN SECTION 27-2601 OF THE ENVIRONMENTAL CONSERVATION LAW.

2. "Scrap processor" shall mean any person, association, partnership or corporation operating and maintaining a "scrap metal processing facility".

3. "GOVERNMENT ISSUED PHOTOGRAPHIC IDENTIFICATION" SHALL MEAN ANY CURRENT AND VALID OFFICIAL FORM OF IDENTIFICATION ISSUED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, A STATE, TERRITORY, PROTECTORATE, OR DEPENDENCY OF THE UNITED STATES OF AMERICA, A COUNTY, MUNICIPALITY OR SUBDIVISION THEREOF, ANY PUBLIC AGENCY OR DEPARTMENT THEREOF, OR ANY PUBLIC EMPLOYER, WHICH REQUIRES AND BEARS THE SIGNATURE AND PHOTOGRAPH OF THE PERSON TO WHOM IT IS ISSUED.

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

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4. "DEPARTMENT" SHALL MEAN THE NEW YORK STATE DEPARTMENT OF STATE.

S 2. Section 69-f of the general business law, as added by chapter 431 of the laws of 1976, is amended to read as follows:

S 69-f. License. 1. It shall be unlawful for any person, association, partnership or corporation to engage in business as a scrap processor unless such scrap processor shall have complied with the provisions of this article and obtained a license to do so from [the mayor of the city, if the place of business of such scrap processor is in a city, or the mayor of the village if the place of business is in an incorporated village, otherwise from the supervisor of the town in which such place of business is located, or from] the licensing authority AS DESIGNATED BY A DULY ADOPTED LOCAL LAW of [any such] THE municipality IN WHICH SUCH SCRAP PROCESSOR IS LOCATED; for which license shall be paid [such mayor or supervisor or licensing authority for the use of such city, village, or town the sum of seventy-five dollars if such place of business is the principal place of business of such scrap processor in this state, otherwise the sum of fifty dollars, which license shall expire on June thirtieth of each year] AN ANNUAL LICENSE FEE NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS.

2. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, NO PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION SHALL HOLD HIMSELF, HERSELF OR ITSELF OUT TO BE A SCRAP PROCESSOR IN NEW YORK STATE WITHOUT FIRST REGISTERING WITH THE DEPARTMENT AS PROVIDED IN THIS SECTION.

3. ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION SEEKING A LICENSE AS A SCRAP PROCESSOR SHALL FILE WITH THE DEPARTMENT A LICENSE APPLICATION WHICH SHALL INCLUDE THE FOLLOWING INFORMATION:

(A) THE BUSINESS NAME AND ADDRESS OF THE APPLICANT;

(B) THE NAMES OF THE APPLICANT'S OFFICERS, DIRECTORS, AND HIGH MANAGERIAL AGENTS AS SUCH TERM IS DEFINED IN SECTION 20.20 OF THE PENAL LAW;

(C) THE BUSINESS TELEPHONE NUMBER OF THE APPLICANT;

(D) THE ADDRESS OF THE SCRAP PROCESSING FACILITY FOR WHICH A LICENSE IS SOUGHT;

(E) A STATEMENT INDICATING WHETHER THE APPLICANT OR ANY PERSON IDENTIFIED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION HAS:

(I) BEEN CONVICTED OF ANY CRIME RELATING TO CONDUCT AS A SCRAP PROCESSOR; AND

(II) AT ANY TIME IN THE PAST BEEN ISSUED A LICENSE PURSUANT TO THIS SECTION, AND IF SO, WHETHER SUCH LICENSE WAS EVER REVOKED OR SUSPENDED;

(F) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLIANCE WITH THE APPLICABLE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

(G) A COPY OF (I) THE APPLICANT'S EPA REFRIGERANT RECOVERY EQUIPMENT ACQUISITION CERTIFICATION FORM CERTIFYING THAT THE PROSPECTIVE LICENSEE OWNS APPROVED REFRIGERANT REMOVAL EQUIPMENT, OR (II) A COPY OF A VALID CONTRACT BETWEEN THE APPLICANT AND A CERTIFIED REFRIGERANT REMOVAL CONTRACTOR.

(H) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLIANCE WITH REQUIREMENTS OF SECTION SIXTY-NINE-G OF THIS ARTICLE;

(I) A SWORN STATEMENT BY THE APPLICANT THAT THE INFORMATION SET FORTH IN THE APPLICATION IS CURRENT AND ACCURATE; AND

(J) A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH OFFICER AND HIGH MANAGERIAL AGENT OF THE APPLICANT ON A STANDARD FINGERPRINT CARD APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH CARDS SHALL BE RETAINED BY THE DEPARTMENT AND USED SOLELY FOR THE PURPOSE OF CONDUCTING AN INVESTIGATION PURSUANT TO SUBDIVISION TEN OF THIS SECTION.

IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED THE APPLICANT SHALL FURNISH THEM UPON REQUEST.

4. (A) A LICENSE ISSUED OR RENEWED UNDER THE PROVISIONS OF THIS SECTION SHALL ENTITLE A PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION TO ACT AS A SCRAP PROCESSOR IN THE STATE OF NEW YORK FOR A PERIOD OF TWO YEARS FROM THE EFFECTIVE DATE OF THE LICENSE. ANY LICENSE GRANTED UNDER THIS SECTION MAY BE RENEWED BY THE DEPARTMENT UPON APPLICATION FOR SUCH RENEWAL BY THE HOLDER THEREOF, IN SUCH FORM AS THE DEPARTMENT MAY PRESCRIBE.

(B) UPON ORIGINAL APPLICATION FOR A LICENSE TO OPERATE AS A SCRAP PROCESSOR, THE APPLICANT SHALL PAY AN APPLICATION FEE OF ONE THOUSAND DOLLARS. UPON APPLICATION FOR A LICENSE RENEWAL, THE LICENSE SHALL PAY A RENEWAL PROCESSING FEE OF ONE THOUSAND DOLLARS.

(C) THE SECRETARY OF STATE SHALL HAVE THE AUTHORITY TO ASSIGN STAGGERED EXPIRATION DATES FOR LICENSES AT THE TIME OF RENEWAL. IF THE ASSIGNED DATE RESULTS IN A TERM THAT EXCEEDS TWENTY-FOUR MONTHS, THE APPLICANT SHALL PAY AN ADDITIONAL PRORATED ADJUSTMENT TOGETHER WITH THE REGULAR RENEWAL FEE.

(D) THE SECRETARY OF STATE SHALL ISSUE EACH SCRAP PROCESSOR A UNIQUE LICENSE NUMBER.

5. (A) NOTICE IN WRITING IN THE MANNER AND FORM PRESCRIBED BY THE DEPARTMENT SHALL BE GIVEN TO THE DEPARTMENT AT ITS OFFICES IN ALBANY WITHIN TEN DAYS OF CHANGES OF NAME OR ADDRESS BY A REGISTERED SCRAP PROCESSOR.

(B) IN THE CASE OF LOSS, DESTRUCTION OR DAMAGE, THE DEPARTMENT MAY, UPON SUBMISSION OF A REQUEST IN SUCH FORM AND MANNER AS THE DEPARTMENT MAY PRESCRIBE, ISSUE A DUPLICATE LICENSE UPON PAYMENT OF A FEE OF ONE HUNDRED DOLLARS.

6. THE FEES ESTABLISHED BY THIS SECTION SHALL NOT BE REFUNDABLE.

7. EACH SCRAP PROCESSOR SHALL EXHIBIT THE LICENSE PRESCRIBED BY THIS ARTICLE AT THE PLACE OF BUSINESS.

8. NO PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION SHALL:

(A) PRESENT, OR ATTEMPT TO PRESENT, THE LICENSE OF ANOTHER;

(B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPARTMENT FOR THE PURPOSE OF PROCURING A LICENSE; OR

(C) FALSELY REPRESENT THEMSELVES TO BE A REGISTERED SCRAP PROCESSOR.

9. LICENSES ISSUED TO SCRAP PROCESSORS SHALL NOT BE TRANSFERABLE OR ASSIGNABLE.

10. (A) THE SECRETARY OF STATE SHALL PROMULGATE SUCH RULES AND REGULATIONS AS ARE DEEMED NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE.

(B) THE SECRETARY OF STATE SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF THIS ARTICLE AND UPON COMPLAINT OF ANY PERSON, OR UPON THE DEPARTMENT'S INITIATIVE, TO INVESTIGATE ANY VIOLATION THEREOF OR TO INVESTIGATE THE BUSINESS PRACTICES AND BUSINESS METHODS OF ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION APPLYING FOR OR HOLDING A LICENSE AS A SCRAP PROCESSOR. EACH SUCH APPLICANT OR REGISTRANT SHALL BE OBLIGED ON REQUEST OF THE DEPARTMENT, TO SUPPLY SUCH INFORMATION, BOOKS, PAPERS OR RECORDS AS MAY BE REQUIRED CONCERNING BUSINESS PRACTICES OR BUSINESS METHODS. FAILURE TO COMPLY WITH SUCH LAWFUL REQUEST SHALL BE A GROUND FOR DENYING AN APPLICATION FOR A LICENSE, OR FOR REVOKING, SUSPENDING, OR NOT RENEWING A LICENSE ISSUED UNDER THIS ARTICLE.

11. IN ORDER TO ASSURE THAT SCRAP PROCESSOR LICENSES ARE NOT ISSUED TO OR HELD BY UNQUALIFIED OR UNSUITABLE PERSONS, THE SECRETARY OR STATE MAY, CONSISTENT WITH ARTICLES TWENTY-THREE AND TWENTY-THREE-A OF THE CORRECTION LAW, DENY, SUSPEND OR REVOKE ANY SUCH LICENSE UPON A WRITTEN

DETERMINATION THAT SUCH ACTION IS REQUIRED TO PROTECT THE PUBLIC HEALTH AND SAFETY AND THAT:

(A) THE LICENSE HOLDER OR APPLICANT HAS BEEN FINALLY DETERMINED IN AN ADMINISTRATIVE, CIVIL OR CRIMINAL PROCEEDING TO HAVE VIOLATED A SUBSTANTIVE PROVISION OF THIS ARTICLE, ANY SUBSTANTIVE REGULATION PROMULGATED PURSUANT TO THIS ARTICLE, A MATERIAL CONDITION OF ANY LICENSE ISSUED THEREUNDER, OR OF ANY SUBSTANTIALLY SIMILAR STATUTE, REGULATION, ORDER OR LICENSE CONDITION OF THE FEDERAL OR OTHER STATE GOVERNMENT RELATING TO OPERATION AS A SCRAP PROCESSOR; OR

(B) SUCH LICENSEE OR APPLICANT HAS BEEN PREVIOUSLY DENIED A LICENSE FOR THE SAME OR SUBSTANTIALLY SIMILAR ACTIVITY BASED UPON ONE OR MORE OF THE PROVISIONS OF THIS SUBDIVISION; OR

(C) SUCH LICENSE HOLDER OR APPLICANT HAS BEEN FOUND IN A CIVIL PROCEEDING TO HAVE COMMITTED AN INTENTIONALLY TORTIOUS ACT IN RELATION TO OPERATIONS AS A SCRAP PROCESSOR OR HAS BEEN CONVICTED IN A CRIMINAL PROCEEDING OF A CRIME INVOLVING OPERATION AS A SCRAP PROCESSOR; OR

(D) SUCH LICENSEE HAS BEEN CONVICTED OF A FELONY UNDER THE LAWS OF THIS STATE INVOLVING FRAUD, BRIBERY, PERJURY, OR THEFT, OR HAS BEEN CONVICTED UNDER THE LAWS OF ANY OTHER STATE OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR FELONY UNDER SUCH LAWS OF THIS STATE; OR

(E) SUCH LICENSEE IN ANY MATTER WITHIN THE JURISDICTION OF THE DEPARTMENT HAS BEEN DETERMINED TO HAVE KNOWINGLY FALSIFIED A MATERIAL FACT, OR KNOWINGLY SUBMITTED A FALSE STATEMENT, OR KNOWINGLY MADE USE OF A FALSE STATEMENT IN CONNECTION WITH ANY DOCUMENT OR APPLICATION SUBMITTED TO THE DEPARTMENT OR SAID AGENCY; OR

(F) SUCH LICENSEE OR APPLICANT IS EITHER:

(I) AN INDIVIDUAL WHO HAD A SUBSTANTIAL INTEREST IN OR ACTED AS A HIGH MANAGERIAL AGENT OR DIRECTOR FOR ANY CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION WHICH COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR THE DENIAL OF A LICENSE PURSUANT TO THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER IF SUCH CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION APPLIED FOR A LICENSE UNDER THIS TITLE; OR

(II) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR ORGANIZATION, OR ANY PRINCIPAL THEREOF, OR ANY PERSON HOLDING A SUBSTANTIAL INTEREST THEREIN, WHICH COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR THE DENIAL OF A LICENSE PURSUANT TO THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER IF SUCH CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION APPLIED FOR A LICENSE UNDER THIS TITLE; OR

(III) A CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION OR ANY HIGH MANAGERIAL AGENT OR DIRECTOR THEREOF, OR ANY PERSON HOLDING A SUBSTANTIAL INTEREST THEREIN, ACTING AS HIGH MANAGERIAL AGENT OR DIRECTOR FOR OR HOLDING A SUBSTANTIAL INTEREST IN ANOTHER CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION WHICH COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR THE DENIAL OF A LICENSE PURSUANT TO THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER HAD SUCH OTHER CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION APPLIED FOR A LICENSE UNDER THIS TITLE.

FOR THE PURPOSES OF THIS SUBDIVISION, "HIGH MANAGERIAL AGENT" HAS THE SAME MEANING AS IS GIVEN THAT TERM IN SECTION 20.20 OF THE PENAL LAW.

12. ANY ACT OR FAILURE TO ACT WHICH SERVES AS A BASIS FOR DENIAL OR REVOCATION OF A LICENSE PURSUANT TO THIS SUBDIVISION SHALL HAVE OCCURRED WITHIN FIVE YEARS FROM THE DATE ON WHICH THE APPLICATION FOR A LICENSE, RENEWAL OR MODIFICATION IS SUBMITTED TO THE DEPARTMENT OR FROM THE DATE

ON WHICH THE DEPARTMENT SERVES NOTICE OF INTENT TO REVOKE OR MODIFY A LICENSE ISSUED BY THE DEPARTMENT IN RELATION TO AN EXISTING LICENSE.

13. ANY PERSON DENIED A LICENSE OR RENEWAL ON THE GROUNDS SPECIFIED IN THIS SECTION SHALL BE ENTITLED TO A HEARING WITHIN SIXTY DAYS OF SUCH DENIAL IN THE CASE OF A NEW LICENSE, OR WITHIN FIFTEEN DAYS IN THE CASE OF A RENEWAL OF ANY EXISTING LICENSE.

14. THE DEPARTMENT SHALL MAINTAIN AND PUBLISH A REGISTRY OF ALL REGISTERED SCRAP PROCESSORS, WHICH SHALL LIST AND IDENTIFY ON A COUNTY BY COUNTY BASIS, ALL REGISTERED SCRAP PROCESSORS DOING BUSINESS IN THIS STATE. THE DEPARTMENT SHALL MAKE THE REGISTRY AVAILABLE ON ITS WEBSITE.

S 3. Section 69-g of the general business law, as amended by chapter 302 of the laws of 2007, is amended to read as follows:

S 69-g. Records. 1. [Such] A scrap processor shall record [(i) each purchase of any pig or pigs of metal, bronze or brass castings or parts thereof, sprues or gates or parts thereof, utility wire or brass car journals, or of metal beer kegs, and (ii)] each purchase of [iron, steel] FERROUS and/or nonferrous scrap for a price of fifty dollars or more, and preserve such record for a period of three years; which record shall show the date of purchase, THE name of THE seller, [his] THE SELLER'S residence OR BUSINESS address [by street, number, city, village or town], the driver's license number or information from a government issued photographic identification card, [if any, of such person, or by such description as will reasonably locate the seller,] AND the type and quantity of such purchase[; and the]. THE scrap processor shall cause such record to be signed by the seller or his OR HER agent. It shall be unlawful for any seller to refuse to furnish such information or to furnish incorrect or incomplete information. Such scrap processor shall also make and retain a copy of the government issued photographic identification card used to verify the identity of [the] ANY NATURAL person from whom the scrap metal was purchased and shall retain this copy in a separate book, register or electronic archive for [two] THREE years from the date of purchase.

2. Such records shall be available for inspection by the police department of the state or the municipality in which the establishment is located, BY THE DEPARTMENT AND BY THE LOCAL LICENSING AUTHORITY SO DESIGNATED PURSUANT TO SUBDIVISION ONE OF SECTION SIXTY-NINE-F OF THIS ARTICLE.

3. BY NO LATER THAN SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, A SCRAP PROCESSOR SHALL INSTALL AND MAINTAIN IN WORKING ORDER AN ELECTRONIC VIDEO RECORDING SYSTEM AT ALL SCALES AND AT ALL POINTS OF SALE LOCATED ON THE PREMISES OF THE SCRAP PROCESSING FACILITY. ELECTRONIC VIDEO RECORDS SHALL BE MAINTAINED IN AN ELECTRONIC ARCHIVE FOR A PERIOD OF NO LESS THAN ONE HUNDRED TWENTY DAYS FROM THE DATE WHEN SUCH ELECTRONIC VIDEO RECORD WAS MADE.

4. BY NO LATER THAN SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, A SCRAP PROCESSOR SHALL MAINTAIN A RECORD THAT SAID SCRAP PROCESSOR EITHER (A) POSSESSES REFRIGERANT RECOVERY EQUIPMENT CERTIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR (B) HAS EXECUTED A VALID CONTRACT WITH A REFRIGERANT REMOVAL CONTRACT CERTIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

S 4. Section 69-h of the general business law is renumbered section 69-i and two new sections 69-h and 69-j are added to read as follows:

S 69-H. PROHIBITION ON SALE OF CERTAIN ITEMS. NOTWITHSTANDING ANY PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IT SHALL BE UNLAWFUL FOR SCRAP PROCESSORS TO SELL, OFFER FOR SALE, OR PURCHASE AS SCRAP, ANY METAL ITEMS BEARING MARKINGS OF ANY GOVERNMENTAL ENTITY, UTILITY

COMPANY, CEMETERY OR RAILROAD UNLESS SUCH ITEMS ARE OFFERED FOR SALE BY A DULY AUTHORIZED EMPLOYEE OR AGENT OF ANY SUCH GOVERNMENTAL ENTITY, UTILITY COMPANY, CEMETERY OR RAILROAD.

S 69-J. PREEMPTION OF LOCAL LAWS. THE PROVISIONS OF SECTIONS SIXTY-NINE-G AND SIXTY-NINE-H OF THIS ARTICLE SHALL PREEMPT AND SUPERSEDE ANY LOCAL LAW WHICH WOULD OTHERWISE REGULATE THE PURCHASE AND/OR SALE OF SCRAP METAL AND/OR IMPOSE RECORD KEEPING AND/OR REPORTING REQUIREMENTS IN A MANNER WHICH CONFLICTS WITH OR IMPOSED ADDITIONAL REQUIREMENTS OTHER THAN THOSE SET FORTH THEREIN, AND/OR WHICH WOULD REQUIRE A SCRAP PROCESSOR TO HOLD SCRAP MATERIAL FOR A SPECIFIED PERIOD OF TIME PRIOR TO THE PROCESSING OR RE-SALE OF SUCH SCRAP MATERIAL, OR WHICH WOULD OTHERWISE PROHIBIT THE ACCEPTANCE OF SCRAP MATERIAL.

S 5. Section 69-i of the general business law, as added by chapter 431 of the laws of 1976 and as renumbered by section four of this act, is amended to read as follows:

S 69-i. Penalty. 1. [Each violation of this article by a scrap processor shall be a violation subject to a fine of not more than two hundred dollars, unless such violation shall be wilful, in which event it shall be a misdemeanor except, however, the scrap processor shall not be liable for any violation of this article by a seller, his agent, or a purported seller or agent.

2. Each violation of this article by a seller or his agent shall be a misdemeanor.] ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION WHO VIOLATES THIS ARTICLE SHALL BE LIABLE FOR A CRIMINAL FINE OF NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS AND/OR IMPRISONMENT FOR A TERM OF NOT MORE THAN FIFTEEN DAYS. A SECOND VIOLATION OF THIS ARTICLE COMMITTED WITHIN A TEN-YEAR PERIOD SHALL BE PUNISHABLE AS A MISDEMEANOR SUBJECT TO A CRIMINAL FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS AND/OR IMPRISONMENT FOR A TERM OF NOT MORE THAN ONE YEAR.

2. ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION WHO VIOLATES THIS ARTICLE SHALL BE LIABLE FOR A MAXIMUM CIVIL PENALTY OF TWO THOUSAND FIVE HUNDRED DOLLARS FOR A FIRST OFFENSE, FIVE THOUSAND DOLLARS FOR A SECOND OFFENSE WITHIN A TWELVE MONTH PERIOD AND FOR A MAXIMUM CIVIL PENALTY OF TEN THOUSAND DOLLARS FOR A THIRD AND FOR EACH SUBSEQUENT OFFENSE WITHIN A TWELVE-MONTH PERIOD.

3. IN ANY CRIMINAL PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE, IN ADDITION TO A TERM OF IMPRISONMENT, WHERE A PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION HAS GAINED MONEY OR PROPERTY THROUGH A VIOLATION OF THIS ARTICLE THE COURT, UPON CONVICTION THEREOF, IN LIEU OF IMPOSING THE FINE AUTHORIZED FOR THE OFFENSE UNDER SUBDIVISION ONE OF THIS SECTION MAY SENTENCE THE DEFENDANT TO PAY AN AMOUNT, FIXED BY THE COURT, NOT EXCEEDING DOUBLE THE AMOUNT OF THE DEFENDANT'S GAIN FROM THE COMMISSION OF THE OFFENSE.

4. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION, IN ADDITION TO THOSE PERSONS OTHERWISE AUTHORIZED TO ENFORCE THIS ARTICLE AND ADJUDICATE VIOLATIONS THEREOF, THE PROVISIONS OF THIS ARTICLE SHALL ALSO BE ENFORCEABLE IN A CITY WITH A POPULATION OF ONE MILLION OR MORE BY AN AGENCY DESIGNATED BY A LOCAL LAW DULY ADOPTED BY SUCH CITY, AND NOTICES OF VIOLATION MAY BE RETURNABLE TO THE ENVIRONMENTAL CONTROL BOARD OF SUCH CITY, WHICH SHALL HAVE THE POWER TO IMPOSE THE CIVIL PENALTIES HEREIN PROVIDED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION, SERVICE OF A NOTICE OF VIOLATION FOR AN ALLEGED VIOLATION OF THIS SUBDIVISION COMMITTED IN SUCH CITY MAY BE MADE UPON ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION BY FIRST CLASS MAIL, POSTAGE PREPAID, AND ANY SUCH NOTICE SERVED BY MAIL SHALL BE RETURNABLE ONLY TO SUCH ENVIRONMENTAL CONTROL BOARD. SUCH SERVICE BY FIRST CLASS

MAIL SHALL BE DEEMED COMPLETE UPON MAILING OF THE NOTICE OF VIOLATION, UNLESS THE NOTICE OF VIOLATION IS RETURNED TO THE SENDER BY THE UNITED STATES POSTAL SERVICE FOR ANY REASON OTHER THAN REFUSAL OF DELIVERY. IN ADDITION, ANY NOTICE OF VIOLATION FOR A VIOLATION OF THIS SUBDIVISION MAY BE SERVED BY A MEANS PRESCRIBED IN ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES OR ARTICLE THREE OF THE BUSINESS CORPORATION LAW.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION, SUCH CIVIL PENALTIES IMPOSED BY SUCH ENVIRONMENTAL CONTROL BOARD SHALL BE PAID INTO THE GENERAL FUND OF SUCH CITY.

(C) ANY FINAL ORDER ISSUED PURSUANT TO THIS SUBDIVISION BY AN ENVIRONMENTAL CONTROL BOARD OF A CITY WITH A POPULATION OF ONE MILLION OR MORE SHALL CONSTITUTE A JUDGMENT THAT MAY BE ENTERED IN ANY PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE, AND MAY BE ENFORCED WITHOUT COURT PROCEEDINGS IN THE SAME MANNER AS THE ENFORCEMENT OF MONEY JUDGMENTS ENTERED IN CIVIL ACTIONS; PROVIDED, HOWEVER, THAT NO SUCH JUDGMENT SHALL BE ENTERED THAT EXCEEDS THE SUM OF TWENTY-FIVE THOUSAND DOLLARS FOR EACH PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION. NOTWITHSTANDING THE PRECEDING SENTENCE, BEFORE A JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED, SUCH ENVIRONMENTAL CONTROL BOARD MUST HAVE NOTIFIED THE PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION BY FIRST CLASS MAIL IN SUCH FORM AS SUCH ENVIRONMENTAL CONTROL BOARD MAY DIRECT: (1) OF THE DEFAULT DECISION AND ORDER AND THE PENALTY IMPOSED; (2) THAT A JUDGMENT WILL BE ENTERED IN ANY PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS IN THE STATE; AND (3) THAT ENTRY OF SUCH JUDGMENT MAY BE AVOIDED BY REQUESTING A STAY OF DEFAULT FOR GOOD CAUSE SHOWN AND EITHER REQUESTING A HEARING OR ENTERING A PLEA PURSUANT TO THE RULES OF SUCH ENVIRONMENTAL CONTROL BOARD WITHIN THIRTY DAYS OF THE MAILING OF SUCH NOTICE. NO JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED BY THE ENVIRONMENTAL CONTROL BOARD WITHIN LESS THAN SIXTY DAYS FROM THE COMPLETION OF SERVICE BY MAIL OF THE NOTICE OF VIOLATION AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION. ANY REQUIREMENT OF ANY PROVISION OF LAW OTHER THAN THIS SUBDIVISION THAT RELATES TO THE MANNER OF SERVICE OF THE NOTICE OF VIOLATION THAT PRECEDES ANY FINAL ORDER OF SUCH ENVIRONMENTAL CONTROL BOARD SHALL NOT APPLY TO A FINAL ORDER ISSUED PURSUANT TO THIS SUBDIVISION. A JUDGMENT ENTERED PURSUANT TO THIS PARAGRAPH SHALL REMAIN IN FULL FORCE AND EFFECT FOR EIGHT YEARS.

S 6. This act shall take effect on the first of September next succeeding the date on which it shall have become a law, provided, however, that the department of state may take all steps necessary, including but not limited to the promulgation of rules and regulations, to ensure the prompt implementation of this act on its effective date.