STATE OF NEW YORK

8201

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to the establishment of a board of trustees to administer the accountants' fund for client protection of the state of New York; to amend the state finance law, in relation to establishing the accountants' fund for client protection of the state of New York; to amend the education law, in relation to registration fees for accountants; and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new section 7403-a to read as follows:

§ 7403-a. Client protection of the state of New York. 1. a. The state board for public accountancy shall appoint a board of trustees to administer the accountants' fund for client protection of the state of New York established pursuant to section ninety-seven-u of the state finance law. Of the trustees first appointed, three shall be appointed for a term of three years; two for a term of two years; and two for a term of one year. As each such term expires, each new appointment shall be for a term of three years. The state board for public accountancy may require such reports or audits of the board of trustees as it shall from time to time deem to be necessary or desirable.

b. Of the seven trustees appointed pursuant to this section, five shall be certified public accountants licensed to practice in this state and the remaining trustees shall be business executives operating businesses located in and doing business in this state.

2. The board shall have the power to receive, hold, manage and distribute the funds collected hereunder for the purpose of maintaining the integrity and protecting the good name of the accounting profession by reimbursing, in the discretion of the trustees to the extent they may

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

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deem proper and reasonable, losses caused by the dishonest conduct of accountants licensed to practice in this state. For purposes of this section, the term "dishonest conduct" shall mean misappropriation or wilful misapplication of clients' money, securities, or other property, by an accountant licensed to practice in this state.

3. The board of trustees shall adopt regulations for the administration of the accountants' fund for client protection of the state of New York and the procedures for presentation, consideration, allowance and payment of claims, including the establishment of a maximum limitation for awards to claimants; provided that for the first two years following the establishment of the fund, the initial maximum amount of an award shall be four hundred thousand dollars per claim.

4. The board of trustees shall have the sole discretion to determine the merits of claims presented for reimbursement, the amount of such reimbursement and the terms under which such reimbursement shall be made. Such terms of reimbursement shall require that the claimant execute such instruments, take such action or enter into such agreements as the board of trustees shall require including assignments, subrogation agreements and promises to cooperate with the board of trustees in making claims against the accountant whose dishonest conduct resulted in the claim.

5. The board of trustees shall serve without compensation but shall be entitled to receive their actual and necessary expenses incurred in the discharge of their duties.

6. The board of trustees may employ and at pleasure remove such personnel as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available therefor.

7. The board of trustees shall be considered employees of the state for the purpose of section seventeen of the public officers law.

8. All payments from the accountants' fund for client protection of the state of New York shall be made by the state comptroller upon certification and authorization of the board of trustees of said fund.

9. Acceptance of an award of reimbursement from the accountants' fund for client protection of the state of New York shall, to the extent of such award, (a) subrogate the fund to any right or cause of action that accrued to the claimant as a consequence of the dishonest conduct that resulted in the claimant's award and (b) create a lien in favor of the fund that shall attach to any money asset that is designated to be paid to the claimant from, or on behalf of, the accountant who caused the claimant's loss. If the fund fully reimburses the claimant's loss, as determined by the board of trustees, the lien shall be in the amount of the fund's award. If the claimant's loss exceeds the fund's award, the lien shall not extend to the claimant's right to recover additional restitution from the accountant for the claimant's unreimbursed loss. In the event of a recovery by the fund, a claimant shall be entitled to any money recovered in excess of the fund's award of reimbursement to the claimant.

§ 2. The state finance law is amended by adding a new section 97-u to read as follows:

§ 97-u. Accountants' fund for client protection of the state of New York. 1. There is hereby established in the custody of the state comptroller a special fund to be known as the "accountants' fund for client protection of the state of New York".

2. (a) The full amount of the allocable portion of the triennial registration fees collected pursuant to the provisions of sections seventy-four hundred four and seventy-four hundred five of the education

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 accountants' fund for client protection of the state of New York. Nothing contained herein shall prevent the state from receiving grants, gifts, or bequests for the fund and depositing them into the fund according to law.

(b) All deposits of such revenues not otherwise required for the payment of claims as provided in this section shall be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such revenues in such fund may be invested in obligations of the United States or of the state, or in obligations the principal and interest on which are guaranteed by the United States or by the state.

3. Monies in the fund, when allocated, shall be available to the board of trustees of the fund for the purpose of issuing awards for losses caused by the dishonest conduct of accountants licensed in this state pursuant to section seventy-four hundred three-a of the education law.

4. Monies shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of education.

§ 3. Paragraph 8 of subdivision 1 of section 7404 of the education law, as amended by chapter 62 of the laws of 1989, is amended to read as follows:

(8) Fees: pay a fee of two hundred twenty dollars to the department for admission to a department conducted examination and for an initial license, a fee of one hundred fifteen dollars for each reexamination, a fee of one hundred thirty-five dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of two hundred [~~ten~~] sixty dollars for each triennial registration period of which fifty dollars shall be allocated to and be deposited in the accountants' fund for client protection of the state of New York established pursuant to the provisions of section ninety-seven-u of the state finance law.

§ 4. Subdivision 4 of section 7405 of the education law, as amended by chapter 62 of the laws of 1989, is amended to read as follows:

(4) Fees: pay a fee to the department for an initial license of two hundred twenty dollars, and a fee of two hundred [~~ten~~] sixty dollars for each triennial registration period of which fifty dollars shall be allocated to and be deposited in the accountants' fund for client protection of the state of New York established pursuant to the provisions of section ninety-seven-u of the state finance law.

§ 5. The sum of twenty million dollars ($20,000,000), or so much thereof as may be necessary, is hereby appropriated to the state board for public accountancy out of any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated, and made immediately available, for the purpose of carrying out the provisions of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of education in the manner prescribed by law.

§ 6. This act shall take effect immediately.