

STATE OF NEW YORK

8165

IN SENATE

January 27, 2022

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the labor law, in relation to establishing the excluded worker unemployment program; to amend the state finance law, in relation to establishing the excluded worker unemployment program fund; and making an appropriation therefor

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

1 Section 1. This act shall be known and may be cited as the "excluded
2 worker unemployment program act".

3 § 2. The labor law is amended by adding a new section 591-b to read as
4 follows:

5 § 591-b. Excluded worker unemployment program. 1. Definitions. As used
6 in this section, the following terms shall have the following meanings:

7 (a) "Total unemployment" means a month in which the applicant has no
8 employment earnings for at least three of the four full calendar weeks
9 in that month.

10 (b) "Partial unemployment" means a month in which earnings are sixty
11 percent less than an applicant's average monthly earnings during the
12 prior taxable year, or, if the applicant did not have earnings in the
13 prior taxable year, the average monthly earnings in the current year
14 prior to the loss of work-related earnings.

15 (c) "Non-payroll check" means a personal check, check issued from a
16 business's bank account, or other check that does not indicate the hours
17 worked, pay rate, deductions, or tax withholdings or otherwise comply
18 with the requirements of section one hundred ninety-five of this chap-
19 ter.

20 (d) "Domestic worker" shall have the same meaning as defined in subdi-
21 vision sixteen of section two of this chapter.

22 (e) "Landscaping worker" means a person engaging in commercial land-
23 scaping services primarily involving the care and maintenance of yards,
24 gardens, or other outdoor landscapes for clients, including private
25 households. Such services include, but are not limited to, lawn care,
26 gardening, and the pruning or removal of trees, shrubs, or plant waste.

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

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1 (f) "Day laborer" means an individual who provides labor or employment
2 that is occasional or irregular for which an individual is employed for
3 not longer than the time period required to complete the assignment for
4 which the individual is hired and in which wage payments are made
5 directly to the day laborer or indirectly by the day labor service agen-
6 cy or the third-party employer for work undertaken by a day laborer. Day
7 labor does not include labor or employment of a professional or clerical
8 nature.

9 (g) "Street vendor" means a person who sells food or merchandise from
10 a food truck, pushcart, stand, display, pedal-driven cart, wagon, show-
11 case, rack, other nonmotorized conveyance, or from one's person, upon a
12 public street, sidewalk or other pedestrian path.

13 (h) "Construction worker" means an individual employed to provide
14 construction labor or services and hired by a labor broker, private
15 household, or home improvement contractor.

16 (i) "Excluded worker unemployment program navigator" means a non-pro-
17 fit organization that is certified by the department to help screen
18 applicants to determine their eligibility for the excluded worker unem-
19 ployment program or unemployment insurance benefits.

20 2. The department is hereby authorized, empowered and mandated to
21 establish and operate an excluded worker unemployment program as author-
22 ized pursuant to this section. Such program shall be established within
23 sixty days of the effective date of this section.

24 3. For the purposes of this section, the term "excluded worker unem-
25 ployment program" means a program under which assistance is available to
26 applicants who reside in the state and:

27 (a) have not received unemployment insurance benefits as described in
28 this article, including benefits payable to federal civilian employees
29 and to ex-servicemen and servicewomen pursuant to Chapter 85 of the
30 United States Code, and benefits authorized to be used for the self-em-
31 ployment assistance program pursuant to the Federal-State Extended Unem-
32 ployment Compensation Act of 1970 in the twelve-month period directly
33 prior to their application for the excluded worker unemployment program;

34 (b) received in error payments from the sources in paragraph (a) of
35 this subdivision and such payments were recovered or are recoverable by
36 the administering agency;

37 (c) are covered employees for the purposes of the excluded worker
38 unemployment program. For the purposes of this subdivision, "covered
39 employees" mean persons who:

40 (i) have performed services of employment pursuant to section five
41 hundred eleven of this article and are not otherwise eligible for bene-
42 fits under this article, or

43 (ii) have performed services of employment as defined by section five
44 hundred eleven of this article and:

45 (1) who was paid in cash or paid with a personal check or non-payroll
46 check, and

47 (2) whose wages were not reported to the tax commission by an "employ-
48 er," as defined under section five hundred twelve of this article and as
49 required by paragraph four of subsection (a) of section six hundred
50 seventy-four of the tax law, and

51 (3) who did not receive a wage statement from such "employer" as
52 required under section one hundred ninety-five of this chapter, and

53 (4) who did not receive an internal revenue service Form 1099-NEC for
54 non-employment services for compensation earned during the most recent
55 taxable year from such employer, or performed services that are custom-
56 arily recorded through a Form 1099-NEC; provided, however, that individ-

1 uals performing the following services shall be considered an employee
2 for the purposes of this subparagraph:

3 (A) domestic workers who are employed by a family or individual house-
4 hold;

5 (B) landscaping and groundskeeping services;

6 (C) day laborers; and

7 (D) workers employed to provide construction labor or services and
8 hired by a labor broker, private household, or home improvement contrac-
9 tor; or

10 (iii) is a bona fide self-employed worker. For the purposes of this
11 subparagraph, "bona fide self-employed worker" means:

12 (1) the individual is free from control and direction in performing
13 the job, both under his or her contract and in fact, and

14 (2) the service is performed outside the usual course of business for
15 which the service is performed, and

16 (3) the individual is customarily engaged in an independently estab-
17 lished trade, occupation, profession, or business that is similar to the
18 labor or service at issue.

19 For the purposes of this subparagraph, street vendors shall be consid-
20 ered to be bona fide self-employed workers;

21 (d) suffered a loss of work-related earnings leading to a period of
22 total or partial unemployment during the prior calendar month;

23 (e) prior to suffering the loss of work-related earnings, had worked
24 in at least three of the previous twelve months and had earned at least
25 four thousand fifty dollars in gross earnings; provided, however, that
26 in the case of a worker described in subparagraph (iii) of paragraph (c)
27 of this subdivision such earnings shall be calculated on a net basis;

28 (f) whose reason for loss of work-related earnings would not have been
29 disqualifying under section five hundred ninety-three of this article;

30 (g) who are capable of work or who are ready, willing and able to work
31 in their usual employment or in any other for which they are reasonably
32 fitted by training and experience;

33 (h) whose principal place of residence is in New York state; and

34 (i) provide suitable documentation pursuant to subdivision four of
35 this section.

36 4. For the purposes of paragraph (i) of subdivision three of this
37 section, "suitable documentation" means the following:

38 (a) For the purposes of establishing residency, an applicant shall be
39 required to produce one or more of the following items, each of which
40 shall show the applicant's name and current residential address located
41 within New York state:

42 (i) a non-expired New York state driver's license issued by the
43 department of motor vehicles;

44 (ii) a non-expired New York state non-driver identification card
45 issued by the department of motor vehicles;

46 (iii) a non-expired New York state learner's permit issued by the
47 department of motor vehicles;

48 (iv) a non-expired IDNYC identification card;

49 (v) a state or federal tax filing or return, with a filing date not
50 more than twelve months prior to the date of application for benefits
51 under this program;

52 (vi) a document issued by an agency, authority, board or commission of
53 New York state, a government agency or authority of a political subdivi-
54 sion within New York state, including a school district, or an agency of
55 the federal government, with a date of not more than twelve months prior
56 to the date of application for benefits under this program;

1 (vii) a social security statement letter or benefit verification
2 letter, with a date of not more than twelve months prior to the date of
3 application for benefits under this program; or

4 (viii) any of the following documents, containing the name and New
5 York state address of the applicant, provided that the date is no more
6 than twelve months before the date of application for benefits under
7 this program:

8 (1) a utility bill, including a bill from a mobile service provider;

9 (2) a bank or credit card statement;

10 (3) a letter addressed to the applicant from the New York city housing
11 authority;

12 (4) a letter addressed to the applicant from a homeless shelter indi-
13 cating that the applicant currently resides at the homeless shelter;

14 (5) a current lease or sublease, mortgage payment, or property tax
15 statement;

16 (6) a pay stub;

17 (7) an employment offer letter or notice of pay that documents employ-
18 er provided housing located in the state, including seasonal housing;

19 (8) a statement, bill, or record from a health institution or insur-
20 ance company (including health insurance, homeowner's insurance,
21 renter's insurance, life insurance, or automobile insurance);

22 (9) a jury summons, court order, or other document from a state,
23 federal, or local court or administrative law forum within New York
24 state;

25 (10) a letter from a domestic violence residential care program, or a
26 government agency, non-profit organization, or religious institution
27 that provides services to domestic violence survivors;

28 (11) a letter addressed to the applicant from a non-profit organiza-
29 tion or religious institution that provides services to homeless indi-
30 viduals;

31 (12) a letter attesting to the residency of an applicant issued by a
32 charitable organization registered with the charities bureau of the New
33 York state office of the attorney general and that provided services to
34 the applicant in the ordinary course of business of such charitable
35 organization; or

36 (13) any other document the commissioner deems acceptable.

37 (b) For the purposes of establishing identity, an applicant shall be
38 required to produce one or more of the following items to establish at
39 least four points of proof of identity:

40 (i) For four points:

41 (1) a New York state driver's license or learner's permit, issued by
42 the department of motor vehicles, which may be expired by not more than
43 two years;

44 (2) a New York state non-driver identification card issued by the
45 department of motor vehicles, which may be expired by not more than two
46 years;

47 (3) a United States or foreign passport, which may be expired by not
48 more than two years;

49 (4) a United States military ID card issued to active, reserve, and
50 retired military personnel only, which may be expired by not more than
51 two years;

52 (5) a United States employment authorization with photo, which may be
53 expired by not more than two years;

54 (6) an inpatient photo identification card issued by the New York
55 state office of mental health;

(7) a federal document with photo, issued by the United States Citizenship and Immigration Services, including but not limited to Form I-94, Form I-797, I-797A, or I-797D; or

(8) a photo identification card, issued by an agency, authority, board, or commission of New York state, a government agency or authority of a political subdivision within New York state, including a school district, or an agency of the federal government, which may be expired by not more than two years; provided, however, that identification cards that are marked "not for identification purposes" or similar language shall not be considered for four points.

(ii) For three points:

(1) a photo identification card, issued by an agency, authority, board, or commission of New York state, a government agency or authority of a political subdivision within New York state, including a school district, or an agency of the federal government, that is marked "not for identification purposes" or similar language and which may be expired by not more than two years;

(2) a photo identification card issued by an educational institution, including a university, college, or post-secondary school, subject to the regulation of the state education department or board of regents;

(3) a New York city health and hospitals patient card issued by a hospital and medical clinic;

(4) an identification card issued by the New York state department of corrections and community supervision or by any local or municipal department of corrections located within New York state;

(5) a photo identification card issued by a charitable organization registered with the charities bureau of the New York state office of the attorney general relating to eligibility for services or participation in the programs administered by the charitable organization in the ordinary course of such charitable organization; or

(6) a photo identification card issued by a labor organization.

(iii) For two points:

(1) an NYC Care membership card;

(2) a federal document issued by the United States Citizenship and Immigration Services, including Form I-94, Form I-797, I-797A, or I-797D, that does not include a photo;

(3) a foreign driver's license with a photo, which may be expired by not more than two years;

(4) a foreign issued identification card, including, but not limited to, a consular identification card or any other photo identification card issued by another country to its citizens;

(5) a United States individual taxpayer identification number assignment letter;

(6) a marriage certificate;

(7) a divorce decree;

(8) a birth certificate issued by a foreign country;

(9) a Direct Express Debit Mastercard provided by the United States treasury; or

(10) a social security statement letter or benefit verification letter.

(iv) For one point:

(1) a non-expired New York city department of parks and recreation membership card;

(2) a diploma or transcript from a high school, college, or university in the United States;

1 (3) a photo identification card issued by an employer or entity asso-
2 ciated with an employer, including photo identification cards required
3 to access secure facilities and buildings; or

4 (4) a written employment offer, pay stubs, or notice of pay document
5 provided to the applicant by an employer.

6 (v) The commissioner may accept any other document the commissioner
7 deems relevant and adequate to establish the identity of the applicant
8 and may assign a reasonable point value for such document.

9 (c) Each applicant shall be required to complete and submit a ques-
10 tionnaire attesting that in the twelve months directly prior to the date
11 of application for benefits under this program the applicant worked in
12 at least three calendar months, earned at least four thousand fifty
13 dollars in gross wages or four thousand fifty dollars in net self-em-
14 ployment earnings, and lost their job through no fault of their own. The
15 applicant shall additionally submit the following documentation to
16 establish four points or more of proof of work history:

17 (i) For four points:

18 (1) wage statements, as set forth in section one hundred ninety-five
19 of this chapter, or, where the employer has failed to provide the appli-
20 cant with accurate wage statements meeting the requirements of section
21 one hundred ninety-five of this chapter, non-payroll checks paid by the
22 employer or employer's agent to the applicant or other records showing
23 payments from an app-based employer to the applicant. Such statements or
24 other records shall demonstrate at least four thousand fifty dollars in
25 gross wages or earnings, and payment of wages in at least three calendar
26 months within the twelve-month period directly prior to the date of
27 application for benefits under this program;

28 (2) a letter from an employer, or a client of the applicant or their
29 employer, attesting that the applicant earned at least four thousand
30 fifty dollars in gross wages or earnings and worked in at least three
31 months in the twelve months prior to when the applicant becomes unem-
32 ployed or partially unemployed. Such letter shall include:

33 (A) the employer's mailing address and the address of the site, within
34 New York state, at which the applicant was employed;

35 (B) the employer's New York state unemployment insurance account
36 number or federal employment identification number; or

37 (C) contact information, including a phone number, for a represen-
38 tative of such employer who can verify the contents of the letter;

39 (3) a letter attesting to the applicant's employment history issued by
40 a charitable organization registered with the charities bureau of the
41 New York state office of the attorney general or other entity designated
42 by the commissioner and based on direct knowledge that the applicant
43 earned at least four thousand fifty dollars in gross wages or earnings
44 and worked in at least three calendar months in the twelve-months
45 directly prior to when the applicant became unemployed or partially
46 unemployed, acquired in the course of conducting intake, interviews, or
47 other standard processes related to the provision of job-related direct
48 services to the applicant; or

49 (4) a complaint, charge, or equivalent document filed with a local,
50 state, or federal agency or court, and acknowledged by such entity,
51 alleging that the applicant worked in New York state in at least three
52 calendar months and earned at least four thousand fifty dollars in gross
53 wages or earnings in the twelve-month period directly prior to the date
54 the applicant certifies that he or she became eligible for benefits.

55 (ii) For three points:

1 (1) a federal tax return for the tax year immediately prior to the
2 year in which the applicant became unemployed or partially unemployed,
3 with proof of filing with the internal revenue service using a social
4 security number or valid United States individual taxpayer identifica-
5 tion number;

6 (2) a state tax return for the tax year immediately prior to the year
7 in which the applicant became unemployed or partially unemployed, filed
8 with the department of taxation and finance using a social security
9 number or valid United States individual taxpayer identification number;
10 or

11 (3) a form W-2 or 1099 form demonstrating four thousand fifty dollars
12 or more in gross wages or earnings for the tax year immediately prior to
13 the year in which the applicant became unemployed or partially unem-
14 ployed.

15 (iii) For two points:

16 (1) evidence, such as statements issued by a financial institution,
17 showing regular direct deposits made by the employer to the applicant,
18 or regular deposits of cash earnings or checks made by the applicant to
19 the applicant's bank account, or transfers from an entity or from an
20 unrelated individual (in each case that is not determined to not be an
21 employer) to the applicant;

22 (2) receipts from a check cashing establishment or transaction logs
23 from a payment app, of regular direct deposits, deposits, or transfers
24 from an entity or from an unrelated individual (in each case that is not
25 determined to not be an employer) to the applicant;

26 (3) an employer issued identification badge;

27 (4) emails, text messages, social media posts or messages, or other
28 written communications relating to delivery order sheets, work invoices,
29 point of sale receipts, work schedules, sign-in sheets, timesheets,
30 directions or instructions from employers or other written communi-
31 cations between an applicant and an employer or hiring party establish-
32 ing the existence of a work relationship;

33 (5) documents or materials issued by an employer to an employee,
34 including any materials containing the employer's mailing address, the
35 employer's New York state unemployment insurance account number or
36 federal employment identification number, and contact information,
37 including a phone number, from a representative of such employer; or

38 (6) receipts or records showing a consecutive pattern of commuting to
39 and from a work location, such as toll records, parking receipts, or
40 public transportation records.

41 (iv) The commissioner may, by regulation, establish alternative docu-
42 ments that sufficiently demonstrate an applicant's qualification for the
43 program, provided that such additional documents shall clearly demon-
44 strate that the applicant was employed in at least three calendar months
45 and earned at least four thousand fifty dollars in the twelve-month
46 period prior to the date the applicant certifies that he or she became
47 eligible for benefits pursuant to this section.

48 (v) Where an applicant has not received sufficient documentation of
49 their work hours, wages, or other employment records in order to meet
50 the four points required pursuant to this paragraph, the commissioner
51 shall conduct a credibility interview to determine whether the appli-
52 cant's questionnaire and/or documentation submitted reasonably demon-
53 strates that they meet the work-related eligibility requirements of this
54 program.

55 5. The department shall establish application procedures which shall
56 include, but not be limited to:

1 (a) creating a user-friendly, and language-accessible website for
2 application to the program. The department shall provide translation of
3 the website and application forms on the website in the ten most common
4 non-English languages spoken by individuals with limited-English profi-
5 ciency in the state of New York;

6 (b) establishing, in collaboration with the director of the budget, an
7 excluded worker unemployment program navigator grant for non-profit
8 agencies to help screen potential applicants on whether they are eligi-
9 ble for the program and to assist applicants in applying for the
10 program. Such navigator grant shall be established within sixty days of
11 the effective date of this section;

12 (c) requiring that all applications for the program shall be processed
13 within four weeks of the receipt of a completed application. The depart-
14 ment shall provide a response to each applicant on whether such appli-
15 cant is eligible for the program, unless the local jurisdiction is
16 facing extenuating circumstances;

17 (d) providing notice to the public at least fourteen days prior to
18 closing the application process period to applicants;

19 (e) processes for reviewing applications that have been rejected,
20 either in whole or in part. Reviews shall be conducted in a manner spec-
21 ified by the commissioner. Such processes shall require the commissioner
22 to provide a detailed explanation of the reason for denial to any appli-
23 cant whose application has been denied;

24 (f) providing all notices to the applicant in the applicant's primary
25 language, as indicated in their initial application;

26 (g) issuing a written notice of determination to the applicant within
27 five calendar days of reaching a determination of the applicant's eligi-
28 bility for benefits under this program; and

29 (h) establishing procedures for denials and appeals which, at a mini-
30 mum, provide that:

31 (i) when an application is denied, the department shall include in the
32 notice of determination a specific explanation as to the reason for the
33 denial and detailed instructions as to what documentation or documented
34 justification is needed to support the applicant's appeal;

35 (ii) the department shall create an appeal form in the ten most common
36 non-English languages spoken by individuals with limited-English profi-
37 ciency in the state of New York. Such form shall be included with the
38 notice of determination and shall be in the applicant's primary
39 language, as indicated in their initial application;

40 (iii) an applicant may file an appeal within sixty days after receipt
41 of the notice of determination required pursuant to paragraph (g) of
42 this subdivision;

43 (iv) an applicant shall submit the appeals form provided by the
44 department pursuant to this paragraph, in addition to any additional
45 information or documentation required to support the applicant's posi-
46 tion in filing their appeal;

47 (v) the department shall notify the applicant in writing of the status
48 of the appeal or of the need for additional information and the date by
49 which the information must be provided. Such notification shall be
50 provided to the applicant within thirty days from the date the depart-
51 ment receives the appeal and shall provide the applicant with at least
52 seven days' notice to provide additional information to the department;
53 and

54 (vi) the department shall notify the applicant in writing of its final
55 determination of the appeal within thirty days following the receipt of

1 any additional information or following expiration of the period for
2 providing such information.

3 6. (a) All excluded worker unemployment program payments made pursuant
4 to this section shall be subject to the appropriation of funds therefor.

5 (b) Eligible applicants shall be eligible to receive up to six monthly
6 excluded worker unemployment program payments per calendar year. Such
7 payments shall be made to eligible applicants who certify that they are
8 totally or partially unemployed in the prior month and that they are
9 available for work, as required pursuant to subdivision three of this
10 section. If all monies in the excluded worker unemployment program fund
11 are exhausted prior to the end of an eligible applicant's six months of
12 eligibility, the state shall be responsible for replenishing the funds
13 needed to provide workers the funds they are owed pursuant to this
14 section.

15 (c) The allowance payable to eligible applicants shall be in the
16 amount of: (i) for the year two thousand twenty-two, one thousand two
17 hundred dollars per month; (ii) for January first, two thousand twenty-
18 three and thereafter, the benefit payment shall increase from one thou-
19 sand two hundred dollars per month at a rate equal to the annual
20 percentage change in the state's average weekly wage as determined by
21 quarter four data from the previous year's United States Bureau of Labor
22 Statistics.

23 (d) Eligible applicants may receive initial and subsequent payments
24 retroactively to their first month of partial or total unemployment;
25 provided, however, that no more than three months of retroactive
26 payments may be made at one time. Subsequent payments shall be contin-
27 gent upon the availability of funds.

28 (e) For the purposes of this subdivision, "subsequent payment" means a
29 payment which is made after the first month an applicant is eligible for
30 a payment from the excluded worker unemployment program.

31 7. (a) (i) Except where necessary to comply with a lawful court order,
32 judicial warrant signed by a judge appointed pursuant to Article III of
33 the United States Constitution, subpoena for individual records issued
34 pursuant to the criminal procedure law or the civil practice law and
35 rules, or in accordance with this section, no record or portion thereof
36 relating to an applicant or worker who has filed an application for
37 benefits pursuant to this section shall be a public record and no such
38 record shall be disclosed, redisclosed, released, disseminated or other-
39 wise published or made available.

40 (ii) For purposes of this subdivision:

41 (1) "record" means an application, a claim file, a file regarding a
42 complaint or circumstances for which no application has been made,
43 and/or any records maintained by the department in electronic databases
44 in which individual applicants, recipients or workers are identifiable,
45 or any other information relating to any person who has heretofore or
46 hereafter filed an application for benefits pursuant to this section,
47 including a copy or oral description of a record which is or was in the
48 possession or custody of the department, its officers, members, employ-
49 ees or agents.

50 (2) "person" means any natural person, corporation, association, part-
51 nership, or other public or private entity.

52 (3) "individually identifiable information" means any data concerning
53 any application, benefit or potential application or benefit that is
54 linked to an identifiable worker or other natural person, including but
55 not limited to a photo image, social security number, tax identification
56 number, telephone number, place of birth, country of origin, place of

1 employment, school or educational institution attended, source of
2 income, status as a recipient of public benefits, customer identifica-
3 tion number associated with a public utilities account, or medical or
4 disability information.

5 (b) Records which contain individually identifiable information may,
6 unless otherwise prohibited by law, be disclosed to:

7 (i) officers, members and employees of the department if such disclo-
8 sure is necessary to the performance of their official duties pursuant
9 to a purpose of the department required to be accomplished by statute or
10 executive order or otherwise necessary to act upon an application for
11 benefits submitted by the person who is the subject of the particular
12 record;

13 (ii) officers or employees of another governmental unit, or agent or
14 contractors of another governmental unit at the request or direction of
15 such governmental unit, if the information sought to be disclosed is
16 necessary to act upon an application for benefits submitted by the
17 person who is the subject of the particular record;

18 (iii) a judicial or administrative officer or employee in connection
19 with an administrative or judicial proceeding if the information sought
20 to be disclosed is necessary to act upon an application for benefits
21 submitted by the person who is the subject of the particular record; and

22 (iv) a person engaged in bona fide statistical research, including but
23 not limited to actuarial studies and health and safety investigations,
24 which are authorized by statute or regulation of the department or other
25 governmental agency. Individually identifiable information shall not be
26 disclosed unless the researcher has entered into an agreement not to
27 disclose any individually identifiable information which contains
28 restrictions no less restrictive than the restrictions set forth in this
29 section and which includes an agreement that any research findings shall
30 not disclose individually identifiable information.

31 (c) Notwithstanding the restrictions on disclosure set forth in para-
32 graphs (a) and (b) of this subdivision, an applicant may authorize the
33 release, re-release or publication of his or her record to a specific
34 person not otherwise authorized to receive such record, by submitting
35 written authorization for such release to the department on a form
36 prescribed by the commissioner or by a notarized original authorization
37 specifically directing the department to release the applicant's records
38 to such person; provided, however, that no such authorization directing
39 disclosure of records to a prospective employer shall be valid, nor
40 shall an authorization permitting disclosure of records in connection
41 with assessing fitness or capability for employment be valid, and no
42 disclosure of records shall be made pursuant thereto. It shall be unlaw-
43 ful for any person to consider for the purpose of assessing eligibility
44 for benefits, or as the basis for an employment-related action, an indi-
45 vidual's failure to provide authorization under this paragraph.

46 (d) For the purposes of this section, whenever disclosure of records
47 is sought pursuant to a lawful court order, judicial warrant signed by a
48 judge pursuant to Article III of the United States Constitution, or
49 subpoena for individual records properly issued pursuant to the criminal
50 procedure law or the civil practice law and rules or pursuant to this
51 subdivision, such specifically sought records may be disclosed, and any
52 such disclosure shall be limited only to such records as are necessary
53 to fulfill the purpose of such disclosure.

54 (e) The commissioner shall require any person or entity that receives
55 or has access to records to certify that, before such receipt or access,
56 such person or entity shall not:

1 (i) use such records or information for civil immigration purposes; or
2 (ii) disclose such records or information to any agency that primarily
3 enforces immigration law or to any employee or agent of any such agency
4 unless such disclosure is pursuant to a cooperative arrangement between
5 city, state and federal agencies which arrangement does not enforce
6 immigration law and which disclosure is limited to the specific records
7 or information being sought pursuant to such arrangement. Violation of
8 such certification shall be a class A misdemeanor. In addition to any
9 records required to be kept pursuant to subdivision (c) of section 2721
10 of title 18 of the United States code, any person or entity certifying
11 pursuant to this paragraph shall keep for a period of five years records
12 of all uses and identifying each person or entity that primarily
13 enforces immigration law that received department records or information
14 from such certifying person or entity. Such records shall be maintained
15 in a manner and form prescribed by the commissioner and shall be avail-
16 able for inspection by the commissioner or his or her designee upon his
17 or her request.

18 (iii) For purposes of this paragraph, the term "agency that primarily
19 enforces immigration law" shall include, but not be limited to, the
20 United States immigration and customs enforcement and United States
21 customs and border protection, and any successor agencies having similar
22 duties.

23 (iv) Failure to maintain records as required by this paragraph shall
24 be a class E felony.

25 (f) Except as otherwise provided by this subdivision, any person who
26 knowingly and willfully obtains records which contain individually iden-
27 tifiable information under false pretenses or otherwise violates this
28 subdivision shall be guilty of a class E felony.

29 (g) In addition to or in lieu of any criminal proceeding available
30 pursuant to this subdivision, whenever there shall be a violation of
31 this subdivision, application may be made by the attorney general in the
32 name of the people of the state of New York to a court or justice having
33 jurisdiction by a special proceeding to issue an injunction, and upon
34 notice to the defendant of not less than five days, to enjoin and
35 restrain the continuance of such violations; and if it shall appear to
36 the satisfaction of the court or justice that the defendant has, in
37 fact, violated this subdivision, an injunction may be issued by such
38 court or justice, enjoining and restraining any further violation, with-
39 out requiring proof that any person has, in fact, been injured or
40 damaged thereby. In any such proceeding, the court may make allowances
41 to the attorney general as provided in paragraph six of subdivision (a)
42 of section eighty-three hundred three of the civil practice law and
43 rules, and direct restitution. Whenever the court shall determine that a
44 violation of this subdivision has occurred, the court may impose a civil
45 penalty of not more than five hundred dollars for the first violation,
46 and not more than one thousand dollars for the second or subsequent
47 violation within a three-year period. In connection with any such
48 proposed application, the attorney general is authorized to take proof
49 and make a determination of the relevant facts and to issue subpoenas in
50 accordance with the civil practice law and rules.

51 8. Notwithstanding any law, rule, or regulation to the contrary,
52 general operating funds required by the department shall not be reduced
53 due to monies expended from or by the excluded worker unemployment
54 program fund established pursuant to section ninety-five-k of the state
55 finance law.

§ 3. The state finance law is amended by adding a new section 95-k to read as follows:

§ 95-k. Excluded worker unemployment program fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a special fund to be known as the "excluded worker unemployment program fund".

2. Moneys in such fund shall consist of all moneys appropriated for the purposes of such fund and all moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law. Any interest received by the comptroller on money on deposit in the fund shall be retained in and become part of the fund.

3. All moneys collected as contributions and interest relating to wage replacement to workers and families unable to access traditional worker wage insurance or assistance programs shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. Moneys so deposited shall be credited immediately to the account of the excluded worker unemployment program fund and shall be used for the purposes set forth in section five hundred ninety-one-b of the labor law. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of this article, and shall only be used for the purposes specified herein.

4. Moneys in the fund shall be used exclusively for the purpose of providing wage replacement to workers that do not qualify for unemployment insurance or other worker wage assistance programs and who have lost a major source of income due to lost work. The moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by such commissioner or his or her duly designated officer. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

5. Moneys of the fund shall not be used in whole or in part for any purpose or in any manner which would (a) permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

§ 4. The sum of eight hundred million dollars (\$800,000,000) is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the state purposes account for the excluded worker unemployment program fund in carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 5. Severability Clause. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or

1 part thereof directly involved in the controversy in which such judgment
2 shall have been rendered. It is hereby declared to be the intent of the
3 legislature that this act would have been enacted even if such invalid
4 provisions had not been included herein.
5 § 6. This act shall take effect immediately.