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

2833

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. FITZPATRICK, FINCH, CALHOUN, KOLB -- Multi-Sponsored by -- M. of A. McKEVITT, WALKER -- read once and referred to the Committee on Health

AN ACT to amend the executive law, in relation to defining "incidental exposure"

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

Section 1. Section 621 of the executive law is amended by adding a new subdivision 24 to read as follows:

24. "INCIDENTAL EXPOSURE" SHALL MEAN AN EXPOSURE, OTHER THAN CONSENSUAL SEXUAL CONTACT OR SHARING HYPODERMIC NEEDLES OR SYRINGES, TO BLOOD OR BODY FLUIDS WHICH WOULD PLACE AN EXPOSED PERSON AT SIGNIFICANT RISK OF CONTRACTING HIV INFECTION IF THE BLOOD OR BODY FLUID WERE INFECTED WITH HIV.

S 2. Subdivisions 1 and 2 of section 631 of the executive law, subdivision 1 as amended by chapter 74 of the laws of 2007 and subdivision 2 as amended by chapter 162 of the laws of 2008, are amended to read as follows:

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to, OR INCIDENTAL EXPOSURE TO HIV, or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified; provided, however, in cases involving an alleged sex offense as contained in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of the penal law or labor trafficking as defined in section 135.35 of the penal law

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

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or sex trafficking as defined in section 230.34 of the penal law or an offense chargeable as a family offense as described in section eight hundred twelve of the family court act or section 530.11 of the criminal procedure law, the criminal justice agency report need only be made within a reasonable time considering all the circumstances, including the victim's physical, emotional and mental condition and family situation. For the purposes of this subdivision, "criminal justice agency" shall include, but not be limited to, a police department, a district attorney's office, and any other governmental agency having responsibility for the enforcement of the criminal laws of the state provided, however, that in cases involving such sex offense a criminal justice agency shall also mean a family court, a governmental agency responsible for child and/or adult protective services pursuant to title six of article six of the social services law and/or title one of article nine-B of the social services law, and any medical facility established under the laws of the state that provides a forensic physical examination for victims of rape and sexual assault.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based; loss of earnings or support resulting from such injury not to exceed thirty thousand dollars; burial expenses not exceeding six thousand dollars of a victim who died as a direct result of a crime; the costs of crime scene cleanup and securing of a crime scene not exceeding twenty-five hundred dollars; reasonable relocation expenses not exceeding twenty-five hundred dollars; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of the crime. An award for loss of earnings shall include earnings lost by a parent or guardian as a result of the hospitalization of a child victim under age eighteen for injuries sustained as a direct result of a crime. In addition to the medical or other services necessary as a result of the injury upon which the claim is based, an award may be made for rehabilitative occupational training for the purpose of job retraining or similar employment-oriented rehabilitative services based upon the claimant's medical and employment history. For the purpose of this subdivision, rehabilitative occupational training shall include but not be limited to educational training and expenses. An award for rehabilitative occupational training may be made to a victim, or to a family member of a victim where necessary as a direct result of a crime. IN CASES WHERE INCIDENTAL EXPOSURE HAS OCCURRED, THE VICTIMS WILL BE COVERED FOR THE EXPENSES INCURRED AS THE RESULT OF AN APPROPRIATE HIV DIAGNOSTIC TEST APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION TO DETERMINE IF THEY CONTRACTED HIV.

S 3. This act shall take effect on the thirtieth day after it shall have become a law.