

1711

2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. ENGLEBRIGHT, V. LOPEZ, PHEFFER -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to creating the senior benefits card program

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

1 Section 1. Legislative findings and purpose. The legislature hereby
2 finds and declares that access to healthy foods and exercise can make a
3 significant difference in the quality and length of the life of seniors,
4 and that the voluntary program created by this act, with the education
5 and outreach program instituted by the state office for the aging also
6 required in this act, provides an effective means of enlisting many
7 parts of the society of the state of New York in this effort, and of
8 incentivizing the kind of cultural change and support necessary to make
9 the effort successful.
10 The legislature further declares that the purposes of this program are
11 first, to provide a discount card to seniors that will enable and
12 encourage them to purchase healthy and appropriate foods at a discounted
13 price, to dine for lower costs on healthy and appropriate foods, and to
14 join health clubs or obtain health and exercise services at special
15 rates; second, to enlist voluntary participation in the program by
16 restaurants, markets, and other food-sellers, and health clubs and
17 health and exercise services; third, to promulgate and widely advertise
18 the benefits in health and longevity of a regime of healthy diet and
19 exercise for seniors; and fourth, to engage seniors, their families, and
20 friends, in a broad voluntary effort to extend the quality of life and
21 the longevity of seniors.
22 The legislature further declares that an additional purpose of the
23 program shall be to create greater efficiency and effectiveness in the
24 management of senior health issues by including access to such other

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

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appropriate programs as food stamps and EPIC to users of the senior benefits card.

The legislature further finds and declares that actions taken by the state office for the aging pursuant to the requirements and intent of this act are in every sense an appropriate public purpose undertaken for the common good of the people of this state.

S 2. Article 2 of the elder law is amended by adding a new title 5 to read as follows:

TITLE 5

SENIOR BENEFITS CARDS

SECTION 260. REPORT ON SENIOR BENEFITS CARD PROGRAM.

261. DEFINITIONS.

262. SENIOR BENEFITS CARD PROGRAM.

263. EDUCATION AND OUTREACH.

S 260. REPORT ON SENIOR BENEFITS CARD PROGRAM. 1. THE DIRECTOR SHALL INVESTIGATE AND REPORT TO THE GOVERNOR, THE DIRECTOR OF THE DIVISION OF THE BUDGET, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE CHAIRPERSONS OF THE FISCAL, HEALTH, AND AGING COMMITTEES OF THE LEGISLATURE CONCERNING THE CREATION OF A SENIOR BENEFITS CARD PROGRAM, WHICH SHALL INVOLVE THE VOLUNTARY PARTICIPATION OF MARKETS, FOOD SELLERS, RESTAURANTS, HEALTH CLUBS AND OTHER APPROPRIATE ENTITIES IN SELLING HEALTHY AND APPROPRIATE FOODS AND PROVIDING HEALTH CLUB SERVICES TO SENIORS AT A DISCOUNTED RATE, UPON PRESENTATION OF A SENIOR BENEFITS CARD, SUBJECT TO THE FOLLOWING PRINCIPLES AND PARAMETERS:

(A) THE PROGRAM SHALL ALLOW AND ENCOURAGE MEMBERSHIP BY ANY SENIOR WHO SHALL PAY A PARTICIPATION FEE DETERMINED BY THE OFFICE.

(B) THE CARD SHALL BE DESIGNED IN A MANNER THAT ALLOWS ADDITION IN THE FUTURE OF OTHER PROGRAMS SUCH AS FOOD STAMPS, THE ELDERLY PHARMACEUTICAL INSURANCE COVERAGE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE, MEDICAID, THE FEDERAL PHARMACEUTICAL BENEFITS PROGRAM AUTHORIZED PURSUANT TO THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003, AND OTHER PROGRAMS THAT PROVIDE BENEFITS TO SENIORS THAT USE A CARD OR CARD SWIPE TO ACCESS BENEFITS.

(C) PRESENTATION OF THE CARD SHALL ENTITLE THE SENIOR TO DISCOUNTS FOR THE PURCHASE OF HEALTHY AND APPROPRIATE FOODS. THE DIRECTOR AND THE BOARD OF THE OPERATING ENTITY, OR IN THE ALTERNATIVE, THE ADVISORY COMMITTEE CONVENED BY HIM OR HER PURSUANT TO THIS TITLE SHALL DETERMINE THE MINIMUM DISCOUNT REQUIRED OF PARTICIPANTS. NOTHING CONTAINED IN THIS TITLE SHALL PREVENT A PARTICIPATING RETAILER FROM OFFERING DEEPER DISCOUNTS FOR HEALTHY AND APPROPRIATE FOODS OR HEALTH SERVICES.

(D) THE PROGRAM SHALL BE OPERATED BY THE OFFICE, OR BY AN OPERATING ENTITY SELECTED OR CREATED BY THE OFFICE, AND SHALL BE ADMINISTERED BY AN ADMINISTRATIVE ENTITY SELECTED BY THE OFFICE, OR BY THE OFFICE AND THE OPERATING ENTITY IF THE OFFICE SHALL SELECT OR CREATE AN OPERATING ENTITY, SUBJECT TO SUCH CONDITIONS AND REQUIREMENTS AS THE OFFICE, AFTER CONSULTATION WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET, SHALL REQUIRE.

(E) IF THE OFFICE DOES NOT SELECT OR CREATE AN OPERATING ENTITY, IT SHALL CREATE AN ADVISORY COMMITTEE TO AID IN MAKING DECISIONS CONCERNING THE PROGRAM CREATED BY THIS TITLE.

(F) THE OFFICE SHALL, AFTER CONSULTATION WITH APPROPRIATE CONSULTANTS AND EXPERTS AND WITH THE OPERATING ENTITY OR THE ADVISORY COMMITTEE, PROMULGATE A LIST OF HEALTHY AND APPROPRIATE FOODS FOR WHICH DISCOUNTS SHALL BE OFFERED BY PARTICIPATING MARKETS, SUPERMARKETS, FOOD SELLERS, AND OTHERS, AS WELL AS AN APPROPRIATE EXERCISE REGIME THAT INCLUDES CARDIO-VASCULAR AND STRENGTH TRAINING.

(G) THE OFFICE SHALL DEVELOP AND ADMINISTER A BROADLY BASED ADVERTISING AND MARKETING CAMPAIGN, IN CONJUNCTION WITH PARTICIPANTS AND OTHER INTERESTED PARTIES, TO ALERT SENIORS, THEIR FAMILIES AND FRIENDS TO THE BENEFITS OF APPROPRIATE DIET AND EXERCISE.

(H) THE OFFICE SHALL SOLICIT APPROPRIATE GRANTS AND FUNDING OPPORTUNITIES IN FURTHERANCE OF THE PROGRAM FROM FOUNDATIONS, OTHER GOVERNMENTAL AGENCIES AND INDIVIDUALS, UNDER SUCH TERMS AND CONDITIONS AS THE OFFICE SHALL DEEM APPROPRIATE.

2. IN DEVELOPING THE REPORT REQUIRED BY THIS SECTION, THE DIRECTOR SHALL CONSULT WITH THE COMMISSIONER OF HEALTH AND OTHER APPROPRIATE PUBLIC OFFICIALS, AND WITH REPRESENTATIVES OF MARKETS OR SUPERMARKETS OR FOOD-SELLERS, PERSONS KNOWLEDGEABLE IN HEALTHCARE AND DIET FOR SENIORS, PHYSICIANS, REPRESENTATIVES OF HEALTH CLUBS, AND OTHER ADVISORS AND CONSULTANTS, AND SHALL CONDUCT AT LEAST ONE PUBLIC HEARING TO OBTAIN INFORMATION FOR THE REPORT, AND MAY CONDUCT SUCH OTHER HEARINGS, COLLOQUIUMS, MEETINGS, AND LISTENING SESSIONS AS HE OR SHE DEEMS ADVISABLE.

3. THE DIRECTOR SHALL PROVIDE THE REPORT AS REQUIRED IN THIS SECTION NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE REPORT SHALL CONSIDER AND MAKE RECOMMENDATIONS CONCERNING THE FOLLOWING:

(A) WHETHER THE OFFICE SHOULD CHOOSE AN OPERATING ENTITY FOR THE PROGRAM, AND WHETHER THE FORM OF THE OPERATING ENTITY SHOULD BE PUBLIC, PRIVATE OR NOT-FOR-PROFIT.

(B) THE BUDGET NECESSARY FOR THE PROGRAM TO BEGIN OPERATIONS, AND THE BUDGET NECESSARY FOR THE PROGRAM TO MAINTAIN OPERATIONS.

(C) THE MARKETING BUDGET REQUIRED TO MAKE ELIGIBLE PARTICIPANTS AWARE OF THE PROGRAM.

(D) NON-STATE SOURCES OF FUNDING THAT COULD BE AVAILABLE FOR OPERATING AND IMPLEMENTING THE PROGRAM.

(E) SAVINGS THAT COULD OCCUR TO THE STATE, OR ANY OF ITS PROGRAMS, AS A RESULT OF IMPLEMENTING THE PROGRAM.

(F) THE NUMBER OF POTENTIAL PARTICIPANTS, AND THE BENEFITS TO THEM OF JOINING THE PROGRAM.

(G) MECHANISMS NEEDED TO PROTECT AGAINST LIABILITY, LOSS OF FUNDS, FAILURE OF GUARANTEES OR OTHER NECESSARY PROTECTIONS FOR THE STATE, SENIORS AND PARTICIPANTS INVOLVED IN THE PROGRAM.

(H) PROTECTIONS NEEDED TO ASSURE CONFIDENTIALITY OF IDENTIFYING INFORMATION RELATING TO INDIVIDUALS PARTICIPATING IN THE PROGRAM, AND MATTERS RELATING TO TRADE AND/OR COMPETITIVE SECRETS OF SUPPLIERS AND PARTICIPATING RETAILERS.

(I) THE POSSIBILITY AND DESIRABILITY OF USING THE CARD TO PROVIDE ACCESS TO OTHER PROGRAMS SUCH AS MEDICAID, THE FEDERAL PHARMACEUTICAL BENEFITS PROGRAM AUTHORIZED PURSUANT TO THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003, AND OTHER PROGRAMS THAT PROVIDE BENEFITS TO SENIORS THAT USE A CARD OR CARD SWIPE TO ACCESS BENEFITS.

(J) SUCH OTHER MATTERS AS THE DIRECTOR SHALL DEEM APPROPRIATE, INCLUDING THE SOFTWARE TECHNOLOGY REQUIRED TO ALLOW THE LISTING OF HEALTHY AND APPROPRIATE FOODS TO BE PROVIDED AT NO CHARGE TO PARTICIPATING RETAILERS IN MACHINE READY FORM.

S 261. DEFINITIONS. AS USED IN THIS TITLE:

1. "SENIOR BENEFITS CARD PROGRAM" OR "PROGRAM" MEANS THE SENIOR BENEFITS CARD PROGRAM CREATED PURSUANT TO THIS TITLE, AND WHICH

(A) IS OPERATED BY THE OFFICE, OR BY AN OPERATING ENTITY SELECTED OR CREATED BY THE OFFICE AS A PUBLIC, PRIVATE OR NOT-FOR-PROFIT ENTITY, AS DETERMINED BY THE DIRECTOR;

(B) IS ADMINISTERED BY AN ENTITY SELECTED BY THE OFFICE OR, IF THE OFFICE SHALL CREATE AN ENTITY TO OPERATE THE PROGRAM, BY THE OFFICE AND THE ENTITY, SUBJECT TO SUCH CONDITIONS AND REQUIREMENTS AS THE OFFICE SHALL REQUIRE;

(C) ALLOWS MEMBERSHIP BY ANY SENIOR; AND

(D) ENLISTS THE VOLUNTARY PARTICIPATION OF MARKETS, SUPERMARKETS, HEALTH CLUBS AND OTHERS.

2. "PARTICIPANT" MEANS ANY VOLUNTARY PARTICIPANT WHICH IS A MARKET OR SUPERMARKET OR FOOD-SELLER, HEALTH CLUB AND SUCH OTHERS AS MAY BE DEEMED APPROPRIATE BY THE DIRECTOR.

3. "HEALTHY AND APPROPRIATE FOOD" MEANS ANY FOOD WHICH THE OFFICE SHALL AFTER CONSULTATION WITH APPROPRIATE CONSULTANTS AND EXPERTS PROMULGATE IN A LIST OF HEALTHY AND APPROPRIATE FOODS FOR WHICH DISCOUNTS SHALL BE OFFERED BY PARTICIPATING MARKETS, SUPERMARKETS, FOOD SELLERS, AND OTHERS.

4. "SENIOR" MEANS ANY PERSON SIXTY YEARS OF AGE OR OLDER.

5. "OPERATING ENTITY" MEANS A PUBLIC, PRIVATE OR NOT-FOR-PROFIT ENTITY SELECTED OR CREATED BY THE OFFICE TO OPERATE THE PROGRAM. ITS BOARD SHALL CONSIST OF TWENTY-ONE PERSONS, INCLUDING AT LEAST TWO OF EACH OF THE FOLLOWING: REPRESENTATIVES OF MARKETS OR SUPERMARKETS; REPRESENTATIVES OF ON-PREMISES FOOD ESTABLISHMENTS; REPRESENTATIVES OF OFF-PREMISES FOOD WHOLESALERS; PERSONS KNOWLEDGEABLE IN HEALTH CARE AND DIET FOR SENIORS; PHYSICIANS SPECIALIZING IN GERONTOLOGICAL MATTERS; REPRESENTATIVES OF HEALTH CLUBS; REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE FOR SENIORS; AND RESTAURANT REPRESENTATIVES. THE BOARD MAKEUP SHALL REFLECT, INsofar AS PRACTICAL, REGIONAL DIVERSITY AND, WITH RESPECT TO RETAIL REPRESENTATIVES, THE SIZE OF COMPANIES AS WELL AS WHETHER SUCH COMPANIES ARE INDEPENDENT OR CHAINS.

6. "ADVISORY COMMITTEE" MEANS THE ADVISORY COMMITTEE CREATED BY THE DIRECTOR IF HE OR SHE SHALL DETERMINE NOT TO SELECT OR CREATE THE OPERATING ENTITY. ITS MEMBERSHIP SHALL BE SELECTED BY THE DIRECTOR, AND SHALL CONSIST OF TWENTY-ONE PERSONS, INCLUDING AT LEAST TWO OF EACH OF THE FOLLOWING: REPRESENTATIVES OF MARKETS OR SUPERMARKETS; REPRESENTATIVES OF ON-PREMISES FOOD ESTABLISHMENTS; REPRESENTATIVES OF OFF-PREMISES FOOD WHOLESALERS; PERSONS KNOWLEDGEABLE IN HEALTH CARE AND DIET FOR SENIORS; PHYSICIANS SPECIALIZING IN GERONTOLOGICAL MATTERS; REPRESENTATIVES OF HEALTH CLUBS; REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE FOR SENIORS; AND RESTAURANT REPRESENTATIVES. THE MAKEUP OF THE ADVISORY COMMITTEE SHALL REFLECT, INsofar AS PRACTICAL, REGIONAL DIVERSITY AND, WITH RESPECT TO RETAIL REPRESENTATIVES, THE SIZE OF COMPANIES AS WELL AS WHETHER SUCH COMPANIES ARE INDEPENDENT OR CHAINS.

7. "DIRECTOR" MEANS THE DIRECTOR OF THE STATE OFFICE FOR THE AGING.

8. "OFFICE" MEANS THE STATE OFFICE FOR THE AGING.

S 262. SENIOR BENEFITS CARD PROGRAM. 1. THE SENIOR BENEFITS CARD PROGRAM IS HEREBY CREATED, THE PURPOSE OF WHICH SHALL BE TO AFFORD SENIORS ACCESS TO HEALTHY FOODS IN MARKETS AND RESTAURANTS AND TO PROVIDE INCENTIVES FOR THEM TO ADOPT A HEALTHY EXERCISE REGIME.

2. IF THE DIRECTOR OF THE BUDGET SHALL AGREE WITH THE FINDINGS OF THE REPORT REQUIRED PURSUANT TO THIS TITLE, HE OR SHE SHALL SO INFORM THE GOVERNOR, AND SHALL DIRECT AND AUTHORIZE THE DIRECTOR TO TAKE THE STEPS REQUIRED BY THIS TITLE, AND OTHERS AUTHORIZED BY THIS TITLE THAT HE OR SHE MAY DEEM NECESSARY AND APPROPRIATE AFTER CONSULTATION WITH THE ADVISORY COMMITTEE AND INVESTIGATION OF ISSUES AND CONCERNS RAISED BY PARTICIPANTS.

1 3. THE DIRECTOR SHALL CONSULT WITH AND BE GUIDED BY THE ADVICE OF THE
2 OPERATING ENTITY, OR, IN THE ALTERNATIVE, THE ADVISORY COMMITTEE, ON THE
3 FOLLOWING MATTERS:

4 (A) THE LIST OF HEALTHY AND APPROPRIATE FOODS, AND THE WAY IN WHICH
5 SUCH LIST SHALL BE APPLIED TO HEALTHY AND APPROPRIATE MEALS AT PARTIC-
6 IPATING RESTAURANTS;

7 (B) THE WAY IN WHICH THE LIST OF HEALTHY AND APPROPRIATE FOODS SHALL
8 BE TRANSMITTED TO PARTICIPATING RETAILERS AND RESTAURATEURS, IN A MANNER
9 THAT SHALL BE MACHINE READY AND DELIVERED AT NO COST TO THE PARTICIPAT-
10 ING RETAILERS;

11 (C) THE PERCENTAGE AMOUNT OF THE DISCOUNT APPLIED TO RETAIL PRICE, THE
12 NUMBER OF HEALTHY AND APPROPRIATE FOODS TO WHICH IT SHOULD BE APPLIED AT
13 ANY ONE TIME, AND THE DAYS OF THE WEEK OR THE NUMBER OF SUCH DAYS IN A
14 WEEK IN WHICH SUCH DISCOUNTS SHOULD BE OFFERED;

15 (D) HOW SUCH DISCOUNT SHOULD BE APPLIED TO HEALTHY AND APPROPRIATE
16 FOODS FOR WHICH A PARTICIPATING RETAILER MAY BE OFFERING A DISCOUNT; AND

17 (E) ANY SUCH OTHER MATTERS WHICH THE DIRECTOR MAY CHOOSE TO REFER TO
18 THE ENTITY OR THE COMMITTEE, OR WHICH THE ENTITY OR THE COMMITTEE MAY
19 CHOOSE TO TAKE UP. THE DIRECTOR SHALL SUBMIT ANY PROPOSED GUIDELINES TO
20 THE ENTITY OR, IN THE ALTERNATIVE, THE ADVISORY COMMITTEE, AS APPROPRI-
21 ATE, FOR ITS CONSIDERATION AND REVIEW.

22 4. THE DIRECTOR SHALL PROVIDE SUCH FUNDS, WITHIN THE AMOUNTS MADE
23 AVAILABLE BY APPROPRIATION THEREFOR, AS SHALL BE NECESSARY TO INITIATE
24 AND MAINTAIN THE PROGRAM.

25 5. IF THE DIRECTOR, AFTER CONSULTATION WITH THE DIRECTOR OF THE DIVI-
26 SION OF THE BUDGET, SHALL DETERMINE THAT IT IS DESIRABLE AND BENEFICIAL
27 TO SENIORS TO USE THE SENIOR BENEFITS CARD TO PROVIDE ACCESS TO OTHER
28 PROGRAMS OF BENEFIT TO SENIORS SUCH AS MEDICAID, FOOD STAMPS, THE FEDER-
29 AL PHARMACEUTICAL BENEFITS PROGRAM AUTHORIZED PURSUANT TO THE MEDICARE
30 PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003, AND OTHER
31 SUCH PROGRAMS THAT UTILIZE A CARD OR CARD SWIPE TO ACCESS BENEFITS, THE
32 DIRECTOR SHALL SEEK TO REACH AGREEMENTS WITH OTHER NECESSARY AND APPRO-
33 PRIATE ENTITIES TO ALLOW SUCH UTILIZATION.

34 S 263. EDUCATION AND OUTREACH. THE DIRECTOR SHALL CONDUCT EDUCATION
35 AND OUTREACH TO PROMOTE THE PROGRAM AND TO ENCOURAGE QUALIFIED PERSONS
36 AND ENTITIES TO BECOME PARTICIPANTS AND PARTICIPATING RETAILERS, WITHIN
37 THE AMOUNTS APPROPRIATED THEREFOR.

38 S 3. Severability. If any clause, sentence, paragraph, section or part
39 of this act shall be adjudged by any court of competent jurisdiction to
40 be invalid, the judgment shall not affect, impair or invalidate the
41 remainder thereof, but shall be confined in its operation to the clause,
42 sentence, paragraph, section or part of this act directly involved in
43 the controversy in which the judgment shall have been rendered.

44 S 4. This act shall take effect immediately.