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

4154--A

2011-2012 Regular Sessions

I N S E N A T E

March 21, 2011

Introduced by Sen. SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to providing an occupational wellness tax credit for businesses; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative findings and intent. The legislature hereby finds that healthier employees experience less absenteeism, greater productivity, better mental performance, and increased job satisfaction, performance and morale.

The legislature hereby finds that occupational wellness programs directly prevent the leading causes of premature death and disability in the United States. Furthermore, the vital importance of this issue was recently crystallized by the United States Centers for Disease Control and Prevention (CDC) who earmarked $14 million to study occupational wellness programs.

The legislature hereby finds that there is a significant state interest in encouraging a proactive approach to preventing illness and injury, as opposed to the traditional reactive, sick-care method. A reorientation of our systematic approach to health care is exemplified by United States Senate Bill 2558, the Healthy Lifestyles and Prevention (HeLP) America Act of 2004 and New York State Senate Bill 5774-A of 1999-2000, The Wellness and Preventative Health Care Program.

The legislature hereby finds that individual studies and evaluations of wellness programs have concluded that such endeavors have dual, reinforcing, and parallel benefits. In the first instance, employees have

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

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become more fit, reduced obesity, lessened stress levels, quit smoking, and achieved other propitious outcomes. Secondarily, wellness programs have increased overall productivity, economic viability, and reduced health care costs.

The legislature hereby finds that encouragement of a healthy lifestyle, while accruing concrete benefits to employees and employers alike, in the final analysis -- empowers individuals, strengthens families, and promotes a greater quality of life.

The legislature intends to ensconce the ethic of a healthy workforce into the fabric of our personal and professional lives, while realizing the tertiary benefits of savings on insurance premiums as the result of reducing the number and instance of health insurance and workers' compensation claims filed by employees.

S 2. Agreement for tax credits; application, criteria and requirements. 1. Application criteria. (a) The department of health shall promulgate an application form for taxpayers to apply for a credit established in subdivision 22-a of section 210 and subsection (uu) of section 606 of the tax law. The application form shall include all relevant information deemed necessary by the commissioner of health.

(b) Application. An application submitted in writing to the commissioner of health shall include a detailed description of the wellness plan to be implemented. Such description shall include, but not be limited to, the purpose of the plan, target goals, type or nature of plan, estimated cost of plan, expected results and benefits and enunciation of a program coordinator as a liaison to the department of health.

2. Agreement. After receipt of an application pursuant to subdivision one of this section, the commissioner of health shall enter into an agreement with an applicant for a credit established in subdivision 22-a of section 210 and subsection (uu) of section 606 of the tax law. The agreement shall include, but not be limited to:

(a) A requirement that such plan be maintained for the duration of the tax credit.

(b) A requirement that the taxpayer shall annually report to the commissioner of health concerning the number of employees participating, costs, benefits, results and any other information the commissioner of health deems necessary to carry out the purposes of this act.

(c) A non-compliance with agreement clause. If the commissioner of health determines that a taxpayer who has received credit is not complying with the tax credit agreement, such commissioner shall, after giving the taxpayer an opportunity to remedy non-compliance, terminate the tax credit.

(d) Requirements that specify that the credit can only be applied to qualified employees. The credit shall not apply to independent contractors of the taxpayer.

3. Requirements. Tax credits shall be awarded by the commissioner of health on a competitive basis in writing within 45 days. Requirements for consideration shall include, but not be limited to:

(a) A requirement that priority shall be given to small businesses.

(b) A requirement that priority shall be given to new programs.

(c) Tax credits shall be awarded on a competitive basis. The commissioner of health shall award tax credits on the basis of the strength of the applicants' proposals, as well as the goal of ensuring that wellness and preventive health care programs are distributed across the state.

4. Definitions. For the purposes of this section:

(a) "Independent contractor" shall mean an employee who does not work directly under the auspices and purview of the business applying for the credit established in this act.

(b) "New program" shall mean a program in a business that did not have an existing wellness program prior to the effective date of this act.

(c) "Qualified employee" shall mean an individual, excluding general executive officers, in the case of a corporation, employed for at least 35 hours per week and for at least one-half of the taxable year. Such employee shall reside in New York state or work in New York state but reside outside the state and shall not be an independent contractor.

(d) "Small businesses" shall mean any corporation, limited liability company or partnership having 100 or less employees.

(e) "Taxpayer" means any corporation or any partnership doing business for profit within the state of New York subject to tax under the tax law.

S 3. Section 210 of the tax law is amended by adding a new subdivision 22-a to read as follows:

22-A. OCCUPATIONAL WELLNESS CREDIT. (A) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBDIVISION, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR PROVIDING AN OCCUPATIONAL WELLNESS PROGRAM TO ITS EMPLOYEES.

(B) OCCUPATIONAL WELLNESS PROGRAM. AN OCCUPATIONAL WELLNESS PROGRAM IS A COORDINATED AND SYSTEMATIC ORGANIZATIONAL ENDEAVOR WHICH HELPS TO PROMOTE GOOD HEALTH, HELPS TO PREVENT OR MITIGATE ACUTE OR CHRONIC SICKNESS OR DISEASE AND MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. AN OCCUPATIONAL WELLNESS PROGRAM SHALL INCLUDE RELEVANT COMPONENTS, AS DETERMINED BY THE DEPARTMENT OF HEALTH, INCLUDING, BUT NOT LIMITED TO:

(I) PROVIDING INFORMATION AND GUIDANCE ON SUBJECTS INCLUDING, BUT NOT LIMITED TO, PERSONAL AND FAMILY HEALTH, HEALTH EDUCATION, NUTRITION, PHYSICAL ACTIVITY, PREVENTIVE HEALTH CARE, STRESS MANAGEMENT, SMOKING CESSATION, ANGER MANAGEMENT, CONFLICT MANAGEMENT, ANXIETY, DEPRESSION, SLEEP DISORDERS, MOOD DISORDERS, LIFESTYLE PATTERNS, HEALTHY FOOD CHOICES, OBESITY, SUBSTANCE ABUSE AND WEIGHT LOSS;

(II) ASSESSING EMPLOYEE HEALTH LEVELS, INCLUDING, BUT NOT LIMITED TO, BIOMETRICS TESTING, HEALTH SCREENING TESTS, QUESTIONNAIRES AND CLINICAL TESTING;

(III) ENCOURAGING OR PROVIDING INSTRUCTION IN AND OPPORTUNITY FOR FITNESS ENHANCEMENT ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, AEROBIC EXERCISE, WEIGHT BEARING EXERCISE, YOGA, PILATES, MUSCLE STRETCHING OR MARTIAL ARTS;

(IV) ENCOURAGING OR PROVIDING INCENTIVES FOR EMPLOYEES WHO REGULARLY ENGAGE IN PHYSICAL ACTIVITY AND PREVENTIVE HEALTH CARE, INCLUDING, BUT NOT LIMITED TO, HEALTH SCREENINGS OR MEMBERSHIPS WITH A FITNESS CENTER; OR

(V) PROVIDING AN EMPLOYEE ASSISTANCE PROGRAM (EAP). FOR THE PURPOSE OF THIS SUBPARAGRAPH, "EMPLOYEE ASSISTANCE PROGRAM" SHALL MEAN A PROGRAM WHICH INCLUDES EARLY INTERVENTION STRATEGY AND COUNSELING FOR BOTH WORK AND PERSONAL PROBLEMS. AN EMPLOYEE ASSISTANCE PROGRAM SHALL OFFER PROGRAMS INCLUDING, BUT NOT LIMITED TO, COUNSELING TO EMPLOYEES WHO NEED HELP WITH ISSUES RELATED TO DRUGS, ALCOHOL, FINANCES, STRESS, FAMILY PROBLEMS AND OTHER PERSONAL PROBLEMS.

(C) AMOUNT OF CREDIT. A CREDIT SHALL BE ALLOWED FOR THE AMOUNT OF EXPENDITURES FOR OCCUPATIONAL WELLNESS INCURRED BY AN EMPLOYER. THE AMOUNT OF CREDIT SHALL NOT EXCEED ONE HUNDRED DOLLARS PER EMPLOYEE FOR WHOM SUCH PROGRAMS HAVE BEEN PROVIDED DURING THE TAXABLE YEAR IN WHICH

SUCH EXPENDITURES WERE MADE AND SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS PER EMPLOYER PER TAXABLE YEAR. TAXPAYERS SHALL BE REQUIRED TO REAPPLY FOR THE CREDIT ESTABLISHED BY THIS SUBDIVISION ON AN ANNUAL BASIS. THE DEPARTMENT OF HEALTH SHALL ESTABLISH THE CRITERIA FOR WHICH TAXPAYERS SHALL RECEIVE SUCH CREDIT. THE DEPARTMENT OF HEALTH MAY CONTRACT WITH INDEPENDENT ORGANIZATIONS TO DEVELOP CRITERIA FOR WHICH TAXPAYERS SHALL RECEIVE SUCH CREDIT. THE AMOUNT OF CREDIT ISSUED TO ALL TAXPAYERS COMBINED UNDER THIS SUBDIVISION SHALL NOT EXCEED TWENTY MILLION DOLLARS ANNUALLY. FUNDS NOT DISPERSED IN A GIVEN YEAR SHALL CARRY OVER TO THE NEXT YEAR.

(D) CARRYOVER. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. PROVIDED, HOWEVER, IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY NOT BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY NOT BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxiv) to read as follows:

(XXXIV) OCCUPATIONAL WELLNESS CREDIT UNDER SUBSECTION (UU)	AMOUNT OF CREDIT UNDER SUBDIVISION TWENTY-TWO-A OF SECTION TWO HUNDRED TEN

S 5. Section 606 of the tax law is amended by adding a new subsection (uu) to read as follows:

(UU) OCCUPATIONAL WELLNESS CREDIT. (1) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBSECTION, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR PROVIDING AN OCCUPATIONAL WELLNESS PROGRAM TO ITS EMPLOYEES.

(2) OCCUPATIONAL WELLNESS PROGRAM. AN OCCUPATIONAL WELLNESS PROGRAM IS A COORDINATED AND SYSTEMATIC ORGANIZATIONAL ENDEAVOR WHICH HELPS TO PROMOTE GOOD HEALTH, HELPS TO PREVENT OR MITIGATE ACUTE OR CHRONIC SICKNESS OR DISEASE, AND MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. AN OCCUPATIONAL WELLNESS PROGRAM SHALL INCLUDE RELEVANT COMPONENTS, AS DETERMINED BY THE DEPARTMENT OF HEALTH, INCLUDING, BUT NOT LIMITED TO:

(A) PROVIDING INFORMATION AND GUIDANCE ON SUBJECTS INCLUDING, BUT NOT LIMITED TO, RELATING TO PERSONAL AND FAMILY HEALTH, HEALTH EDUCATION, NUTRITION, PHYSICAL ACTIVITY, PREVENTIVE HEALTH CARE, STRESS MANAGEMENT, SMOKING CESSATION, ANGER MANAGEMENT, CONFLICT MANAGEMENT, ANXIETY, DEPRESSION, SLEEP DISORDERS, MOOD DISORDERS, LIFESTYLE PATTERNS, HEALTHY FOOD CHOICES, OBESITY, SUBSTANCE ABUSE AND WEIGHT LOSS;

(B) ASSESSING AND TARGETING PROGRAMS ADDRESSING EMPLOYEE HEALTH RISKS AND NEEDS, INCLUDING, BUT NOT LIMITED TO, BIOMETRICS TESTING, HEALTH SCREENING TESTS, QUESTIONNAIRES AND CLINICAL TESTING;

(C) ENCOURAGING OR PROVIDING INSTRUCTION IN AND OPPORTUNITY FOR FITNESS ENHANCEMENT ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, AEROBIC EXERCISE, WEIGHT BEARING EXERCISE, YOGA, PILATES, MUSCLE STRETCHING OR MARTIAL ARTS;

(D) ENCOURAGING OR PROVIDING INCENTIVES FOR EMPLOYEES WHO REGULARLY ENGAGE IN PHYSICAL ACTIVITY AND PREVENTIVE HEALTH CARE, INCLUDING, BUT NOT LIMITED TO, HEALTH SCREENINGS OR MEMBERSHIP WITH A FITNESS CENTER; OR

(E) PROVIDES AN EMPLOYEE ASSISTANCE PROGRAM (EAP). FOR THE PURPOSE OF THIS SUBPARAGRAPH, "EMPLOYEE ASSISTANCE PROGRAM" SHALL MEAN A PROGRAM WHICH INCLUDES EARLY INTERVENTION STRATEGY AND COUNSELING FOR BOTH WORK AND PERSONAL PROBLEMS. AN EMPLOYEE ASSISTANCE PROGRAM SHALL OFFER PROGRAMS INCLUDING, BUT NOT LIMITED TO, COUNSELING TO EMPLOYEES WHO NEED HELP WITH ISSUES RELATED TO DRUGS, ALCOHOL, FINANCES, STRESS, FAMILY PROBLEMS AND OTHER PERSONAL PROBLEMS.

(3) AMOUNT OF CREDIT. A CREDIT SHALL BE ALLOWED FOR THE AMOUNT OF EXPENDITURES FOR OCCUPATIONAL WELLNESS INCURRED BY AN EMPLOYER. THE AMOUNT OF CREDIT SHALL NOT EXCEED ONE HUNDRED DOLLARS PER EMPLOYEE FOR WHOM SUCH PROGRAMS HAVE BEEN PROVIDED DURING THE TAXABLE YEAR IN WHICH SUCH EXPENDITURES WERE MADE AND SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS PER EMPLOYER PER TAXABLE YEAR. TAXPAYERS SHALL BE REQUIRED TO REAPPLY FOR THE CREDIT ESTABLISHED BY THIS SUBSECTION ON AN ANNUAL BASIS. THE DEPARTMENT OF HEALTH SHALL ESTABLISH THE CRITERIA FOR WHICH TAXPAYERS SHALL RECEIVE SUCH CREDIT. THE DEPARTMENT OF HEALTH MAY CONTRACT WITH INDEPENDENT ORGANIZATIONS TO DEVELOP CRITERIA FOR WHICH TAXPAYERS SHALL RECEIVE SUCH CREDIT. THE AMOUNT OF CREDIT ISSUED TO ALL TAXPAYERS COMBINED UNDER THIS SUBSECTION SHALL NOT EXCEED TWENTY MILLION DOLLARS ANNUALLY. FUNDS NOT DISPERSED IN A GIVEN FISCAL YEAR SHALL CARRY OVER TO THE NEXT FISCAL YEAR.

(4) CARRYOVER. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH TAX YEAR, THE EXCESS MAY NOT BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY NOT BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 6. Additional funding. In addition to state funds appropriated for programs under this act, the commissioner of health may accept grants from public or private sources for the program established by this act. The commissioner of health may contract with independent organizations to develop criteria regarding occupational wellness programs.

S 7. Reporting requirement. The commissioner of health shall submit an annual report to the governor, the temporary president of the senate, and the speaker of the assembly. Such report shall include an evaluation of how the occupational wellness programs and credits established by this act are functioning and whether this act has been successful in getting more businesses to create occupational wellness programs.

S 8. This act shall take effect immediately and shall apply to taxable years beginning on and after the first of January next succeeding the date on which it shall have become a law; provided that the provisions of this act shall expire and be deemed repealed 5 years after such effective date.