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I N   S E N A T E

April 11, 2012

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Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to clarifying notice requirements conciliation procedures and sanctions in cases when the recipient of public assistance programs refuses to comply with employment program requirements

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

1     Section 1. Section 341 of the social services law, as amended by  
2     section 148 of part B of chapter 436 of the laws of 1997, subdivision 1  
3     as amended by section 1 of part D of chapter 61 of the laws of 2006, is  
4     amended to read as follows:  
5     S 341. [Conciliation] RE-ENGAGEMENT; CONCILIATION; refusal to partic-  
6     ipate. 1. (a) Consistent with federal law and regulations and this  
7     title, IF A PARTICIPANT HAS FAILED OR REFUSED TO COMPLY WITH THE  
8     REQUIREMENTS OF THIS TITLE AND THE DISTRICT HAS DETERMINED THAT HE OR  
9     SHE IS NOT EXEMPT FROM SUCH REQUIREMENTS AND HAS VERIFIED THAT APPROPRI-  
10    ATE CHILD CARE, TRANSPORTATION, AND ACCOMMODATIONS FOR DISABILITY WERE  
11    IN PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL, [if a participant has  
12    failed or refused to comply with the requirements of this title,] the  
13    social services district shall issue a RE-ENGAGEMENT notice in plain  
14    language indicating that such failure or refusal has taken place and of  
15    the right of such participant to [conciliation to resolve] AVOID A PRO-  
16    RATA REDUCTION IN PUBLIC ASSISTANCE BENEFITS THROUGH THE RE-ENGAGEMENT  
17    PROCESS. "RE-ENGAGEMENT PROCESS" SHALL MEAN THE PROCESS THROUGH WHICH A  
18    PARTICIPANT MAY AVOID A PRO-RATA REDUCTION IN PUBLIC ASSISTANCE BENEFITS  
19    BY AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT  
20    WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO  
21    PARTICIPATE IN WORK ACTIVITIES, BY NOTIFYING THE DISTRICT THAT HE OR SHE  
22    HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS TITLE, OR BY RESOLVING  
23    the reasons for such failure or refusal [to avoid a pro-rata reduction  
24    in public assistance benefits for a period of time set forth in section  
25    three hundred forty-two of this title] AT A CONCILIATION CONFERENCE.  
26    THE NOTICE SHALL INDICATE THAT THE PARTICIPANT HAS TEN DAYS TO REQUEST

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

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1 RE-ENGAGEMENT WITH THE DISTRICT. The notice shall indicate the specific  
2 instance or instances of willful refusal or failure to comply without  
3 good cause with the requirements of this title and the necessary actions  
4 that must be taken to avoid a pro-rata reduction in public assistance  
5 benefits AND THE DISTRICT HAS VERIFIED THAT APPROPRIATE CHILD CARE,  
6 TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT THE  
7 TIME OF SUCH FAILURE OR REFUSAL. [The notice shall indicate that the  
8 participant has seven days to request conciliation with the district  
9 regarding such failure or refusal in the case of a safety net partic-  
10 ipant and ten days in the case of a family assistance participant.]

11 (1) IF A PARTICIPANT CHOOSES TO AVOID A PRO-RATA REDUCTION IN PUBLIC  
12 ASSISTANCE BENEFITS THROUGH A CONCILIATION CONFERENCE, IT WILL BE THE  
13 RESPONSIBILITY OF THE PARTICIPANT TO GIVE REASONS FOR SUCH FAILURE OR  
14 REFUSAL. The RE-ENGAGEMENT notice shall also include an explanation in  
15 plain language of what would constitute good cause for non-compliance  
16 and examples of acceptable forms of evidence that may warrant an  
17 exemption from work activities, including evidence of domestic violence,  
18 and physical or mental health limitations that may be provided at the  
19 conciliation conference to demonstrate such good cause for failure to  
20 comply with the requirements of this title. UNLESS AS PART OF THE  
21 RE-ENGAGEMENT PROCESS THE PARTICIPANT DOES NOT AGREE TO COMPLY, HAS NOT  
22 BECOME EXEMPT OR THE DISTRICT DETERMINES AS A RESULT OF THE CONCILIATION  
23 CONFERENCE THAT SUCH FAILURE OR REFUSAL WAS WILLFUL AND WITHOUT GOOD  
24 CAUSE, NO FURTHER ACTION SHALL BE TAKEN.

25 (2) If the participant does not contact the district within [the spec-  
26 ified number of] TEN days OF THE RE-ENGAGEMENT NOTICE, the district  
27 shall [issue ten days notice of intent to discontinue or reduce assist-  
28 ance, pursuant to regulations of the department. Such notice shall also  
29 include a statement of the participant's right to a fair hearing relat-  
30 ing to such discontinuance or reduction. If such participant contacts  
31 the district within seven days in the case of a safety net participant  
32 or within ten days in the case of a family assistance participant, it  
33 will be the responsibility of the participant to give reasons for such  
34 failure or refusal] MAKE A FINDING OF WHETHER THE ALLEGED FAILURE OR  
35 REFUSAL TO COMPLY WAS WILLFUL AND WITHOUT GOOD CAUSE AND SHALL CONSIDER  
36 ANY EVIDENCE IN THE POSSESSION OF THE DISTRICT INDICATING THAT THE  
37 PARTICIPANT HAS GOOD CAUSE AND IF THE PARTICIPANT IS OTHERWISE PARTIC-  
38 IPATING IN WORK ACTIVITIES, THERE SHALL BE NO FINDING OF WILLFULNESS  
39 WITHOUT GOOD CAUSE BASED ON A SINGLE APPOINTMENT OR INFRACTION.

40 (b) [Unless the district determines as a result of such conciliation  
41 process that such failure or refusal was willful and was without good  
42 cause, no further action shall be taken.] If the district determines  
43 that such failure or refusal was willful and without good cause, AND  
44 THAT THE INDIVIDUAL IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE,  
45 the district shall notify such participant in writing, in plain language  
46 and in a manner distinct from any previous notice, by issuing ten days  
47 notice of its intent to discontinue or reduce assistance. Such notice  
48 shall include the reasons for such determination, the specific instance  
49 or instances of willful refusal or failure to comply without good cause  
50 with the requirements of this title, SHALL VERIFY THAT APPROPRIATE CHILD  
51 CARE, TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT  
52 THE TIME OF SUCH FAILURE OR REFUSAL, AND SPECIFY the necessary actions  
53 that must be taken to avoid a pro-rata reduction in public assistance  
54 benefits, INCLUDING AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS  
55 TITLE CONSISTENT WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVID-  
56 UAL'S ABILITY TO PARTICIPATE IN WORK ACTIVITIES OR NOTIFYING THE

1 DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS  
2 TITLE and the right to a fair hearing relating to such discontinuance or  
3 reduction. [Unless extended by mutual agreement of the participant and  
4 the district, conciliation shall terminate and a determination shall be  
5 made within fourteen days of the date a request for conciliation is made  
6 in the case of a safety net participant or within thirty days of the  
7 conciliation notice in the case of a family assistance participant.]

8 2. (a) The department shall establish in regulation a conciliation  
9 procedure for the resolution of disputes related to an individual's  
10 participation in programs pursuant to this title.

11 (b) The district shall contract with an independent entity, approved  
12 by the department, or shall use designated trained staff at the supervi-  
13 sory level who have no direct responsibility for the participant's case  
14 to mediate disputes in the conciliation conference. [If no such supervi-  
15 sory staff or independent entity is available, the district may desig-  
16 nate another trained individual, who has no direct responsibility for  
17 the participant's case to mediate disputes in the conciliation confer-  
18 ence.]

19 (c) If a participant's dispute cannot be resolved through such concil-  
20 iation procedure, an opportunity for a fair hearing shall be provided.  
21 No sanction relating to the subject dispute may be imposed during the  
22 [conciliation] RE-ENGAGEMENT process.

23 3. When any [family assistance] participant required to participate in  
24 work activities fails to comply with the provisions of this title, the  
25 social services district shall take such actions as prescribed by appro-  
26 priate federal law and regulation and this title.

27 4. [When any safety net participant required to participate in work  
28 activities fails to comply with the provisions of this title, the social  
29 services district shall deny assistance to such participant in accord-  
30 ance with section three hundred forty-two of this title.]

31 5. (a) To the extent that] CONSISTENT WITH federal law [requires] AND  
32 THIS TITLE, a social services district shall provide to those [family  
33 assistance] participants whose failure to comply has continued for  
34 [three months] THIRTY DAYS or longer a written reminder of the option to  
35 end a sanction [after the expiration of the applicable minimum sanction  
36 period] by terminating the failure to comply as specified in subdivision  
37 [three] ONE of this section. Such notice shall advise that the partic-  
38 ipant may immediately terminate the [first or second] sanction by  
39 [participating in the program or accepting employment and that any  
40 subsequent sanction after six months have elapsed may be terminated by  
41 participating in the program or accepting employment.]

42 (b) A social services district shall provide to those safety net  
43 participants whose failure to comply has continued for the length of the  
44 sanction period or longer a written reminder of the option to end a  
45 sanction after the expiration of the applicable minimum sanction period  
46 by terminating the failure to comply as specified in subdivision four of  
47 this section.] EITHER AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS  
48 TITLE CONSISTENT WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVID-  
49 UAL'S ABILITY TO PARTICIPATE IN WORK ACTIVITIES OR NOTIFYING THE  
50 DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS  
51 TITLE.

52 [6.] 5. Consistent with federal law and regulation AND THIS TITLE, no  
53 NOTICE SHALL BE ISSUED AS SPECIFIED IN SUBDIVISION ONE OF THIS SECTION  
54 UNLESS IT HAS BEEN DETERMINED THAT THE INDIVIDUAL IS NOT EXEMPT FROM THE  
55 REQUIREMENTS OF THIS TITLE AND HAS DETERMINED THAT APPROPRIATE CHILD  
56 CARE, TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT

1 THE TIME OF SUCH FAILURE OR REFUSAL TO COMPLY WITH THE REQUIREMENTS OF  
2 THIS TITLE AND NO action shall be taken pursuant to this section for  
3 failure to participate in the program or refusal to accept employment  
4 if:

5 (a) child care for a child under age thirteen (or day care for any  
6 incapacitated individual living in the same home as a dependent child)  
7 is necessary for an individual to participate or continue participation  
8 in activities pursuant to this title or accept employment and such care  
9 is not available and the social services district fails to provide such  
10 care;

11 (b) (1) the employment would result in the family of the participant  
12 experiencing a net loss of cash income; provided, however, a participant  
13 may not claim good cause under this paragraph if the social services  
14 district assures that the family will not experience a net loss of cash  
15 income by making a supplemental payment;

16 (2) net loss of cash income results if the family's gross income less  
17 necessary work-related expenses is less than the cash assistance the  
18 participant was receiving at the time the offer of employment is made;  
19 or

20 (c) the participant meets other grounds for good cause set forth by  
21 the department in its implementation plan for this title which, at a  
22 minimum, must describe what circumstances beyond the household's control  
23 will constitute "good cause".

24 S 2. Section 342 of the social services law, as added by section 148  
25 of part B of chapter 436 of the laws of 1997, is amended to read as  
26 follows:

27 S 342. Noncompliance with the requirements of this title. 1. In  
28 accordance with the provisions of this section an individual who is  
29 required to participate in work activities shall be ineligible to  
30 receive public assistance if he or she fails to comply, without good  
31 cause, with the requirements of this title AND THE DISTRICT HAS DETER-  
32 MINED THAT HE OR SHE IS NOT EXEMPT FROM SUCH REQUIREMENTS AND HAS VERI-  
33 FIED THAT APPROPRIATE CHILD CARE, TRANSPORTATION, AND ACCOMMODATIONS FOR  
34 DISABILITY WERE IN PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL. Such  
35 ineligibility shall be for the amount and [periods] PERIOD specified in  
36 this section. Good cause for failing to comply with the requirements of  
37 this title shall be defined in department regulations, provided, howev-  
38 er, that the parent or caretaker relative of a child under thirteen  
39 years of age shall not be subject to the ineligibility provisions of  
40 this section if the individual can demonstrate, in accordance with the  
41 regulations of the office of children and family services department,  
42 that lack of available child care prevents such individual from comply-  
43 ing with the work requirements of this title. The parent or caretaker  
44 relative shall be responsible for locating the child care needed to meet  
45 the work requirements; provided, however, that the relevant social  
46 services district shall provide a parent or caretaker relative who  
47 demonstrates an inability to obtain needed child care with a choice of  
48 two providers, at least one of which will be a regulated provider.

49 2. In the case of an applicant for or recipient of public assistance  
50 WHOM THE DISTRICT HAS DETERMINED IS NOT EXEMPT FROM THE REQUIREMENTS OF  
51 THIS TITLE AND who is a parent or caretaker of a dependent child, the  
52 public assistance benefits otherwise available to the household of which  
53 such individual is a member shall be reduced pro-rata[:

54 (a) for the first instance of failure to comply without good cause  
55 with the requirement of this article] until the individual is willing to  
56 comply WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH ANY MEDICAL

1 CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN  
2 WORK ACTIVITIES[;  
3 (b) for the second instance of failure to comply without good cause  
4 with the requirements of this article, for a period of three months and  
5 thereafter until the individual is willing to comply;  
6 (c) for the third and all subsequent instances of failure to comply  
7 without good cause with the requirements of this article, for a period  
8 of six months and thereafter until the individual is willing to comply].  
9 3. In the case of an individual who is a member of a household without  
10 dependent children WHOM THE DISTRICT HAS DETERMINED IS NOT EXEMPT FROM  
11 THE REQUIREMENTS OF THIS TITLE AND WHO IS applying for or in receipt of  
12 safety net assistance, the public assistance benefits otherwise avail-  
13 able to the household of which such individual is a member shall be  
14 reduced pro-rata[;  
15 (a) for the first such failure or refusal], until the failure or  
16 refusal TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH  
17 ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO  
18 PARTICIPATE IN WORK ACTIVITIES ceases [or ninety days, whichever period  
19 of time is longer;  
20 (b) for the second such failure or refusal, until the failure ceases  
21 or for one hundred fifty days, whichever period of time is longer; and  
22 (c) for the third and all subsequent such failures or refusals, until  
23 the failure ceases or one hundred eighty days, whichever period of time  
24 is longer].  
25 4. A recipient of public assistance WHOM THE DISTRICT HAS DETERMINED  
26 IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE AND who quits or  
27 reduces his hours of employment without good cause OR DUE TO ANY MEDICAL  
28 CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN  
29 WORK ACTIVITIES shall be considered to have failed to comply with the  
30 requirements of this article and shall be subject to the provisions of  
31 this section.  
32 5. A person described in paragraph (b) of subdivision seven of section  
33 one hundred fifty-nine of this chapter may not be sanctioned if his or  
34 her failure to comply with requirements of this title are related to  
35 his or her health status.  
36 S 3. This act shall take effect immediately.