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

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I N  A S S E M B L Y

January 25, 2011

Introduced by M. of A. P. RIVERA, MILLMAN, GUNTHER, ARROYO, MAYERSOHN, LIFTON, SCHROEDER -- Multi-Sponsored by -- M. of A. BENEDETTO, BURLING, CLARK, CONTE, COOK, DESTITO, FARRELL, FINCH, GLICK, KELLNER, LAVINE, MARKEY, McDONOUGH, McENENY, J. MILLER, RAIA, REILLY, N. RIVERA, ROBINSON, SWEENEY, THIELE, TITUS, TOWNS, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the tax law, the state finance law, the executive law and the criminal procedure law, in relation to enacting the "sexual assault forensic act"; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Short title. This act shall be known and may be cited as the "sexual assault forensic act".

S 2. Paragraphs (e) and (f) of subdivision 1 of section 424 of the tax law, paragraph (e) as amended by chapter 190 of the laws of 1990 and paragraph (f) as amended by chapter 508 of the laws of 1993, are amended to read as follows:

(e) (I) Sixty-seven cents per liter upon liquors containing not more than twenty-four per centum of alcohol by volume except liquors containing not more than two per centum of alcohol by volume, upon which the tax shall be one cent per liter, AND

(II) AN ADDITIONAL FIFTY CENTS PER LITER UPON LIQUOR CONTAINING NOT MORE THAN TWENTY-FOUR PER CENTUM OF ALCOHOL BY VOLUME; and

(f) (I) One dollar and seventy cents per liter upon all other liquors, AND (II) AN ADDITIONAL FIFTY CENTS PER LITER UPON ALL OTHER LIQUORS; when sold or used within this state, except when sold or used under such circumstances that this state is without power to impose such tax or when sold to the United States and except beers when sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations

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

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promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations, directives and policy statements of such an agency applicable to such sales, and except when sold to professional foreign consuls-general, consuls and vice-consuls who are nationals of the state appointing them and who are assigned to foreign consulates in this state, provided that American consular officers of equal rank who are citizens of the United States and who exercise their official functions at American consulates in such foreign country are granted reciprocal exemptions; provided, however, that the commissioner may permit the sale of alcohol without tax to a holder of any industrial alcohol permit, alcohol permit or alcohol distributor's permit, issued by the state liquor authority, and by the holder of an alcohol distributor's permit, class A, issued by such authority to a holder of a distiller's license, class B, or a winery license, issued by such authority and may also permit the use of alcohol for any purpose other than the production of alcoholic beverages by such holders without tax; provided also that the commissioner may permit the sale of cider without tax by a holder of a cider producer's license issued by the state liquor authority to a holder of a cider producer's license or a cider wholesaler's license issued by such authority.

S 3. Section 435 of the tax law, as added by chapter 69 of the laws of 1978, is amended to read as follows:

S 435. Deposit and disposition of revenue. [All] 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, ALL taxes, interest and penalties collected or received by the [tax commission] DEPARTMENT under the taxes imposed by this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

2. ALL TAXES COLLECTED OR RECEIVED BY THE DEPARTMENT PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (E) AND SUBPARAGRAPH (II) OF PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-FOUR OF THIS ARTICLE SHALL BE DEPOSITED AND DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION EIGHTY-NINE-H OF THE STATE FINANCE LAW.

S 4. The state finance law is amended by adding a new section 89-h to read as follows:

S 89-H. SEXUAL ASSAULT DNA REGISTRY TRUST 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 "SEXUAL ASSAULT DNA REGISTRY TRUST FUND".

2. SUCH FUND SHALL CONSIST OF ALL TAXES COLLECTED OR RECEIVED BY THE DEPARTMENT OF TAXATION AND FINANCE PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (E) AND SUBPARAGRAPH (II) OF PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE TAX LAW, AND ALL OTHER MONEYS APPROPRIATED FOR THE PURPOSES OF SUCH FUND, ALL MONEYS TRANSFERRED TO SUCH FUND PURSUANT TO LAW AND ALL MONEYS REQUIRED BY THE PROVISIONS OF ANY OTHER LAW TO BE PAID INTO OR CREDITED INTO THE FUND.

3. MONEYS OF THE FUND, WHEN ALLOCATED, SHALL BE AVAILABLE TO THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR THE PURPOSE OF IMPLEMENTING THE PROVISIONS OF SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE LAW.

S 5. Subdivision 2 of section 89-h of the state finance law, as added by section four of this act, is amended to read as follows:

2. Such fund shall consist of all [taxes collected or received by the department of taxation and finance pursuant to subparagraph (ii) of paragraph (e) and subparagraph (ii) of paragraph (f) of subdivision one of section four hundred twenty-four of the tax law, and all other]

moneys appropriated for the purposes of such fund, all moneys transferred to such fund pursuant to law and all moneys required by the provisions of any other law to be paid into or credited into the fund.

S 6. The executive law is amended by adding a new section 49-a to read as follows:

S 49-A. REPORT ON SEXUAL ASSAULT DNA REGISTRY TRUST FUND. ON OR BEFORE FEBRUARY FIRST EACH YEAR, THE COMPTROLLER, IN COOPERATION WITH THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES, SHALL SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE ON THE USES AND ALLOCATIONS OF THE MONIES IN THE SEXUAL ASSAULT DNA REGISTRY TRUST FUND, PURSUANT TO SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THIS CHAPTER, DURING THE PREVIOUS CALENDAR YEAR AND THE STATUS OF SUCH FUND AT THE CLOSE OF SUCH CALENDAR YEAR. SUCH REPORT SHALL INCLUDE:

1. THE AMOUNT OF MONEY FROM THE SEXUAL ASSAULT DNA REGISTRY TRUST FUND THAT EACH COUNTY RECEIVED;

2. THE AMOUNT OF MONEY EACH COUNTY USED FOR SEXUAL ASSAULT EVIDENCE COLLECTION AND TESTING;

3. THE NUMBER OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS USED BY EACH COUNTY;

4. THE AMOUNT OF MONEY USED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THIS CHAPTER;

5. THE AMOUNT OF MONEY USED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THIS CHAPTER; AND

6. THE AMOUNTS OF MONEYS CREDITED TO, DISBURSED FROM AND REMAINING IN THE SEXUAL ASSAULT DNA REGISTRY TRUST FUND.

S 7. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. SEXUAL ASSAULT FORENSICS. 1. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSION ON FORENSIC SCIENCE AND THE COMMISSIONER OF HEALTH, SHALL ESTABLISH A PROGRAM TO ENHANCE DNA TESTING, EQUIPMENT AND TRAINING RELATING TO THE INVESTIGATION OF FELONIES DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.

2. SUCH PROGRAM SHALL ESTABLISH STANDARDS AND PROVIDE FUNDING FOR:

(A) EXPANSION OF DNA TESTING, EQUIPMENT AND TRAINING WITHIN THE STATE SO AS TO ELIMINATE ANY BACKLOG IN SUCH TESTING OF EVIDENCE IN SEX OFFENSE FELONIES, AND TO EXPAND THE AVAILABILITY AND USE OF SEXUAL ASSAULT EVIDENCE KITS;

(B) PROVISION OF TRAINING FOR PERSONS ENGAGED IN THE COLLECTION, ANALYSIS AND STORAGE OF DNA EVIDENCE IN SEX OFFENSE FELONIES;

(C) EMPLOYMENT OF PERSONNEL ENGAGED IN THE COLLECTION, ANALYSIS AND STORAGE OF DNA EVIDENCE IN SEX OFFENSE FELONIES;

(D) THE PURCHASE AND MAINTENANCE OF EQUIPMENT AND SUPPLIES UTILIZED IN THE COLLECTION, ANALYSIS AND STORAGE OF DNA EVIDENCE IN SEX OFFENSE FELONIES;

(E) ESTABLISHMENT OF FACILITIES FOR THE ANALYSIS AND STORAGE OF DNA EVIDENCE IN SEX OFFENSE FELONIES; AND

(F) TRAINING OF REGISTERED PROFESSIONAL NURSES IN THE COLLECTION OF DNA EVIDENCE.

3. THE COMMISSIONER SHALL ESTABLISH A SYSTEM WHICH PROVIDES FOR THE STORAGE AND MAINTENANCE OF DNA, RELATING TO SEX OFFENSE FELONIES. SUCH SYSTEM SHALL PROVIDE FOR THE STORAGE AND MAINTENANCE OF SUCH EVIDENCE FOR AN INDEFINITE PERIOD OF TIME AND IN A CONDITION WHERE SUCH EVIDENCE REMAINS INDISPUTABLE.

S 8. Paragraph (a) of subdivision 2 of section 30.10 of the criminal procedure law, as amended by chapter 467 of the laws of 2008, is amended to read as follows:

(a) A prosecution for a class A felony, or [rape in the first degree as defined in section 130.35 of the penal law, or a crime defined or formerly defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law] ANY FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE, OR SECTIONS 255.25, 255.26 OR 255.27 OF THE PENAL LAW WHEN SUCH PROSECUTION IS BASED ON DNA EVIDENCE, may be commenced at any time;

S 9. The state comptroller shall notify the commissioner of the division of criminal justice services when fifteen percent of the total amount of the taxes collected pursuant to section two of this act is all that remains in the sexual assault DNA registry trust fund established in section 89-h of the state finance law. Upon such notification, the commissioner of the division of criminal justice services shall submit a report to the governor, temporary president of the senate and speaker of the assembly on the implementation of the provisions of section 837-s of the executive law, the funding needs for the continued implementation of such section and any recommendations on the improved implementation of the provisions of this act.

S 10. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that:

(a) sections two and three of this act shall expire and be deemed repealed four years after such effective date;

(b) section five of this act shall take effect four years after such effective date; and

(c) any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.