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2011-2012 Regular Sessions

I N  A S S E M B L Y

February 15, 2011

Introduced by M. of A. OAKS, CALHOUN, FITZPATRICK, GIGLIO, HAWLEY, MONTESANO, PALMESANO, TEDISCO, MURRAY -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BURLING, BUTLER, CASTELLI, CONTE, CORWIN, CROUCH, DUPREY, FINCH, GOODELL, HAYES, JORDAN, KOLB, P. LOPEZ, McDONOUGH, McKEVITT, McLAUGHLIN, J. MILLER, MOLINARO, RABBITT, RAIA, REILICH, SALADINO, SAYWARD -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, the vehicle and traffic law, the general municipal law, the labor law, the public health law, the volunteer firefighters' benefit law, the volunteer ambulance workers' benefit law, and the county law, in relation to enacting the volunteer firefighter and ambulance worker protection and incentive act of 2011; and to amend chapter 668 of the laws of 1977, amending the volunteer firefighters' benefit law, relating to disability due to disease or malfunction of the heart or coronary arteries, in relation to making certain provisions thereof permanent

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 "volunteer firefighter and ambulance worker protection and incentive act of 2011".

S 2. Subsection (e-1) of section 606 of the tax law, as added by section 1 of part U of chapter 62 of the laws of 2006, paragraph 2 as amended by chapter 532 of the laws of 2007, paragraph 3 as added and paragraph 4 as renumbered by section 4 of part N of chapter 61 of the laws of 2006, is amended to read as follows:

(e-1) Volunteer firefighters' and ambulance workers' credit. (1) For taxable years beginning on and after January first, two thousand [seven] ELEVEN, a resident taxpayer who serves as an active volunteer firefighter as defined in subdivision one of section two hundred fifteen of the general municipal law or as a volunteer ambulance worker as defined in

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

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subdivision fourteen of section two hundred nineteen-k of the general municipal law shall be allowed a credit against the tax imposed by this article equal to [two] FIVE hundred dollars. In order to receive this credit a volunteer firefighter or volunteer ambulance worker must have been active for the entire taxable year for which the credit is sought.

(2) If a taxpayer receives a real property tax exemption relating to such service under title two of article four of the real property tax law, such taxpayer shall not be eligible for this credit; provided, however (A) if the taxpayer receives such real property tax exemption in the two thousand [seven] ELEVEN taxable year as a result of making application therefor in a prior year or (B) if the taxpayer notifies his or her assessor in writing by December thirty-first, two thousand [seven] ELEVEN of the taxpayer's intent to discontinue such real property tax exemption by not re-applying for such real property tax exemption by the next taxable status date, such taxpayer shall be eligible for this credit for the two thousand [seven] ELEVEN taxable year.

(3) In the case of a husband and wife who file a joint return and who both individually qualify for the credit under this subsection, the amount of the credit allowed shall be [four hundred] ONE THOUSAND dollars.

(4) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

S 3. Subdivision 6 of section 401 of the vehicle and traffic law is amended by adding a new paragraph h to read as follows:

H. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR ANY OTHER LAW TO THE CONTRARY, ANY MOTOR VEHICLE OWNED BY A VOLUNTEER FIREFIGHTER, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE OF THE VOLUNTEER FIREFIGHTERS' BENEFIT LAW, OR A VOLUNTEER AMBULANCE WORKER, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE OF THE VOLUNTEER AMBULANCE WORKERS' BENEFIT LAW, AND USED BY SUCH VOLUNTEER IN THE PERFORMANCE OF HIS OR HER DUTIES AS A VOLUNTEER FIREFIGHTER OR VOLUNTEER AMBULANCE WORKER SHALL BE EXEMPT FROM ALL MOTOR VEHICLE REGISTRATION FEES AND FROM ANY VEHICLE USE OR OTHER TAX BASED UPON THE WEIGHT OR VALUE OF SUCH MOTOR VEHICLE.

S 4. Subdivision 3 of section 404-b of the vehicle and traffic law, as amended by chapter 277 of the laws of 1991, is amended to read as follows:

3. A distinctive plate issued pursuant to this section shall be issued in the same manner as other number plates upon payment of the regular registration fee prescribed by section four hundred one of this chapter and an initial one time service charge of fifteen dollars; PROVIDED, HOWEVER, NO SUCH REGISTRATION FEE OR SERVICE CHARGE SHALL BE IMPOSED FOR A MOTOR VEHICLE USED BY A VOLUNTEER FIREFIGHTER IN THE PERFORMANCE OF HIS OR HER DUTIES.

S 5. Subdivision 3 of section 404-f of the vehicle and traffic law, as amended by chapter 277 of the laws of 1991, is amended to read as follows:

3. A distinctive plate issued pursuant to this section shall be issued in the same manner as other number plates upon payment of the regular registration fee prescribed by section four hundred one of this chapter and an additional annual service charge of fifteen dollars; PROVIDED, HOWEVER, NO SUCH REGISTRATION FEE OR SERVICE CHARGE SHALL BE IMPOSED FOR A MOTOR VEHICLE USED BY A MEMBER OF A VOLUNTEER AMBULANCE SERVICE IN THE PERFORMANCE OF HIS OR HER DUTIES.

S 6. Section 92-a of the general municipal law is amended by adding a new subdivision 8 to read as follows:

8. THE PROVISIONS OF THIS SECTION SHALL APPLY TO VOLUNTEER FIREFIGHTERS, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE OF THE VOLUNTEER FIREFIGHTERS' BENEFIT LAW, AND VOLUNTEER AMBULANCE WORKERS, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE OF THE VOLUNTEER AMBULANCE WORKERS' BENEFIT LAW; PROVIDED HOWEVER, THAT THE TOTAL OR PARTIAL COST OF PARTICIPATION SHALL BE BORNE BY SUCH MEMBER, UNLESS THE GOVERNING BOARD OF THE VOLUNTEER FIRE COMPANY, DEPARTMENT, OR CORPORATION OR THE GOVERNING BOARD OF THE VOLUNTEER AMBULANCE COMPANY, EITHER VOLUNTARY OR MUNICIPAL, SHALL ENACT PROVISIONS TO PROVIDE TOTAL OR PARTIAL CONTRIBUTION IN PAYMENT OF THE COST OF SUCH MEMBER'S PARTICIPATION IN SUCH PLAN.

S 7. The labor law is amended by adding a new section 202-l to read as follows:

S 202-L. AUTHORIZED ABSENCE. 1. IF AN EMPLOYEE IS ABSENT FROM OR LATE TO HIS OR HER EMPLOYMENT IN ORDER TO RESPOND TO AN EMERGENCY PRIOR TO THE TIME THE EMPLOYEE IS TO REPORT TO HIS OR HER EMPLOYMENT DUE TO HIS OR HER ENGAGING IN THE ACTUAL PERFORMANCE OF HIS OR HER DUTIES AS (A) A VOLUNTEER FIREFIGHTER, OR (B) AN ENROLLED MEMBER OF A VOLUNTEER AMBULANCE SERVICE PURSUANT TO ARTICLE THIRTY OF THE PUBLIC HEALTH LAW, AN EMPLOYER SHALL BE PROHIBITED FROM TERMINATING SUCH EMPLOYEE ON THE BASIS OF SUCH ABSENCE OR LATENESS.

2. THE ENTIRE PERIOD OF THE AUTHORIZED ABSENCE GRANTED PURSUANT TO THIS SECTION MAY BE CHARGED AGAINST ANY OTHER LEAVE SUCH EMPLOYEE IS OTHERWISE ENTITLED TO, AND SUCH AUTHORIZED ABSENCE SHALL INCLUDE TRAVEL BOTH TO AND FROM SUCH DUTIES PERFORMED IN HIS OR HER CAPACITY AS A VOLUNTEER. AT THE EMPLOYER'S REQUEST, THE EMPLOYEE MUST PROVIDE THE EMPLOYER WITH A STATEMENT FROM THE HEAD OF THE VOLUNTEER FIREFIGHTER OR VOLUNTEER AMBULANCE SERVICE, AS APPLICABLE, STATING THE EMPLOYEE RESPONDED TO AN EMERGENCY AND THE TIME OF SUCH RESPONSE.

S 8. Subdivisions 12 and 13 of section 2780 of the public health law, as added by chapter 584 of the laws of 1988, are amended and two new subdivisions 18 and 19 are added to read as follows:

12. "Health facility" means a hospital as defined in section two thousand eight hundred one of this chapter, NURSING HOME, HOSPICE, CLINIC, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, RESIDENTIAL OR OUTPATIENT DRUG AND ALCOHOL REHABILITATION SERVICE or facility providing care or treatment to persons with a mental disability as defined in article one of the mental hygiene law OR ANY OTHER HEALTH CARE INSTITUTION REQUIRED TO BE LICENSED IN THIS STATE WHETHER PRIVATELY OR PUBLICLY OPERATED.

13. "Health care provider" means any physician, nurse, EMERGENCY MEDICAL SERVICES WORKER, provider of services for the mentally disabled as defined in article one of the mental hygiene law, or other person involved in providing medical, nursing, counseling, or other health care or mental health service, including those associated with, or under contract to, a health maintenance organization or medical services plan.

18. "FIRST RESPONDER" MEANS POLICE, FIREFIGHTERS, RESCUE PERSONNEL OR ANY OTHER PERSON WHO PROVIDES EMERGENCY RESPONSE, FIRST AID OR OTHER MEDICALLY RELATED ASSISTANCE EITHER IN THE COURSE OF THEIR OCCUPATIONAL DUTIES OR AS A VOLUNTEER, WHICH MAY EXPOSE THEM TO CONTACT WITH A PERSON'S BODILY FLUIDS.

19. "SIGNIFICANT EXPOSURE" MEANS DIRECT CONTACT WITH BLOOD OR BODY FLUIDS OF A PATIENT IN A MANNER WHICH, ACCORDING TO THE MOST CURRENT GUIDELINES OF THE CENTERS FOR DISEASE CONTROL OF THE UNITED STATES PUBLIC HEALTH SERVICE, IS CAPABLE OF TRANSMITTING HUMAN IMMUNODEFICIENCY

VIRUS, INCLUDING, BUT NOT LIMITED TO, A PERCUTANEOUS INJURY, CONTACT OF MUCOUS MEMBRANES OR CONTACT OF SKIN (ESPECIALLY WHEN THE EXPOSED SKIN IS CHAPPED, ABRADED OR AFFLICTED WITH DERMATITIS) OR IF THE CONTACT IS PROLONGED OR INVOLVES AN EXTENSIVE AREA.

S 9. Subdivision 1 of section 2781 of the public health law, as amended by chapter 308 of the laws of 2010, is amended to read as follows:

1. Except as provided in section TWENTY-SEVEN HUNDRED EIGHTY-ONE-B OF THIS ARTICLE OR IN SECTION three thousand one hundred twenty-one of the civil practice law and rules, or unless otherwise specifically authorized or required by a state or federal law, no person shall order the performance of an HIV related test without first having received the written or, where authorized by this subdivision, oral, informed consent of the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, of a person authorized pursuant to law to consent to health care for such individual. When the test being ordered is a rapid HIV test, such informed consent may be obtained orally and shall be documented in the subject of the test's medical record by the person ordering the performance of the test.

S 10. The public health law is amended by adding a new section 2781-b to read as follows:

S 2781-B. CERTIFICATION OF SIGNIFICANT EXPOSURE AND TESTING PROCEDURES. 1. WHENEVER A HEALTH CARE PROVIDER OR FIRST RESPONDER EXPERIENCES AN EXPOSURE TO A PATIENT'S BLOOD OR BODILY FLUIDS DURING THE COURSE OF RENDERING HEALTH CARE OR OCCUPATIONAL SERVICES, THE INDIVIDUAL MAY REQUEST AN EVALUATION OF THE EXPOSURE, BY A PHYSICIAN, TO DETERMINE IF IT IS A SIGNIFICANT EXPOSURE. NO PHYSICIAN SHALL CERTIFY HIS OWN SIGNIFICANT EXPOSURE OR THAT OF ANY OF HIS EMPLOYEES. SUCH REQUESTS SHALL BE MADE WITHIN SEVENTY-TWO HOURS OF THE EXPOSURE.

2. WITHIN SEVENTY-TWO HOURS OF THE REQUEST, THE PHYSICIAN SHALL MAKE WRITTEN CERTIFICATION OF THE SIGNIFICANCE OF THE EXPOSURE.

3. IF THE PHYSICIAN DETERMINES THAT THE HEALTH CARE PROVIDER OR FIRST RESPONDER HAS EXPERIENCED A SIGNIFICANT EXPOSURE, THE PHYSICIAN SHALL OFFER THE EXPOSED INDIVIDUAL THE OPPORTUNITY TO UNDERGO TESTING FOLLOWING THE PROCEDURE OUTLINED IN SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE OF THIS ARTICLE.

S 11. The volunteer firefighters' benefit law is amended by adding a new section 26 to read as follows:

S 26. EXPOSURE TO BLOOD OR BODILY FLUIDS. IF, AS A RESULT OF SERVICES PERFORMED IN THE LINE OF DUTY, A VOLUNTEER FIREFIGHTER EXPERIENCES AN EXPOSURE TO A PATIENT'S OR VICTIM'S BLOOD OR BODILY FLUIDS, THE EXECUTIVE OFFICER OF THE FIRE DEPARTMENT OR FIRE COMPANY OF WHICH HE OR SHE IS A MEMBER MAY AUTHORIZE THE VOLUNTEER FIREFIGHTER TO OBTAIN THE EVALUATION AND TESTING OF THE EXPOSURE SET FORTH IN SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE-B OF THE PUBLIC HEALTH LAW. ANY SUCH AUTHORIZATION MAY BE GRANTED PRIOR TO THE GIVING OF NOTICE UNDER THIS CHAPTER. SUCH EVALUATION AND TESTING OF THE EXPOSURE SHALL BE A COVERED BENEFIT UNDER THIS CHAPTER.

S 12. The volunteer ambulance workers' benefit law is amended by adding a new section 26 to read as follows:

S 26. EXPOSURE TO BLOOD OR BODILY FLUIDS. IF, AS A RESULT OF SERVICES PERFORMED IN THE LINE OF DUTY, A VOLUNTEER AMBULANCE WORKER EXPERIENCES AN EXPOSURE TO A PATIENT'S OR VICTIM'S BLOOD OR BODILY FLUIDS, THE EXECUTIVE OFFICER OF THE AMBULANCE COMPANY OF WHICH HE OR SHE IS A MEMBER MAY AUTHORIZE THE VOLUNTEER AMBULANCE WORKER TO OBTAIN THE EVALUATION AND TESTING OF THE EXPOSURE SET FORTH IN SECTION TWENTY-SEVEN HUNDRED

EIGHTY-ONE-B OF THE PUBLIC HEALTH LAW. ANY SUCH AUTHORIZATION MAY BE GRANTED PRIOR TO THE GIVING OF NOTICE UNDER THIS CHAPTER. SUCH EVALUATION AND TESTING OF THE EXPOSURE SHALL BE A COVERED BENEFIT UNDER THIS CHAPTER.

S 13. The county law is amended by adding a new section 307-a to read as follows:

S 307-A. PRIORITY ACCESS TO WIRELESS TELEPHONE AND TEXT MESSAGING SERVICE FOR EMERGENCY SERVICE. EVERY WIRELESS TELEPHONE SERVICE SUPPLIER AS DEFINED IN SECTION THREE HUNDRED TWENTY-FIVE OF THIS CHAPTER, OFFERING WIRELESS TELEPHONE AND TEXT MESSAGING SERVICE SHALL, TO THE EXTENT TECHNICALLY FEASIBLE, MAKE AVAILABLE TO (1) ANY WIRELESS TELEPHONE CUSTOMER DIALING 911 AND (2) EMERGENCY SERVICE PROVIDERS INCLUDING, BUT NOT LIMITED TO, FIRE DEPARTMENTS AND COMPANIES, EMERGENCY MEDICAL SERVICES AND LAW ENFORCEMENT AGENCIES, PRIORITY ACCESS TO WIRELESS TELEPHONE AND TEXT MESSAGING SERVICE IN ORDER TO ASSURE ITS AVAILABILITY DURING A PUBLIC EMERGENCY. SUCH WIRELESS TELEPHONE SERVICE SUPPLIERS MAY CONSULT WITH THE NEW YORK STATE 911 BOARD, STATE FIRE ADMINISTRATOR, NEW YORK STATE EMERGENCY MEDICAL SERVICES COUNCIL AND SUCH LAW ENFORCEMENT OFFICIALS AS APPROPRIATE IN ESTABLISHING SUCH PRIORITY ACCESS.

S 14. Section 4 of chapter 668 of the laws of 1977, amending the volunteer firefighters' benefit law, relating to disability due to disease or malfunction of the heart or coronary arteries, as amended by chapter 383 of the laws of 2010, is amended to read as follows:

[S 4. The provisions of section two of this act shall remain in full force and effect to and including the thirtieth day of June, 2015.]

S 15. Notwithstanding any other provision of law to the contrary, the payment of tolls on any highway, bridge, tunnel or other toll road within this state shall not apply to a voluntary ambulance service operating pursuant to a valid operating certificate as described in subdivision 1 of section 3005 of the public health law while such vehicle is responding to an emergency or furnishing voluntary ambulance services.

S 16. This act shall take effect immediately, except that:

a. sections three, four and five of this act shall apply to fees, charges and taxes imposed on or after such effective date; and

b. section six of this act shall take effect on the one hundred twentieth day after it shall have become a law. The rules and regulations necessary to implement the provisions of section six of this act on its effective date are authorized and directed to be promulgated on or before such date.