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

966

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. LIBOUS -- 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 prohibiting the sale or purchase of alcoholic beverages, tobacco products or lottery tickets with public assistance benefits and prohibiting use of or access to such benefits in a casino, liquor store or adult entertainment facility; and to amend the state finance law, in relation to establishing the public assistance integrity fund

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 "public assistance integrity act".

S 2. The social services law is amended by adding two new sections 147-a and 147-b to read as follows:

S 147-A. PENALTIES FOR THE PURCHASE OR SALE OF ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS OR LOTTERY TICKETS WITH PUBLIC ASSISTANCE BENEFITS. 1. FOR THE PURPOSES OF THIS SECTION, "PUBLIC ASSISTANCE BENEFITS" MEANS MONEY OR PROPERTY PROVIDED DIRECTLY OR INDIRECTLY THROUGH PROGRAMS OF THE FEDERAL GOVERNMENT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND ADMINISTERED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE OR SOCIAL SERVICES DISTRICTS.

2. NO RECIPIENT OF PUBLIC ASSISTANCE BENEFITS SHALL USE ALL OR ANY PORTION OF SUCH BENEFITS FOR THE PURCHASE OF ANY ALCOHOLIC BEVERAGE, TOBACCO PRODUCT OR LOTTERY TICKET. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL UPON THE FIRST SUCH VIOLATION BE DISQUALIFIED FROM RECEIVING PUBLIC ASSISTANCE BENEFITS BY MEANS OF DIRECT CASH PAYMENT OR ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE FOR A PERIOD OF ONE MONTH, UPON A FINDING OF A SECOND SUCH VIOLATION BE DISQUALIFIED FROM RECEIVING PUBLIC ASSISTANCE BENEFITS BY MEANS OF DIRECT CASH PAYMENT OR ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE FOR A

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

PERIOD OF THREE MONTHS, AND UPON A FINDING OF A THIRD OR SUBSEQUENT SUCH VIOLATION SHALL BE PERMANENTLY DISQUALIFIED FROM RECEIVING PUBLIC ASSISTANCE BENEFITS BY MEANS OF DIRECT CASH PAYMENT OR ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE. SUCH PERSON SHALL HAVE THE RIGHT TO A FAIR HEARING PURSUANT TO SECTION TWENTY-TWO OF THIS CHAPTER. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR ANY OTHER LAW TO THE CONTRARY, NO APPLICANT FOR PUBLIC ASSISTANCE BENEFITS SHALL BE APPROVED UNLESS HE OR SHE ATTESTS TO THE FACT THAT ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS AND LOTTERY TICKETS ARE PRODUCTS WHICH ARE PROHIBITED FROM BEING PURCHASED WITH SUCH BENEFITS PURSUANT TO THIS SECTION. SUCH ATTESTATION SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER OF TEMPORARY AND DISABILITY ASSISTANCE.

3. NO PERSON ENGAGED IN RETAIL SALES, OR ANY AGENT OR EMPLOYEE THEREOF, SHALL SELL OR OFFER FOR SALE ANY ALCOHOLIC BEVERAGE, TOBACCO PRODUCT OR LOTTERY TICKET TO ANY OTHER PERSON IN EXCHANGE FOR OR FOR CONSIDERATION OF PUBLIC ASSISTANCE BENEFITS BY MEANS OF AN ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL BE SUBJECT TO A CIVIL FINE OF ONE HUNDRED DOLLARS FOR THE FIRST SUCH VIOLATION, A CIVIL FINE OF FIVE HUNDRED DOLLARS FOR THE SECOND SUCH VIOLATION WITHIN ANY FIVE YEAR PERIOD OF TIME, AND UPON A FINDING OF A THIRD OR A SUBSEQUENT VIOLATION WITHIN ANY FIVE YEAR PERIOD OF TIME THE LICENSE, PERMIT OR CERTIFICATION ISSUED TO SUCH PERSON PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW, AND/OR ARTICLE TWENTY AND/OR ARTICLE THIRTY-FOUR OF THE TAX LAW SHALL BE SUSPENDED.

4. IN ANY PROCEEDING BROUGHT AGAINST THE OPERATOR OF A RETAIL BUSINESS ENGAGED IN RETAIL SALES, PURSUANT TO SUBDIVISION THREE OF THIS SECTION WHEN THE UNLAWFUL SALE WAS MADE BY AN AGENT OR EMPLOYEE OF THE OPERATOR OF SUCH BUSINESS, IT SHALL BE AN AFFIRMATIVE DEFENSE IN FAVOR OF SUCH OPERATOR THAT, AT THE TIME OF SUCH ALLEGED VIOLATION, THE BUSINESS OPERATOR CAN AND DOES PRODUCE PROOF THAT THE AGENT OR EMPLOYEE WHO COMMITTED SUCH VIOLATION COMPLETED A TRAINING PROGRAM ESTABLISHED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

5. A. THE COMMISSIONER OF TEMPORARY AND DISABILITY ASSISTANCE SHALL PROMULGATE RULES AND REGULATIONS THAT WOULD DEVELOP AND ESTABLISH CRITERIA FOR TRAINING PROGRAMS ON THE PROHIBITION ON THE SALE AND PURCHASE OF ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS AND LOTTERY TICKETS IN EXCHANGE FOR PUBLIC ASSISTANCE BENEFITS. SUCH TRAINING MAY BE GIVEN AND ADMINISTERED BY SCHOOLS; OTHER ENTITIES INCLUDING TRADE ASSOCIATIONS WHOSE MEMBERS ARE ENGAGED IN THE RETAIL SALE OF ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS AND/OR LOTTERY TICKETS; AND NATIONAL AND REGIONAL FRANCHISORS WITH AT LEAST FIVE FRANCHISES IN THE STATE WHICH ENGAGE IN THE SALES OF ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS AND/OR LOTTERY TICKETS. THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO ALL CERTIFIED TRAINING PROGRAMS ON THE PROHIBITION ON THE SALE AND PURCHASE OF ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS AND/OR LOTTERY TICKETS IN EXCHANGE FOR PUBLIC ASSISTANCE BENEFITS. CERTIFICATES OF APPROVAL MAY BE REVOKED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE FOR FAILURE TO ADHERE TO THE COMMISSIONER'S RULES AND REGULATIONS. SUCH RULES AND REGULATIONS SHALL AFFORD THOSE WHO HAVE BEEN ISSUED A CERTIFICATE OF APPROVAL AN OPPORTUNITY FOR A HEARING PRIOR TO ANY DETERMINATION OF WHETHER SUCH CERTIFICATE SHOULD BE REVOKED. THE COMMISSIONER OF TEMPORARY AND DISABILITY ASSISTANCE SHALL ADOPT RULES TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, INCLUDING MINIMUM REQUIREMENTS FOR THE CURRICULUM OF EACH SUCH TRAINING PROGRAM AND THE REGULAR TRAINING OF AGENTS AND EMPLOYEES HOLDING CERTIFICATES OF COMPLETION OR RENEWAL CERTIFICATES.

B. TO EFFECTUATE THE PROVISIONS OF THIS SUBDIVISION, THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE IS EMPOWERED TO REQUIRE IN CONNECTION WITH AN APPLICATION THE SUBMISSION OF SUCH INFORMATION AS SUCH OFFICE MAY DIRECT; TO PRESCRIBE FORMS OF APPLICATIONS AND OF ALL REPORTS IT DEEMS NECESSARY TO BE MADE BY ANY APPLICANT OR CERTIFICATE HOLDER; TO CONDUCT INVESTIGATIONS, TO REQUIRE MAINTENANCE OF SUCH BOOKS AND RECORDS AS SUCH OFFICE MAY DIRECT; AND TO CANCEL, REVOKE OR SUSPEND FOR CAUSE ANY CERTIFICATE PROVIDED FOR IN THIS SUBDIVISION.

C. EACH ENTITY AUTHORIZED TO GIVE AND ADMINISTER A TRAINING PROGRAM ON THE PROHIBITION ON THE SALE AND PURCHASE OF ALCOHOLIC BEVERAGES, TOBACCO PRODUCTS AND LOTTERY TICKETS IN EXCHANGE FOR PUBLIC ASSISTANCE BENEFITS SHALL ISSUE CERTIFICATES OF COMPLETION TO ALL PERSONS ENGAGED IN RETAIL SALES, AND THE AGENTS AND EMPLOYEES THEREOF WHO SUCCESSFULLY COMPLETE SUCH APPROVED TRAINING PROGRAM. SUCH ENTITY SHALL REGULARLY TRANSMIT TO THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE THE NAMES, ADDRESSES AND DATES OF ATTENDANCE OF ALL SUCH PERSONS, AGENTS AND EMPLOYEES WHO SUCCESSFULLY COMPLETE AN APPROVED TRAINING PROGRAM. SUCH TRANSMITTAL SHALL BE IN A FORM AND MANNER PRESCRIBED BY SUCH OFFICE. A CERTIFICATE OF COMPLETION OR RENEWAL THEREOF ISSUED BY AN ENTITY AUTHORIZED TO GIVE AND ADMINISTER A TRAINING PROGRAM PURSUANT TO THIS SUBDIVISION TO PERSONS ENGAGED IN RETAIL SALES, AND THE AGENTS AND EMPLOYEES THEREOF SHALL NOT BE INVALIDATED BY A CHANGE OF EMPLOYER. ATTENDANCE AT ANY COURSE ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE IN PERSON, THROUGH DISTANCE LEARNING METHODS OR THROUGH AN INTERNET BASED ONLINE PROGRAM. EACH CERTIFICATE OF APPROVAL, RENEWAL AND COMPLETION THEREOF SHALL BE ISSUED FOR A PERIOD OF THREE YEARS.

S 147-B. PROHIBITION OF USE OF PUBLIC ASSISTANCE BENEFITS IN CERTAIN FACILITIES. 1. FOR THE PURPOSES OF THIS SECTION:

A. "ELECTRONIC BENEFIT TRANSFER TRANSACTION" MEANS THE USE OF A CREDIT CARD OR DEBIT CARD SERVICE, AUTOMATED TELLER MACHINE, POINT-OF-SALE TERMINAL OR ACCESS TO AN ONLINE SYSTEM FOR THE WITHDRAWAL OF FUNDS OR THE PROCESSING OF A PAYMENT FOR MERCHANDISE OR A SERVICE.

B. "CASINO" MEANS ANY CASINO, GAMING ESTABLISHMENT OR GAMBLING CASINO, BUT SHALL NOT INCLUDE:

(I) ANY RETAIL STORE WHICH SELLS GROCERIES INCLUDING STAPLE FOODS (WITHIN THE MEANING OF SECTION 3(R) OF THE FOOD AND NUTRITION ACT OF 2008 (7 U.S.C. 2012 (R)), AND WHICH ALSO OFFERS OR IS LOCATED WITHIN THE SAME BUILDING OR COMPLEX AS CASINO, GAMBLING OR GAMING ACTIVITIES; OR

(II) ANY OTHER ESTABLISHMENT THAT OFFERS CASINO, GAMBLING OR GAMING ACTIVITIES INCIDENTAL TO THE PRINCIPAL PURPOSE OF THE BUSINESS OF SUCH ESTABLISHMENT.

C. "LIQUOR STORE" MEANS ANY RETAIL ESTABLISHMENT WHICH EXCLUSIVELY OR PRIMARILY SELLS ALCOHOLIC BEVERAGES. SUCH TERM SHALL NOT INCLUDE ANY GROCERY STORE WHICH SELLS BOTH ALCOHOLIC BEVERAGES AND STAPLE FOODS (WITHIN THE MEANING OF SECTION 3(R) OF THE FOOD AND NUTRITION ACT OF 2008 (7 U.S.C. 2012 (R)).

D. "PUBLIC ASSISTANCE BENEFITS" MEANS MONEY OR PROPERTY PROVIDED DIRECTLY OR INDIRECTLY THROUGH PROGRAMS OF THE FEDERAL GOVERNMENT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND ADMINISTERED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE OR SOCIAL SERVICES DISTRICTS.

2. NO RECIPIENT OF PUBLIC ASSISTANCE BENEFITS SHALL BY MEANS OF AN ELECTRONIC BENEFIT TRANSFER TRANSACTION WITHDRAW OR USE SUCH BENEFITS IN ANY LIQUOR STORE, CASINO OR RETAIL ESTABLISHMENT WHICH PROVIDES ADULT-ORIENTED ENTERTAINMENT IN WHICH PERFORMERS DISROBE OR PERFORM IN AN UNCLOTHED STATE FOR ENTERTAINMENT. ANY PERSON WHO VIOLATES THE

PROVISIONS OF THIS SUBDIVISION SHALL UPON THE FIRST SUCH VIOLATION BE DISQUALIFIED FROM RECEIVING PUBLIC ASSISTANCE BENEFITS BY MEANS OF DIRECT CASH PAYMENT OR ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE FOR A PERIOD OF ONE MONTH, UPON A FINDING OF A SECOND SUCH VIOLATION SHALL BE DISQUALIFIED FROM RECEIVING PUBLIC ASSISTANCE BENEFITS BY MEANS OF DIRECT CASH PAYMENT OR ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE FOR A PERIOD OF THREE MONTHS, AND UPON A FINDING OF A THIRD OR SUBSEQUENT SUCH VIOLATION SHALL BE PERMANENTLY DISQUALIFIED FROM RECEIVING PUBLIC ASSISTANCE BENEFITS BY MEANS OF DIRECT CASH PAYMENT OR ELECTRONIC BENEFITS TRANSFER ACCESS DEVICE. SUCH PERSON SHALL HAVE THE RIGHT TO A FAIR HEARING PURSUANT TO SECTION TWENTY-TWO OF THIS CHAPTER.

3. THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL ESTABLISH AND IMPLEMENT RULES AND REGULATIONS PROHIBITING RECIPIENTS OF PUBLIC ASSISTANCE BENEFITS, BY MEANS OF ANY ELECTRONIC BENEFIT TRANSFER TRANSACTION, FROM WITHDRAWING OR USING ANY SUCH BENEFITS IN ANY LIQUOR STORE, CASINO OR RETAIL ESTABLISHMENT WHICH PROVIDES ADULT-ORIENTED ENTERTAINMENT IN WHICH PERFORMERS DISROBE OR PERFORM IN AN UNCLOTHED STATE FOR ENTERTAINMENT.

S 3. The state finance law is amended by adding a new section 85 to read as follows:

S 85. PUBLIC ASSISTANCE INTEGRITY FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE "PUBLIC ASSISTANCE INTEGRITY FUND".

2. THE PUBLIC ASSISTANCE INTEGRITY FUND SHALL CONSIST OF MONIES RECEIVED BY THE STATE FROM FINES AND FEES IMPOSED PURSUANT TO SECTIONS ONE HUNDRED FORTY-SEVEN-A AND ONE HUNDRED FORTY-SEVEN-B OF THE SOCIAL SERVICES LAW, AND ALL OTHER MONIES APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

3. MONIES OF THE PUBLIC ASSISTANCE INTEGRITY FUND, FOLLOWING APPROPRIATION THEREOF, SHALL BE SOLELY MADE AVAILABLE TO THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE FOR EXPENDITURE FOR THE COSTS OF SUCH OFFICE ASSOCIATED WITH THE PREVENTION OF MISUSE OF PUBLIC ASSISTANCE BENEFITS INCLUDING, BUT NOT LIMITED TO, ADMINISTRATION, OVERSIGHT, TRAINING AND ENFORCEMENT RELATED ACTIVITIES.

S 4. This act shall take effect February 22, 2014; provided that, effective immediately, any actions necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.