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

February 16, 2016

Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Veterans' Affairs

AN ACT to amend the executive law, in relation to enacting the "New York State Restoration of Honor Act"

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

Section 1. This act shall be known and may be cited as the "New York State Restoration of Honor Act".

S 2. The executive law is amended by adding a new article 17-C to read as follows:

ARTICLE 17-C

NEW YORK STATE RESTORATION OF HONOR ACT

SECTION 369-L. DEFINITIONS.

369-M. ELIGIBILITY OF DISCHARGED LGBT VETERANS FOR STATE BENEFITS.

369-N. ELIGIBILITY CERTIFICATION FOR DISCHARGED LGBT VETERANS.

369-O. COOPERATION AND FACILITIES OF OTHER DEPARTMENTS.

S 369-L. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "DIVISION" MEANS THE DIVISION OF VETERANS' AFFAIRS.

2. "STATE DIRECTOR" MEANS THE NEW YORK STATE DIRECTOR OF VETERANS' AFFAIRS.

3. "VETERAN" MEANS A RESIDENT OF THIS STATE WHO HAS SERVED IN THE ACTIVE MILITARY OR NAVAL SERVICE OF THE UNITED STATES DURING A WAR IN WHICH THE UNITED STATES ENGAGED AND WHO HAS BEEN RELEASED FROM SUCH SERVICE.

4. "DISCHARGED LGBT VETERAN" SHALL MEAN A VETERAN WHO WAS DISCHARGED LESS THAN HONORABLY FROM MILITARY OR NAVAL SERVICE DUE TO THEIR SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR STATEMENTS, CONSENSUAL SEXUAL CONDUCT, OR CONSENSUAL ACTS RELATING TO SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR THE DISCLOSURE OF SUCH STATEMENTS, CONDUCT, OR ACTS, THAT WERE PROHIBITED BY THE ARMED FORCES AT THE TIME OF DISCHARGE.

5. "ARMED FORCES" MEANS THE MILITARY AND NAVAL FORCES OF THE UNITED STATES.

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

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S 369-M. ELIGIBILITY OF DISCHARGED LGBT VETERANS FOR STATE BENEFITS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO VETERAN SHALL BE DENIED ELIGIBILITY FOR ANY PROGRAM, SERVICE, BENEFIT, OR ACTIVITY OF DEPARTMENTS, DIVISIONS, BOARDS, BUREAUS, COMMISSIONS OR AGENCIES OF THE STATE OR OF ANY POLITICAL SUBDIVISION OF THE STATE THAT PROVIDES SERVICES OR FACILITIES TO VETERANS FOR WHICH THEY WOULD OTHERWISE BE ELIGIBLE, SOLELY ON THE BASIS OF THE VETERAN'S STATUS AS A DISCHARGED LGBT VETERAN.

2. A CERTIFICATE OF ELIGIBILITY ISSUED BY THE DIVISION TO A DISCHARGED LGBT VETERAN PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-N OF THIS ARTICLE SHALL BE SUFFICIENT PROOF OF ELIGIBILITY FOR ANY SUCH PROGRAM, SERVICE, BENEFIT, OR ACTIVITY.

S 369-N. ELIGIBILITY CERTIFICATION FOR DISCHARGED LGBT VETERANS. 1. TO EFFECTUATE THE PURPOSES OF SECTION THREE HUNDRED SIXTY-NINE-M OF THIS ARTICLE, THE DIVISION SHALL ESTABLISH A CONSISTENT AND UNIFORM PROCESS FOR THE ISSUANCE OF CERTIFICATES OF ELIGIBILITY FOR DISCHARGED LGBT VETERANS TO ACT AS PROOF OF ELIGIBILITY FOR ANY PROGRAM, SERVICE, BENEFIT, OR ACTIVITY OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE.

2. A DISCHARGED LGBT VETERAN SEEKING SUCH A CERTIFICATE OF ELIGIBILITY SHALL BE REQUIRED TO PROVIDE EITHER:

(A) DOCUMENTS CONSISTING OF: (I) A COPY OF THE VETERAN'S DISCHARGE PAPERS; (II) A PERSONAL AFFIDAVIT OF THE CIRCUMSTANCES SURROUNDING THE DISCHARGE; AND (III) ANY RELEVANT RECORDS PERTAINING TO THE DISCHARGE; OR

(B) A PERSONAL AFFIDAVIT: (I) OF THE CIRCUMSTANCES SURROUNDING THE DISCHARGE; AND (II) CERTIFYING THAT THE VETERAN DOES NOT HAVE THE DOCUMENTS SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION.

3. IF A DISCHARGED LGBT VETERAN PROVIDES THE DIVISION WITH AN AFFIDAVIT DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, THE DIVISION MAY ATTEMPT TO RETRIEVE THE DOCUMENTS SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION FROM THE UNITED STATES DEPARTMENT OF DEFENSE. IN NO CASE, HOWEVER, SHALL THE ABSENCE OF SUCH DOCUMENTS BE CONSIDERED A REASON TO DENY A VETERAN A CERTIFICATE PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

4. A DISCHARGED LGBT VETERAN SHALL ONLY RECEIVE SUCH CERTIFICATION FROM THE DIVISION IF, WITH RESPECT TO THEIR ORIGINAL DISCHARGE, THERE WERE NO AGGRAVATING CIRCUMSTANCES THAT WOULD HAVE INDEPENDENTLY LED TO A DISCHARGE CHARACTERIZATION THAT WAS LESS THAN HONORABLE.

5. THE DIVISION SHALL MAKE AVAILABLE INFORMATION ABOUT THE PROCESS FOR OBTAINING CERTIFICATES OF ELIGIBILITY FOR DISCHARGED LGBT VETERANS ON THE DIVISION'S WEBSITE.

6. THE STATE DIRECTOR SHALL PROMULGATE AND ADOPT SUITABLE RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

S 369-O. COOPERATION AND FACILITIES OF OTHER DEPARTMENTS. TO EFFECTUATE THE PURPOSES OF THIS ARTICLE, THE GOVERNOR MAY DIRECT ANY RELEVANT DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION OR AGENCY OF THE STATE, OR OF ANY POLITICAL SUBDIVISION THEREOF, TO COOPERATE WITH AND ASSIST AND ADVISE THE DIVISION IN THE PERFORMANCE OF ITS DUTIES AND FUNCTIONS, AND TO PROVIDE SUCH FACILITIES, INCLUDING PERSONNEL, MATERIALS AND OTHER ASSISTANCE AND DATA AS WILL ENABLE THE DIVISION OR ANY OF ITS AGENCIES TO PROPERLY CARRY OUT ITS ACTIVITIES AND EFFECTUATE ITS PURPOSES UNDER THIS ARTICLE.

S 3. Subdivision 14 of section 353 of the executive law, as added by chapter 444 of the laws of 1988 and as renumbered by chapter 652 of the laws of 2007, is amended to read as follows:

14. To establish, operate and maintain a toll-free telephone number, under the supervision of the state director, for the purpose of providing callers thereof with information relating to services provided by the division as well as services and programs provided to veterans by other agencies, bureaus and organizations AND BY OBTAINING CERTIFICATES OF ELIGIBILITY FOR DISCHARGED LGBT VETERANS PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-N OF THIS CHAPTER. Such services and programs shall include, but not be limited to, educational and job benefits, tuition assistance programs, survivor benefits, health and mental health referrals and real property tax exemptions.

S 4. This act shall take effect on the ninetieth day after it shall have become a law; provided that effective immediately, the division of veterans' affairs is authorized to implement rules and regulations for the timely implementation of this act on its effective date.