STATE OF NEW YORK

9037--A

IN ASSEMBLY

January 27, 2022

Introduced by M. of A. REYES, MITAYNES, NIOU, MAMDANI, JACKSON, TAPIA, ANDERSON, CRUZ, SIMON, HEVESI, GONZALEZ-ROJAS, BURDICK, BICHOTTE HERMELYN, EPSTEIN, GALLAGHER, SEPTIMO, KELLES, GLICK, GIBBS, FORREST, WALKER, KIM, FERNANDEZ, RAMOS, WEPRIN, SEAWRIGHT, DE LOS SANTOS, L. ROSENTHAL, BARNWELL -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to establishing the excluded worker unemployment program; to amend the state finance law, in relation to establishing the excluded worker unemployment program fund; and making an appropriation therefor

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 "excluded worker unemployment program act".

§ 2. The labor law is amended by adding a new section 591-b to read as follows:

§ 591-b. Excluded worker unemployment program. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Total unemployment" means a month in which the applicant has no employment earnings for at least three of the four full calendar weeks in that month.

(b) "Partial unemployment" means a month in which earnings are sixty percent less than an applicant's average monthly earnings during the prior taxable year, or, if the applicant did not have earnings in the prior taxable year, the average monthly earnings in the current year prior to the loss of work-related earnings.

(c) "Non-payroll check" means a personal check, check issued from a business's bank account, or other check that does not indicate the hours worked, pay rate, deductions, or tax withholdings or otherwise comply with the requirements of section one hundred ninety-five of this chapter.

(d) "Domestic worker" shall have the same meaning as defined in subdivision sixteen of section two of this chapter.

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

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(e) "Landscaping worker" means a person engaging in commercial landscaping services primarily involving the care and maintenance of yards, gardens, or other outdoor landscapes for clients, including private households. Such services include, but are not limited to, lawn care, gardening, and the pruning or removal of trees, shrubs, or plant waste.

(f) "Day laborer" means an individual who provides labor or employment that is occasional or irregular for which an individual is employed for not longer than the time period required to complete the assignment for which the individual is hired and in which wage payments are made directly to the day laborer or indirectly by the day labor service agency or the third-party employer for work undertaken by a day laborer. Day labor does not include labor or employment of a professional or clerical nature.

(g) "Street vendor" means a person who sells food or merchandise from a food truck, pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, other nonmotorized conveyance, or from one's person, upon a public street, sidewalk or other pedestrian path.

(h) "Construction worker" means an individual employed to provide construction labor or services.

(i) "Construction" means constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating or demolition of any building, structure, or improvement, or relating to the excavation of or other development or improvement to land.

(j) "Construction labor provider" means a person who employs and supplies a covered construction worker to a third-party client for the performance of construction work or manual labor for a construction project of such client on a site in the city, in exchange for compensation from such third-party client, provided that the completion of such project is directed by such client or such client's contractor and not such person. The term "construction labor provider" does not mean: (i) an employment agency or an employee fee paid employment agency, as defined in article eleven of the general business law; or (ii) a professional employer organization, as defined in article thirty-one of this chapter; or (iii) a construction subcontractor that is responsible for and performs any of the following: (1) performing construction work on a project in accordance with a written contract for a defined scope of construction work at a fixed price; (2) obtaining necessary licenses to perform construction services under the entity's name; (3) exclusively controlling the subcontractor's workers, including having hiring and firing authority and direction of methods and means of construction work performed on the construction project; (4) paying wages and fringe benefits to workers by the subcontractor and not any other person or entity, and maintaining required employment and payroll records by the subcontractor; (5) purchasing the majority of materials, supplies and tools for construction work performed by the subcontractor on the project; and (6) maintaining workers' compensation and unemployment insurance coverage for periods preceding, during and succeeding the term of the construction project for the type and scope of construction work performed by the subcontractor on the project; or (iv) a website, mobile application, or other internet service.

(k) "Home improvement contractor" means any person, other than a bona fide employee of the owner, who owns, operates, maintains, conducts, controls or transacts a home improvement business and who undertakes or offers to undertake or agrees to perform any home improvement or solicits any contract therefor, whether or not such person is licensed or

subject to licensing requirements, and whether or not such person is a prime contractor or subcontractor with respect to the owner.

(l) "Home improvement" means the construction, repair, replacement, remodeling, alteration, conversion, rehabilitation, renovation, modernization, improvement, or addition to any land or building, or that portion thereof which is used or designed to be used as a residence or dwelling place and shall include but not be limited to the construction, erection, replacement, or improvement of driveways, swimming pools, terraces, patios, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements to structures or upon land which is adjacent to a dwelling house. "Home improvement" shall not include: (i) the construction of a new home or building or work done by a contractor in compliance with a guarantee of completion of a new building project; (ii) the sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials; (iii) residences owned by or controlled by the state or any municipal subdivision thereof; or (iv) painting or decorating of a building, residence, home or apartment, when not incidental or related to home improvement work as herein defined. Without regard to the extent of affixation, "home improvement" shall also include the installation of central heating or air conditioning systems, central vacuum cleaning systems, storm windows, awnings, and communication systems.

(m) "Contractor" means any person or salesperson, other than a bona fide employee of the owner, who owns, operates, maintains, conducts, controls or transacts a home improvement business and who undertakes or offers to undertake or agrees to perform any home improvement or solicits any contract therefor, whether or not such person is licensed or subject to the licensing requirements of this section, and whether or not such person is a prime contractor or subcontractor with respect to the owner.

(n) "Excluded worker unemployment program navigator" means a non-profit organization that is certified by the department to help guide applicants to determine their eligibility for the excluded worker unemployment program or unemployment insurance benefits.

(o) "Program year" is the twelve month period beginning April first.

2. The department is hereby authorized, empowered and mandated to establish and operate an excluded worker unemployment program as authorized pursuant to this section. Such program shall be established by April first, two thousand twenty-three.

3. For the purposes of this section, the term "excluded worker unemployment program" means a program under which assistance is available to applicants who reside in the state and:

(a) have not received unemployment insurance benefits as described in this article, including benefits payable to federal civilian employees and to ex-servicemen and servicewomen pursuant to Chapter 85 of the United States Code, benefits authorized to be used for the self-employment assistance program pursuant to the Federal-State Extended Unemployment Compensation Act of 1970 in the twelve-month period directly prior to their application for the excluded worker unemployment program; or any other benefits distributed to New Yorkers through the federal unemployment account; or

(b) received in error payments from the sources in paragraph (a) of this subdivision and such payments were recovered or are recoverable by the administering agency; and

(c) are covered employees for the purposes of the excluded worker unemployment program. For the purposes of this subdivision, "covered employees" mean persons who:

(i) have performed services of employment pursuant to section five hundred eleven of this article and are ineligible for benefits under this article because of provisions related to subdivision nine of section five hundred ninety of this article or because they are deemed unavailable to work due to a lack of work authorization; or

(ii) have performed any of the following services of employment as defined by section five hundred eleven of this article:

(1) domestic workers who are employed by a family or individual household; or

(2) day laborers; or

(3) workers employed to provide construction, landscaping, or groundskeeping labor or services and hired by a construction labor provider, a private household or home improvement contractor, provided that:

(A) they were paid in cash or paid with a personal check or non-payroll check; and

(B) their wages were not reported to the tax commission by an "employer," as defined under section five hundred twelve of this article and as required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law; and

(C) they did not receive a wage statement from such "employer" as required under section one hundred ninety-five of this chapter; and

(D) they did not receive an internal revenue service form 1099-nec for non-employment services for compensation earned during the most recent taxable year from such employer, or performed services that are customarily recorded through a form 1099-nec; or

(iii) is a bona fide self-employed worker, regardless of citizenship or immigration status. For the purposes of this subparagraph, "bona fide self-employed worker" means:

(1) the individual is free from control and direction in performing the job, both under his or her contract and in fact, and

(2) the service is performed outside the usual course of business for which the service is performed, and

(3) the individual is customarily engaged in an independently established trade, occupation, profession, or business that is similar to the labor or service at issue.

For the purposes of this subparagraph, street vendors shall be considered to be bona fide self-employed workers;

(d) suffered a loss of work-related earnings leading to a period of total or partial unemployment during the prior calendar month;

(e) prior to suffering the loss of work-related earnings, had worked in at least three of the previous twelve months and had earned at least four thousand fifty dollars in gross earnings; provided, however, that in the case of a worker described in subparagraph (iii) of paragraph (c) of this subdivision such earnings shall be calculated on a net basis;

(f) whose reason for loss of work-related earnings would not have been disqualifying under section five hundred ninety-three of this article;

(g) who are capable of work or who are ready, willing and able to work, regardless of citizenship or immigration status, in their usual employment or in any other for which they are reasonably fitted by training and experience;

(h) whose principal place of residence is in New York state;

(i) provide suitable documentation pursuant to subdivision four of this section;

(j) have earned no more than fifty-six thousand three hundred ninety-three dollars in the prior taxable year; provided, however, that:

(i) this amount shall be updated on the next January first after the effective date of this section and set as the median annual employment earnings for a full-time worker living in the state as calculated by the United States census bureau, and updated on each January first thereafter;

(ii) for the purposes of workers becoming eligible under subparagraph (iii) of paragraph (c) of this subdivision, the amount shall be set as forty-five thousand one hundred fourteen dollars in net earnings; and

(k) no state or local public benefit program shall require an applicant or recipient to apply for the excluded worker unemployment program as a condition of eligibility.

4. All documents submitted by an applicant to establish identity and residency shall be: (i) certified by the issuing agency; (ii) unexpired unless specifically noted; (iii) in English, or accompanied by an English language translation; and (iv) not mutilated or damaged. Applicants shall not be required to prove that they are lawfully present in the United States. Applicants shall certify, in a form and manner the commissioner of labor shall prescribe. For the purposes of paragraph (i) of subdivision three of this section, "suitable documentation" means the following:

(a) For the purposes of establishing residency, an applicant shall be required to produce one or more of the following items, each of which shall show the applicant's name and current residential address located within New York state:

(i) a non-expired New York state driver's license issued by the department of motor vehicles;

(ii) a non-expired New York state non-driver identification card issued by the department of motor vehicles;

(iii) a non-expired New York state learner's permit issued by the department of motor vehicles;

(iv) a non-expired IDNYC identification card;

(v) a state or federal tax filing or return, with a filing date not more than twelve months prior to the date of application for benefits under this program;

(vi) a document issued by an agency, authority, board or commission of New York state, a government agency or authority of a political subdivision within New York state, including a school district, or an agency of the federal government, with a date of not more than twelve months prior to the date of application for benefits under this program;

(vii) a social security statement letter or benefit verification letter, with a date of not more than twelve months prior to the date of application for benefits under this program; or

(viii) any of the following documents, containing the name and New York state address of the applicant, provided that the date is no more than twelve months before the date of application for benefits under this program:

(1) a utility bill, including a bill from a mobile service provider;

(2) a bank or credit card statement;

(3) a letter addressed to the applicant from the New York city housing authority;

(4) a letter addressed to the applicant from a homeless shelter indicating that the applicant currently resides at the homeless shelter;

(5) a current lease or sublease, mortgage payment, or property tax statement;

(6) a pay stub;

(7) an employment offer letter or notice of pay that documents employer provided housing located in the state, including seasonal housing;

(8) a statement, bill, or record from a health institution or insurance company (including health insurance, homeowner's insurance, renter's insurance, life insurance, or automobile insurance);

(9) a jury summons, court order, or other document from a state, federal, or local court or administrative law forum within New York state;

(10) a letter from a domestic violence residential care program, or a government agency, non-profit organization, or religious institution that provides services to domestic violence survivors;

(11) a letter addressed to the applicant from a non-profit organization or religious institution that provides services to homeless individuals;

(12) a letter attesting to the residency of an applicant issued by a charitable organization registered with the charities bureau of the New York state office of the attorney general and that provided services to the applicant in the ordinary course of business of such charitable organization;

(13) a letter attesting the residency of an applicant signed and notarized by a co-habitant of the same residence; or

(14) any other document the commissioner deems acceptable.

(b) For the purposes of establishing identity, an applicant shall be required to produce one or more of the following items to establish at least four points of proof of identity:

(i) For four points:

(1) a New York state driver's license or learner's permit, issued by the department of motor vehicles, which may be expired by not more than two years;

(2) a New York state non-driver identification card issued by the department of motor vehicles, which may be expired by not more than two years;

(3) a United States or foreign passport, which may be expired by not more than two years;

(4) a United States military ID card issued to active, reserve, and retired military personnel only, which may be expired by not more than two years;

(5) a United States employment authorization with photo, which may be expired by not more than two years;

(6) an inpatient photo identification card issued by the New York state office of mental health;

(7) a federal document with photo, issued by the United States Citizenship and Immigration Services, including but not limited to Form I-94 or I-766 (United States employment authorization document), which may be expired by not more than two years; or

(8) a photo identification card, issued by an agency, authority, board, or commission of New York state, a government agency or authority of a political subdivision within New York state, including a school district, or an agency of the federal government, which may be expired by not more than two years; provided, however, that identification cards that are marked "not for identification purposes" or similar language shall not be considered for four points.

(ii) For three points:

(1) a photo identification card, issued by an agency, authority, board, or commission of New York state, a government agency or authority of a political subdivision within New York state, including a school district, or an agency of the federal government, that is marked "not for identification purposes" or similar language and which may be expired by not more than two years;

(2) a photo identification card issued by an educational institution, including a university, college, or post-secondary school, subject to the regulation of the state education department or board of regents;

(3) a New York city health and hospitals patient card issued by a hospital and medical clinic;

(4) an identification card issued by the New York state department of corrections and community supervision or by any local or municipal department of corrections located within New York state;

(5) a photo identification card issued by a charitable organization registered with the charities bureau of the New York state office of the attorney general relating to eligibility for services or participation in the programs administered by the charitable organization in the ordinary course of such charitable organization; or

(6) a photo identification card issued by a labor organization.

(iii) For two points:

(1) an NYC Care membership card;

(2) a federal document issued by the United States Citizenship and Immigration Services, including Form I-797, I-797A, or I-797D, that does not include a photo;

(3) a foreign driver's license with a photo, which may be expired by not more than two years;

(4) a foreign issued identification card, including, but not limited to, a consular identification card or any other photo identification card issued by another country to its citizens;

(5) a United States individual taxpayer identification number assignment letter;

(6) a marriage certificate;

(7) a divorce decree;

(8) a birth certificate issued by a foreign country;

(9) a Direct Express Debit Mastercard provided by the United States treasury; or

(10) a social security statement letter or benefit verification letter.

(iv) For one point:

(1) a non-expired New York city department of parks and recreation membership card;

(2) a diploma or transcript from a high school, college, or university in the United States;

(3) a photo identification card issued by an employer or entity associated with an employer, including photo identification cards required to access secure facilities and buildings; or

(4) a written employment offer, pay stubs, or notice of pay document provided to the applicant by an employer.

(v) The commissioner may accept any other document the commissioner deems relevant and adequate to establish the identity of the applicant and may assign a reasonable point value for such document.

(c) Each applicant shall be required to complete and submit a questionnaire attesting that in the twelve months directly prior to the date of application for benefits under this program the applicant worked in at least three calendar months, earned at least four thousand fifty

dollars in gross wages or four thousand fifty dollars in net self-employment earnings, and lost their job through no fault of their own. The applicant shall additionally submit the following documentation to establish four points or more of proof of work history:

(i) For four points:

(1) wage statements, as set forth in section one hundred ninety-five of this chapter, or, where the employer has failed to provide the applicant with accurate wage statements meeting the requirements of section one hundred ninety-five of this chapter, non-payroll checks paid by the employer or employer's agent to the applicant or other records showing payments from an app-based employer to the applicant. Such statements or other records shall demonstrate at least four thousand fifty dollars in gross wages or earnings, and payment of wages in at least three calendar months within the twelve-month period directly prior to the date of application for benefits under this program;

(2) a letter from an employer, or a client of the applicant or their employer, attesting that the applicant earned at least four thousand fifty dollars in gross wages or earnings and worked in at least three months in the twelve months directly prior to when the applicant becomes unemployed or partially unemployed. Such letter shall include:

(A) the employer's mailing address and the address of the site, within New York state, at which the applicant was employed;

(B) the employer's New York state unemployment insurance account number or federal employment identification number; or

(C) contact information, including a phone number, for a representative of such employer who can verify the contents of the letter;

(3) a letter attesting to the applicant's employment history issued by a charitable organization registered with the charities bureau of the New York state office of the attorney general or other entity designated by the commissioner and based on direct knowledge that the applicant earned at least four thousand fifty dollars in gross wages or earnings and worked in at least three calendar months in the twelve months directly prior to when the applicant became unemployed or partially unemployed, acquired in the course of conducting intake, interviews, or other standard processes related to the provision of job-related direct services to the applicant; or

(4) a complaint, charge, or equivalent document filed with a local, state, or federal agency or court, and acknowledged by such entity, alleging that the applicant worked in New York state in at least three calendar months and earned at least four thousand fifty dollars in gross wages or earnings in the twelve-month period directly prior to the date the applicant certifies that he or she became eligible for benefits.

(ii) For three points:

(1) a federal tax return for the tax year immediately prior to the year in which the applicant became unemployed or partially unemployed, with proof of filing with the internal revenue service using a social security number or valid United States individual taxpayer identification number;

(2) a state tax return for the tax year immediately prior to the year in which the applicant became unemployed or partially unemployed, filed with the department of taxation and finance using a social security number or valid United States individual taxpayer identification number; or

(3) a form W-2 or 1099 form demonstrating four thousand fifty dollars or more in gross wages or earnings for the tax year immediately prior to

the year in which the applicant became unemployed or partially unemployed.

(iii) For two points:

(1) evidence, such as statements issued by a financial institution, showing regular direct deposits made by the employer to the applicant, or regular deposits of cash earnings or checks made by the applicant to the applicant's bank account, or transfers from an entity or from an unrelated individual (in each case that is not determined to not be an employer) to the applicant;

(2) receipts from a check cashing establishment or transaction logs from a payment app, of regular direct deposits, deposits, or transfers from an entity or from an unrelated individual (in each case that is not determined to not be an employer) to the applicant;

(3) an employer issued identification badge;

(4) emails, text messages, social media posts or messages, or other written communications relating to delivery order sheets, work invoices, point of sale receipts, work schedules, sign-in sheets, timesheets, directions or instructions from employers or other written communications between an applicant and an employer or hiring party establishing the existence of a work relationship;

(5) documents or materials issued by an employer to an employee, including any materials containing the employer's mailing address, the employer's New York state unemployment insurance account number or federal employment identification number, and contact information, including a phone number, from a representative of such employer; or

(6) receipts or records showing a consecutive pattern of commuting to and from a work location, such as toll records, parking receipts, or public transportation records.

(iv) The commissioner may, by regulation, establish alternative documents that sufficiently demonstrate an applicant's qualification for the program, provided that such additional documents shall clearly demonstrate that the applicant was employed in at least three calendar months and earned at least four thousand fifty dollars in the twelve-month period prior to the date the applicant certifies that he or she became eligible for benefits pursuant to this section.

(v) Where an applicant has not received sufficient documentation of their work hours, wages, or other employment records in order to meet the four points required pursuant to this paragraph, the commissioner shall conduct a credibility interview to determine whether the applicant's questionnaire and/or documentation submitted reasonably demonstrates that they meet the work-related eligibility requirements of this program. The commissioner may establish procedures for credibility interviews in cases when documents used to meet the four point eligibility need additional verification or clarification.

5. The department shall establish application procedures which shall include, but not be limited to:

(a) creating a user-friendly, and language-accessible website for application to the program. The department shall provide translation of the website and application forms on the website in the ten most common non-English languages spoken by individuals with limited-English proficiency in the state of New York;

(b) establishing, in collaboration with the director of the budget, an excluded worker unemployment program navigator grant for non-profit agencies to help screen potential applicants on whether they are eligible for the program and to assist applicants in applying for the

program. Such navigator grant shall be established by January first, two thousand twenty-three;

(c) requiring that all applications for the program shall be processed within four weeks of the receipt of a completed application. The department shall provide a response to each applicant on whether such applicant is eligible for the program, unless the local jurisdiction is facing extenuating circumstances;

(d) providing notice to the public at least fourteen days prior to closing the application process period to applicants;

(e) processes for reviewing applications that have been rejected, either in whole or in part. Reviews shall be conducted in a manner specified by the commissioner. Such processes shall require the commissioner to provide a detailed explanation of the reason for denial to any applicant whose application has been denied;

(f) providing all notices to the applicant in the applicant's primary language, as indicated in their initial application;

(g) issuing a written notice of determination to the applicant within five calendar days of reaching a determination of the applicant's eligibility for benefits under this program; and

(h) establishing procedures for denials and appeals which, at a minimum, provide that:

(i) when an application is denied, the department shall include in the notice of determination a specific explanation as to the reason for the denial and detailed instructions as to what documentation or documented justification is needed to reverse the determination;

(ii) the department may create an appeal form in the ten most common non-English languages spoken by individuals with limited-English proficiency in the state of New York. Such form shall be included with the notice of determination and shall be in the applicant's primary language, as indicated in their initial application;

(iii) an applicant may file an appeal within sixty days after receipt of the notice of determination required pursuant to paragraph (g) of this subdivision;

(iv) an applicant may submit the appeals form provided by the department pursuant to this paragraph, in addition to any additional information or documentation required to support the applicant's position in filing their appeal;

(v) the department shall notify the applicant in writing of the determination on the appeal or of the need for additional information and the date by which the information must be provided. Such notification shall be provided to the applicant within thirty days from the date the department receives the appeal and shall provide the applicant with at least twenty-one days' notice to provide additional information to the department; and

(vi) the department shall notify the applicant in writing of its final determination on the appeal within thirty days following the receipt of any additional information or following expiration of the period for providing such information.

6. (a) Persons eligible to receive funding shall be given the option to receive such funds via prepaid ATM card or direct deposit into a bank account of their designation.

(b) If an applicant elects to receive funds via prepaid ATM card, such card:

(i) shall be sent to the address the applicant provided to the department. If the applicant receives funding for more than one month, such funds shall be sent to the same debit card;

(ii) shall be limited to two pin-based withdrawals per month. Retail transactions, online transactions, and teller desk withdrawals shall be unlimited. There shall be no limit for cash withdrawals made at the teller desk on such cards.

(iii) the department, in conjunction with the department of financial services, shall issue guidance to banks regarding acceptable identification documents to be accepted for withdrawals. Such documentation shall mirror the documentation to prove eligibility under this program to the maximum extent possible.

(c) If an applicant chooses to receive funding via direct deposit:

(i) the applicant shall submit bank information while filling out the application or by submitting a bank account pursuant to regulations promulgated by the department.

(ii) the department shall conduct a review to ensure that the necessary anti-fraud provisions for bank account direct deposits exist. The department shall have the right to restrict direct deposit payments if such payments violate requisite anti-fraud provisions.

(d) The disbursement of funds shall be accompanied by a document from the department or the department of taxation and finance, that explains that such funds count as income or wage replacement and are subject to the payment of taxes. Such form shall also include information related to the state tax rate.

(e) (i) The department, in coordination with the administrator of the fund, shall promulgate rules and regulations necessary to create an efficient and effective dispute process for charges a recipient of funds under this program claims to be fraudulent. Such regulations shall require a provision that a bank disbursing funds via ATM cards shall be obligated to notify the recipient, by telephone call or email, when: (1) a fraudulent charges claim has been received; (2) when more information is needed; (3) when there is any status update; and (4) when the case has been resolved and what the determination is.

(ii) To the extent practicable under state and federal law, as it relates to claims of fraud by a recipient of funds under this program, banks shall accept a signed and notarized attestation from a community based organization confirming such fraud in lieu of police reports. The department shall promptly communicate all information regarding the disbursement of funds and any applicable fraud warnings to an applicant, in such applicant's preferred language as chosen in the original application.

7. Any person who applies for benefits under this chapter or who requests documentation or evidence to support an application for benefits under this chapter shall not be subject to retaliation, as that term is used in paragraph (a) of subdivision one of section two hundred fifteen of this chapter, for engaging in any of these activities. For the purposes of this subdivision, retaliation shall include deliberately misinforming a person or dissuading a person from applying for benefits under this article. Violations of this subdivision shall be deemed to be violations of paragraph (a) of subdivision one of section two hundred fifteen of this chapter and the civil penalties and remedies of paragraph (b) of subdivision one and paragraphs (a) and (b) of subdivision two of section two hundred fifteen of this chapter shall be applicable to this subdivision.

8. At the time of their application, each applicant shall be given the option to report their employer or previous employer to the department in order to initiate a labor dispute regarding wage theft, misclassification, retaliation, or other violations of the labor law. At the

close of each calendar year, the department shall provide the application documents, with any identifying information of individual applicants redacted, but including the names of any employer of an applicant, to a liaison of the department's division responsible for the enforcement of the New York state construction industry fair play act pursuant to article twenty-five-B of this chapter if:

(a) the employer, at the close of the year, employs ten or more employees; or

(b) employees of the employer performed construction work of a construction site in New York city which was required by code to be overseen by a certified site safety manager; and

(c) the applicant is a covered employee for the purpose of the excluded worker unemployment program, defined for these purposes as a person:

(i) who was paid in cash or paid with a personal check or non-payroll check; and

(ii) whose wages were not reported to the tax commission by an "employer," as defined under section five hundred twelve of this article and as required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law; and

(iii) who did not receive a wage statement from that employer as required under section one hundred ninety-five of this chapter; or

(iv) who received an internal revenue service Form 1099-NEC and who performed construction work which would be considered non-exempt work under the New York state construction industry fair play act.

(d) The department shall investigate potential violations of the New York state construction industry fair play act and as applicable assess civil penalties and prosecute violating employers. In order to protect worker confidentiality, the department shall conduct broad audits of multiple employers, to the extent possible. The redacted applications provided under this section shall not be a public record and shall be subject to the limitations on disclosure, redisclosure, release, dissemination, or other publication in subdivision eleven of this section.

9. All excluded worker unemployment program payments made pursuant to this section shall be subject to the appropriation of funds therefor.

(a) Eligible applicants shall be eligible to receive up to six monthly excluded worker unemployment program payments per program year. Such payments shall be made to eligible applicants who certify that they are totally or partially unemployed in the prior month and that they are available for work, as required pursuant to subdivision three of this section. If all monies in the excluded worker unemployment program fund are exhausted prior to the end of an eligible applicant's six months of eligibility, the state shall be responsible for replenishing the funds needed to provide workers the funds they are owed pursuant to this section.

(b) The allowance payable to eligible applicants shall be in the amount of: (i) for the year two thousand twenty-two, one thousand two hundred dollars per month; (ii) for January first, two thousand twenty-three and thereafter, the benefit payment shall increase from one thousand two hundred dollars per month at a rate equal to the annual percentage change in the state's average weekly wage as determined by quarter four data from the previous year's United States Bureau of Labor Statistics.

(c) Eligible applicants may receive initial and subsequent payments retroactively to their first month of partial or total unemployment; provided, however, that no more than three months of retroactive

payments may be made at one time. Subsequent payments shall be contingent upon the availability of funds.

(d) For the purposes of this subdivision, "subsequent payment" means a payment which is made after the first month an applicant is eligible for a payment from the excluded worker unemployment program.

(e) No more than twenty-five percent of the total funds appropriated shall be paid to workers eligible pursuant to subparagraph (iii) of paragraph (c) of subdivision three of this section.

(f) Twenty-five percent of the total funds appropriated for the program shall be reserved for individuals receiving their initial payments made after October first of the program year.

(g) (i) Individuals that have received an initial payment during the prior program year can continue to apply for and receive subsequent payments in the following year, subject to the availability of funds.

(ii) Individuals that apply for benefits in the prior program year but were not eligible because all funds were appropriated when they applied can receive up to six payments retroactive to their initial application in the following year.

(iii) No more than twenty-five percent of the total funds appropriated shall be paid to workers eligible pursuant to this paragraph.

10. (a) Excluded worker unemployment program navigators shall assist applicants applying for excluded worker unemployment benefits as follows:

(i) The navigator shall assist the potential applicant in the gathering of required documentation of residency, identity and work history to satisfy the requirements of subdivision four of this section;

(ii) Target underserved populations, as identified by the department, to expand opportunities for employment through reemployment services, education or training opportunities, apprenticeships and other models that result in skill development and family-supporting careers;

(iii) Assist individuals with procuring food, housing, and meeting other basic needs in order to help them persist in education and work;

(iv) Conduct outreach and provide individual assistance and education to individuals applying for and making ongoing claims pursuant to the excluded no more program and unemployment compensation benefits, including partial unemployment benefits and assistance for dislocated or marginalized workers and qualified entities. To be eligible to be certified by the department as an excluded worker unemployment program navigator, an entity must:

(A) demonstrate existing peer relationships with the target population of the excluded worker unemployment program immigrants, cash earners, persons with limited English proficiency, racial and ethnic minorities, persons with low literacy, persons with disabilities and others seeking to gain employment; and

(B) demonstrate the capability to carry out the duties of this section including knowledge of eligibility requirements and the application process for the excluded no more program;

(v) Comply with existing confidentiality standards to ensure the privacy of all information collected from individuals receiving navigator services; and

(vi) Provide services under this section without charge to the individuals receiving those services.

(b) The department shall establish standards for the awarding of contracts to qualified entities in accordance with this subdivision.

(c) (i) To support the maintenance of relationships between qualified entities and target populations as identified in paragraph (a) of subdi-

vision three of this section and to ensure a high quality of service, the department shall award contracts to qualified entities for a duration of three years as long as the qualified entities satisfy performance standards set forth in the contracts.

(ii) The department shall give priority for navigator contracts to qualified entities that are a recognized source of support or advocacy for excluded workers, especially those as described in this subdivision, including but not limited to immigrants, cash earners, persons with limited English proficiency, racial and ethnic minorities, persons with low literacy, persons with disabilities and others seeking to gain employment. Navigator services provided by qualified entities that receive navigator contracts shall be coordinated with and supplement, not supplant, services provided by the department.

(iii) The department shall ensure that selected qualified entities do not perform functions that must be performed by department staff, including following up on matters of individual eligibility and resolving such matters.

(d) All navigator services provided under this subdivision shall be performed in a manner that is culturally and linguistically appropriate to the population served, immigrants, cash earners, persons with limited English proficiency, racial and ethnic minorities, persons with low literacy, persons with disabilities and others seeking to gain employment, while recognizing the varying levels of digital literacy and access to technology among individuals in need of services.

11. (a) (i) Except where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules, or in accordance with this section, no record or portion thereof relating to an applicant or worker who has filed an application for benefits pursuant to this section shall be a public record and no such record shall be disclosed, redisclosed, released, disseminated or otherwise published or made available.

(ii) For purposes of this subdivision:

(1) "record" means an application, a claim file, a file regarding a complaint or circumstances for which no application has been made, and/or any records maintained by the department in electronic databases in which individual applicants, recipients or workers are identifiable, or any other information relating to any person who has heretofore or hereafter filed an application for benefits pursuant to this section, including a copy or oral description of a record which is or was in the possession or custody of the department, its officers, members, employees or agents.

(2) "person" means any natural person, corporation, association, partnership, or other public or private entity.

(3) "individually identifiable information" means any data concerning any application, benefit or potential application or benefit that is linked to an identifiable worker or other natural person, including but not limited to a photo image, social security number, tax identification number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, customer identification number associated with a public utilities account, or medical or disability information.

(b) Records which contain individually identifiable information may, unless otherwise prohibited by law, be disclosed to:

(i) officers, members and employees of the department if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the department required to be accomplished by statute or executive order or otherwise necessary to act upon an application for benefits submitted by the person who is the subject of the particular record;

(ii) officers or employees of another governmental unit, or agent or contractors of another governmental unit at the request or direction of such governmental unit, if the information sought to be disclosed is necessary to act upon an application for benefits submitted by the person who is the subject of the particular record;

(iii) a judicial or administrative officer or employee in connection with an administrative or judicial proceeding if the information sought to be disclosed is necessary to act upon an application for benefits submitted by the person who is the subject of the particular record; and

(iv) a person engaged in bona fide statistical research, including but not limited to actuarial studies and health and safety investigations, which are authorized by statute or regulation of the department or other governmental agency. Individually identifiable information shall not be disclosed unless the researcher has entered into an agreement not to disclose any individually identifiable information which contains restrictions no less restrictive than the restrictions set forth in this section and which includes an agreement that any research findings shall not disclose individually identifiable information.

(c) Notwithstanding the restrictions on disclosure set forth in paragraphs (a) and (b) of this subdivision, an applicant may authorize the release, re-release or publication of his or her record to a specific person not otherwise authorized to receive such record, by submitting written authorization for such release to the department on a form prescribed by the commissioner or by a notarized original authorization specifically directing the department to release the applicant's records to such person; provided, however, that no such authorization directing disclosure of records to a prospective employer shall be valid, nor shall an authorization permitting disclosure of records in connection with assessing fitness or capability for employment be valid, and no disclosure of records shall be made pursuant thereto. It shall be unlawful for any person to consider for the purpose of assessing eligibility for benefits, or as the basis for an employment-related action, an individual's failure to provide authorization under this paragraph.

(d) For the purposes of this section, whenever disclosure of records is sought pursuant to a lawful court order, judicial warrant signed by a judge pursuant to Article III of the United States Constitution, or subpoena for individual records properly issued pursuant to the criminal procedure law or the civil practice law and rules or pursuant to this subdivision, such specifically sought records may be disclosed, and any such disclosure shall be limited only to such records as are necessary to fulfill the purpose of such disclosure.

(e) The commissioner shall require any person or entity that receives or has access to records to certify that, before such receipt or access, such person or entity shall not:

(i) use such records or information for civil immigration purposes; or

(ii) disclose such records or information to any agency that primarily enforces immigration law or to any employee or agent of any such agency unless such disclosure is pursuant to a cooperative arrangement between city, state and federal agencies which arrangement does not enforce immigration law and which disclosure is limited to the specific records

or information being sought pursuant to such arrangement. Violation of such certification shall be a class A misdemeanor. In addition to any records required to be kept pursuant to subdivision (c) of section 2721 of title 18 of the United States code, any person or entity certifying pursuant to this paragraph shall keep for a period of five years records of all uses and identifying each person or entity that primarily enforces immigration law that received department records or information from such certifying person or entity. Such records shall be maintained in a manner and form prescribed by the commissioner and shall be available for inspection by the commissioner or his or her designee upon his or her request.

(iii) For purposes of this paragraph, the term "agency that primarily enforces immigration law" shall include, but not be limited to, the United States immigration and customs enforcement and United States customs and border protection, and any successor agencies having similar duties.

(iv) Failure to maintain records as required by this paragraph shall be a class E felony.

(f) Except as otherwise provided by this subdivision, any person who knowingly and willfully obtains records which contain individually identifiable information under false pretenses or otherwise violates this subdivision shall be guilty of a class E felony.

(g) In addition to or in lieu of any criminal proceeding available pursuant to this subdivision, whenever there shall be a violation of this subdivision, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this subdivision, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this subdivision has occurred, the court may impose a civil penalty of not more than five hundred dollars for the first violation, and not more than one thousand dollars for the second or subsequent violation within a three-year period. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

12. Notwithstanding any law, rule, or regulation to the contrary, general operating funds required by the department shall not be reduced due to monies expended from or by the excluded worker unemployment program fund established pursuant to section ninety-five-k of the state finance law.

§ 3. The state finance law is amended by adding a new section 95-k to read as follows:

§ 95-k. Excluded worker unemployment program 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 "excluded worker unemployment program fund".

2. Moneys in such fund shall consist of all moneys appropriated for the purposes of such fund and all moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law. Any interest received by the comptroller on money on deposit in the fund shall be retained in and become part of the fund.

3. All moneys collected as contributions and interest relating to wage replacement to workers and families unable to access traditional worker wage insurance or assistance programs shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. Moneys so deposited shall be credited immediately to the account of the excluded worker unemployment program fund and shall be used for the purposes set forth in section five hundred ninety-one-b of the labor law. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of this article, and shall only be used for the purposes specified herein.

4. Moneys in the fund shall be used exclusively for the purpose of providing wage replacement to workers that do not qualify for unemployment insurance or other worker wage assistance programs and who have lost a major source of income due to lost work. The moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by such commissioner or his or her duly designated officer. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

5. Moneys of the fund shall not be used in whole or in part for any purpose or in any manner which would (a) permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

§ 4. The sum of eight hundred million dollars ($800,000,000) is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the state purposes account for the excluded worker unemployment program fund in carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 5. Severability Clause. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 6. This act shall take effect immediately.