§ 158.00 Definitions; presumption; limitation.

1. Definitions. The following definitions are applicable to this article:

(a) "Public benefit card" means any medical assistance card, food stamp assistance card, public assistance card, or any other identification, authorization card or electronic access device issued by the state or a social services district, as defined in subdivision seven of section two of the social services law, which entitles a person to obtain public assistance benefits under a local, state, or federal program administered by the state, its political subdivisions, or social services districts.

(b) "Fraudulent welfare act" means knowingly and with intent to defraud, engaging in an act or acts pursuant to which a person:

(1) offers, presents or causes to be presented to the state, any of its political subdivisions or social services districts, or any employee or agent thereof, an oral or written application or request for public assistance benefits or for a public benefit card with knowledge that the application or request contains a false statement or false information, and such statement or information is material, or

(2) holds himself or herself out to be another person, whether real or fictitious, for the purpose of obtaining public assistance benefits, or

(3) makes a false statement or provides false information for the purpose of (i) establishing or maintaining eligibility for public assistance benefits or (ii) increasing or preventing reduction of public assistance benefits, and such statement or information is material.

(c) "Public assistance benefits" means money, property or services provided directly or indirectly through programs of the federal government, the state government or the government of any political subdivision within the state and administered by the department of social services or social services districts.

2. Rebuttable presumption. (a) A person who possesses five or more public benefit cards in a name or names other than his or her own is presumed to possess the same with intent to defraud, deceive or injure another.

(b) The presumption established by this subdivision shall not apply

to:

(1) any employee or agent of the department of social services to the extent that he or she possesses such cards in the course of his or her official duties; or

(2) any person to the extent that he she possesses a public benefit card or cards issued to a member or members of his or her immediate family or household with the consent of the cardholder; or

(3) any person providing home health services or personal care services pursuant to title eleven of article five of the social services law, or any agent or employee of a congregate care or residential treatment facility or foster care provider, to the extent that in the course of his or her duties, he or she possesses public assistance cards issued to persons under his or her care.

(c) The presumption established by this subdivision is rebuttable by evidence tending to show that the defendant did not possess such public benefit card or cards with intent to defraud, deceive or injure another. In any action tried before a jury, the jury shall be so instructed.

(d) The foregoing presumption shall apply to prosecutions for criminal possession of public benefit cards.

3. Limitation. Nothing contained in this article shall be construed to prohibit a recipient of public assistance benefits from pledging his or her public assistance benefits or using his or her public benefit card as collateral for a loan.