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Further Amendment #804.1 to H04100

Further to #804

Ms. Walz of Boston moves to strike the text of amendment 804 and inserting in place thereof the following:-

SECTION 35. Chapter 18 of the General laws, as amended by chapter 84 of the acts of 2011, is hereby amended by striking out sections 5I through 5J, inclusive, and inserting in place thereof the following 2 sections:-

Section 5I. (a) As used in sections 5I through 5J, inclusive, the following terms shall, unless the context clearly requires otherwise, have the following meanings:-

“Access device”, a card, code, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods or other things of value, or that can be used to initiate a transfer of funds under the federal Food Stamp Act, 7 U.S.C. § 2011 et seq., or regulations issued pursuant to the federal Food Stamp Act.

“Cosmetics”, includes (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; provided, however, that cosmetics shall not include soap, shampoo, deodorant, toothpaste, or other personal hygiene products.

“Automatic teller machine”, a machine allowing for cash withdrawals of direct cash assistance.

“Department”, the department of transitional assistance.

“Direct cash assistance”, any manner of cash assistance provided by the department of transitional assistance, including, but not limited to, temporary aid to families with dependent children, wherein the assistance is provided directly to the recipient, rather than a vendor.

“Drinking establishment”, a business licensed to sell alcoholic beverages pursuant to chapter 138 that derives more than 50 per cent profit from the sale of alcoholic beverages.

“Electronic benefit transfer card”, a card that provides benefits through an electronic benefit transfer.

"Electronic benefit transfer", a system for the food stamp program as an alternative to issuing food stamp coupons. An electronic benefit transfer system is a computer based system in which the benefit authorization is received through a point of sale terminal. Eligible households utilize plastic cards in lieu of food stamp coupons to purchase food items at authorized food retailers. This type of benefit may also be used to issue other types of public welfare benefits.

"Eligible recipient", a person who meets the nonfinancial, financial and categorical requirements that the department of transitional assistance utilizes to determine, upon application or review, whether a person is entitled to direct cash assistance, barring any evidence of an outstanding default or arrest warrant issued by any court of the commonwealth.

"Immediate family", the recipient and his spouse, and their parents, children, brothers and sisters.

"Liquor Store", an establishment licensed to sell alcoholic beverages not to be drunk on the premises pursuant to section 15 of chapter 138 excluding any food store as defined pursuant to section 184B of chapter 94.

"Performance", any commercially offered play, dance, concert, exhibit, including movies or simulcasts, any such entertainment at an establishment which displays live nudity for patrons as defined pursuant to section 9A of chapter 40A, or any such entertainment performed before 1 or more persons, excluding performances offered by, at or through any preschool, school, college, university, public library, church or nonprofit organization.

"Performance venue", any place at which a performance is conducted, including, but not limited to, a sports arena, stadium, ball park, race track, , or establishment which display live nudity for patrons, as defined pursuant to section 9A of chapter 40A.

"Person", a natural person, corporation, association, partnership or other legal entity.

"Travel services", furnishing or facilitating interstate travel for vacation or foreign travel, except in the case of the death of a family member or family emergency.

(b) (1) No person shall knowingly use or accept direct cash assistance funds held on electronic benefit transfer cards or access devices for the purchase or sale of the following services or products: (1) alcoholic beverages as defined in section 1 of chapter 138; (2) lottery tickets; (3) tobacco products as defined in section 1 of chapter 64C; (4) any visual material or performance intended to create or simulate sexual conduct or sexual excitement as those terms are defined pursuant to section 31 of chapter 272; (5) firearms or ammunition as defined in section 121 of chapter 140; (6) admission to any performances; (7) cosmetics; (8) professional services, excluding medical care, provided by any member of the bar or any person licensed pursuant to chapter 112 professional services provided by any member of the bar or any person licensed pursuant to chapter 112, but excluding health care services and services provided for haircutting or funeral or final disposition; (9) travel services; (10) services, excluding childcare services, programs at a community center or similar nonprofit facility or memberships, provided by health clubs as defined pursuant to section 78 of chapter 93; (11) tattoos for the marking of the human body or other body art or piercings; (12) jewelry; (13) for the rental of goods or real property, except for rent paid for a primary residence; (14) for the payment to the commonwealth or any political subdivision thereof of any, fee, fine or penalty, including restitution or bail or bail bonds ordered by a court; or (15) gambling as defined pursuant to section 2

of chapter 23K.

(2) No person shall knowingly use an access device or automatic teller machine to access direct cash assistance funds held on electronic benefit transfer cards at: (1) liquor stores; (2) gaming establishments licensed pursuant to chapter 23K; (3) performance venues; (4) adult bookstores or adult paraphernalia stores, as defined pursuant to section 9A of chapter 40A; (5) firearms dealers licensed pursuant to section 122 of chapter 140 and ammunitions dealers licensed pursuant to section 122B of chapter 140; (6) tattoo parlors; (7) manicure shops or aesthetic shops registered pursuant to chapter 112; (8) (9) rent-to-own furniture, electronics, or appliance stores; (10) jewelry stores; (11) drinking establishments; (12) on cruise ships.

(3) No person shall permit the use of an access device or automatic teller machine to access direct cash assistance funds held on electronic benefit transfer cards at: (1) liquor stores; (2) gaming establishments licensed pursuant to chapter 23K; (3) performance venues; (4) adult bookstores or adult paraphernalia stores, as defined pursuant to section 9A of chapter 40A; (5) firearms dealers licensed pursuant to section 122 of chapter 140 and ammunitions dealers licensed pursuant to section 122B of chapter 140; (6) tattoo parlors; (7) manicure shops or aesthetic shops registered pursuant to chapter 112; (9) rent-to-own furniture, electronics, or appliance stores; (10) jewelry stores; and (11) drinking establishments; or (12) cruise ships.

(c) The following types of businesses shall not house access devices or automatic teller machines that accept electronic benefit transfer cards: (1) liquor stores; (2) gaming establishments licensed pursuant to chapter 23K; (3) performance venues; (4) adult bookstores or adult paraphernalia stores, as defined pursuant to section 9A of chapter 40A; (5) firearms dealers licensed pursuant to section 122 of chapter 140 and ammunitions dealers licensed pursuant to section 122B of chapter 140; (6) tattoo parlors; (7) manicure shops or aesthetic shops registered pursuant to chapter 112; (8) rent-to-own furniture, electronics, or appliance stores; (10) jewelry stores; and (11) drinking establishments; (12) cruise ships.

(d) Any business that offers for sale the services or products defined by subsection (b), excluding businesses defined by subsection (e), shall display in an area conspicuous to patrons a sign advising patrons of the excluded products.

The department shall develop the sign and make a downloadable form available on the department's website. Business associations may also maintain a downloadable form of the sign on their websites.

(e) Any business identified in subsection (b), shall display in an area conspicuous to patrons a sign instructing patrons that the business is prohibited from accepting electronic benefit transfer cards.

The department shall develop the sign and make a downloadable form available on the department's website. Business associations may also maintain a downloadable form of the sign on their websites.

(f) No person shall knowingly access, or provide access to, direct cash assistance funds held on electronic benefit transfer cards or access devices to an eligible recipient from outside the commonwealth, except for states that immediately border the commonwealth; provided, however, that the department may permit direct cash assistance funds held on electronic benefit transfer cards or access devices to an eligible recipient to be accessed outside of the commonwealth or states along its border for a family or medical emergency or other such emergency purpose as approved by the department; and provided further, that an electronic benefit transfer card or access device shall be authorized to access federal Supplemental Nutrition Assistance Program benefits in any manner authorized by federal law.

(g) Any eligible recipient of direct cash assistance who knowingly makes a purchase in violation of this section shall reimburse the department for such purchase and shall be disqualified from the direct cash assistance program for a period of 3 months for the first offense and permanently for the second offense.

(h) Any person, except an eligible recipient, who knowingly violates clause 1 of subsection (b), subsection (c) or subsection (d) of this section shall be punished by a fine of not more than \$500 for the first offense, a fine of not less than \$500 nor more than \$1,000 for the second offense and a fine of not less than \$10,000 for the third or subsequent offense.

At minimum, the department shall identify all violators on a monthly basis and direct the appropriate vendor to technologically prohibit the respective access device from accepting electronic benefit transfer cards.

(i) Any person, except an eligible recipient who knowingly violates clause 2 or clause 3 of subsection (b) shall be punished by a fine of not less than \$1,000 for the first offense; not less than \$3,000 for the second offense and not less than \$10,000 for the third or subsequent offense.

(j) The alcoholic beverages control commission may suspend or revoke the license of any person who is found to have knowingly violated subsection (b) or subsection (c).

(k) The state lottery commission may suspend or revoke the license of any person who is found to have knowingly violated subsection (b) or subsection (c).

Section 5J (a) No person shall knowingly, transfer, acquire, alter or possess an electronic benefit transfer card or access device in any manner not authorized by the federal Food Stamp act or this chapter.

(b) No person shall present for payment or redemption an electronic benefit transfer card or access device that has been illegally received, transferred, or altered.

(c) A person who is found to have knowingly violated subsection (a) or subsection (b), if such benefits are of an aggregate value of less than \$100, shall, upon the first conviction thereof, be imprisoned in a jail or house of correction for not more than 1 year or fined not more than \$1,000, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned in a jail or house of correction for not more than 2 1/2 years or fined not more than \$1,000, or both.

A person who is found to have knowingly violated subsection (a) or subsection (b), if such benefit has an aggregate value of more than \$100 but less than \$5,000, shall, upon the first conviction thereof, be imprisoned in a jail or house of correction or in the state prison for not more than 3 years or be fined not more than \$10,000, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned in a jail or house of correction or in the state prison for not more than 5 years or be fined not more than \$10,000, or both.

A person who is found to have knowingly violated subsection (a) or subsection (b), if such benefits are of an aggregate value of

\$5,000 or more, shall be imprisoned in a jail or house of correction or the state prison for not more than 20 years or be fined not more than \$250,000, or both.

(d) Any person who is found to have knowingly violated subsection (a) or subsection (b) shall forfeit to the commonwealth all property, real and personal, used in connection with the violation or any proceeds traceable to said violation.

The proceeds from any sale of forfeited property and any monies forfeited under this subsection shall be used by the commonwealth to reimburse the bureau of special investigations in the office of the state auditor, established under section 16 of chapter 11, or any other state or local agency for any cost incurred in the investigative effort resulting in the forfeiture.

No interest in property shall be forfeited under this subsection as the result of any act or omission established by the owner of the interest to have been committed or omitted without the knowledge or consent of the owner.

(e) The alcoholic beverages control commission may suspend or revoke the license of any person who is found to have knowingly violated subsection (a) or subsection (b).

(f) The state lottery commission may suspend or revoke the license of any person who is found to have knowingly violated subsection (a) or subsection (b).

Section 5K. Whoever embezzles, steals or obtains by fraud any funds, assets or property provided by the department and whoever receives, conceals or retains such funds, assets or property for his own interest knowing such funds, assets or property have been embezzled, stolen or obtained by fraud shall, if such funds, assets or property are of a value of \$100 or more, be punished by a fine of not more than \$25,000 or by imprisonment in a jail or house of correction for not more than 2 1/2 years, or imprisonment in the state prison for not more than 5 years, or both such fine and imprisonment, or if such funds, assets or property are of a value of less than \$100, by a fine of not more than \$1,000 or by imprisonment in a jail or house of correction for not more than 1 year, or both such fine and imprisonment.

Section 5L. The department shall charge all eligible recipients of direct cash assistance a fee of \$5 for each requested replacement card. All fees for replacement cards shall be deducted directly from the recipient's direct cash assistance.

And moves to further amend the bill, by inserting at the end thereof the following sections:-

SECTION. Notwithstanding any general or special law to the contrary, the department of transitional assistance benefits in the form of vendor payments with respect to rent and utilities, whenever a determination is made that the grant has not been used in the best interests of the child or the assistance unit or other chronic misuse of benefits is occurring, provided that implementation of vendor payments will not increase the risk of homelessness, decrease the ability to escape domestic abuse or impair the assistance unit's ability to withhold payment as a reasonable exercise of consumer or tenant rights when there is a legitimate dispute as to whether

terms of an agreement have been met. The department of transitional assistance may presume mismanagement of benefits whenever shelter costs, including, but not limited to, rent, heat, fuel, utilities, have regularly not been met without reasonable cause. At eligibility determinations and redeterminations, the department shall screen households to determine if they have chronically failed to pay rent and utilities to determine if vendor payments are appropriate and shall refer households to the housing consumer education centers and community based resources for assistance in meeting their expenses.

SECTION. Notwithstanding any general or special law to the contrary, the department of transitional assistance and the Massachusetts Bay Transit Authority shall coordinate to ensure that by June 30, 2013, direct cash assistance funds held on electronic benefit transfer cards be accepted for payment of public transportation fares at electronic fare vending machines.

SECTION. Notwithstanding any general or special law to the contrary, there shall be an independent commission to study and report on the development of a cashless payment system in using electronic benefit transfer, or EBT, cards. The commission shall consist of the following 9 members: the commissioner of transitional assistance, or a designee, who shall serve as chair; the inspector general, or a designee; the state auditor, or a designee; 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 2 members of the senate, 1 of whom shall be appointed by the minority leader; and 2 persons representing eligible recipients as appointed by the governor. The commission shall research, assess and develop recommendations to implement a cashless payment system and investigate and report on the feasibility of expanding the direct vendor payment system for rent and utility payments for all eligible recipients.. The commission shall hire an independent consultant to conduct the research and assist with the preparation of any recommendations. The report shall include, but shall not be limited to, the following: (1) the costs associated with and any technological improvements necessary to implement and the time frame required for the expansion; (2) the implementation of a vendor payment system for the non-cash payment of rent and utility bills for all eligible recipients of direct cash assistance; and (3) the feasibility of placing fluctuating limitations on the percentage allocated to direct cash assistance and point of sale use. The commission shall submit a final report of its findings and recommendations, together with drafts of legislation necessary to implement those recommendations, by filing the same with the clerks of the senate and house on or before December 31, 2012.