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Amendment #804 to H04100

An Act relative to EBT reform

Representatives O'Connell of Taunton, Holmes of Boston, Jones of North Reading, Peterson of Grafton, Hill of Ipswich, Poirier of North Attleborough, deMacedo of Plymouth, D'Emilia of Bridgewater, Ross of Attleboro, Gifford of Wareham, Howitt of Seekonk, Winslow of Norfolk, Humason of Westfield, Smola of Palmer, Boldyga of Southwick, Lombardo of Billerica, Hunt of Sandwich, Stanley of Waltham, Finn of West Springfield, Diehl of Whitman, Lawn of Watertown, Lyons of Andover, Beaton of Shrewsbury, Orrall of Lakeville, Webster of Pembroke, Dwyer of Woburn, Adams of Andover, Barrows of Mansfield, Bastien of Gardner, Durant of Spencer, Fattman of Sutton, Ferguson of Holden, Frost of Auburn, Harrington of Groton, Kuros of Uxbridge, Levy of Marlborough, Vieira of Falmouth and Wong of Saugus move to amend the bill by striking section 35 and inserting in the place thereof the following two sections:—

“SECTION 35A. Chapter 18 of the General laws, as most recently amended by chapter 84 of the acts of 2011, is hereby amended by striking out sections 5I and 5J and inserting in place thereof the following 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 including an automated teller machine or point of sale terminal 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 beautifying, promoting attractiveness, or altering 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.

‘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’, any tavern or club licensed to sell alcoholic beverages, wines, or malt beverages pursuant to chapter 138 that derives more than 50 per cent of the establishment’s profit from the sales of alcoholic beverages, wines, or malt 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.

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

'Performance', any play, dance, concert, exhibit, including movies, 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 one 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, movie theatre, 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 or foreign travel, including transportation and vacation services.

(b) 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, without limitation: (1) alcoholic beverages as defined pursuant to section 1 of chapter 138; (2) lottery tickets; (3) tobacco products as defined pursuant to section 1 of chapter 64C; (4) any visual material intended to create or simulate sexual conduct or sexual excitement as defined pursuant to section 31 of chapter 272; (5) firearms or ammunition as defined pursuant to 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; (9) travel services; (10) services, excluding childcare services, 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; (14) for the payment to the commonwealth or any political subdivision thereof of any tax, fee 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.

(c) Any business that offers for sale the services or products defined by subsection (b), and excluding businesses defined by subsection (e), shall display in an area conspicuous patrons a sign containing the following statement: "Massachusetts law (M.G.L. c.18, §5I) prohibits the use of EBT or direct cash assistance for the purchase of the following products and services: alcoholic beverages; tobacco products; lottery tickets; sexually explicit material; firearms or ammunition; admission to performances; cosmetics; professional services; travel services; health club memberships or services; tattoos, body art, or piercings; jewelry; rental goods or property; payment of any tax, fee, or penalty including bail or bail bonds; and gambling. Violators will be punished to the full extent of

the law. If you witness EBT benefit fraud, please report it, toll-free, by calling: 1-800-FRAUD-99 (1-800-372-8399)."

The department shall maintain a downloadable template of the sign on the department's website. Business associations may also maintain a downloadable template of the sign on their websites.

(d) No eligible recipient shall use electronic benefit transfer cards at access devices housed within the following types of businesses: (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) beauty shops, barber shops, manicure shops or aesthetic shops registered pursuant to chapter 112; (8) health clubs as defined pursuant to section 78 of chapter 93; (9) rent-to-own furniture, electronics, or appliance stores; (10) jewelry stores; and (11) drinking establishments; (12) cruise ships.

(e) The following types of businesses shall not house access devices 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) beauty shops, barber shops, manicure shops or aesthetic shops registered pursuant to chapter 112; (8) health clubs as defined pursuant to section 78 of chapter 93; (9) rent-to-own furniture, electronics, or appliance stores; (10) jewelry stores; and (11) drinking establishments; (12) cruise ships.

Upon request, any state agency that, in the regular course of business, regulates retail stores shall cooperate with law enforcement regarding potential violations of this section. 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. Any business or store owner who knowingly houses an access device that accepts electronic benefit transfer cards in violation of this section 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.

(f) Any business defined by subsection (e), shall display in an area conspicuous to patrons a sign containing the following statement: "Massachusetts law (M.G.L. c.18, §5J) prohibits this store from accepting EBT cards or direct cash assistance and Massachusetts law (M.G.L. c.18, §5I) prohibits customers from purchasing products in this store with EBT cards or direct cash assistance. Violators will be punished to the full extent of the law. If you witness EBT benefit fraud, please report it, toll-free, by calling: 1-800-FRAUD-99 (1-800-372-8399)."

The department shall maintain a downloadable template of the sign on the department's website. Business associations may also maintain a downloadable template of the sign on their websites.

(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, excluding any eligible recipient, who knowingly violates subsection (b), subsection (c), or subsection (f) 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.

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, the federal Social Security Act, 42 U.S.C. 608(a) et seq., 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) Any 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 fined not more than \$1,000 or be imprisoned in a jail or house of correction or the state prison for not more than 1 year, or both, and upon the second and any subsequent conviction thereof, shall be fined not more than \$1,000 or imprisoned in a jail or house of correction or the state prison for not more than 2 1/2 years, or both.

Any 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 fined not more than \$10,000 or be imprisoned in a jail or house of correction or in the state prison for not more than 3 years, or both, and, upon the second and any subsequent conviction thereof, shall be fined not more than \$10,000 or be imprisoned in a jail or house of correction or in the state prison for not more than 5 years or both.

Any 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 fined not more than \$250,000 or be imprisoned in a jail or house of correction or the state prison for not more than 20 years, 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 the 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) of this section or subsection (b) or subsection (e) of section 5I.

(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) of this section or subsection (b) or subsection (e) of section 5I.

SECTION 35B. Chapter 18 of the General Laws, as so appearing, is hereby amended by inserting after section 5K the following new sections:—

Section 5L. Notwithstanding any general or special law to the contrary, the department shall charge all eligible recipients of direct cash assistance a fee of \$10 for the first requested replacement of an electronic benefit transfer card and a fee of \$25 for any additional replacement of an electronic benefit transfer card. All fees for replacement cards shall be deducted directly from the recipient's direct cash assistance.

Section 5M. Notwithstanding any general or special law to the contrary, direct cash assistance issued by the Commonwealth shall not be used for purchases in states other than Massachusetts and states contiguous to Massachusetts. For the purposes of this section, contiguous states shall mean: New Hampshire, Connecticut, Rhode Island, New York, and Vermont. The department shall identify all violators, at minimum, on a monthly basis. Any eligible recipient who violates this section shall be disqualified from the program for not less than 3 months. The department shall notify the recipient that they must report in person to their local department of transitional

assistance office to have their benefits reinstated. Any eligible recipient who violates this section for a second time shall be permanently disqualified from the direct cash assistance program.

Section 5N. Notwithstanding any general or special law to the contrary, the department shall implement a vendor payment system for the non-cash payment of rent and electric and gas utility bills for all eligible recipients of direct cash assistance. The department shall have 50 per cent of all direct cash assistance recipients enrolled in the vendor payment system by July 31, 2012, and shall have the remaining 50 per cent of recipients enrolled in the vendor payment system by November 30, 2012. Beginning on July 31, 2012, all recipients of direct cash assistance shall be enrolled in the vendor payment system upon admittance into the direct cash assistance program.

Section 5O. Notwithstanding any general or special law to the contrary, by November 30, 2012, all eligible recipients of direct cash assistance shall access monthly direct cash assistance through the department's vendor payment system or point of sale payments, provided however, that eligible recipients shall not withdraw cash assistance from a point of sale transaction. Beginning on November 30, 2012, eligible recipients of direct cash assistance shall not have access to monthly direct cash assistance through automatic teller machines.

Section 5P. Notwithstanding any general or special law to the contrary, the department shall solicit, in writing, a cost estimate from the department's current vendor and at least one other vendor for the costs associated with requiring the department to include, on the front of each newly issued, re-issued, and existing electronic benefit transfer card, a photograph of the cardholder. The department shall submit a final cost estimate by filing the same with the clerks of the house and the senate not later than November 30, 2012."