

7063

I N S E N A T E

April 26, 2012

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, in relation to reestablishing the alcohol and drug rehabilitation program within the office of alcoholism and substance abuse services; and to repeal section 1196 of the vehicle and traffic law relating thereto

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

1 Section 1. The mental hygiene law is amended by adding a new section
2 19.26 to read as follows:
3 S 19.26 ALCOHOL AND DRUG REHABILITATION PROGRAM.
4 (A) PROGRAM ESTABLISHMENT. THERE IS HEREBY ESTABLISHED AN ALCOHOL AND
5 DRUG REHABILITATION PROGRAM WITHIN THE OFFICE. THE COMMISSIONER SHALL
6 ESTABLISH, BY REGULATION, THE INSTRUCTIONAL AND REHABILITATIVE ASPECTS
7 OF THE PROGRAM. SUCH PROGRAM SHALL CONSIST OF AT LEAST FIFTEEN HOURS
8 AND INCLUDE, BUT NEED NOT BE LIMITED TO, CLASSROOM INSTRUCTION IN AREAS
9 DEEMED APPROPRIATE BY THE COMMISSIONER. NO PERSON SHALL BE REQUIRED TO
10 ATTEND OR PARTICIPATE IN SUCH PROGRAM OR ANY ASPECT THEREOF FOR A PERIOD
11 EXCEEDING EIGHT MONTHS EXCEPT UPON THE RECOMMENDATION OF THE OFFICE OR
12 APPROPRIATE HEALTH OFFICIALS ADMINISTERING THE PROGRAM ON BEHALF OF A
13 MUNICIPALITY.
14 (B) CURRICULUM. THE FORM, CONTENT AND METHOD OF PRESENTATION OF THE
15 VARIOUS ASPECTS OF SUCH PROGRAM SHALL BE ESTABLISHED BY THE COMMISSION-
16 ER. IN THE DEVELOPMENT OF THE FORM, CURRICULUM AND CONTENT OF SUCH
17 PROGRAM, THE COMMISSIONER MAY CONSULT WITH THE COMMISSIONER OF MENTAL
18 HEALTH AND ANY OTHER STATE AGENCY, DEPARTMENT OR OFFICE, AND MAY REQUEST
19 AND RECEIVE ASSISTANCE FROM THEM. THE COMMISSIONER IS ALSO AUTHORIZED TO
20 DEVELOP MORE THAN ONE CURRICULUM AND COURSE CONTENT FOR SUCH PROGRAM IN
21 ORDER TO MEET THE VARYING REHABILITATIVE NEEDS OF PARTICIPANTS.
22 (C) WHERE AVAILABLE. A COURSE IN SUCH PROGRAM SHALL BE AVAILABLE IN AT
23 LEAST EVERY COUNTY IN THE STATE, EXCEPT WHERE THE COMMISSIONER DETER-
24 MINES THAT THERE IS NOT A SUFFICIENT NUMBER OF ALCOHOL OR DRUG-RELATED
25 TRAFFIC OFFENSES IN A COUNTY TO MANDATE THE ESTABLISHMENT OF SAID

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

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1 COURSE; AND PROVIDED THAT PROVISIONS BE MADE FOR THE RESIDENTS OF SAID
2 COUNTY TO ATTEND A COURSE IN ANOTHER COUNTY WHERE A COURSE EXISTS.

3 (D) ELIGIBILITY. PARTICIPATION IN THE PROGRAM SHALL BE LIMITED TO
4 THOSE PERSONS WHO HAVE BEEN: CONVICTED OF ALCOHOL OR DRUG-RELATED TRAF-
5 FIC OFFENSES; ADJUDICATED YOUTHFUL OFFENDERS FOR ALCOHOL OR DRUG-RELATED
6 TRAFFIC OFFENSES; OR FOUND TO HAVE BEEN OPERATING A MOTOR VEHICLE AFTER
7 HAVING CONSUMED ALCOHOL, IN VIOLATION OF SECTION ELEVEN HUNDRED NINETY-
8 TWO-A OF THE VEHICLE AND TRAFFIC LAW, CHOOSE TO PARTICIPATE, AND MEET
9 THE REQUIREMENTS FOR PARTICIPATION ESTABLISHED BY THIS SECTION AND THE
10 REGULATIONS PROMULGATED THEREUNDER; PROVIDED, HOWEVER, THE JUDGE IMPOS-
11 ING SENTENCE MAY PROHIBIT THE DEFENDANT FROM ENROLLING IN SUCH PROGRAM.
12 THE COMMISSIONER MAY ALSO EXERCISE DISCRETION BY REJECTING ANY PERSON
13 FROM PARTICIPATION REFERRED TO SUCH PROGRAM AND NOTHING HEREIN CONTAINED
14 SHALL BE CONSTRUED AS CREATING A RIGHT TO BE INCLUDED IN ANY COURSE OR
15 PROGRAM ESTABLISHED UNDER THIS SECTION. IN ADDITION, NO PERSON SHALL BE
16 PERMITTED TO TAKE PART IN SUCH PROGRAM IF, DURING THE FIVE YEARS IMME-
17 DIATELY PRECEDING COMMISSION OF AN ALCOHOL OR DRUG-RELATED TRAFFIC
18 OFFENSE OR A FINDING OF A VIOLATION OF SECTION ELEVEN HUNDRED
19 NINETY-TWO-A OF THE VEHICLE AND TRAFFIC LAW, SUCH PERSON HAS PARTIC-
20 IPATED IN A PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE OR BEEN
21 CONVICTED OF A VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN HUNDRED
22 NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW OTHER THAN A VIOLATION COMMIT-
23 TED PRIOR TO NOVEMBER FIRST, NINETEEN HUNDRED EIGHTY-EIGHT, FOR WHICH
24 SUCH PERSON DID NOT PARTICIPATE IN SUCH PROGRAM. IN THE EXERCISE OF
25 DISCRETION, THE COMMISSIONER SHALL HAVE THE RIGHT TO EXPEL ANY PARTIC-
26 IPANT FROM THE PROGRAM WHO FAILS TO SATISFY THE REQUIREMENTS FOR PARTIC-
27 IPATION IN SUCH PROGRAM OR WHO FAILS TO SATISFACTORILY PARTICIPATE IN OR
28 ATTEND ANY ASPECT OF SUCH PROGRAM. NOTWITHSTANDING ANY CONTRARY
29 PROVISIONS OF THE VEHICLE AND TRAFFIC LAW, SATISFACTORY PARTICIPATION IN
30 AND COMPLETION OF A COURSE IN SUCH PROGRAM SHALL RESULT IN THE TERMI-
31 NATION OF ANY SENTENCE OF IMPRISONMENT THAT MAY HAVE BEEN IMPOSED BY
32 REASON OF A CONVICTION THEREFOR; PROVIDED, HOWEVER, THAT NOTHING
33 CONTAINED IN THIS SECTION SHALL DELAY THE COMMENCEMENT OF SUCH SENTENCE.

34 (E) EFFECT OF COMPLETION. EXCEPT AS PROVIDED IN SUBPARAGRAPH NINE OF
35 PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION ELEVEN HUNDRED NINETY-THREE
36 OR IN SUBPARAGRAPH THREE OF PARAGRAPH (D) OF SUBDIVISION TWO OF SECTION
37 ELEVEN HUNDRED NINETY-FOUR OF THE VEHICLE AND TRAFFIC LAW, UPON SUCCESS-
38 FUL COMPLETION OF A COURSE IN SUCH PROGRAM AS CERTIFIED BY ITS ADMINIS-
39 TRATOR, A PARTICIPANT MAY APPLY TO THE COMMISSIONER OF MOTOR VEHICLES,
40 ON A FORM PROVIDED FOR THAT PURPOSE, FOR THE TERMINATION OF THE SUSPEN-
41 SION OR REVOCATION ORDER ISSUED AS A RESULT OF THE PARTICIPANT'S
42 CONVICTION THAT CAUSED THE PARTICIPATION IN SUCH COURSE. IN THE EXERCISE
43 OF DISCRETION, UPON RECEIPT OF SUCH APPLICATION, AND UPON PAYMENT OF ANY
44 CIVIL PENALTIES FOR WHICH THE APPLICANT MAY BE LIABLE, THE COMMISSIONER
45 OF MOTOR VEHICLES IS AUTHORIZED TO TERMINATE SUCH ORDER OR ORDERS AND
46 RETURN THE PARTICIPANT'S LICENSE, OR REINSTATE THE PRIVILEGE OF OPERAT-
47 ING A MOTOR VEHICLE IN THIS STATE. HOWEVER, THE COMMISSIONER OF MOTOR
48 VEHICLES SHALL NOT ISSUE ANY NEW LICENSE NOR RESTORE ANY LICENSE WHERE
49 SAID ISSUANCE OR RESTORAL IS PROHIBITED BY SUBDIVISION TWO OF SECTION
50 ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW.

51 (F) FEES. THE COMMISSIONER SHALL ESTABLISH A SCHEDULE OF FEES TO BE
52 PAID BY OR ON BEHALF OF EACH PARTICIPANT IN THE PROGRAM, AND MAY, FROM
53 TIME TO TIME, MODIFY SAME. SUCH FEES SHALL DEFRAY THE ONGOING EXPENSES
54 OF THE PROGRAM. PROVIDED, HOWEVER, THAT PURSUANT TO AN AGREEMENT WITH
55 THE OFFICE A MUNICIPALITY, DEPARTMENT THEREOF, OR OTHER AGENCY MAY
56 CONDUCT A COURSE IN SUCH PROGRAM WITH ALL OR PART OF THE EXPENSE OF SUCH

1 COURSE AND PROGRAM BEING BORNE BY SUCH MUNICIPALITY, DEPARTMENT OR AGEN-
2 CY. IN NO EVENT SHALL SUCH FEE BE REFUNDABLE, EITHER FOR REASONS OF THE
3 PARTICIPANT'S WITHDRAWAL OR EXPULSION FROM SUCH PROGRAM OR OTHERWISE.

4 (G) CONDITIONAL LICENSE. (1) NOTWITHSTANDING ANY INCONSISTENT
5 PROVISION OF THE VEHICLE AND TRAFFIC LAW, PARTICIPANTS IN THE PROGRAM,
6 EXCEPT THOSE PENALIZED UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION
7 ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW FOR ANY
8 VIOLATION OF SUBDIVISION TWO, THREE, OR FOUR OF SECTION ELEVEN HUNDRED
9 NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW, MAY, AT THE DISCRETION OF THE
10 COMMISSIONER OF MOTOR VEHICLES, BE ISSUED A CONDITIONAL DRIVER'S
11 LICENSE; OR IF THE HOLDER OF A LICENSE ISSUED BY ANOTHER JURISDICTION
12 VALID FOR OPERATION IN THIS STATE, A CONDITIONAL PRIVILEGE OF OPERATING
13 A MOTOR VEHICLE IN THIS STATE. SUCH A CONDITIONAL LICENSE OR PRIVILEGE
14 SHALL BE VALID ONLY FOR USE BY THE HOLDER THEREOF: (I) ENROUTE TO AND
15 FROM THE HOLDER'S PLACE OF EMPLOYMENT; (II) IF THE HOLDER'S EMPLOYMENT
16 REQUIRES THE OPERATION OF A MOTOR VEHICLE THEN DURING THE HOURS THEREOF;
17 (III) ENROUTE TO AND FROM A CLASS OR AN ACTIVITY THAT IS AN AUTHORIZED
18 PART OF THE ALCOHOL AND DRUG REHABILITATION PROGRAM AND AT WHICH HIS OR
19 HER ATTENDANCE IS REQUIRED; (IV) ENROUTE TO AND FROM A CLASS OR COURSE
20 AT AN ACCREDITED SCHOOL, COLLEGE OR UNIVERSITY OR AT A STATE APPROVED
21 INSTITUTION OF VOCATIONAL OR TECHNICAL TRAINING; (V) TO OR FROM COURT
22 ORDERED PROBATION ACTIVITIES; (VI) TO AND FROM A MOTOR VEHICLE OFFICE
23 FOR THE TRANSACTION OF BUSINESS RELATING TO SUCH LICENSE OR PROGRAM;
24 (VII) FOR A THREE HOUR CONSECUTIVE DAYTIME PERIOD, CHOSEN BY THE ADMIN-
25 ISTRATORS OF THE PROGRAM, ON A DAY DURING WHICH THE PARTICIPANT IS NOT
26 ENGAGED IN USUAL EMPLOYMENT OR VOCATION; (VIII) ENROUTE TO AND FROM A
27 MEDICAL EXAMINATION OR TREATMENT AS PART OF A NECESSARY MEDICAL TREAT-
28 MENT FOR SUCH PARTICIPANT OR MEMBER OF THE PARTICIPANT'S HOUSEHOLD, AS
29 EVIDENCED BY A WRITTEN STATEMENT TO THAT EFFECT FROM A LICENSED MEDICAL
30 PRACTITIONER; AND (IX) ENROUTE TO AND FROM A PLACE, INCLUDING A SCHOOL,
31 AT WHICH A CHILD OR CHILDREN OF THE HOLDER ARE CARED FOR ON A REGULAR
32 BASIS AND WHICH IS NECESSARY FOR THE HOLDER TO MAINTAIN SUCH HOLDER'S
33 EMPLOYMENT OR ENROLLMENT AT AN ACCREDITED SCHOOL, COLLEGE OR UNIVERSITY
34 OR AT A STATE APPROVED INSTITUTION OF VOCATIONAL OR TECHNICAL TRAINING.
35 SUCH LICENSE OR PRIVILEGE SHALL REMAIN IN EFFECT DURING THE TERM OF THE
36 SUSPENSION OR REVOCATION OF THE PARTICIPANT'S LICENSE OR PRIVILEGE
37 UNLESS EARLIER REVOKED BY THE COMMISSIONER OF MOTOR VEHICLES.

38 (2) THE CONDITIONAL LICENSE OR PRIVILEGE DESCRIBED IN PARAGRAPH ONE OF
39 THIS SUBDIVISION SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER OF
40 MOTOR VEHICLES, AND SHALL HAVE INDICATED THEREIN THE CONDITIONS IMPOSED
41 BY SUCH PARAGRAPH.

42 (3) UPON RECEIPT OF A CONDITIONAL LICENSE ISSUED PURSUANT TO THIS
43 SECTION, ANY ORDER ISSUED BY A JUDGE, JUSTICE OR MAGISTRATE PURSUANT TO
44 PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION ELEVEN HUNDRED NINETY-THREE
45 OF THE VEHICLE AND TRAFFIC LAW SHALL BE SURRENDERED TO THE DEPARTMENT OF
46 MOTOR VEHICLES.

47 (4) THE COMMISSIONER OF MOTOR VEHICLES SHALL REQUIRE APPLICANTS FOR A
48 CONDITIONAL LICENSE TO PAY A FEE OF SEVENTY-FIVE DOLLARS FOR PROCESSING
49 COSTS. SUCH FEES ASSESSED UNDER THIS SUBDIVISION SHALL BE PAID TO THE
50 COMMISSIONER FOR DEPOSIT TO THE GENERAL FUND AND SHALL BE IN ADDITION TO
51 ANY FEES ESTABLISHED BY THE COMMISSIONER PURSUANT TO PARAGRAPH SIX OF
52 THIS SUBDIVISION TO DEFRAY THE COSTS OF THE ALCOHOL AND DRUG REHABILI-
53 TATION PROGRAM.

54 (5) THE CONDITIONAL LICENSE OR PRIVILEGES DESCRIBED IN THIS SUBDIVI-
55 SION MAY BE REVOKED BY THE COMMISSIONER OF MOTOR VEHICLES, FOR SUFFI-
56 CIENT CAUSE INCLUDING, BUT NOT LIMITED TO, FAILURE TO REGISTER IN THE

PROGRAM, FAILURE TO ATTEND OR SATISFACTORILY PARTICIPATE IN THE SESSIONS, CONVICTION OF ANY TRAFFIC INFRACTION OTHER THAN ONE INVOLVING PARKING, STOPPING OR STANDING OR CONVICTION OF ANY ALCOHOL OR DRUG-RELATED TRAFFIC OFFENSE, MISDEMEANOR OR FELONY. IN ADDITION, THE COMMISSIONER OF MOTOR VEHICLES SHALL HAVE THE RIGHT, AFTER A HEARING, TO REVOKE THE CONDITIONAL LICENSE OR PRIVILEGE UPON RECEIVING NOTIFICATION OR EVIDENCE THAT THE OFFENDER IS NOT ATTEMPTING IN GOOD FAITH TO ACCEPT REHABILITATION. IN THE EVENT OF SUCH REVOCATION, THE FEE DESCRIBED IN PARAGRAPH SIX OF THIS SUBDIVISION SHALL NOT BE REFUNDED.

(6) IT SHALL BE A TRAFFIC INFRACTION FOR THE HOLDER OF A CONDITIONAL LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE UPON A PUBLIC HIGHWAY FOR ANY USE OTHER THAN THOSE AUTHORIZED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION. WHEN A PERSON IS CONVICTED OF THIS OFFENSE, THE SENTENCE OF THE COURT MUST BE A FINE OF NOT LESS THAN TWO HUNDRED DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS OR A TERM OF IMPRISONMENT OF NOT MORE THAN FIFTEEN DAYS OR BOTH SUCH FINE AND IMPRISONMENT. ADDITIONALLY, THE CONDITIONAL LICENSE OR PRIVILEGES DESCRIBED IN THIS SUBDIVISION SHALL BE REVOKED BY THE COMMISSIONER OF MOTOR VEHICLES UPON RECEIVING NOTIFICATION FROM THE COURT THAT THE HOLDER THEREOF HAS BEEN CONVICTED OF THIS OFFENSE.

(8) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN A CERTIFICATE OF RELIEF FROM DISABILITIES OR A CERTIFICATE OF GOOD CONDUCT ISSUED PURSUANT TO ARTICLE TWENTY-THREE OF THE CORRECTION LAW, ANY CONDITIONAL LICENSE OR PRIVILEGE ISSUED TO A PERSON CONVICTED OF A VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW SHALL NOT BE VALID FOR THE OPERATION OF ANY COMMERCIAL MOTOR VEHICLE. IN ADDITION, NO SUCH CONDITIONAL LICENSE OR PRIVILEGE SHALL BE VALID FOR THE OPERATION OF A TAXICAB AS DEFINED IN THE VEHICLE AND TRAFFIC LAW.

(9) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THE VEHICLE AND TRAFFIC LAW, THE CONDITIONAL LICENSE DESCRIBED IN THIS SUBDIVISION MAY, PURSUANT TO REGULATIONS ESTABLISHED BY THE COMMISSIONER OF MOTOR VEHICLES, BE ISSUED TO A PERSON WHOSE LICENSE HAS BEEN SUSPENDED PENDING PROSECUTION PURSUANT TO SUBPARAGRAPH SEVEN OF PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW.

S 2. Section 1196 of the vehicle and traffic law is REPEALED.

S 3. Notwithstanding any other provision of law to the contrary, the department of motor vehicles is hereby authorized to transfer the alcohol and drug rehabilitation program established pursuant to section 1196 of the vehicle and traffic law to the office of alcoholism and substance abuse services. Oversight and responsibility for the operation of such program shall be assumed by such office and any regulations necessary for the continued operation and oversight of the program shall be promulgated by the commissioner of alcoholism and substance abuse services in consultation with the commissioner of motor vehicles.

S 4. Any rules or regulations promulgated by the commissioner of motor vehicles pursuant to the provisions of section 1196 of the vehicle and traffic law shall survive the repeal of such section pursuant to section two of this act, and shall be applicable to section 19.26 of the mental hygiene law, as added by section one of this act.

S 5. This act shall take effect immediately; provided, however, that absent explicit language expressly and unequivocally stating a legislative intent to the contrary, all provisions of this act are irrefutably presumed to operate in a wholly prospective manner. Provisions shall be considered to operate retroactively, and therefore in violation of this

1 section, if applied in such a manner as to alter, change, affect, impair
2 or defeat any rights, obligations, duties or interests accrued, incurred
3 or conferred prior to the effective date of this act. Furthermore, the
4 provisions of this act shall neither apply to, nor be applied based upon
5 the occasion of, acts occurring prior to the effective date thereof.