

1535

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. CYMBROWITZ -- read once and referred to the  
Committee on Transportation

AN ACT to amend the mental hygiene law, in relation to reestablishing  
the alcohol and drug rehabilitation program within the office of alco-  
holism 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 ASSEM-  
BLY, 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.

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

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1 (C) WHERE AVAILABLE. A COURSE IN SUCH PROGRAM SHALL BE AVAILABLE IN AT  
2 LEAST EVERY COUNTY IN THE STATE, EXCEPT WHERE THE COMMISSIONER DETER-  
3 MINES THAT THERE IS NOT A SUFFICIENT NUMBER OF ALCOHOL OR DRUG-RELATED  
4 TRAFFIC OFFENSES IN A COUNTY TO MANDATE THE ESTABLISHMENT OF SAID  
5 COURSE; AND PROVIDED THAT PROVISIONS BE MADE FOR THE RESIDENTS OF SAID  
6 COUNTY TO ATTEND A COURSE IN ANOTHER COUNTY WHERE A COURSE EXISTS.

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

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

55 (F) FEES. THE COMMISSIONER SHALL ESTABLISH A SCHEDULE OF FEES TO BE  
56 PAID BY OR ON BEHALF OF EACH PARTICIPANT IN THE PROGRAM, AND MAY, FROM

1 TIME TO TIME, MODIFY SAME. SUCH FEES SHALL DEFRAY THE ONGOING EXPENSES  
2 OF THE PROGRAM. PROVIDED, HOWEVER, THAT PURSUANT TO AN AGREEMENT WITH  
3 THE OFFICE A MUNICIPALITY, DEPARTMENT THEREOF, OR OTHER AGENCY MAY  
4 CONDUCT A COURSE IN SUCH PROGRAM WITH ALL OR PART OF THE EXPENSE OF SUCH  
5 COURSE AND PROGRAM BEING BORNE BY SUCH MUNICIPALITY, DEPARTMENT OR AGEN-  
6 CY. IN NO EVENT SHALL SUCH FEE BE REFUNDABLE, EITHER FOR REASONS OF THE  
7 PARTICIPANT'S WITHDRAWAL OR EXPULSION FROM SUCH PROGRAM OR OTHERWISE.

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

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

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

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

1 THIS SUBDIVISION TO DEFRAY THE COSTS OF THE ALCOHOL AND DRUG REHABILI-  
2 TATION PROGRAM.

3 (5) THE CONDITIONAL LICENSE OR PRIVILEGES DESCRIBED IN THIS SUBDIVI-  
4 SION MAY BE REVOKED BY THE COMMISSIONER OF MOTOR VEHICLES, FOR SUFFI-  
5 CIENT CAUSE INCLUDING, BUT NOT LIMITED TO, FAILURE TO REGISTER IN THE  
6 PROGRAM, FAILURE TO ATTEND OR SATISFACTORILY PARTICIPATE IN THE  
7 SESSIONS, CONVICTION OF ANY TRAFFIC INFRACTION OTHER THAN ONE INVOLVING  
8 PARKING, STOPPING OR STANDING OR CONVICTION OF ANY ALCOHOL OR DRUG-RE-  
9 LATED TRAFFIC OFFENSE, MISDEMEANOR OR FELONY. IN ADDITION, THE COMMIS-  
10 SIONER OF MOTOR VEHICLES SHALL HAVE THE RIGHT, AFTER A HEARING, TO  
11 REVOKE THE CONDITIONAL LICENSE OR PRIVILEGE UPON RECEIVING NOTIFICATION  
12 OR EVIDENCE THAT THE OFFENDER IS NOT ATTEMPTING IN GOOD FAITH TO ACCEPT  
13 REHABILITATION. IN THE EVENT OF SUCH REVOCATION, THE FEE DESCRIBED IN  
14 PARAGRAPH SIX OF THIS SUBDIVISION SHALL NOT BE REFUNDED.

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

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

35 (8) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THE VEHICLE AND  
36 TRAFFIC LAW, THE CONDITIONAL LICENSE DESCRIBED IN THIS SUBDIVISION MAY,  
37 PURSUANT TO REGULATIONS ESTABLISHED BY THE COMMISSIONER OF MOTOR VEHI-  
38 CLES, BE ISSUED TO A PERSON WHOSE LICENSE HAS BEEN SUSPENDED PENDING  
39 PROSECUTION PURSUANT TO SUBPARAGRAPH SEVEN OF PARAGRAPH (E) OF SUBDIVI-  
40 SION TWO OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAF-  
41 FIC LAW.

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

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

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

1     S   5. This act shall take effect immediately; provided, however, that  
2 absent explicit language expressly and unequivocally stating a legisla-  
3 tive intent to the contrary, all provisions of this act are irrefutably  
4 presumed to operate in a wholly prospective manner. Provisions shall be  
5 considered to operate retroactively, and therefore in violation of this  
6 section, if applied in such a manner as to alter, change, affect, impair  
7 or defeat any rights, obligations, duties or interests accrued, incurred  
8 or conferred prior to the effective date of this act. Furthermore, the  
9 provisions of this act shall neither apply to, nor be applied based upon  
10 the occasion of, acts occurring prior to the effective date thereof.