STATE OF NEW YORK

1332--A

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to establishing the behavioral-based driver retraining programs; to amend the state finance law, in relation to establishing the behavioral-based driver retraining pilot program fund; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature hereby declares that drivers in the state who have reached the point of revocation for traffic violations have proven themselves to be problem drivers. In order to provide meaningful safeguards for the general public who are users of the highways, it is determined that additional training is needed for these problem drivers. For this reason, the legislature directs the department of motor vehicles to implement a five-year driver retraining pilot program, requiring those drivers who have reached the point of revocation, in relevant instances, to complete a behavioral-based retraining course to force a change in the attitude and driving habits of problem drivers in order to have their license reinstated.

§ 2. Subdivision 5 of section 510 of the vehicle and traffic law, as amended by chapter 183 of the laws of 1988, is amended as follows:

5. Restoration. A [~~license or~~] registration may be restored by direction of the commissioner but not otherwise. **A license may be restored by direction of the commissioner but not otherwise; in addition, the completion of a driver retraining program as described in article twelve-D of this chapter in accordance with subdivision five-a of this section shall be required for the restoration of a license from revoca-**

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

LBD06982-02-8

tion in accordance with paragraphs a and c of subdivision two, subdivision two-a, and subdivision three of this section, with the exception of subparagraphs (ii) and (iii) of paragraph a of subdivision two of this section. Reversal on appeal, of any conviction because of which any license or registration has been revoked or suspended, shall entitle the holder to restoration thereof forthwith. The privileges of a non-resident may be restored by direction of the commissioner in his discretion but not otherwise.

§ 3. Section 510 of the vehicle and traffic law is amended by adding a new subdivision 5-a to read as follows:

5-a. Driver retraining required. A license revoked in accordance with paragraphs a and c of subdivision two, subdivision two-a, and subdivision three of this section, with the exception of subparagraphs (ii) and (iii) of paragraph a of subdivision two of this section, may be reinstated, restored, or reissued only upon completion of a driver retraining course as described in article twelve-D of this chapter in addition to the requirements of this section. Upon completion of the driver retraining course, the vendor of the course shall notify the department of such completion.

§ 4. The vehicle and traffic law is amended by adding a new article 12-D to read as follows:

ARTICLE 12-D

BEHAVIORAL-BASED DRIVER RETRAINING PROGRAM

Section 399-p. Statement of purpose.
399-q. Definitions.
399-r. Course approval by the commissioner.
399-s. Application for course approval.
399-t. Standards for course approval.
399-u. Monitoring retrained drivers and proof of effectiveness.
399-v. Deployment of program.
399-w. Information to the vendor.
399-x. Notifications of drivers.
399-y. Fee.
399-z. Regulations.
399-aa. Report.
399-bb. Reapproval of driver retraining courses.

§ 399-p. Statement of purpose. The purposes of this article are to further highway safety by establishing a program of high quality and effective behavioral-based driver retraining to rehabilitate problem drivers, as defined in this article, through the use of education and explanation. A behavioral-based driver retraining program must influence and challenge participants to change their behind-the-wheel behaviors and attitudes so they will choose to drive safely, responsibly, respectfully, and lawfully and provide participants with the knowledge, skills, and techniques to improve their driving-related choices, and thereby avoid collisions and decrease future violations. These purposes will be accomplished by establishing strict criteria for initial and continual course sponsorship approval.

§ 399-q. Definitions. For the purposes of this article, the following terms shall have the following definitions:

1. "Problem driver" shall mean a driver that has reached the point of revocation of license, due to traffic infractions, demonstrating he or she is an unusual or immediate risk upon the highways, pursuant to subdivision five-a of section five hundred ten of this chapter.

2. "Vendor" shall mean a not-for-profit organization which implements the program and designs, provides, conducts, and audits a behavioral-based driver retraining program approved by the commissioner.

3. "Instructor" shall mean an individual employed by a vendor to teach an approved driver retraining course.

4. "Driver retraining course" or "course" shall mean the classroom-based behavioral-based driver retraining course curriculum which has been approved by the commissioner.

5. "Completion certificate" shall mean a document which cannot be altered and which is provided to the student who successfully completes the driver retraining course.

§ 399-r. Course approval by the commissioner. The commissioner shall approve a driver retraining course before any person attending and successfully completing such course may qualify to receive mandatory reinstatement, restoration, or reissuance of a license in accordance with this article and section five hundred ten of this chapter. The commissioner shall base the decision to approve a course upon the requirements set forth in this article and any additional requirements as the commissioner deems necessary.

§ 399-s. Application for course approval. 1. A vendor seeking approval as a behavioral-based driver retraining course shall apply to the commissioner for approval. Such applications shall be made in writing and on forms prescribed by the commissioner. The application shall include at a minimum:

(a) the title or name of the course;

(b) the name of the vendor submitting the application;

(c) a profile of the vendor's operations, qualifications, and organizational capabilities including:

(i) a detailed description of its resources and experience relevant to the requirements to deliver this program.

(ii) a narrative on how and why its organization is capable of meeting the needs relevant to the delivery of this program.

(iii) at least three client references, including name, address, contact person, telephone number, months and years of service, and a description of the services that the vendor provided to the client;

(d) evidence of financial stability in the form of audited financial statements for the most recent financial year of the vendor for which statements are available including:

(i) statements which demonstrate that the vendor's organization is in sound financial condition, or that appropriate corrective action is being taken to resolve all identified financial problems.

(ii) if statements are not available for the last fiscal year, then the vendor may provide a pro forma statement of their most recent filings. If the vendor is a privately held entity that does not wish to submit its balance sheets and revenue statements, it shall demonstrate to the satisfaction of the commissioner that it is a financially stable organization.

(iii) alternative information which may be submitted includes, but is not limited to: number of employees, size of customer base, name of bank, name of law firm, name of accounting firm, rate of growth, approximate assets and liabilities.

(iv) additional information as the commissioner deems necessary;

(e) proof of curriculum ownership;

(f) a sample program curriculum;

(g) proof of course effectiveness as required in subdivision two of section three hundred ninety-nine-u of this article;

(h) proof of experience electronically registering, scheduling and maintaining records for all participants in a multi-site training program;

(i) the names and addresses of all owners, officers, and directors of the agency or organization;

(j) statement certifying that the vendor can provide the personnel sufficient to delivery of the program statewide through the term of the contract and how this commitment will be met; and

(k) such other information or material as the commissioner may prescribe. An application shall not be considered to be complete until all information and material required by this chapter and by regulation of the commissioner has been submitted.

2. The commissioner shall either approve or deny an application for course approval no later than ninety days following submission of a completed application.

§ 399-t. Standards for course approval. 1. Course approval. To be approved, a vendor must:

(a) provide a curriculum in accordance with the requirements of this section that includes at least four hundred thirty minutes of instruction with a certified instructor present presented in a single day or a two day session. Nothing in this section shall prevent the use of audio/visual aids as part of the course presentation prescribed by the commissioner.

(b) have provided the course for at least ten years prior to the submission of an application.

(c) have administered driver retraining on a large volume basis in a class room environment to a minimum of at least fifty thousand persons in a calendar year.

(d) provide a description of the minimum qualifications of all managers and instructors who will be hired by the applicant.

(e) provide each instructor with an instructor's manual and provide student workbooks and/or manuals for each course participant.

(f) provide proof of effectiveness pursuant to section three hundred ninety-nine-u of this article.

2. Curriculum. To be approved, the curriculum of the driver retraining course provided for in this article shall include at least the following:

(a) proven educational or psychological principals/methodologies such as Dr. William Glasser's "Choice Theory" as it relates to behind-the-wheel driving behavior;

(b) why drivers do or do not choose to obey traffic laws with the primary focus on behaviors rather than excuses;

(c) four components of human behavior - doing, thinking, feeling and physiology and the connection between the concepts of needs and wants to behaviors and the human ability to choose behaviors.

(d) additional problem driver behaviors including, but not limited to: hazards associated with prescriptive and over-the-counter drugs, including synergism; impacts of driving with excessive speed; impacts of right-of-way violations; dangers of distracted driving; proper passing and following distances; aggressive driving behaviors; and how fatigue can affect driving behavior.

3. Schedules and facilities. (a) Vendor shall set and adhere to published schedules of training classes at designated places, dates and times. Vendor shall submit training class schedule and locations to the commissioner quarterly.

(b) Vendor shall offer classes at locations throughout the state.

(c) Vendor shall offer a variety of night and weekend courses.

(d) Vendor shall be responsible for securing, and/or obtaining permission for the use of appropriate classroom teaching facilities used for re-training programs.

(e) Vendor shall be responsible for any costs associated with the use of such facilities, including, but not limited to, rent, lights, heat and insurance, and no reimbursement or indemnification for such costs will be provided by the commissioner.

(f) Vendor shall assure that the facilities and program elements for retraining problem drivers are accessible to drivers with physical disabilities and in compliance with the requirements of the Americans with Disabilities Act of 1990.

(g) Vendor shall agree that the commissioner reserves the right to reject, at any time, the use of any facility he or she deems unfit for classroom instruction or geographically inconvenient for the registrants.

4. Business office and telephone. (a) Vendor shall maintain a business office in the state which shall be staffed Monday through Friday, between the hours of 9:00 am and 5:00 pm, to provide the administrative support necessary for successfully maintaining the program.

(b) Vendor shall agree to provide a toll-free telephone exchange service number for program registration use.

(c) Vendor shall agree to provide a website for program information and registration use.

5. Method of instruction. (a) Vendor shall agree to design a curriculum based upon the theory that inducing positive changes in attitude and driving behavior of a person who has been identified as a problem driver, as defined in this article, is a proven method of successful driver retraining.

(b) Vendor shall have experience in designing and implementing a curriculum based upon proven educational or psychological principles, which may include, but not be limited to, methodologies such as Dr. William Glasser's "Choice Theory." While the commissioner may consider different educational approaches based upon the objective merits of each, it is essential that any proposed curriculum be guided by a clear and consistent educational philosophy. The effectiveness of that philosophy in modifying the types of behavior that may lead to the need for driver retraining shall be clearly demonstrated.

(c) The curriculum shall include different forms of media to address a diverse community. The training shall include videos of different styles of driving aggressions and ways to defuse these aggressions.

(d) The proposed curriculum shall encourage the problem driver to explore and understand his or her own attitudes in various driving situations and to also understand the behavioral driving characteristics that have resulted in the driver's poor driving record. The proposed program shall teach the problem driver that poor behavioral choices made behind the wheel often result in unintended consequences, including motor vehicle violations, or accidents, and that the driver shall appreciate the responsibility placed upon each driver to conform his or her driving conduct for the benefit of other motorists, pedestrians, and themselves. Training shall be highly interactive, engaging and take advantage of various forms of media. Classes shall maintain an appropriate student to instructor ratio.

6. Out-of-state drivers and out-of-state programs. (a) When the commissioner identifies an out-of-state driver as a problem driver, as defined in this article, the vendor shall notify the driver of the

availability of the course in New York state using the same means of notification for in-state problem drivers. Vendor shall also notify the out-of-state driver of the name and location of similar programs in the driver's home state, which may qualify for recognition by the commissioner.

(b) Vendor shall assist the commissioner in determining which out-of-state programs meet the criteria established in the state for a driver retraining program.

(c) Vendor shall coordinate with qualified programs to receive and disseminate information and referrals about problem drivers and about the retraining programs.

(d) If a qualified out-of-state program notifies the vendor of the successful completion of the program by an individual problem driver referred from the commissioner, the vendor shall electronically notify the commissioner of such completion.

7. Electronic communication. (a) Vendor shall agree that it possesses or will obtain computer hardware/software that is compatible with the hardware/software of the department to allow the vendor and the department to exchange information directly into each other's computer systems as required.

(b) Vendor shall agree that the department will electronically notify the vendor of the names and addresses of the problem drivers requiring retraining.

(c) Vendor shall agree that it shall then notify, by letter approved by the commissioner, each identified problem driver of the availability of the course and the required fee.

(d) Vendor shall agree that, within one business day of the successful completion of the course by a driver, it will electronically notify the department through an established computer link.

8. Costs, fees and transfers. (a) Vendor shall assume all costs of the driver retraining program.

(b) Vendor shall agree that each driver required to enroll in the driver retraining program will be assessed a reasonable and uniform fee for the course. Such fee shall not be in excess of the quote of the vendor.

(c) Vendor shall arrange for and collect payment of the fee from the registrant.

(d) Vendor shall deposit to a designated account of the department by way of electronic funds transfer as instructed by the commissioner, the agreed upon fee collected from the registrant as reimbursement of department program costs.

(e) Vendor shall be responsible for any costs associated with the collection of checks drawn on insufficient funds, or on unpaid registration fees. The department will not refund its fee if the vendor fails to recover from the student.

9. Personnel. The vendor shall provide a team of personnel consisting of one account manager and personnel sufficient for the delivery of the program statewide.

(a) Vendor shall agree to immediately remove any person performing services under a resulting contract who is, in the judgment of the department, disqualified by reason of ethics, competence, criminal behavior, or motor vehicle violations, or any cause whatsoever, from doing commerce with, or providing services for the state. Such person may be reinstated by the vendor only upon clear written notice of the approval of the commissioner.

(b) Vendor shall agree that it accepts full responsibility for the performance of any sub-contractors, if used. The vendor may sub-contract the services required to deliver this program, but the department shall require a single point of responsibility for this contract. As prime contractor, the vendor shall identify any and all sub-contractors and shall describe the type of contractual arrangement that will exist between the vendor and the sub-contractors. Vendor shall agree that it shall be responsible for meeting all of the terms and conditions of any contract resulting, including the performance of any sub-contractors. The department shall not be responsible for payments due a sub-contractor from the primary contractor.

(c) Vendor shall agree in its response that each person performing services under this contract shall meet the following requirements:

(i) Vendor shall agree to employ only those individuals as instructors who would be reasonably considered qualified instructors for such course by reason of their educational attainments, teaching experience and familiarity with the subject matter and methods used to successfully retrain problem drivers as defined in this article.

(ii) An otherwise qualified instructor shall not be used in any of the driver re-training program if the person is ineligible to obtain or retain driving privileges in any jurisdiction. The department may also reject the use of any particular instructor if the department has reason to believe that the instructor is not properly qualified as a retraining instructor.

10. The commissioner is authorized to suspend or revoke approval of a vendor should the commissioner find that the vendor or its instructors have been found to be in violation of any applicable laws or regulations.

§ 399-u. Monitoring retrained drivers and proof of effectiveness. 1. Monitoring retrained drivers. (a) Vendor shall agree that the department may monitor driving records of persons who have taken and passed the vendor's driver retraining program.

(b) Vendor shall agree that the department may require the vendor to periodically provide the department with information it reasonably believes necessary to monitor the performance of the vendor, including but not limited to, information on numbers of students, number of classes held, class size, location and frequency of classes, and pass/fail rate.

(c) Vendor shall agree to submit on a monthly basis a reconciliation report detailing the number of drivers that have been retrained and the amount of funds transferred to the department.

(d) Vendor shall agree to collaborate with the department to create a survey at the end of the class to capture student feedback on their experience.

2. Proof of effectiveness. (a) Proof of effectiveness submitted by the vendor for sponsorship shall be verifiable research documentation showing evidence of effectiveness as determined by the commissioner in terms of reduced convictions or accidents or both. This research documentation shall employ accepted research principles. In order to establish verifiable effectiveness, the sample group shall be comprised of a minimum of three thousand drivers. The documentation shall include conviction or accident data for each motorist for a period of at least eighteen months prior to the revocation date and at least eighteen months subsequent to reissuance of license. The documentation shall also include a description of the sampling and analytic procedures used, and the motorist identification number and course completion date for all course

attendees. The vendor for sponsorship shall provide, at the request of the commissioner and at the applicant's expense, all driving record data and analysis used in the development of the submitted research documentation. Submission of any fraudulent or intentionally misleading data will disqualify that organization and all owners and principals from participating or approval in the driver retraining course for a period of ten years from submission date. The commissioner may, by regulation, provide for a smaller sample group for specialized courses.

(b) Prior to the end of the pilot program, the vendor shall conduct a study of the effectiveness of the driver retraining program conducted in the state. This proof of effectiveness shall be verifiable research documentation showing evidence of effectiveness as determined by the commissioner in terms of reduced convictions or accidents or both. This research documentation shall employ accepted research principles and include treatment and non-treatment control groups comprised of samples of the representative driver base. In order to establish verifiable effectiveness, each sample group shall be comprised of a minimum of three thousand drivers selected randomly. The documentation shall include conviction or accident data for each motorist for a period of at least eighteen months prior to the revocation date and at least eighteen months subsequent to reissuance of license. The documentation shall also include a description of the sampling and analytic procedures used, and the motorist identification number and course completion date for all course attendees. The vendor shall provide, at the request of the commissioner and at the applicant's expense, all driving record data and analysis used in the development of the submitted research documentation.

§ 399-v. Deployment of program. Vendor shall propose and provide a start-up deployment plan. The proposed start-up deployment plan timetable shall include realistic milestone dates to indicate when the vendor will meet certain targets. The vendor's start-up deployment plan shall include:

1. the number of class locations the vendor intends to have operational by specific dates;

2. the number of instructors the vendor plans to hire by specific dates;

3. plans to test its computer compatibility with the department data center; and

4. a realistic start-up date for full operations of the proposed driver retraining program.

§ 399-w. Information to the vendor. 1. The department will provide the vendor with the names, addresses, and license numbers of those individuals who are required to successfully complete a course of driver retraining by electronic media.

2. All data provided to the vendor shall be kept in accordance with the requirements of the Driver Privacy Protection Act and any related state requirements.

3. The selected vendor will be required to enter into a data privacy agreement with the department once a contract has been awarded.

4. The department will update the driver's record upon notification by the vendor of the driver's successful completion of the re-training program.

5. The department shall provide the vendor with relevant data necessary for the completion of the required effectiveness study.

§ 399-x. Notifications of drivers. The department shall notify those individual drivers that are required to successfully complete the driver retraining program of this requirement.

§ 399-y. Fee. The vendor is authorized to impose a fee for participation in the behavioral-based driver retraining program. The department shall receive a portion of the fee not to exceed two-fifths.

§ 399-z. Regulations. The commissioner shall promulgate such rules and regulations as are necessary to effectuate the provisions of this article. In addition to any requirements expressly authorized by this article, such regulations may include, but not be limited to, requirements and standards with respect to: vendors and instructors; classroom facilities; suspension or revocation of approval; appeal of revocation; course administration and advertising; monitoring of courses and instructors; and reevaluation of course effectiveness pursuant to section three hundred ninety-nine-u of this article.

§ 399-aa. Report. Within five years of the establishment and implementation of this article, the commissioner shall report to the governor, the temporary president of the senate and the speaker of the assembly on the driver retraining program and its results. Such report shall include recommendations as to the future of the program.

§ 399-bb. Reapproval of driver retraining courses. Nothing in this article shall be deemed to require the commissioner to reapprove motor vehicle driver retraining courses approved by the commissioner pursuant to rules and regulations prior to the effective date of this article.

§ 5. The state finance law is amended by adding a new section 99-bb to read as follows:

§ 99-bb. Behavioral-based driver retraining pilot program fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "driver retraining pilot program fund".

2. Such fund shall consist of all fees received by the department of motor vehicles pursuant to the provisions of article twelve-D of the vehicle and traffic law, and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. The moneys in such fund shall be expended only for the purposes of administering and implementing the provisions of article twelve-D of the vehicle and traffic law by the department of motor vehicles.

§ 6. This act shall take effect one year after it shall have become a law and shall expire and be deemed repealed 5 years after the date the behavioral-based driver retraining pilot program is established and implemented by the commissioner of motor vehicles pursuant to article 12-D of the vehicle and traffic law as added by section four of this act; provided however, that effective immediately, the addition, amendment, or repeal of any rule or regulation necessary for the implementation of this act shall be made and completed on or before such effective date; and provided further, however, that the commissioner of motor vehicles shall notify the legislative bill drafting commission upon the date the behavioral-based driver retraining pilot program is established and implemented in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.