

STATE OF NEW YORK

7133--A

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sens. KAVANAGH, HOYLMAN, ADDABBO, ALCANTARA, AVELLA, BAILEY, BENJAMIN, BRESLIN, HAMILTON, KRUEGER, MONTGOMERY, PARKER, PERALTA, PERSAUD, RIVERA, SANDERS, SAVINO, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the criminal procedure law and the penal law, in relation to establishing extreme risk protection orders as court-issued orders of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun

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

Section 1. The civil practice law and rules is amended by adding a new article 63-A to read as follows:

ARTICLE 63-A

EXTREME RISK PROTECTION ORDERS

Section 6340. Definitions.

6341. Application for an extreme risk protection order.

6342. Issuance of a temporary extreme risk protection order.

6343. Issuance of a final extreme risk protection order.

6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order.

6345. Request for renewal of an extreme risk protection order.

6346. Expiration of an extreme risk protection order.

6347. Effect of findings and determinations in subsequent proceedings.

§ 6340. Definitions. For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

2. "Petitioner" means: (a) a police officer, as defined in section 1.20 of the criminal procedure law, or district attorney with jurisdic-

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

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tion in the county or city where the person against whom the order is sought resides; or (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought.

3. "Respondent" means the person against whom an extreme risk protection order is or may be sought under this article.

4. "Possess" shall have the same meaning as defined in subdivision eight of section 10.00 of the penal law.

§ 6341. Application for an extreme risk protection order. In accordance with this article, a petitioner may file a sworn application, and accompanying supporting documentation, setting forth the facts and circumstances justifying the issuance of an extreme risk protection order. Such application and supporting documentation shall be filed in the supreme court in the county in which the respondent resides. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. Such application form shall include inquiry as to whether the petitioner knows, or has reason to believe, that the respondent owns, possesses or has access to a firearm, rifle or shotgun and if so, a request that the petitioner list or describe such firearms, rifles and shotguns, and the respective locations thereof, with as much specificity as possible.

§ 6342. Issuance of a temporary extreme risk protection order. 1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. Such application for a temporary order shall be determined in writing on the same day the application is filed.

2. In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

(a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;

(b) a violation or alleged violation of an order of protection;

(c) any pending charge or conviction for an offense involving the use of a weapon;

(d) the reckless use, display or brandishing of a firearm, rifle or shotgun;

(e) any history of a violation of an extreme risk protection order;

(f) evidence of recent or ongoing abuse of controlled substances or alcohol; or

(g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.

In considering the factors under this subdivision, the court shall consider the time that has elapsed since the occurrence of such act or acts and the age of the person at the time of the occurrence of such act or acts.

For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

3. The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable cause for issuance of a temporary order. The court may conduct an exam-

1 ination under oath of the petitioner and any witness the petitioner may
2 produce.

3 4. A temporary extreme risk protection order, if warranted, shall
4 issue in writing, and shall include:

5 (a) a statement of the grounds found for the issuance of the order;

6 (b) the date and time the order expires;

7 (c) the address of the court that issued the order;

8 (d) a statement to the respondent: (i) directing that the respondent
9 may not purchase, possess or attempt to purchase or possess a firearm,
10 rifle or shotgun while the order is in effect and that any firearm,
11 rifle or shotgun possessed by such respondent shall be promptly surren-
12 dered to any authorized law enforcement official in the same manner as
13 set forth in subdivision five of section 530.14 of the criminal proce-
14 dure law;

15 (ii) informing the respondent that the court will hold a hearing no
16 sooner than three nor more than six business days after service of the
17 temporary order, to determine whether a final extreme risk protection
18 order will be issued and the date, time and location of such hearing,
19 provided that the respondent shall be entitled to more than six days
20 upon request in order to prepare for the hearing; and (iii) informing
21 the respondent the he or she may seek the advice of an attorney and that
22 an attorney should be consulted promptly; and

23 (e) a form to be completed and executed by the respondent at the time
24 of service of the temporary extreme risk protection order which elicits
25 a list of all firearms, rifles and shotguns possessed by the respondent
26 and the particular location of each firearm, rifle or shotgun listed.

27 5. If the application for a temporary extreme risk protection order is
28 not granted, the court shall notify the petitioner and, unless the
29 application is voluntarily withdrawn by the petitioner, nonetheless
30 schedule a hearing on the application for a final extreme risk
31 protection order. Such hearing shall be scheduled to be held promptly,
32 but in any event no later than ten business days after the date on which
33 such application is served on the respondent, provided, however, that
34 the respondent may request, and the court may grant, additional time to
35 allow the respondent to prepare for the hearing. A notice of such hear-
36 ing shall be prepared by the court and shall include the date and time
37 of the hearing, the address of the court, and the subject of the hear-
38 ing.

39 6. (a) The court shall, in the manner specified in paragraph (b) of
40 this subdivision, arrange for prompt service of a copy of the temporary
41 extreme risk protection order, if any, the application therefor and, if
42 separately applied for or if a temporary extreme risk protection order
43 was not granted, the application for an extreme risk protection order,
44 any notice of hearing prepared by the court, along with any associated
45 papers including the petition and any supporting documentation,
46 provided, that the court may redact the address and contact information
47 of the petitioner from such application and papers where the court finds
48 that disclosure of such address or other contact information would pose
49 an unreasonable risk to the health or safety of the petitioner.

50 (b) The court shall provide copies of such documents to the appropri-
51 ate law enforcement agency serving the jurisdiction of the respondent's
52 residence with a direction that such documents be promptly served, at no
53 cost to the petitioner, on the respondent; provided, however, that the
54 petitioner may voluntarily arrange for service of copies of such order
55 and associated papers through a third party, such as a licensed process
56 server.

7. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after issuing the order to such persons or agencies. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of any such protection order, any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

8. A law enforcement officer serving a temporary extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in the respondent's possession in a manner consistent with the procedures of article six hundred ninety of the criminal procedure law.

9. Upon issuance of a temporary extreme risk protection order, or upon setting a hearing for a final extreme risk protection order where a temporary order is denied or not requested, the court shall direct the law enforcement agency having jurisdiction to conduct a background investigation and report to the court and, subject to any appropriate redactions to protect any person, each party regarding whether the respondent:

(a) has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;

(b) has any criminal charge or violation currently pending against him or her;

(c) is currently on parole or probation;

(d) possesses any registered firearms, rifles or shotguns; and

(e) has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.

§ 6343. Issuance of a final extreme risk protection order. 1. In accordance with this article, no sooner than three business days nor later than six business days after service of a temporary extreme risk protection order and, alternatively, no later than ten business days after service of an application under this article where no temporary extreme risk protection order has been issued, the supreme court shall hold a hearing to determine whether to issue a final extreme risk protection order and, when applicable, whether a firearm, rifle or shot-

1 gun surrendered by, or removed from, the respondent should be returned
2 to the respondent. The respondent shall be entitled to more than six
3 business days if a temporary extreme risk protection order has been
4 issued and the respondent requests a reasonable period of additional
5 time to prepare for the hearing. Where no temporary order has been
6 issued, the respondent may request, and the court may grant, additional
7 time beyond the ten days to allow the respondent to prepare for the
8 hearing.

9 2. At the hearing pursuant to subdivision one of this section, the
10 petitioner shall have the burden of proving, by clear and convincing
11 evidence, that the respondent is likely to engage in conduct that would
12 result in serious harm to himself, herself or others, as defined in
13 paragraph one or two of subdivision (a) of section 9.39 of the mental
14 hygiene law. The court may consider the petition and any evidence
15 submitted by the petitioner, any evidence submitted by the respondent,
16 any testimony presented, and the report of the relevant law enforcement
17 agency submitted pursuant to subdivision nine of section sixty-three
18 hundred forty-two of this article. The court shall also consider the
19 factors set forth in subdivision two of section sixty-three hundred
20 forty-two of this article.

21 3. (a) After the hearing pursuant to subdivision one of this section,
22 the court shall issue a written order granting or denying the extreme
23 risk protection order and setting forth the reasons for such determi-
24 nation. If the extreme risk protection order is granted, the court shall
25 direct service of such order in the manner and in accordance with the
26 protections for the petitioner set forth in subdivision six of section
27 sixty-three hundred forty-two of this article.

28 (b) Upon issuance of an extreme risk protection order: (i) any
29 firearm, rifle or shotgun removed pursuant to a temporary extreme risk
30 protection order or such extreme risk protection order shall be retained
31 by the law enforcement agency having jurisdiction for the duration of
32 the order, unless ownership of the firearm, rifle or shotgun is legally
33 transferred by the respondent to another individual permitted by law to
34 own and possess such firearm, rifle or shotgun; (ii) the supreme court
35 shall temporarily suspend any existing firearm license possessed by the
36 respondent and order the respondent temporarily ineligible for such a
37 license; (iii) the respondent shall be prohibited from purchasing or
38 possessing, or attempting to purchase or possess, a firearm, rifle or
39 shotgun; and (iv) the court shall direct the respondent to surrender any
40 firearm, rifle or shotgun in his or her possession in the same manner as
41 set forth in subdivision five of section 530.14 of the criminal proce-
42 dure law.

43 (c) An extreme risk protection order issued in accordance with this
44 section shall extend, as specified by the court, for a period of up to
45 one year from the date of the issuance of such order; provided, however,
46 that if such order was immediately preceded by the issuance of a tempo-
47 rary extreme risk protection order, then the duration of the extreme
48 risk protection order shall be measured from the date of issuance of
49 such temporary extreme risk protection order.

50 (d) A law enforcement officer serving a final extreme risk protection
51 order shall request that the respondent immediately surrender to the
52 officer all firearms, rifles and shotguns in the respondent's possession
53 and the officer shall conduct any search permitted by law for such
54 firearms. The law enforcement officer shall take possession of all
55 firearms, rifles and shotguns that are surrendered, that are in plain
56 sight, or that are discovered pursuant to a lawful search. As part of

1 the order, the court may also direct a police officer to search for
2 firearms, rifles and shotguns in a respondent's possession consistent
3 with the procedures of article six hundred ninety of the criminal proce-
4 dure law.

5 4. (a) The court shall notify the division of state police, any other
6 law enforcement agency with jurisdiction, all applicable licensing offi-
7 cers, and the division of criminal justice services of the issuance of a
8 final extreme risk protection order and provide a copy of such order to
9 such persons and agencies no later than the next business day after
10 issuing the order. The court also shall promptly notify such persons and
11 agencies and provide a copy of any order amending or revoking such
12 protection order or restoring the respondent's ability to own or possess
13 firearms, rifles or shotguns no later than the next business day after
14 issuing the order to restore such right to the respondent. Any notice or
15 report submitted pursuant to this subdivision shall be in an electronic
16 format, in a manner prescribed by the division of criminal justice
17 services.

18 (b) Upon receiving notice of the issuance of a final extreme risk
19 protection order, the division of criminal justice services shall imme-
20 diately report the existence of such order to the federal bureau of
21 investigation to allow the bureau to identify persons prohibited from
22 purchasing firearms, rifles or shotguns. The division shall also imme-
23 diately report to the bureau the expiration of such protection order and
24 any court order amending or revoking such protection order or restoring
25 the respondent's ability to purchase a firearm, rifle or shotgun.

26 5. (a) If, in accordance with a temporary extreme risk protection
27 order, a firearm, rifle or shotgun has been surrendered by or removed
28 from the respondent, and the supreme court subsequently finds that the
29 petitioner has not met the required standard of proof, the court's find-
30 ing shall include a written order, issued to all parties, directing that
31 any firearm, rifle or shotgun surrendered or removed pursuant to such
32 temporary order shall be returned to the respondent, upon a written
33 finding that there is no legal impediment to the respondent's possession
34 of such firearm, rifle or shotgun.

35 (b) If any other person demonstrates that he or she is the lawful
36 owner of any firearm, rifle or shotgun surrendered or removed pursuant
37 to a protection order issued in accordance with this article, and
38 provided that the court has made a written finding that there is no
39 legal impediment to the person's possession of a surrendered or removed
40 firearm, rifle or shotgun, the court shall direct that such firearm,
41 rifle or shotgun be returned to such lawful owner and inform such person
42 of the obligation to safely store such firearm, rifle, or shotgun in
43 accordance with section 265.45 of the penal law.

44 6. The respondent shall be notified on the record and in writing by
45 the court that he or she may submit one written request, at any time
46 during the effective period of an extreme risk protection order, for a
47 hearing setting aside any portion of such order. The request shall be
48 submitted in substantially the same form and manner as prescribed by the
49 chief administrator of the courts. Upon such request, the court shall
50 promptly hold a hearing, in accordance with this article, after provid-
51 ing reasonable notice to the petitioner. The respondent shall bear the
52 burden to prove, by clear and convincing evidence, any change of circum-
53 stances that may justify a change to the order.

54 § 6344. Surrender and removal of firearms, rifles and shotguns pursu-
55 ant to an extreme risk protection order. 1. When a law enforcement offi-
56 cer takes any firearm, rifle or shotgun pursuant to a temporary extreme

1 risk protection order or a final extreme risk protection order, the
2 officer shall give to the person from whom such firearm, rifle or shot-
3 gun is taken a receipt or voucher for the property taken, describing the
4 property in detail. In the absence of a person, the officer shall leave
5 the receipt or voucher in the place where the property was found, mail a
6 copy of the receipt or voucher, retaining proof of mailing, to the last
7 known address of the respondent and, if different, the owner of the
8 firearm, rifle or shotgun, and file a copy of such receipt or voucher
9 with the court. All firearms, rifles and shotguns in the possession of a
10 law enforcement official pursuant to this article shall be subject to
11 the provisions of applicable law, including but not limited to subdivi-
12 sion six of section 400.05 of the penal law; provided, however, that any
13 such firearm, rifle or shotgun shall be retained and not disposed of by
14 the law enforcement agency for at least two years unless legally trans-
15 ferred by the respondent to an individual permitted by law to own and
16 possess such firearm, rifle or shotgun.

17 2. If the location to be searched during the execution of a temporary
18 extreme risk protection order or extreme risk protection order is joint-
19 ly occupied by two or more parties, and a firearm, rifle or shotgun
20 located during the execution of such order is owned by a person other
21 than the respondent, the court shall, upon a written finding that there
22 is no legal impediment to the respondent's possession of such firearm,
23 rifle or shotgun, order the return of such firearm, rifle or shotgun to
24 such lawful owner and inform such person of their obligation to safely
25 store their firearm, rifle, or shotgun in accordance with section 265.45
26 of the penal law.

27 § 6345. Request for renewal of an extreme risk protection order. 1.
28 If a petitioner believes a person subject to an extreme risk protection
29 order continues to be likely to engage in conduct that would result in
30 serious harm to himself, herself, or others, as defined in paragraph one
31 or two of subdivision (a) of section 9.39 of the mental hygiene law,
32 such petitioner may, at any time within sixty days prior to the expira-
33 tion of such existing extreme risk protection order, initiate a request
34 for a renewal of such order, setting forth the facts and circumstances
35 necessitating the request. The chief administrator of the courts shall
36 adopt forms that may be used for purposes of such applications and the
37 court's consideration of such applications. The court may issue a tempo-
38 rary extreme risk protection order in accordance with section sixty-
39 three hundred forty-two of this article, during the period that a
40 request for renewal of an extreme risk protection order is under consid-
41 eration pursuant to this section.

42 2. A hearing held pursuant to this section shall be conducted in the
43 supreme court, in accordance with section sixty-three hundred forty-
44 three of this article, to determine if a request for renewal of the
45 order shall be granted. The respondent shall be served with written
46 notice of an application for renewal a reasonable time before the hear-
47 ing, and shall be afforded an opportunity to fully participate in the
48 hearing. The court shall direct service of such application and the
49 accompanying papers in the manner and in accordance with the protections
50 for the petitioner set forth in subdivision six of section sixty-three
51 hundred forty-two of this article.

52 § 6346. Expiration of an extreme risk protection order. 1. A
53 protection order issued pursuant to this article, and all records of any
54 proceedings conducted pursuant to this article, shall be sealed upon
55 expiration of such order and the clerk of the court wherein such
56 proceedings were conducted shall immediately notify the commissioner of

1 the division of criminal justice services, the heads of all appropriate
2 police departments, applicable licensing officers, and all other appro-
3 priate law enforcement agencies that the order has expired and that the
4 record of such protection order shall be sealed and not be made avail-
5 able to any person or public or private entity, except that such records
6 shall be made available to:

7 (a) the respondent or the respondent's designated agent;

8 (b) courts in the unified court system;

9 (c) police forces and departments having responsibility for enforce-
10 ment of the general criminal laws of the state;

11 (d) any state or local officer or agency with responsibility for the
12 issuance of licenses to possess a firearm, rifle or shotgun, when the
13 respondent has made application for such a license; and

14 (e) any prospective employer of a police officer or peace officer as
15 those terms are defined in subdivisions thirty-three and thirty-four of
16 section 1.20 of the criminal procedure law, in relation to an applica-
17 tion for employment as a police officer or peace officer; provided,
18 however, that every person who is an applicant for the position of
19 police officer or peace officer shall be furnished with a copy of all
20 records obtained under this subparagraph and afforded an opportunity to
21 make an explanation thereto.

22 2. Upon expiration of a protection order issued pursuant to this arti-
23 cle and upon written application of the respondent who is the subject of
24 such order, with notice and opportunity to be heard to the petitioner
25 and every licensing officer responsible for issuance of a firearm
26 license to the subject of the order pursuant to article four hundred of
27 the penal law, and upon a written finding that there is no legal imped-
28 iment to the respondent's possession of a surrendered firearm, rifle or
29 shotgun, the court shall order the return of a firearm, rifle or shotgun
30 not otherwise disposed of in accordance with subdivision one of section
31 sixty-three hundred forty-four of this article. When issuing such order
32 in connection with any firearm subject to a license requirement under
33 article four hundred of the penal law, if the licensing officer informs
34 the court that he or she will seek to revoke the license, the order
35 shall be stayed by the court until the conclusion of any license revoca-
36 tion proceeding.

37 § 6347. Effect of findings and determinations in subsequent
38 proceedings. Notwithstanding any contrary claim based on common law or
39 a provision of any other law, no finding or determination made pursuant
40 to this article shall be interpreted as binding, or having collateral
41 estoppel or similar effect, in any other action or proceeding, or with
42 respect to any other determination or finding, in any court, forum or
43 administrative proceeding.

44 § 2. Paragraph (b) of subdivision 5 of section 530.14 of the criminal
45 procedure law, as added by chapter 644 of the laws of 1996, is amended
46 to read as follows:

47 (b) The prompt surrender of one or more firearms pursuant to a court
48 order issued pursuant to this section shall be considered a voluntary
49 surrender for purposes of subparagraph (f) of paragraph one of subdivi-
50 sion a of section 265.20 of the penal law. The disposition of any such
51 firearms shall be in accordance with the provisions of subdivision six
52 of section 400.05 of the penal law; provided, however, that upon termi-
53 nation of any suspension order issued pursuant to this section or
54 section eight hundred forty-two-a of the family court act, upon written
55 application of the subject of the order, with notice and opportunity to
56 be heard to the district attorney, the county attorney, the protected

1 party, and every licensing officer responsible for issuance of a
2 firearms license to the subject of the order pursuant to article four
3 hundred of the penal law, and upon a written finding that there is no
4 legal impediment to the subject's possession of a surrendered firearm,
5 rifle or shotgun, any court of record exercising criminal jurisdiction
6 may order the return of a firearm, rifle or shotgun not otherwise
7 disposed of in accordance with subdivision six of section 400.05 of the
8 penal law. When issuing such order in connection with any firearm
9 subject to a license requirement under article four hundred of the penal
10 law, if the licensing officer informs the court that he or she will seek
11 to revoke the license, the order shall be stayed by the court until the
12 conclusion of any license revocation proceeding.

13 § 3. Section 265.45 of the penal law, as amended by section 3 of part
14 FF of chapter 57 of the laws of 2013, is amended to read as follows:

15 § 265.45 Safe storage of rifles, shotguns, and firearms.

16 No person who owns or is custodian of a rifle, shotgun or firearm who
17 resides with an individual who such person knows or has reason to know
18 is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)
19 (1), (4), (8) or (9), or pursuant to a temporary or final extreme risk
20 protection order issued under article sixty-three-A of the civil prac-
21 tice law and rules, shall store or otherwise leave such rifle, shotgun
22 or firearm out of his or her immediate possession or control without
23 having first securely locked such rifle, shotgun or firearm in an appro-
24 priate safe storage depository or rendered it incapable of being fired
25 by use of a gun locking device appropriate to that weapon. For purposes
26 of this section "safe storage depository" shall mean a safe or other
27 secure container which, when locked, is incapable of being opened with-
28 out the key, combination or other unlocking mechanism and is capable of
29 preventing an unauthorized person from obtaining access to and
30 possession of the weapon contained therein. With respect to a person who
31 is prohibited from possessing a firearm pursuant to 18 USC § 922(g)(9),
32 for purposes of this section, this section applies only if such person
33 has been convicted of a crime included in subdivision one of section
34 370.15 of the criminal procedure law and such gun is possessed within
35 five years from the later of the date of conviction or completion of
36 sentence. Nothing in this section shall be deemed to affect, impair or
37 supersede any special or local act relating to the safe storage of
38 rifles, shotguns or firearms which impose additional requirements on the
39 owner or custodian of such weapons.

40 A violation of this section shall constitute a class A misdemeanor.

41 § 4. This act shall take effect on the two hundred tenth day after it
42 shall have become a law.