# STATE OF NEW YORK

3453

2021-2022 Regular Sessions

# IN ASSEMBLY

January 26, 2021

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 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:**

Section 1. The mental hygiene law is amended by adding a new section 19.26 to read as follows:

**§ 19.26 Alcohol and drug rehabilitation program.**

**(a) Program establishment. There is hereby established an alcohol and drug rehabilitation program within the office. The commissioner shall establish, by regulation, the instructional and rehabilitative aspects of the program. Such program shall consist of at least fifteen hours and include, but need not be limited to, classroom instruction in areas deemed appropriate by the commissioner. No person shall be required to attend or participate in such program or any aspect thereof for a period exceeding eight months except upon the recommendation of the office or appropriate health officials administering the program on behalf of a municipality.**

**(b) Curriculum. The form, content and method of presentation of the various aspects of such program shall be established by the commissioner. In the development of the form, curriculum and content of such program, the commissioner may consult with the commissioner of mental health and any other state agency, department or office, and may request and receive assistance from them. The commissioner is also authorized to develop more than one curriculum and course content for such program in order to meet the varying rehabilitative needs of participants.**

**(c) Where available. A course in such program shall be available in at least every county in the state, except where the commissioner deter-**

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

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mines that there is not a sufficient number of alcohol or drug-related traffic offenses in a county to mandate the establishment of said course; and provided that provisions be made for the residents of said county to attend a course in another county where a course exists.

(d) Eligibility. Participation in the program shall be limited to those persons who have been: convicted of alcohol or drug-related traffic offenses; adjudicated youthful offenders for alcohol or drug-related traffic offenses; or found to have been operating a motor vehicle after having consumed alcohol, in violation of section eleven hundred ninety-two-a of the vehicle and traffic law, choose to participate, and meet the requirements for participation established by this section and the regulations promulgated thereunder; provided, however, the judge imposing sentence may prohibit the defendant from enrolling in such program. The commissioner may also exercise discretion by rejecting any person from participation referred to such program and nothing herein contained shall be construed as creating a right to be included in any course or program established under this section. In addition, no person shall be permitted to take part in such program if, during the five years immediately preceding commission of an alcohol or drug-related traffic offense or a finding of a violation of section eleven hundred ninety-two-a of the vehicle and traffic law, such person has participated in a program established pursuant to this article or been convicted of a violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law other than a violation committed prior to November first, nineteen hundred eighty-eight, for which such person did not participate in such program. In the exercise of discretion, the commissioner shall have the right to expel any participant from the program who fails to satisfy the requirements for participation in such program or who fails to satisfactorily participate in or attend any aspect of such program. Notwithstanding any contrary provisions of the vehicle and traffic law, satisfactory participation in and completion of a course in such program shall result in the termination of any sentence of imprisonment that may have been imposed by reason of a conviction therefor; provided, however, that nothing contained in this section shall delay the commencement of such sentence.

(e) Effect of completion. Except as provided in subparagraph nine of paragraph (b) of subdivision two of section eleven hundred ninety-three or in subparagraph three of paragraph (d) of subdivision two of section eleven hundred ninety-four of the vehicle and traffic law, upon successful completion of a course in such program as certified by its administrator, a participant may apply to the commissioner of motor vehicles, on a form provided for that purpose, for the termination of the suspension or revocation order issued as a result of the participant's conviction that caused the participation in such course. In the exercise of discretion, upon receipt of such application, and upon payment of any civil penalties for which the applicant may be liable, the commissioner of motor vehicles is authorized to terminate such order or orders and return the participant's license, or reinstate the privilege of operating a motor vehicle in this state. However, the commissioner of motor vehicles shall not issue any new license nor restore any license where said issuance or restoral is prohibited by subdivision two of section eleven hundred ninety-three of the vehicle and traffic law.

(f) Fees. The commissioner shall establish a schedule of fees to be paid by or on behalf of each participant in the program, and may, from time to time, modify same. Such fees shall defray the ongoing expenses of the program. Provided, however, that pursuant to an agreement with

the office a municipality, department thereof, or other agency may conduct a course in such program with all or part of the expense of such course and program being borne by such municipality, department or agency. In no event shall such fee be refundable, either for reasons of the participant's withdrawal or expulsion from such program or otherwise.

(g) Conditional license. (1) Notwithstanding any inconsistent provision of the vehicle and traffic law, participants in the program, except those penalized under paragraph (d) of subdivision one of section eleven hundred ninety-three of the vehicle and traffic law for any violation of subdivision two, three, or four of section eleven hundred ninety-two of the vehicle and traffic law, may, at the discretion of the commissioner of motor vehicles, be issued a conditional driver's license; or if the holder of a license issued by another jurisdiction valid for operation in this state, a conditional privilege of operating a motor vehicle in this state. Such a conditional license or privilege shall be valid only for use by the holder thereof: (i) enroute to and from the holder's place of employment; (ii) if the holder's employment requires the operation of a motor vehicle then during the hours thereof; (iii) enroute to and from a class or an activity that is an authorized part of the alcohol and drug rehabilitation program and at which his or her attendance is required; (iv) enroute to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training; (v) to or from court ordered probation activities; (vi) to and from a motor vehicle office for the transaction of business relating to such license or program; (vii) for a three hour consecutive daytime period, chosen by the administrators of the program, on a day during which the participant is not engaged in usual employment or vocation; (viii) enroute to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of the participant's household, as evidenced by a written statement to that effect from a licensed medical practitioner; and (ix) enroute to and from a place, including a school, at which a child or children of the holder are cared for on a regular basis and which is necessary for the holder to maintain such holder's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training. Such license or privilege shall remain in effect during the term of the suspension or revocation of the participant's license or privilege unless earlier revoked by the commissioner of motor vehicles.

(2) The conditional license or privilege described in paragraph one of this subdivision shall be in a form prescribed by the commissioner of motor vehicles, and shall have indicated therein the conditions imposed by such paragraph.

(3) Upon receipt of a conditional license issued pursuant to this section, any order issued by a judge, justice or magistrate pursuant to paragraph (c) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law shall be surrendered to the department of motor vehicles.

(4) The commissioner of motor vehicles shall require applicants for a conditional license to pay a fee of seventy-five dollars for processing costs. Such fees assessed under this subdivision shall be paid to the commissioner for deposit to the general fund and shall be in addition to any fees established by the commissioner pursuant to paragraph six of this subdivision to defray the costs of the alcohol and drug rehabilitation program.

(5) The conditional license or privileges described in this subdivision may be revoked by the commissioner of motor vehicles, for sufficient 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.

(7) 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.

(8) 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.

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

§ 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.

§ 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.

§ 5. This act shall take effect immediately; provided, however, that absent explicit language expressly and unequivocally stating a legisla-

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