S T A T E O F N E W Y O R K

4235

2009-2010 Regular Sessions

I N A S S E M B L Y

February 2, 2009

Introduced by M. of A. ORTIZ, HOOPER, MAYERSOHN, SEMINERIO, COLTON -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to reducing the blood alcohol level threshold for determination of intoxication and repealing provisions of such law relating thereto

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

Section 1. Subdivision 2 of section 1192 of the vehicle and traffic law, as amended by chapter 3 of the laws of 2002, is amended to read as follows:

2. Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has [.08] .06 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.

S 2. Subdivision 6 of section 1192 of the vehicle and traffic law is REPEALED.

S 3. Section 1192-a of the vehicle and traffic law, as added by chapter 196 of the laws of 1996, is amended to read as follows:

S 1192-a. Operating a motor vehicle after having consumed alcohol; under the age of twenty-one; per se. No person under the age of twenty-one shall operate a motor vehicle after having consumed alcohol as defined in this section. For purposes of this section, a person under the age of twenty-one is deemed to have consumed alcohol only if such person has .02 of one per centum or more but not more than [.07] .06 of one per centum by weight of alcohol in the person's blood, as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article. Any person who operates a motor vehicle in violation of this section, and who is not charged with a violation of any subdivision of section eleven hundred ninety-two of this article arising out of the

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

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same incident shall be referred to the department for action in accordance with the provisions of section eleven hundred ninety-four-a of this article. Except as otherwise provided in subdivision five of section eleven hundred ninety-two of this article, this section shall not apply to a person who operates a commercial motor vehicle. Notwithstanding any provision of law to the contrary, a finding that a person under the age of twenty-one operated a motor vehicle after having consumed alcohol in violation of this section is not a judgment of conviction for a crime or any other offense.

S 4. Subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law, as added by chapter 312 of the laws of 1994, clauses a and a-1 as amended by chapter 732 of the laws of 2006, clause b as separately amended by chapters 3 and 571 of the laws of 2002 and clauses d and e as amended by chapter 251 of the laws of 2007, is amended to read as follows:

(7) Suspension pending prosecution; excessive blood alcohol content. a. Except as provided in clause a-1 of this subparagraph, a court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had [.08] .06 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article.

a-1. A court shall suspend a class DJ or MJ learner's permit or a class DJ or MJ driver's license, pending prosecution, of any person who has been charged with a violation of subdivision one, two, two-a and/or three of section eleven hundred ninety-two of this article.

b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe either that (a) the holder operated a motor vehicle while such holder had [.08] .06 of one percent or more by weight of alcohol in his or her blood as was shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article or (b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

c. Nothing contained in this subparagraph shall be construed to prohibit or limit a court from imposing any other suspension pending prosecution required or permitted by law.

d. Notwithstanding any contrary provision of this chapter, if any suspension occurring under this subparagraph has been in effect for a period of thirty days, the holder may be issued a conditional license, in accordance with section eleven hundred ninety-six of this article, provided the holder of such license is otherwise eligible to receive such conditional license. A conditional license issued pursuant to this subparagraph shall not be valid for the operation of a commercial motor vehicle. The commissioner shall prescribe by regulation the procedures for the issuance of such conditional license.

e. If the court finds that the suspension imposed pursuant to this subparagraph will result in extreme hardship, the court must issue such suspension, but may grant a hardship privilege, which shall be issued on a form prescribed by the commissioner. For the purposes of this clause, "extreme hardship" shall mean the inability to obtain alternative means of travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. The burden of proving extreme hardship shall be on the licensee who may present material and relevant evidence. A finding of extreme hardship may not be based solely upon the testimony of the licensee. In no event shall arraignment be adjourned or otherwise delayed more than three business days solely for the purpose of allowing the licensee to present evidence of extreme hardship. The court shall set forth upon the record, or otherwise set forth in writing, the factual basis for such finding. The hardship privilege shall permit the operation of a vehicle only for travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. A hardship privilege shall not be valid for the operation of a commercial motor vehicle.

S 5. Paragraph (b) of subdivision 2 of section 1195 of the vehicle and traffic law, as amended by chapter 153 of the laws of 2003, is amended to read as follows:

(b) Evidence that there was more than .05 of one per centum but less than [.07] .06 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol; and

S 6. Paragraph (c) of subdivision 2 of section 1195 of the vehicle and traffic law is REPEALED.

S 7. This act shall take effect immediately; provided, however that the amendment to subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law made by section four of this act shall not affect the repeal of such subparagraph and shall be deemed repealed therewith.