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

5804

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. PRETLOW -- Multi-Sponsored by -- M. of A. CLARK, DINOWITZ, GALEF, GLICK, HIKIND, HOOPER, HOYT, SEMINERIO -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the criminal penalties for operating a motor vehicle under the influence of alcohol or drugs and providing for impoundment of the vehicle driven while under the influence of alcohol or drugs

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

Section 1. Paragraphs (a) and (b) of subdivision 1 of section 1193 of the vehicle and traffic law, paragraph (a) as amended by chapter 75 of the laws of 1994 and paragraph (b) as amended by chapter 669 of the laws of 2007, are amended to read as follows:

(a) Driving while ability impaired. A violation of subdivision one of section eleven hundred ninety-two of this article shall be a traffic infraction and shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by imprisonment in a penitentiary or county jail for not more than fifteen days OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN FIFTEEN DAYS, or by both such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT. A person who operates a vehicle in violation of such subdivision after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN THIRTY DAYS or by both such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT. A person who operates a vehicle in violation of such subdivision after having been convicted two or more times of a violation of any subdivision of section eleven hundred nine-

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

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ty-two of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN NINETY DAYS or by both such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT.

(b) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; misdemeanor offenses. A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN ONE YEAR, or by both such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT. A violation of subdivision two-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall require that any person who has been convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article and who is sentenced to a period of probation, to install and maintain, as a condition of such probation and in accordance with section eleven hundred ninety-eight of this article, a functioning ignition interlock device in any vehicle owned or operated by the person during the term of such probation; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

S 2. Subdivision 1 of section 1193 of the vehicle and traffic law is amended by adding a new paragraph (g) to read as follows:

(G) NO SENTENCE OF IMPOUNDMENT MAY BE IMPOSED PURSUANT TO THIS SUBDIVISION UNTIL THE OWNER OF THE MOTOR VEHICLE USED IN THE OFFENSE HAS BEEN NOTIFIED THAT IMPOUNDMENT MAY BE ORDERED AND THEY ARE GIVEN A REASONABLE OPPORTUNITY TO DEMONSTRATE WHY SUCH SENTENCE SHOULD NOT BE IMPOSED. IN EXERCISING ITS SENTENCING DISCRETION IN ANY CASE WHERE THE OWNER OF THE MOTOR VEHICLE USED IN THE OFFENSE IS NOT THE DEFENDANT, THE COURT SHALL CONSIDER (1) THE DUE DILIGENCE EXERCISED BY THE OWNER TO PREVENT THE UNLAWFUL USE OF THE MOTOR VEHICLE BY THE DEFENDANT, AND (2) THE UNDUE HARDSHIP TO THE OWNER IN THE EVENT OF A SENTENCE OF IMPOUNDMENT.

S 3. The vehicle and traffic law is amended by adding a new section 1193-a to read as follows:

S 1193-A. IMPOUNDMENT AND REDEMPTION OF VEHICLES. 1. WHEN A SENTENCE OF IMPOUNDMENT IS IMPOSED BY THE COURT PURSUANT TO SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE OF THIS ARTICLE, THE OWNER SHALL SURRENDER THE VEHICLE USED IN THE OFFENSE TO AN OFFICER OF THE LOCAL AUTHORITY, WHO SHALL REMOVE OR ARRANGE FOR THE REMOVAL OF THE VEHICLE TO A GARAGE, AUTOMOBILE POUND, OR OTHER PLACE OF SAFETY WHERE IT SHALL REMAIN IMPOUNDED FOR THE TIME IMPOSED BY THE SENTENCING COURT. THE VEHICLE SHALL BE ENTERED INTO THE NEW YORK STATEWIDE POLICE INFORMATION NETWORK AS AN IMPOUNDED VEHICLE.

2. A MOTOR VEHICLE SO IMPOUNDED SHALL BE IN THE CUSTODY OF THE LOCAL AUTHORITY AND SHALL NOT BE RELEASED UNTIL:

(A) THE EXPIRATION OF THE IMPOUNDMENT PERIOD IMPOSED BY THE SENTENCING COURT.

(B) PAYMENT HAS BEEN MADE FOR THE REASONABLE COSTS OF REMOVAL, STORAGE AND PROCESSING OF THE MOTOR VEHICLE. THE REGISTERED OWNER OF THE VEHICLE SHALL BE RESPONSIBLE FOR SUCH PAYMENT PROVIDED, HOWEVER, THAT IF HE OR SHE WAS NOT THE OPERATOR AT THE TIME OF THE OFFENSE HE OR SHE SHALL HAVE A CAUSE OF ACTION AGAINST SUCH OPERATOR TO RECOVER SUCH COSTS.

(C) WHERE THE MOTOR VEHICLE WAS OPERATED BY A PERSON WHO AT THE TIME OF THE OFFENSE WAS THE OWNER THEREOF, SATISFACTORY EVIDENCE THAT THE REGISTERED OWNER OR OTHER PERSON SEEKING TO REDEEM THE VEHICLE HAS A LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE IN THIS STATE.

3. IF FIFTEEN DAYS HAVE ELAPSED FROM THE EXPIRATION OF THE TERM OF IMPOUNDMENT IMPOSED BY THE SENTENCING COURT, AND THE MOTOR VEHICLE HAS NOT BEEN RELEASED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE LOCAL AUTHORITY SHALL MAKE INQUIRY IN THE MANNER PRESCRIBED BY THE COMMISSIONER AS TO THE NAME AND ADDRESS OF THE OWNER AND ANY LIENHOLDER AND UPON RECEIPT OF SUCH INFORMATION SHALL NOTIFY THE OWNER AND THE LIENHOLDER, IF ANY, AT HIS OR HER LAST KNOWN ADDRESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT IF THE VEHICLE IS NOT RETRIEVED PURSUANT TO SUBDIVISION TWO OF THIS SECTION WITHIN THIRTY DAYS FROM THE DATE THE NOTICE IS GIVEN, IT WILL BE FORFEITED. IF THE VEHICLE WAS REGISTERED IN NEW YORK STATE THE LAST KNOWN ADDRESS SHALL BE THAT ADDRESS ON FILE WITH THE COMMISSIONER. IF THE VEHICLE WAS REGISTERED OUT-OF-STATE OR WAS NOT REGISTERED, NOTIFICATION SHALL BE MADE IN THE MANNER PRESCRIBED BY THE COMMISSIONER.

4. A MOTOR VEHICLE THAT HAS BEEN IMPOUNDED AND NOT RETRIEVED PURSUANT TO THE FOREGOING PROVISIONS OF THIS SECTION SHALL BE FORFEITED TO THE LOCAL AUTHORITY UPON EXPIRATION OF THE PERIOD OF NOTICE SET FORTH IN SUBDIVISION THREE OF THIS SECTION. A PROCEEDING TO DECREE SUCH FORFEITURE AND TO RECOVER TOWING AND STORAGE COSTS, IF ANY, TO THE EXTENT SUCH COSTS EXCEED THE FAIR MARKET VALUE OF THE VEHICLE, MAY BE BROUGHT BY THE LOCAL AUTHORITY IN THE COURT IN WHICH THE DEFENDANT WAS SENTENCED FOR THE CRIME OF DRIVING WHILE ABILITY IMPAIRED OR DRIVING WHILE INTOXICATED BY PETITION FOR AN ORDER DECREEING FORFEITURE OF THE MOTOR VEHICLE ACCOMPANIED BY AN AFFIDAVIT ATTESTING TO FACTS SHOWING THAT FORFEITURE IS WARRANTED. IF THE IDENTITY AND ADDRESS OF THE OWNER AND/OR LIENHOLDER IS KNOWN TO THE LOCAL AUTHORITY, TEN DAYS NOTICE SHALL BE GIVEN TO SUCH PARTY, WHO SHALL HAVE AN OPPORTUNITY TO APPEAR AND BE HEARD PRIOR TO ENTRY OF AN ORDER DECREEING FORFEITURE. WHERE THE COURT IS SATISFIED THAT FORFEITURE OF A MOTOR VEHICLE IS WARRANTED IN ACCORDANCE WITH THIS SECTION, IT SHALL ENTER AN ORDER DECREEING THE FORFEITURE OF SUCH VEHICLE. PROVIDED, HOWEVER, THAT THE COURT AT ANY TIME PRIOR TO ENTRY OF SUCH ORDER MAY AUTHORIZE RELEASE OF THE VEHICLE IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION UPON A SHOWING OF GOOD CAUSE FOR FAILURE TO RETRIEVE SAME PRIOR TO COMMENCEMENT OF THE PROCEEDING TO DECREE FORFEITURE, BUT IF THE COURT ORDERS RELEASE OF THE MOTOR VEHICLE AS HEREIN PROVIDED AND THE VEHICLE IS NOT REDEEMED WITHIN TEN DAYS FROM THE DATE OF SUCH ORDER, THE VEHICLE SHALL BE DEEMED TO HAVE BEEN ABANDONED AND THE COURT, UPON APPLICATION OF THE LOCAL AUTHORITY, MUST ENTER AN ORDER DECREEING ITS FORFEITURE.

5. A MOTOR VEHICLE FORFEITED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE AND BECOME THE PROPERTY OF THE LOCAL AUTHORITY, SUBJECT HOWEVER TO ANY LIEN THAT WAS RECORDED PRIOR TO THE IMPOUNDMENT OF THE VEHICLE.

6. FOR THE PURPOSES OF THIS SECTION, THE TERM "LOCAL AUTHORITY" MEANS THE MUNICIPALITY IN WHICH THE MOTOR VEHICLE WAS SEIZED; EXCEPT THAT IF THE MOTOR VEHICLE WAS SEIZED ON PROPERTY OF THE NEW YORK STATE THRUWAY AUTHORITY OR PROPERTY UNDER THE JURISDICTION OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, THE DEPARTMENT OF TRANSPORTATION, OR A PUBLIC AUTHORITY OR COMMISSION, THE TERM "LOCAL AUTHORITY" MEANS SUCH AUTHORITY, OFFICE, DEPARTMENT, OR COMMISSION. A COUNTY MAY PROVIDE BY LOCAL LAW THAT THE COUNTY MAY ACT AS THE AGENT FOR A LOCAL AUTHORITY UNDER THIS SECTION.

7. WHEN A VEHICLE HAS BEEN IMPOUNDED PURSUANT TO THIS SECTION, THE LOCAL AUTHORITY OR ANY PERSON HAVING CUSTODY OF THE VEHICLE SHALL MAKE THE VEHICLE AVAILABLE OR GRANT ACCESS TO IT TO ANY OWNER OR ANY PERSON DESIGNATED OR AUTHORIZED BY SUCH OWNER FOR THE PURPOSE OF (A) TAKING POSSESSION OF ANY PERSONAL PROPERTY FOUND WITHIN THE VEHICLE AND (B) OBTAINING PROOF OF REGISTRATION, FINANCIAL SECURITY, TITLE OR DOCUMENTATION IN SUPPORT THEREOF.

8. UPON APPLICATION BY THE DEFENDANT, THE SENTENCING COURT MAY FASHION AN ALTERNATIVE METHOD OF DISABLING AND/OR SECURING THE CAR FROM USE BY THE DEFENDANT FOR THE DURATION OF THE IMPOUNDMENT PERIOD.

9. ANY PERSON WHO KNOWINGLY FAILS TO SURRENDER A VEHICLE FOR IMPOUNDMENT PURSUANT TO THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS, OR BY IMPRISONMENT IN A PENITENTIARY OR COUNTY JAIL FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT.

S 4. This act shall take effect immediately and shall apply to proceedings commenced on and after such effective date.