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

5866

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. McKEVITT, WALKER, KOLB, ALFANO, GABRYSZAK, McDONOUGH, GIGLIO -- Multi-Sponsored by -- M. of A. BARCLAY, BARRA, CROUCH, HAWLEY -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to increasing fines and license revocation periods for repeat alcohol and drug related offenses

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

Section 1. Subparagraph (i) of paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 345 of the laws of 2007, is amended to read as follows:

(i) A person who operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, within the preceding ten years, shall be guilty of a class E felony, and shall be punished by a fine of not less than [one thousand] TWENTY-FIVE HUNDRED dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

S 2. Subparagraph 3 of paragraph (b) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

(3) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol

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

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and any drug or drugs; aggravated driving while intoxicated; prior offense. [One year] TWO YEARS, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. [Eighteen months, where the holder is convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article; or where] WHERE the holder is convicted of a violation of subdivision two, TWO-A, three, four or four-a of section eleven hundred ninety-two of this article [committed] AFTER HAVING BEEN CONVICTED TWO OR MORE TIMES OF A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE within THE PRECEDING ten years [of a conviction for a violation of subdivision two-a of section eleven hundred ninety-two of this article], SUCH HOLDER SHALL BE PERMANENTLY DISQUALIFIED FROM OPERATING A MOTOR VEHICLE.

S 3. Subparagraph 3 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 173 of the laws of 1990 and clause b as amended by section 17 of part E of chapter 60 of the laws of 2005, is amended to read as follows:

(3) Permanent disqualification from operating certain motor vehicles. a. ANY PERSON SENTENCED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION SHALL BE PERMANENTLY DISQUALIFIED FROM OPERATING A MOTOR VEHICLE. IN ADDITION, THE COMMISSIONER SHALL NOT ISSUE SUCH PERSON A LICENSE VALID FOR THE OPERATION OF ANY VEHICLE. HOWEVER, THE COMMISSIONER MAY WAIVE SUCH DISQUALIFICATION AND PROHIBITION HEREINBEFORE PROVIDED AFTER A PERIOD OF TEN YEARS HAS EXPIRED FROM SUCH SENTENCE AND MAY ISSUE A PERMANENTLY PROBATIONARY LICENSE PROVIDED:

(I) THAT DURING SUCH TEN YEAR PERIOD SUCH PERSON HAS NOT VIOLATED ANY OF THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE OR ANY ALCOHOL OR DRUG RELATED TRAFFIC OFFENSE IN THIS STATE OR IN ANY JURISDICTION OUTSIDE THIS STATE;

(II) THAT SUCH PERSON PROVIDES ACCEPTABLE DOCUMENTATION TO THE COMMISSIONER THAT SUCH PERSON IS NOT IN NEED OF ALCOHOL OR DRUG TREATMENT OR HAS SATISFACTORILY COMPLETED A PRESCRIBED COURSE OF SUCH TREATMENT; AND

(III) AFTER SUCH DOCUMENTATION IS ACCEPTED, THAT SUCH PERSON IS GRANTED A CERTIFICATE OF RELIEF FROM DISABILITIES AS PROVIDED FOR IN SECTION SEVEN HUNDRED ONE OF THE CORRECTION LAW BY THE COURT IN WHICH SUCH PERSON WAS LAST PENALIZED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION.

B. Except as otherwise provided herein, in addition to any revocation set forth in subparagraph four or five of paragraph (b) of this subdivision, any person sentenced pursuant to subparagraph three of paragraph (d) of subdivision one of this section shall be permanently disqualified from operating any vehicle set forth in such paragraph. In addition, the commissioner shall not issue such person a license valid for the operation of any vehicle set forth therein by such person. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of five years has expired from such sentencing provided:

(i) that during such five year period such person has not violated any of the provisions of section eleven hundred ninety-two of this article or any alcohol or drug related traffic offense in this state or in any jurisdiction outside this state;

(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized pursuant to paragraph (d) of subdivision one of this section.

[b] C. Any person who holds a commercial driver's license and is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article who has had a prior finding of refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this article or has had a prior conviction of any of the following offenses: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, shall be permanently disqualified from operating a commercial motor vehicle. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of ten years has expired from such sentence provided:

(i) that during such ten year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of any one of the following offenses while operating a motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter;

(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized pursuant to paragraph (d) of subdivision one of this section.

[c] D. Upon a third finding of refusal and/or conviction of any of the offenses which require a permanent commercial driver's license revocation, such permanent revocation may not be waived by the commissioner under any circumstances.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.