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

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2009-2010 Regular Sessions

I N A S S E M B L Y

May 28, 2009

Introduced by M. of A. GANTT, KOON -- (at request of the Department of Motor Vehicles) -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the graduated licensing program; and to repeal section 503-a 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 4 of section 501 of the vehicle and traffic law, as amended by chapter 644 of the laws of 2002, is amended to read as follows:

4. Probationary licenses. Any driver's license, other than a class DJ and class MJ license [or limited class DJ and MJ license], shall be considered probationary until the expiration of six months following the date of issuance thereof, and thereafter as provided in section five hundred ten-b of this title, but this subdivision shall not apply to renewals of a license, or, unless so provided by the commissioner, to a license for which a road test has been waived by the commissioner.

S 2. Paragraphs (c) and (d) of subdivision 1 of section 501-b of the vehicle and traffic law, as added by chapter 644 of the laws of 2002, are amended to read as follows:

(c) operate a motor vehicle with more than [two passengers] ONE PASSENGER who [are] IS under the age of twenty-one and who [are] IS not [members] A MEMBER of such holder's immediate family, provided, however, that the provisions of this [subparagraph] PARAGRAPH shall not apply when such holder is accompanied by a duly licensed parent, guardian, person in a position of loco parentis, driver education teacher or driving school instructor;

(d) be eligible for issuance of a class DJ [or], MJ, D OR M license unless such permit [and/or limited class DJ or MJ license issued pursuant to section five hundred three-a of this article, singly or in combi-

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

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nation, have] HAS been valid for at least six months. Any time period in which such class DJ or MJ learner's permit [or limited class DJ or MJ license] has been suspended or revoked shall not be counted in determining the length of time that such learner's permit [or limited license] has been valid.

S 3. Paragraph (b) of subdivision 2 of section 501-b of the vehicle and traffic law, as added by chapter 644 of the laws of 2002, is amended to read as follows:

(b) with more than [two passengers] ONE PASSENGER who [are] IS under the age of twenty-one and who [are] IS not [members] A MEMBER of such holder's immediate family, provided, however, that the provisions of this [subparagraph] PARAGRAPH shall not apply when such holder is accompanied by a duly licensed parent, guardian, person in a position of loco parentis, driver education teacher or driving school instructor.

S 4. Section 501-b of the vehicle and traffic law is amended by adding a new subdivision 3 to read as follows:

3. (A) IN ADDITION TO THE RESTRICTIONS CONTAINED IN SUBDIVISIONS THREE AND FIVE OF SECTION FIVE HUNDRED ONE OF THIS ARTICLE, NO HOLDER OF A CLASS DJ OR MJ LEARNER'S PERMIT OR CLASS DJ OR MJ LICENSE SHALL OPERATE A MOTOR VEHICLE WHILE USING ANY PORTABLE ELECTRONIC DEVICE.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING TERMS SHALL BE DEFINED AS FOLLOWS:

(I) "PORTABLE ELECTRONIC DEVICE" INCLUDES, BUT SHALL NOT BE LIMITED TO, ANY HAND-HELD OR HANDS-FREE MOBILE TELEPHONE, PERSONAL DIGITAL ASSISTANT (PDA), HANDHELD DEVICE WITH MOBILE DATA ACCESS, LAPTOP COMPUTER, PAGER, BROADBAND PERSONAL COMMUNICATION DEVICE, MOBILE RADIO DEVICE, TWO-WAY MESSAGING DEVICE, ELECTRONIC GAME, OR PORTABLE COMPUTING DEVICE.

(II) "USING" INCLUDES, BUT SHALL NOT BE LIMITED TO: ACTIVATING OR DEACTIVATING, INITIATING OR TERMINATING FUNCTIONS, VIEWING, TAKING OR TRANSMITTING IMAGES, PLAYING GAMES OR MUSIC, CONVERSING, SPEAKING INTO, LISTENING TO, OR COMPOSING, SENDING, RECEIVING, READING, SAVING OR RETRIEVING E-MAIL, TEXT MESSAGES, OR OTHER DATA; PROVIDED HOWEVER THAT FOR PURPOSES OF THIS SUBDIVISION, THE TERM "LISTENING" SHALL NOT INCLUDE OVERHEARING A CONVERSATION, TO WHICH THE DRIVER IS NOT A PARTY, WHICH IS CONDUCTED BY A PASSENGER USING A MOBILE TELEPHONE OR OTHER PORTABLE ELECTRONIC DEVICE SUCH AS A SPEAKERPHONE.

(C) PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO A PERSON USING A PORTABLE ELECTRONIC DEVICE FOR THE SOLE PURPOSE OF COMMUNICATING WITH ANY OF THE FOLLOWING REGARDING AN EMERGENCY SITUATION: AN EMERGENCY RESPONSE OPERATOR, A HOSPITAL, A PHYSICIAN'S OFFICE OR HEALTH CLINIC; AN AMBULANCE COMPANY OR CORPS, A FIRE DEPARTMENT, DISTRICT OR COMPANY, OR A POLICE DEPARTMENT.

(D) A PERSON WHO HOLDS A PORTABLE ELECTRONIC DEVICE WHILE OPERATING A MOTOR VEHICLE IS PRESUMED TO BE USING THE DEVICE. THE PRESUMPTION ESTABLISHED BY THIS PARAGRAPH IS REBUTTABLE BY EVIDENCE SHOWING THAT THE OPERATOR WAS NOT USING THE DEVICE WITHIN THE MEANING OF THIS SUBDIVISION.

S 5. The vehicle and traffic law is amended by adding a new section 501-c to read as follows:

S 501-C. PLEA BARGAINING RESTRICTIONS APPLICABLE TO CERTAIN VIOLATIONS COMMITTED BY JUNIOR DRIVERS. IN ANY CASE WHEREIN THE CHARGE LAID BEFORE THE COURT ALLEGES A VIOLATION OF TITLE SEVEN OF THIS CHAPTER FOR ANY OFFENSE THAT WOULD RESULT IN THE ASSIGNMENT OF POINTS IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS AND THE DEFENDANT HELD A CLASS DJ OR MJ LEARNER'S PERMIT OR CLASS DJ OR MJ LICENSE ON THE DATE OF THE ALLEGED VIOLATION, THEN ANY PLEA OF GUILTY THEREAFTER ENTERED IN SATISFACTION OF

SUCH CHARGE MUST INCLUDE AT LEAST A PLEA OF GUILTY TO A CHARGE THAT WILL RESULT IN THE ASSIGNMENT OF POINTS ON THE DEFENDANT'S DRIVING RECORD IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER; NO OTHER DISPOSITION BY PLEA OF GUILTY TO ANY OTHER CHARGE IN SATISFACTION OF SUCH CHARGE SHALL BE AUTHORIZED. PROVIDED, HOWEVER, IF THE DISTRICT ATTORNEY, UPON REVIEWING THE AVAILABLE EVIDENCE, DETERMINES THAT THE CHARGE WAS NOT WARRANTED, SUCH DISTRICT ATTORNEY MAY CONSENT, AND THE COURT MAY ALLOW, A DISPOSITION BY PLEA OF GUILTY IN SATISFACTION OF SUCH CHARGE TO A CHARGE THAT WILL NOT RESULT IN THE IMPOSITION OF POINTS ON THE DEFENDANT'S DRIVING RECORD.

S 6. Paragraph (d) of subdivision 2 of section 502 of the vehicle and traffic law, as amended by chapter 644 of the laws of 2002, is amended to read as follows:

(d) An applicant for a class DJ or MJ license shall be at least sixteen years of age and such applicant must submit written consent to the issuance of such license by the applicant's parent or guardian. Upon receipt of withdrawal of such consent, any class DJ or MJ license, learner's permit or license application shall be cancelled. No class DJ or MJ license [or limited class DJ or MJ license] shall be issued unless the applicant presents, at the time of the road test administered pursuant to paragraph (b) of subdivision four of THIS section [five hundred two of this article], a written certification by the applicant's parent or guardian that such applicant has operated a motor vehicle for no less than [twenty] FIFTY hours, AT LEAST FIFTEEN HOURS OF WHICH SHALL BE AFTER SUNSET, under the immediate supervision of a person as authorized pursuant to subparagraph (ii) of paragraph (a) or paragraph (b) of subdivision five of section five hundred one of this article, a driver education teacher pursuant to section eight hundred six-a of the education law or a driving school instructor pursuant to subdivision seven-a of section three hundred ninety-four of this chapter.

S 7. Section 503-a of the vehicle and traffic law is REPEALED.

S 8. Subdivision 3 of section 509 of the vehicle and traffic law, as added by chapter 780 of the laws of 1972, is amended to read as follows:

3. Whenever a PERMIT OR license is required to operate a motor vehicle, no person shall operate any motor vehicle in violation of any restriction contained on [his], OR APPLICABLE TO, THE PERMIT OR license.

S 9. Subdivisions 1, 2 and 3 of section 510-b of the vehicle and traffic law, as amended by chapter 644 of the laws of 2002, are amended to read as follows:

1. A license, other than a class DJ or class MJ license [or a limited class DJ or class MJ license], shall be suspended, for a period of sixty days, (i) upon the first conviction of the licensee of a violation, committed during the probationary period provided for in subdivision four of section five hundred one of this title, of any provision of section eleven hundred twenty-nine of this chapter, section eleven hundred eighty of this chapter or any ordinance or regulation limiting the speed of motor vehicles and motorcycles, section eleven hundred eighty-two of this chapter, or subdivision one of section eleven hundred ninety-two of this chapter or section twelve hundred twelve of this chapter; or (ii) upon the second conviction of the licensee of a violation, committed during the aforesaid probationary period, of any other provision of this chapter or of any other law, ordinance, order, rule or regulation relating to traffic.

2. A license, other than a class DJ or class MJ license [or a limited class DJ or class MJ license], considered probationary pursuant to subdivision three of this section shall be revoked upon the conviction

of the licensee of a violation or violations committed within six months following the restoration or issuance of such license, which conviction or convictions would result in the suspension of a probationary license pursuant to subdivision one of this section.

3. Any license, other than a class DJ or class MJ license [or a limited class DJ or class MJ license], which is restored or issued to a person who has had his last valid license suspended or revoked pursuant to the provisions of this section shall be considered probationary until the expiration of six months following the date of restoration or issuance thereof.

S 10. Section 510-c of the vehicle and traffic law, as added by chapter 644 of the laws of 2002, is amended to read as follows:

S 510-c. Suspension and revocation of [certain] LEARNER'S PERMITS AND DRIVER'S LICENSES FOR VIOLATIONS COMMITTED BY HOLDERS OF class DJ or class MJ learner's permits or [driver's] licenses. 1. (a) A [class DJ or class MJ] learner's permit OR A DRIVER'S LICENSE shall be suspended for a period of sixty days:

(i) upon a conviction or finding of a serious traffic violation as defined in subdivision [four] TWO of this section, WHEN SUCH VIOLATION WAS committed while the holder had a class DJ or class MJ learner's permit OR A CLASS DJ OR MJ LICENSE; or

(ii) upon the second conviction or finding of such PERMIT OR LICENSE holder of a violation of any other provision of this chapter or any other law, ordinance, order, rule or regulation relating to traffic, AND WHEN SUCH VIOLATION WAS committed while such holder had [such] A CLASS DJ OR CLASS MJ learner's permit OR A CLASS DJ OR MJ LICENSE.

(b) A [class DJ or class MJ] learner's permit OR A DRIVER'S LICENSE shall be revoked for a period of sixty days upon the conviction or finding of the PERMIT OR LICENSE holder of a violation or violations, committed within six months after the restoration of [a class DJ or class MJ learner's] SUCH permit OR LICENSE suspended pursuant to paragraph (a) of this subdivision, which convictions or findings would result in the suspension of such permit OR LICENSE pursuant to paragraph (a) of this subdivision.

2. [(a) A class DJ or class MJ driver's license or limited class DJ or class MJ license shall be suspended, for a period of sixty days:

(i) upon a conviction or finding of a serious traffic violation as defined in subdivision four of this section, committed while the holder had such license; or

(ii) upon the second conviction or finding of the holder of a violation of any other provision of this chapter or any other law, ordinance, order, rule or regulation relating to traffic, committed while such holder had such license.

(b) A class DJ or class MJ driver's license or a limited class DJ or class MJ license shall be revoked for a period of sixty days upon the conviction or finding of the holder of a violation or violations, committed within six months either after the restoration of such driver's license suspended pursuant to paragraph (a) of this subdivision or after the restoration of a learner's permit suspended or revoked pursuant to subdivision one of this section, which convictions or findings would result in the suspension of such license pursuant to paragraph (a) of this subdivision.

3. A driver's license which has been restored following a suspension of a class DJ or class MJ driver's license or a limited class DJ or class MJ license pursuant to subdivision two of this section shall be revoked for a period of sixty days upon the conviction or finding, with-

in six months of such restoration, of any violation or violations which would result in the suspension of a class DJ or class MJ driver's license or a limited class DJ or class MJ license pursuant to paragraph (a) of subdivision two of this section.

4.] For purposes of this section, the term "serious traffic violation" shall mean operating a motor vehicle in violation of any of the following provisions of this chapter: articles twenty-five and twenty-six; subdivision one of section six hundred; section six hundred one; sections eleven hundred eleven, eleven hundred seventy, eleven hundred seventy-two and eleven hundred seventy-four; subdivisions (a), (b), (c), (d) and (f) of section eleven hundred eighty, provided that the violation involved ten or more miles per hour over the established limit; section eleven hundred eighty-two; subdivision three-a of section twelve hundred twenty-nine-c for violations involving use of safety belts or seats by a child under the age of sixteen; and section twelve hundred twelve of this chapter.

S 11. Subdivision 3-a of section 1229-c of the vehicle and traffic law, as added by chapter 644 of the laws of 2002, is amended to read as follows:

3-a. No person holding a class DJ learner's permit or class DJ license issued pursuant to section five hundred two of this chapter, [or a limited class DJ or MJ license issued pursuant to section five hundred three-a of this chapter,] shall operate a motor vehicle in this state unless such person is restrained by a safety belt approved by the commissioner, and all passengers under the age of four are restrained in a specially designed seat which meets the federal motor vehicle safety standards set forth in 49 C.F.R. 571.213 and which is either permanently affixed or is affixed to such vehicle by a safety belt and, in the case of any other passenger under the age of sixteen, he or she is restrained by a safety belt approved by the commissioner. No person sixteen years of age or over shall be a passenger in a motor vehicle operated by a person holding a class DJ learner's permit, a class DJ license or a limited class DJ license unless such passenger is restrained by a safety belt approved by the commissioner.

S 12. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided however, that section eight of this act shall take effect immediately; and provided further, this act shall apply to licenses issued on or after such date. Any license issued pursuant to section five hundred three-a of the vehicle and traffic law prior to such effective date shall remain in effect until its expiration date.