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

7671

I N S E N A T E

April 30, 2010

Introduced by Sen. AUBERTINE -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, the executive law and the penal law, in relation to offenders required to install and maintain ignition interlock devices

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

Section 1. Subparagraph (ii) of paragraph (b) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain AT THEIR OWN PERSONAL EXPENSE, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for less than six months. 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not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.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. Subparagraph (iii) of paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain AT THEIR OWN PERSONAL EXPENSE, in accordance with the provisions of section eleven hundred ninety-eight

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

LBD17106-01-0

of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than six months. 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 3. Paragraph (a) of subdivision 2 of section 1198 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

(a) In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, to install and maintain, as a condition of probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; 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 except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation; THE COST OF WHICH SHALL BE BORNE BY THE OFFENDER.

S 4. Paragraph (a) of subdivision 5 of section 1198 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

(a) The cost of installing and maintaining the ignition interlock device shall be borne by the person subject to such condition [unless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to a payment plan or waived. In the event of such waiver, the cost of the device shall be borne in accordance with regulations issued under paragraph (g) of subdivision one of section eleven hundred ninety-three of this article or pursuant to such other agreement as may be entered into for provision of the device. Such cost shall be considered a fine for the purposes of subdivision five of section 420.10 of the criminal procedure law. Such cost shall not replace, but shall instead be in addition to, any fines, surcharges, or other costs imposed pursuant to this chapter or other applicable laws].

S 5. Subdivision 15-a of section 259-c of the executive law, as added by chapter 496 of the laws of 2009, is amended to read as follows:

15-a. Notwithstanding any other provision of law, where a person is serving a sentence for a violation of section 120.03, 120.04, 120.04-a, 125.12, 125.13 or 125.14 of the penal law, or a felony as defined in paragraph (c) of subdivision one of section eleven hundred ninety-three of the vehicle and traffic law, if such person is released on parole or conditional release the board shall require as a mandatory condition of such release, that such person install and maintain AT THEIR OWN PERSONAL EXPENSE, in accordance with the provisions of section eleven hundred ninety-eight of the vehicle and traffic law, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such parole or conditional release for such crime. Provided

further, however, the board may not otherwise 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 the vehicle and traffic law.

S 6. Section 60.21 of the penal law, as added by chapter 496 of the laws of 2009, is amended to read as follows:

S 60.21 Authorized dispositions; driving while intoxicated or aggravated driving while intoxicated.

Notwithstanding paragraph (d) of subdivision two of section 60.01 of this article, when a person is to be sentenced upon a conviction for a violation of subdivision two, two-a or three of section eleven hundred ninety-two of the vehicle and traffic law, the court may sentence such person to a period of imprisonment authorized by article seventy of this title and shall sentence such person to a period of probation or conditional discharge in accordance with the provisions of section 65.00 of this title and shall order the installation and maintenance of a functioning ignition interlock device, THE COST OF WHICH SHALL BE BORNE BY THE OFFENDER. Such period of probation or conditional discharge shall run consecutively to any period of imprisonment and shall commence immediately upon such person's release from imprisonment.

S 7. This act shall take effect immediately; provided, however that sections one, three and four of this act shall take effect on the same date and in the same manner as section 15 of chapter 496 of the laws of 2009, takes effect; and provided, however, that the amendments to subdivision 2 of section 1198 of the vehicle and traffic law made by section three of this act shall not affect the expiration of such section and shall be deemed to expire therewith.