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

963

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

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

AN ACT to amend the penal law, in relation to creating the crime of unlawful lending of a motor vehicle and to amend the vehicle and traffic law, in relation to impoundment of a motor vehicle

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

Section 1. The penal law is amended by adding a new section 270.40 to read as follows:

S 270.40 UNLAWFUL LENDING OF A MOTOR VEHICLE.

A PERSON IS GUILTY OF UNLAWFUL LENDING OF A MOTOR VEHICLE WHEN, AS OWNER OF A VEHICLE, HE OR SHE KNOWINGLY PERMITS OPERATION OF SUCH VEHICLE BY A PERSON KNOWN TO HAVE A REVOKED OR SUSPENDED LICENSE, WHERE SUCH REVOCATION OR SUSPENSION RESULTED FROM A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW.

UNLAWFUL LENDING OF A MOTOR VEHICLE IS A CLASS A MISDEMEANOR.

S 2. Section 1193 of the vehicle and traffic law is amended by adding a new subdivision 3 to read as follows:

3. VEHICLE IMPOUNDMENT PENDING PROSECUTION. (A) A COURT SHALL ORDER THE IMPOUNDMENT, PENDING PROSECUTION, OF A MOTOR VEHICLE OPERATED BY A PERSON CHARGED WITH A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, WHERE THE OPERATOR:

(1) HAS BEEN CONVICTED OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE TWO OR MORE TIMES IN THE PRECEDING FIVE YEARS; OR

(2) IS ALLEGED TO BE OPERATING SUCH VEHICLE WITHOUT A VALID LICENSE.

(B) IN ORDER FOR THE COURT TO ORDER SUCH IMPOUNDMENT IT MUST FIND:

(1) THAT THE ACCUSATORY INSTRUMENT CONFORMS TO THE REQUIREMENTS OF SECTION 100.40 OF THE CRIMINAL PROCEDURE LAW;

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

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(2) THAT THERE EXISTS REASONABLE CAUSE TO BELIEVE THAT THE ACCUSED OPERATED A MOTOR VEHICLE WHILE SUCH HOLDER HAD .08 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, URINE OR SALIVA, MADE PURSUANT TO THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE; AND

(3) THAT THE ACCUSED HAS EITHER (I) BEEN CONVICTED OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE TWO OR MORE TIMES IN THE PRECEDING FIVE YEARS OR (II) DOES NOT HOLD A VALID LICENSE TO OPERATE A VEHICLE.

(C) AT THE TIME OF SUCH VEHICLE IMPOUNDMENT, THE OPERATOR SHALL BE ENTITLED TO AN OPPORTUNITY TO MAKE A STATEMENT REGARDING THE COURT'S FINDINGS UNDER PARAGRAPH (B) OF THIS SUBDIVISION AND TO PRESENT EVIDENCE TENDING TO REBUT THE COURT'S FINDINGS.

(D) THE IMPOUNDMENT OCCURRING UNDER THIS SECTION SHALL BE ORDERED NO LATER THAN 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 SUBDIVISION, ORDER SUCH VEHICLE IMPOUNDED.

(E) IMPOUNDMENT SHALL CONTINUE FOR THIRTY DAYS OR UNTIL THE PROSECUTION HAS CONCLUDED, WHICHEVER COMES FIRST, AND ALL COSTS RELATED TO SUCH IMPOUNDMENT AND SUBSEQUENT STORAGE SHALL BE BORNE BY THE OPERATOR; PROVIDED, HOWEVER, THAT THE COURT MAY ORDER THE VEHICLE RETURNED TO ITS OWNER AT ANY TIME WHERE THE OWNER PETITIONS THE COURT TO ORDER THE VEHICLE'S RELEASE, SO LONG AS:

(1) THE PETITIONER IS NOT THE OPERATOR CHARGED WITH A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE,

(2) THE PETITIONER IS NOT CHARGED WITH A VIOLATION OF SECTION 270.40 OF THE PENAL LAW, AND

(3) ALL COSTS RELATED TO THE VEHICLE'S IMPOUNDMENT AND STORAGE HAVE BEEN PAID.

(F) IF ANY IMPOUNDMENT ORDERED UNDER THIS SUBDIVISION HAS BEEN IN EFFECT FOR A PERIOD OF THIRTY DAYS, THE COURT MUST ORDER THE VEHICLE RETURNED TO ITS OWNER, PROVIDED THAT THE OWNER HAS PAID ALL COSTS RELATED TO THE IMPOUNDMENT AND SUBSEQUENT STORAGE OF THE VEHICLE.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, and shall apply to offenses committed on or after such date.