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

5341--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 16, 2011

Introduced by M. of A. KAVANAGH, REILLY, BARCLAY, COLTON, RAIA, SWEENEY, WEPRIN -- Multi-Sponsored by -- M. of A. LIFTON, LINARES, McDONOUGH, SALADINO, WEISENBERG -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the vehicle and traffic law, in relation to aggravated unlicensed operation of a motor vehicle

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

Section 1. Paragraph (d) of subdivision 1 of section 160.10 of the criminal procedure law, as amended by chapter 232 of the laws of 2010, is amended and a new paragraph (e) is added to read as follows:

(d) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law[.]; OR

(E) AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE AS DEFINED IN SECTION FIVE HUNDRED ELEVEN OF THE VEHICLE AND TRAFFIC LAW.

S 2. Subdivision 11 of section 509 of the vehicle and traffic law, as amended by section 3 of part C of chapter 62 of the laws of 2003, is amended to read as follows:

11. A violation of any provision of this section shall be punishable by a fine of not less than seventy-five nor more than three hundred dollars, or by imprisonment for not more than fifteen days, or by both such fine and imprisonment except, if the violation consists of failure to renew a license which was valid within sixty days, the fine shall be not more than forty dollars, and except that a violation of subdivision [seven or] eight of this section shall be punishable by a fine of not more than seventy-five dollars. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION AFTER HAVING BEEN CONVICTED OF A VIOLATION OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN TWO HUNDRED DOLLARS AND NOT MORE THAN FIVE HUNDRED DOLLARS OR A SENTENCE OF IMPRISONMENT FOR NOT MORE THAN ONE HUNDRED EIGHTY DAYS, OR BOTH SUCH FINE AND IMPRISONMENT.

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

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S 3. Paragraph (a) of subdivision 1 of section 511 of the vehicle and traffic law, as amended by chapter 173 of the laws of 1990, is amended to read as follows:

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that such person's license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner, OR WHEN SUCH PERSON OPERATES A MOTOR VEHICLE WITHOUT BEING DULY LICENSED PURSUANT TO SECTION FIVE HUNDRED TWO OF THIS TITLE AND SUCH PERSON HAS PREVIOUSLY BEEN CONVICTED FOR A VIOLATION OF SECTION FIVE HUNDRED NINE OF THIS TITLE WITHIN THE IMMEDIATELY PRECEDING EIGHTEEN MONTHS. FOR THE PURPOSE OF THIS PARAGRAPH, A PERSON WHO HAS IN EFFECT THREE OR MORE SUSPENSIONS OR REVOCATIONS OF HIS OR HER LICENSE, IMPOSED ON AT LEAST THREE SEPARATE DATES, SHALL BE PRESUMED TO KNOW THAT SUCH LICENSE WAS SUSPENDED OR REVOKED.

S 4. Subdivisions 2 and 3 of section 511 of the vehicle and traffic law, as amended by chapter 420 of the laws of 1989, paragraphs (a) and (b) of subdivision 2 as amended by chapter 607 of the laws of 1993, subparagraph (ii) of paragraph (a) of subdivision 2 as amended by chapter 196 of the laws of 1996, paragraph (a) of subdivision 3 as amended by chapter 732 of the laws of 2006 and subparagraph (iii) of paragraph (a) of subdivision 3 as amended by chapter 746 of the laws of 2006 and paragraph (b) of subdivision 3 as separately amended by chapters 786 and 892 of the laws of 1990, are amended to read as follows:

2. Aggravated unlicensed operation of a motor vehicle in the second degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the second degree when such person commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and

(i) has previously been convicted of an offense that consists of or includes the elements comprising the offense committed within the immediately preceding eighteen months; or

(ii) the suspension or revocation is based upon a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this chapter, a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter or upon a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this chapter; or

(iii) the suspension was a mandatory suspension pending prosecution of a charge of a violation of section eleven hundred ninety-two of this chapter ordered pursuant to paragraph (e) of subdivision two of section eleven hundred ninety-three of this chapter or other similar statute; or

(iv) such person has in effect three or more suspensions, imposed on at least three separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter; OR

(V) HAS PREVIOUSLY BEEN CONVICTED OF ANY OFFENSE INCLUDED UNDER ARTICLE ONE HUNDRED SEVENTY OF THE PENAL LAW INVOLVING THE FALSIFICATION OF DEPARTMENT RECORDS; OR

(VI) WHILE OPERATING A MOTOR VEHICLE, HE OR SHE COMMITS THE OFFENSE OF RECKLESS DRIVING AS DEFINED IN SECTION TWELVE HUNDRED TWELVE OF THIS CHAPTER.

(b) Aggravated unlicensed operation of a motor vehicle in the second degree is a [misdemeanor] CLASS E FELONY. When a person is convicted of this crime under subparagraph (i) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars NOR MORE THAN TWENTY-FIVE HUNDRED DOLLARS; [and] AND/OR (ii) a term of imprisonment [not to exceed one hundred eighty days; or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section] AS PROVIDED IN THE PENAL LAW. When a person is convicted of this crime under subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than [one] FIVE thousand dollars; [and] AND/OR (ii) a term of imprisonment [of not less than seven days nor more than one hundred eighty days, or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section].

3. Aggravated unlicensed operation of a motor vehicle in the first degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the first degree when such person: (i) commits the offense of aggravated unlicensed operation of a motor vehicle in the second degree as provided in subparagraph (ii), (iii) or (iv) of paragraph (a) of subdivision two of this section and is operating a motor vehicle while under the influence of alcohol or a drug in violation of subdivision one, two, two-a, three, four, four-a or five of section eleven hundred ninety-two of this chapter; or

(ii) commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and is operating a motor vehicle while such person has in effect [ten] FIVE or more suspensions, imposed on at least [ten] FIVE separate dates for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six of this chapter or subdivision four-a of section five hundred ten of this article; or

(iii) commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and is operating a motor vehicle while under permanent revocation as set forth in subparagraph twelve of paragraph (b) of subdivision two of section eleven hundred ninety-three of this chapter[.]; OR

(IV) HAS PREVIOUSLY BEEN CONVICTED OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE SECOND DEGREE WITHIN THE IMMEDIATELY PRECEDING TEN YEARS.

(b) Aggravated unlicensed operation of a motor vehicle in the first degree is a class [E] D felony. When a person is convicted of this crime, the sentence of the court must be: (i) a fine in an amount not less than [five] SEVEN hundred FIFTY dollars nor more than [five] SEVEN thousand FIVE HUNDRED dollars; [and] AND/OR (ii) a term of imprisonment as provided in the penal law[, or (iii) where appropriate and a term of imprisonment is not required by the penal law, a sentence of probation as provided in subdivision six of this section, or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law].

S 5. This act shall take effect immediately.