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

7459

2011-2012 Regular Sessions

I N A S S E M B L Y

May 4, 2011

Introduced by M. of A. SWEENEY, COOK, LANCMAN, ZEBROWSKI, GALEF, P. RIVERA, JAFFEE, ROBINSON, GUNTHER, ROBERTS, ENGLEBRIGHT, M. MILLER, STEVENSON, GABRYSZAK -- Multi-Sponsored by -- M. of A. LUPARDO, MAGEE, REILLY, THIELE, TITONE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to operating a motor vehicle while under the influence of alcohol or drugs and aggravated unlicensed operation of a motor vehicle in the first degree

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

Section 1. Paragraph (b) of subdivision 3 of section 511 of the vehicle and traffic law, as separately amended by chapters 786 and 892 of the laws of 1990, is amended to read as follows:

(b) Aggravated unlicensed operation of a motor vehicle in the first degree IN VIOLATION OF SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF THIS SUBDIVISION is a class E felony. AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FIRST DEGREE IN VIOLATION OF SUBPARAGRAPH (III) OF PARAGRAPH (A) OF THIS SUBDIVISION IS A CLASS 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 hundred dollars nor more than five thousand dollars; and (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 2. Subparagraphs (i) and (ii) 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, are amended to read as follows:

(i) A person who operates a vehicle (A) 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 subdivi-

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

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sion 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 NOT INCLUDING ANY PERIOD OF IMPRISONMENT, or (B) in violation of paragraph (b) of subdivision two-a of section eleven hundred ninety-two of this article shall be guilty of a class E felony, and shall be punished by a fine of not less than one thousand 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.

(ii) 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, twice within the preceding ten years NOT INCLUDING ANY PERIOD OF IMPRISONMENT, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

S 3. Clause (a) of subparagraph 12 of paragraph (b) of subdivision 2 of section 1193 of the vehicle and traffic law, as added by chapter 732 of the laws of 2006, is amended to read as follows:

(a) Notwithstanding any other provision of this chapter to the contrary, whenever a revocation is imposed upon a person for the refusal to submit to a chemical test pursuant to the provisions of section eleven hundred ninety-four of this article or conviction for any violation of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed, and such person has: (i) within the previous four years been twice convicted of any provisions of section eleven hundred ninety-two of this article or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least one such conviction was for a crime, or has twice been found to have refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, or has any combination of two such convictions and findings of refusal not arising out of the same incident; or (ii) within the previous eight years been convicted three times of any provision of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least two such convictions were for crimes, or has been found, on three separate occasions, to have refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, or has any combination of such convictions and findings of refusal not arising out of the same incident; OR (III) BEEN FOUR TIMES CONVICTED OF ANY PROVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE OR A VIOLATION OF THE PENAL LAW FOR WHICH A VIOLATION OF SUCH SECTION ELEVEN HUNDRED NINETY-TWO IS AN ESSENTIAL ELEMENT AND AT LEAST THREE SUCH

CONVICTIONS WERE FOR CRIMES, OR HAS FOUR TIMES BEEN FOUND TO HAVE REFUSED TO SUBMIT TO A CHEMICAL TEST PURSUANT TO SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE, OR HAS ANY COMBINATION OF FOUR SUCH CONVICTIONS AND FINDINGS OF REFUSAL NOT ARISING OUT OF THE SAME INCIDENT, such revocation shall be permanent.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.