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

1671

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. TEDISCO -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the criminal procedure law, in relation to plea bargaining options and personal court appearances for certain driver's license holders

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

Section 1. Section 1805 of the vehicle and traffic law, as amended by chapter 182 of the laws of 2004, is amended to read as follows:

S 1805. Plea of guilty, how put in. [The] EXCEPT IN ANY CASE IN WHICH THE DEFENDANT IS A HOLDER OF A CLASS DJ OR CLASS MJ LEARNER'S PERMIT OR CLASS DJ OR CLASS MJ DRIVER'S LICENSE PURSUANT TO SECTION FIVE HUNDRED TWO, THE provisions of section 170.10 of the criminal procedure law and the provisions of section eighteen hundred seven of this article may be waived, to the extent hereinafter indicated, by a defendant charged with a violation of any provision of the tax law or the transportation law regulating traffic, or a traffic infraction, as defined in this chapter, other than a third or subsequent speeding violation committed within a period of eighteen months, provided that he OR SHE shall submit to the local criminal court having jurisdiction, in person, by duly authorized agent, by first class mail or by registered or certified mail, return receipt requested, an application setting forth (a) the nature of the charge, (b) the information or instructions required by section eighteen hundred seven of this article to be given defendant upon arraignment, (c) that defendant waives arraignment in open court and the aid of counsel, (d) that he OR SHE pleads guilty to the offense as charged, (e) that defendant elects and requests that the charge be disposed of and the fine or penalty fixed by the court, pursuant to this section, (f) any statement or explanation that the defendant may desire to make concerning the offense charged and (g) that defendant makes all statements with respect to such application under penalty of perjury. This

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

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application shall be in such form as the commissioner shall prescribe and a copy thereof shall be handed to the defendant by the officer charging him OR HER with such offense. Thereupon the local criminal court may proceed as though the defendant had been convicted upon a plea of guilty in open court, provided, however, that any imposition of fine or penalty hereunder shall be deemed tentative until such fine or penalty shall have been paid and discharged in full, prior to which time such court, in its discretion, may annul any proceedings hereunder, including such tentative imposition of fine or penalty, and deny the application, in which event the charge shall be disposed of pursuant to the applicable provisions of law, as though no proceedings had been had under this section. If upon receipt of the aforesaid application such court shall deny the same, it shall thereupon inform the defendant of this fact, and that he OR SHE is required to appear before the said court at a stated time and place to answer the charge which shall thereafter be disposed of pursuant to the applicable provisions of law. THE HOLDER OF A CLASS DJ OR CLASS MJ LEARNER'S PERMIT, A CLASS DJ OR CLASS MJ DRIVER'S LICENSE OR A LIMITED CLASS DJ OR CLASS MJ LICENSE MAY NOT WAIVE THE PROVISIONS OF SECTION 170.10 OF THE CRIMINAL PROCEDURE LAW OR SECTION EIGHTEEN HUNDRED SEVEN OF THIS ARTICLE AND SUCH DEFENDANT SHALL BE REQUIRED TO PERSONALLY ENTER A PLEA IN COURT.

S 2. Paragraph (b) of subdivision 1 of section 170.10 of the criminal procedure law, as amended by chapter 661 of the laws of 1972, is amended to read as follows:

(b) In any case in which the defendant's appearance is required by a summons or an appearance ticket, the court in its discretion may, for good cause shown, permit the defendant to appear by counsel instead of in person, EXCEPT IN ANY CASE IN WHICH THE DEFENDANT IS A HOLDER OF A CLASS DJ OR CLASS MJ LEARNER'S PERMIT, A CLASS DJ OR CLASS MJ DRIVER'S LICENSE ISSUED PURSUANT TO SECTION FIVE HUNDRED TWO OF THE VEHICLE AND TRAFFIC LAW, WHERE SUCH DEFENDANT HAS BEEN CHARGED WITH A VIOLATION OF THE VEHICLE AND TRAFFIC LAW, OR OTHER LAW OR ORDINANCE RELATING TO THE OPERATION OF MOTOR VEHICLES OR MOTORCYCLES.

S 3. Section 170.10 of the criminal procedure law is amended by adding a new subdivision 10 to read as follows:

10. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN ANY CASE WHEREIN A CHARGE LAID BEFORE A COURT ON A SIMPLIFIED TRAFFIC INFORMATION CHARGES ANY HOLDER OF A CLASS DJ OR CLASS MJ LEARNER'S PERMIT, A CLASS DJ OR CLASS MJ DRIVER'S LICENSE ISSUED PURSUANT TO SECTION FIVE HUNDRED TWO OF THE VEHICLE AND TRAFFIC LAW WITH A SERIOUS TRAFFIC VIOLATION AS DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION, ANY PLEA OF GUILTY THEREAFTER ENTERED IN SATISFACTION OF SUCH CHARGE MUST INCLUDE AT LEAST A PLEA OF GUILTY TO ONE OF THE CHARGES THAT SUCH HOLDER WAS ORIGINALLY CHARGED WITH AND 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 OF SUCH VIOLATION IS NOT WARRANTED, SUCH DISTRICT ATTORNEY MAY CONSENT, AND THE COURT MAY ALLOW A DISPOSITION BY PLEA OF GUILTY TO ANOTHER CHARGE IN SATISFACTION OF SUCH CHARGE; PROVIDED, HOWEVER, IN ALL SUCH CASES, THE COURT SHALL SET FORTH UPON THE RECORD THE BASIS FOR SUCH DISPOSITION.

(B) FOR PURPOSES OF THIS SUBDIVISION, THE TERM "SERIOUS TRAFFIC VIOLATION" SHALL MEAN OPERATING A MOTOR VEHICLE IN VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF THE VEHICLE AND TRAFFIC LAW: 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 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.

S 4. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to violations occurring on and after such effective date.