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I N S E N A T E

February 3, 2012

Introduced by Sen. MARCELLINO -- 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 the offense of unauthorized use of a vehicle in third degree

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

1 Section 1. Section 165.05 of the penal law, as amended by chapter 413  
2 of the laws of 1982, is amended to read as follows:

3 S 165.05 Unauthorized use of a vehicle in the third degree.

4 A person is guilty of unauthorized use of a vehicle in the third  
5 degree when:

6 1. Knowing that he OR SHE does not have the consent of the owner, he  
7 OR SHE takes, ENTERS OR REMAINS IN, operates, exercises control over,  
8 rides in or otherwise uses a vehicle. A person who engages in any such  
9 conduct without the consent of the owner is presumed to know that he OR  
10 SHE does not have such consent; or

11 2. Having custody of a vehicle pursuant to an agreement between  
12 himself OR HERSELF or another and the owner thereof whereby he OR SHE or  
13 another is to perform for compensation a specific service for the owner  
14 involving the maintenance, repair or use of such vehicle, he OR SHE  
15 intentionally uses or operates the same, without the consent of the  
16 owner, for his OR HER own purposes in a manner constituting a gross  
17 deviation from the agreed purpose; or

18 3. Having custody of a vehicle pursuant to an agreement with the owner  
19 thereof whereby such vehicle is to be returned to the owner at a speci-  
20 fied time, he OR SHE intentionally retains or withholds possession ther-  
21 eof, without the consent of the owner, for so lengthy a period beyond  
22 the specified time as to render such retention or possession a gross  
23 deviation from the agreement.

24 For purposes of this section "a gross deviation from the agreement"  
25 shall consist of, but not be limited to, circumstances wherein a person  
26 who having had custody of a vehicle for a period of fifteen days or less  
27 pursuant to a written agreement retains possession of such vehicle for  
28 at least seven days beyond the period specified in the agreement and

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

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1 continues such possession for a period of more than two days after  
2 service or refusal of attempted service of a notice in person or by  
3 certified mail at an address indicated in the agreement stating (i) the  
4 date and time at which the vehicle was to have been returned under the  
5 agreement; (ii) that the owner does not consent to the continued with-  
6 holding or retaining of such vehicle and demands its return; and that  
7 continued withholding or retaining of the vehicle may constitute a class  
8 A misdemeanor punishable by a fine of up to one thousand dollars or by a  
9 sentence to a term of imprisonment for a period of up to one year or by  
10 both such fine and imprisonment.

11 Unauthorized use of a vehicle in the third degree is a class A misde-  
12 meanor.

13 S 2. This act shall take effect on the first of November next succeed-  
14 ing the date upon which it shall have become a law.