

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. KAVANAGH, BARCLAY, COLTON, RAIA, SWEENEY, WEPRIN
-- Multi-Sponsored by -- M. of A. LIFTON, McDONOUGH, SALADINO, WEISEN-
BERG -- read once and referred to the Committee on Codes

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (d) of subdivision 1 of section 160.10 of the
2 criminal procedure law, as amended by chapter 232 of the laws of 2010,
3 is amended and a new paragraph (e) is added to read as follows:
4 (d) Loitering for the purpose of engaging in a prostitution offense as
5 defined in subdivision two of section 240.37 of the penal law[.]; OR
6 (E) AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE AS DEFINED IN
7 SECTION FIVE HUNDRED ELEVEN OF THE VEHICLE AND TRAFFIC LAW.
8 S 2. Subdivision 11 of section 509 of the vehicle and traffic law, as
9 amended by section 3 of part C of chapter 62 of the laws of 2003, is
10 amended to read as follows:
11 11. A violation of any provision of this section shall be punishable
12 by a fine of not less than seventy-five nor more than three hundred
13 dollars, or by imprisonment for not more than fifteen days, or by both
14 such fine and imprisonment except, if the violation consists of failure
15 to renew a license which was valid within sixty days, the fine shall be
16 not more than forty dollars, and except that a violation of subdivision
17 [seven or] eight of this section shall be punishable by a fine of not
18 more than seventy-five dollars. EXCEPT AS OTHERWISE PROVIDED IN THIS
19 SECTION, A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION AFTER
20 HAVING BEEN CONVICTED OF A VIOLATION OF THIS SECTION SHALL BE GUILTY OF
21 A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN TWO HUNDRED DOLLARS
22 AND NOT MORE THAN FIVE HUNDRED DOLLARS OR A SENTENCE OF IMPRISONMENT FOR
23 NOT MORE THAN ONE HUNDRED EIGHTY DAYS, OR BOTH SUCH FINE AND IMPRISON-
24 MENT.

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

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

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

18 S 4. Subdivisions 2 and 3 of section 511 of the vehicle and traffic
19 law, as amended by chapter 420 of the laws of 1989, paragraphs (a) and
20 (b) of subdivision 2 as amended by chapter 607 of the laws of 1993,
21 subparagraph (ii) of paragraph (a) of subdivision 2 as amended by chap-
22 ter 196 of the laws of 1996, paragraph (a) of subdivision 3 as amended
23 by chapter 732 of the laws of 2006 and subparagraph (iii) of paragraph
24 (a) of subdivision 3 as amended by chapter 746 of the laws of 2006 and
25 paragraph (b) of subdivision 3 as separately amended by chapters 786 and
26 892 of the laws of 1990, are amended to read as follows:

27 2. Aggravated unlicensed operation of a motor vehicle in the second
28 degree. (a) A person is guilty of the offense of aggravated unlicensed
29 operation of a motor vehicle in the second degree when such person
30 commits the offense of aggravated unlicensed operation of a motor vehi-
31 cle in the third degree as defined in subdivision one of this section;
32 and

33 (i) has previously been convicted of an offense that consists of or
34 includes the elements comprising the offense committed within the imme-
35 diately preceding eighteen months; or

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

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

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

50 (V) HAS PREVIOUSLY BEEN CONVICTED OF ANY OFFENSE INCLUDED UNDER ARTI-
51 CLE ONE HUNDRED SEVENTY OF THE PENAL LAW INVOLVING THE FALSIFICATION OF
52 DEPARTMENT RECORDS; OR

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

1 (b) Aggravated unlicensed operation of a motor vehicle in the second
2 degree is a [misdemeanor] CLASS E FELONY. When a person is convicted of
3 this crime under subparagraph (i) of paragraph (a) of this subdivision,
4 the sentence of the court must be: (i) a fine of not less than five
5 hundred dollars NOR MORE THAN TWENTY-FIVE HUNDRED DOLLARS; [and] AND/OR
6 (ii) a term of imprisonment [not to exceed one hundred eighty days; or
7 (iii) where appropriate a sentence of probation as provided in subdivi-
8 sion six of this section; or (iv) a term of imprisonment as a condition
9 of a sentence of probation as provided in the penal law and consistent
10 with this section] AS PROVIDED IN THE PENAL LAW. When a person is
11 convicted of this crime under subparagraph (ii), (iii) or (iv) of para-
12 graph (a) of this subdivision, the sentence of the court must be: (i) a
13 fine of not less than five hundred dollars nor more than [one] FIVE
14 thousand dollars; [and] AND/OR (ii) a term of imprisonment [of not less
15 than seven days nor more than one hundred eighty days, or (iii) where
16 appropriate a sentence of probation as provided in subdivision six of
17 this section; or (iv) a term of imprisonment as a condition of a
18 sentence of probation as provided in the penal law and consistent with
19 this section].

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

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

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

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

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

54 S 5. This act shall take effect immediately.