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

5859

2013-2014 Regular Sessions

I N  S E N A T E

June 18, 2013

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the vehicle and traffic law, in relation to driving while intoxicated and ignition interlock devices

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

Section 1. Subparagraph (iii) of paragraph (a) of subdivision 3 of section 511 of the vehicle and traffic law, as amended by chapter 746 of the laws of 2006, is amended and a new subparagraph (iv) is added to read as follows:

(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) OPERATES A MOTOR VEHICLE UPON A PUBLIC HIGHWAY WHILE HOLDING A CONDITIONAL LICENSE ISSUED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION ELEVEN HUNDRED NINETY-SIX OF THIS CHAPTER 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.

S 2. Paragraphs (b) and (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:

(b) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; misdemeanor offenses. (i) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary

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

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or county jail for not more than one year, or by both such fine and imprisonment. A violation of paragraph (a) of subdivision two-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, OR ADJUDICATED A YOUTHFUL OFFENDER FOR, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a [period] TERM of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for A PERIOD OF less than [six] TWELVE months; PROVIDED, HOWEVER, THAT SUCH PERIOD OF INTERLOCK RESTRICTION SHALL TERMINATE UPON SUBMISSION OF PROOF THAT SUCH PERSON INSTALLED AND MAINTAINED AN IGNITION INTERLOCK DEVICE FOR AT LEAST SIX MONTHS, UNLESS THE COURT ORDERED SUCH PERSON TO INSTALL AND MAINTAIN AN IGNITION INTERLOCK DEVICE FOR A LONGER PERIOD AS AUTHORIZED BY THIS SUBPARAGRAPH AND SPECIFIED IN SUCH ORDER. THE PERIOD OF INTERLOCK RESTRICTION SHALL COMMENCE FROM THE EARLIER OF THE DATE OF SENTENCING, OR THE DATE THAT AN IGNITION INTERLOCK DEVICE WAS INSTALLED IN ADVANCE OF SENTENCING. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

(c) Felony offenses. (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 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, within the preceding ten years, 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, 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.

(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, OR ADJUDICATED A YOUTHFUL OFFENDER FOR, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than [six] TWELVE months; PROVIDED, HOWEVER, THAT SUCH PERIOD OF INTERLOCK RESTRICTION SHALL TERMINATE UPON SUBMISSION OF PROOF THAT SUCH PERSON INSTALLED AND MAINTAINED AN IGNITION INTERLOCK DEVICE FOR AT LEAST SIX MONTHS, UNLESS THE COURT ORDERED SUCH PERSON TO INSTALL AND MAINTAIN A IGNITION INTERLOCK DEVICE FOR A LONGER PERIOD AS AUTHORIZED BY THIS SUBPARAGRAPH AND SPECIFIED IN SUCH ORDER. THE PERIOD OF INTERLOCK RESTRICTION SHALL COMMENCE FROM THE EARLIER OF THE DATE OF SENTENCING, OR THE DATE THAT AN IGNITION INTERLOCK DEVICE WAS INSTALLED IN ADVANCE OF SENTENCING. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

S 3. Paragraph (a) of subdivision 4 of section 1198 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

(a) Following imposition by the court of the use of an ignition interlock device as a condition of probation or conditional discharge it shall require the person to provide proof of compliance with this section to the court and the probation department OR OTHER MONITOR where such person is under probation or conditional discharge supervision. If the person fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court may revoke, modify, or terminate the person's sentence of probation or conditional discharge as provided under law. GOOD CAUSE MAY INCLUDE A FINDING THAT THE PERSON IS NOT THE OWNER OF A MOTOR VEHICLE IF SUCH PERSON ASSERTS UNDER OATH THAT SUCH PERSON IS NOT THE OWNER OF ANY MOTOR VEHICLE AND THAT HE OR SHE WILL NOT OPERATE ANY MOTOR VEHICLE DURING THE PERIOD OF INTERLOCK RESTRICTION EXCEPT AS MAY BE OTHERWISE AUTHORIZED PURSUANT TO LAW. "OWNER" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION ONE HUNDRED TWENTY-EIGHT OF THIS CHAPTER.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to violations committed on and after such date; provided, however, that the amendments to paragraph (a) of subdivision 4 of section 1198 of the vehicle and traffic law made by section three of this act shall not affect the repeal of such section and shall be deemed repealed therewith.