

7049

I N S E N A T E

April 21, 2014

Introduced by Sen. NOZZOLIO -- 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 establishing the crimes of persistent aggravated unlicensed operation of a motor vehicle and persistent driving while intoxicated, to increase the felony class of certain crimes related to the operation of a motor vehicle; to amend the vehicle and traffic law, in relation to certain civil penalties and aggravated unlicensed operation of a motor vehicle; and to repeal certain provisions of the vehicle and traffic law relating thereto

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

1 Section 1. The penal law is amended by adding a new section 270.40 to
2 read as follows:
3 S 270.40 PERSISTENT AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE.
4 A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT AGGRAVATED UNLICENSED
5 OPERATION OF A MOTOR VEHICLE WHEN SUCH PERSON: (1) COMMITS THE OFFENSE
6 OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE THIRD
7 DEGREE AS DEFINED IN SUBDIVISION ONE OF SECTION FIVE HUNDRED ELEVEN OF
8 THE VEHICLE AND TRAFFIC LAW; AND IS OPERATING A MOTOR VEHICLE WHILE
9 UNDER PERMANENT REVOCATION AS SET FORTH IN SUBPARAGRAPH TWELVE OF PARA-
10 GRAPH (B) OF SUBDIVISION TWO OF SECTION ELEVEN HUNDRED NINETY-THREE OF
11 THE VEHICLE AND TRAFFIC LAW; OR (2) OPERATES A MOTOR VEHICLE UPON A
12 PUBLIC HIGHWAY WHILE HOLDING A CONDITIONAL LICENSE ISSUED PURSUANT TO
13 PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION ELEVEN HUNDRED NINETY-SIX
14 OF THE VEHICLE AND TRAFFIC LAW WHILE UNDER THE INFLUENCE OF ALCOHOL OR A
15 DRUG IN VIOLATION OF SUBDIVISION ONE, TWO, TWO-A, THREE, FOUR, FOUR-A OR
16 FIVE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC
17 LAW.
18 PERSISTENT AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IS A
19 CLASS D FELONY.
20 S 2. Subparagraphs (iii) and (iv) of paragraph (a) of subdivision 3 of
21 section 511 of the vehicle and traffic law are REPEALED.
22 S 3. The penal law is amended by adding a new section 270.45 to read
23 as follows:

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

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1 S 270.45 PERSISTENT DRIVING WHILE INTOXICATED.

2 A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT DRIVING WHILE INTOXI-
3 CATED WHEN SUCH PERSON OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION
4 TWO, TWO-A, THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO
5 OF THE VEHICLE AND TRAFFIC LAW AFTER HAVING BEEN CONVICTED OF ANY
6 VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF SUCH
7 SECTION OR OF VEHICULAR ASSAULT IN THE SECOND OR FIRST DEGREE, AS
8 DEFINED, RESPECTIVELY, IN SECTIONS 120.03 AND 120.04 OF THIS PART AND
9 AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THIS PART
10 OR OF VEHICULAR MANSLAUGHTER IN THE SECOND OR FIRST DEGREE, AS DEFINED,
11 RESPECTIVELY, IN SECTIONS 125.12 AND 125.13 AND AGGRAVATED VEHICULAR
12 HOMICIDE AS DEFINED IN SECTION 125.14 OF THIS PART, ON THREE OR MORE
13 OCCASIONS, WITHIN THE PRECEDING FIFTEEN YEARS OR ANY COMBINATION OF
14 THREE OR MORE OF THE OFFENSES SET FORTH IN THIS SECTION WITHIN THE
15 PRECEDING FIFTEEN YEARS.

16 PERSISTENT DRIVING WHILE INTOXICATED IS A CLASS C FELONY.

17 S 4. Subparagraph 2 of paragraph (d) of subdivision 2 of section 1194
18 of the vehicle and traffic law, as amended by chapter 732 of the laws of
19 2006, is amended to read as follows:

20 (2) Civil penalties. Except as otherwise provided, any person whose
21 license, permit to drive, or any non-resident operating privilege is
22 revoked pursuant to the provisions of this section shall also be liable
23 for a civil penalty in the amount of five hundred dollars except that if
24 such revocation is a second or subsequent revocation pursuant to this
25 section issued within a five year period, or such person has been
26 convicted of a violation of any subdivision of section eleven hundred
27 ninety-two of this article within the past five years not arising out of
28 the same incident, the civil penalty shall be in the amount of [seven
29 hundred fifty] ONE THOUSAND dollars. Any person whose license is revoked
30 pursuant to the provisions of this section based upon a finding of
31 refusal to submit to a chemical test while operating a commercial motor
32 vehicle shall also be liable for a civil penalty of five hundred fifty
33 dollars except that if such person has previously been found to have
34 refused a chemical test pursuant to this section while operating a
35 commercial motor vehicle or has a prior conviction of any of the follow-
36 ing offenses while operating a commercial motor vehicle: any violation
37 of section eleven hundred ninety-two of this article; any violation of
38 subdivision two of section six hundred of this chapter; or has a prior
39 conviction of any felony involving the use of a commercial motor vehicle
40 pursuant to paragraph (a) of subdivision one of section five hundred
41 ten-a of this chapter, then the civil penalty shall be [seven hundred
42 fifty] ONE THOUSAND dollars. No new driver's license or permit shall be
43 issued, or non-resident operating privilege restored to such person
44 unless such penalty has been paid. All penalties collected by the
45 department pursuant to the provisions of this section shall be the prop-
46 erty of the state and shall be paid into the general fund of the state
47 treasury.

48 S 5. Paragraph (b) of subdivision 3 of section 511 of the vehicle and
49 traffic law, as separately amended by chapters 786 and 892 of the laws
50 of 1990, is amended to read as follows:

51 (b) Aggravated unlicensed operation of a motor vehicle in the first
52 degree is a class E felony. When a person is convicted of this crime,
53 the sentence of the court must be: (i) a fine in an amount not less than
54 [five hundred] ONE THOUSAND dollars nor more than five thousand dollars;
55 and (ii) a term of imprisonment as provided in the penal law, or (iii)
56 where appropriate and a term of imprisonment is not required by the

1 penal law, a sentence of probation as provided in subdivision six of
2 this section, or (iv) a term of imprisonment as a condition of a
3 sentence of probation as provided in the penal law.

4 S 6. Clauses (b), (c), (d) and (e) of subparagraph 12 of paragraph (b)
5 of subdivision 2 of section 1193 of the vehicle and traffic law are
6 REPEALED and clause (f) is relettered clause (b).

7 S 7. The closing paragraph of section 125.13 of the penal law, as
8 amended by chapter 496 of the laws of 2009, is amended to read as
9 follows:

10 Vehicular manslaughter in the first degree is a class [C] B felony.

11 S 8. Paragraph (a) of subdivision 1 of section 70.02 of the penal law,
12 as amended by chapter 320 of the laws of 2006, is amended to read as
13 follows:

14 (a) Class B violent felony offenses: an attempt to commit the class
15 A-I felonies of murder in the second degree as defined in section
16 125.25, kidnapping in the first degree as defined in section 135.25, and
17 arson in the first degree as defined in section 150.20; manslaughter in
18 the first degree as defined in section 125.20, aggravated manslaughter
19 in the first degree as defined in section 125.22, rape in the first
20 degree as defined in section 130.35, criminal sexual act in the first
21 degree as defined in section 130.50, aggravated sexual abuse in the
22 first degree as defined in section 130.70, course of sexual conduct
23 against a child in the first degree as defined in section 130.75;
24 assault in the first degree as defined in section 120.10, kidnapping in
25 the second degree as defined in section 135.20, burglary in the first
26 degree as defined in section 140.30, arson in the second degree as
27 defined in section 150.15, robbery in the first degree as defined in
28 section 160.15, incest in the first degree as defined in section 255.27,
29 criminal possession of a weapon in the first degree as defined in
30 section 265.04, criminal use of a firearm in the first degree as defined
31 in section 265.09, criminal sale of a firearm in the first degree as
32 defined in section 265.13, aggravated assault upon a police officer or a
33 peace officer as defined in section 120.11, gang assault in the first
34 degree as defined in section 120.07, AGGRAVATED VEHICULAR HOMICIDE AS
35 DEFINED IN SECTION 125.14, intimidating a victim or witness in the first
36 degree as defined in section 215.17, hindering prosecution of terrorism
37 in the first degree as defined in section 490.35, criminal possession of
38 a chemical weapon or biological weapon in the second degree as defined
39 in section 490.40, and criminal use of a chemical weapon or biological
40 weapon in the third degree as defined in section 490.47.

41 S 9. The closing paragraph of section 120.03 of the penal law, as
42 amended by chapter 732 of the laws of 2006, is amended to read as
43 follows:

44 Vehicular assault in the second degree is a class [E] D felony.

45 S 10. The closing paragraph of section 120.04 of the penal law, as
46 amended by chapter 496 of the laws of 2009, is amended to read as
47 follows:

48 Vehicular assault in the first degree is a class [D] C felony.

49 S 11. The closing paragraph of section 120.04-a of the penal law, as
50 amended by chapter 496 of the laws of 2009, is amended to read as
51 follows:

52 Aggravated vehicular assault is a class [C] B felony.

53 S 12. This act shall take effect on the first of November next
54 succeeding the date on which it shall have become a law.