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

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:

Section 1. The penal law is amended by adding a new section 270.40 to read as follows:

S 270.40 PERSISTENT AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE.

A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE WHEN SUCH PERSON: (1) COMMITS THE OFFENSE OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION ONE OF SECTION FIVE HUNDRED ELEVEN OF THE VEHICLE AND TRAFFIC LAW; 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 THE VEHICLE AND TRAFFIC LAW; OR (2) 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 THE VEHICLE AND TRAFFIC LAW 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 THE VEHICLE AND TRAFFIC LAW.

PERSISTENT AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IS A CLASS D FELONY.

S 2. Subparagraphs (iii) and (iv) of paragraph (a) of subdivision 3 of section 511 of the vehicle and traffic law are REPEALED.

S 3. The penal law is amended by adding a new section 270.45 to read as follows:

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

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S 270.45 PERSISTENT DRIVING WHILE INTOXICATED.

A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT DRIVING WHILE INTOXICATED WHEN SUCH PERSON OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW AFTER HAVING BEEN CONVICTED OF ANY 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 OF THIS PART AND AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THIS PART 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 THIS PART, ON THREE OR MORE OCCASIONS, WITHIN THE PRECEDING FIFTEEN YEARS OR ANY COMBINATION OF THREE OR MORE OF THE OFFENSES SET FORTH IN THIS SECTION WITHIN THE PRECEDING FIFTEEN YEARS.

PERSISTENT DRIVING WHILE INTOXICATED IS A CLASS C FELONY.

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

(2) Civil penalties. Except as otherwise provided, any person whose license, permit to drive, or any non-resident operating privilege is revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of five hundred dollars except that if such revocation is a second or subsequent revocation pursuant to this section issued within a five year period, or such person has been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the past five years not arising out of the same incident, the civil penalty shall be in the amount of [seven hundred fifty] ONE THOUSAND dollars. Any person whose license is revoked pursuant to the provisions of this section based upon a finding of refusal to submit to a chemical test while operating a commercial motor vehicle shall also be liable for a civil penalty of five hundred fifty dollars except that if such person has previously been found to have refused a chemical test pursuant to this section while operating a commercial motor vehicle or has a prior conviction of any of the following offenses while operating a commercial motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a commercial motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, then the civil penalty shall be [seven hundred fifty] ONE THOUSAND dollars. No new driver's license or permit shall be issued, or non-resident operating privilege restored to such person unless such penalty has been paid. All penalties collected by the department pursuant to the provisions of this section shall be the property of the state and shall be paid into the general fund of the state treasury.

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

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

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

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

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

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

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

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

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

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

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

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

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

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

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