

4649--A

Cal. No. 390

2015-2016 Regular Sessions

I N S E N A T E

April 1, 2015

Introduced by Sens. MARTINS, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the vehicle and traffic law, in relation to the crime of aggravated unlicensed operation of a motor vehicle

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

1 Section 1. Section 511 of the vehicle and traffic law, as added by
2 chapter 756 of the laws of 1985, paragraph (a) of subdivision 1 as
3 amended and paragraph (c) of subdivision 1 as added by chapter 173 of
4 the laws of 1990, paragraph (b) of subdivision 1 and paragraphs (a) and
5 (b) of subdivision 2 as amended by chapter 607 of the laws of 1993,
6 subdivisions 2 and 3 as amended by chapter 420 of the laws of 1989,
7 subparagraph (ii) of paragraph (a) of subdivision 2 as amended by chap-
8 ter 196 of the laws of 1996, paragraph (a) of subdivision 3 as amended
9 by chapter 732 of the laws of 2006, subparagraph (iii) of paragraph (a)
10 of subdivision 3 as amended and subparagraph (iv) of paragraph (a) of
11 subdivision 3 as added by chapter 169 of the laws of 2013, paragraph (b)
12 of subdivision 3 as separately amended by chapters 786 and 892 of the
13 laws of 1990, and subdivision 7 as amended by section 3 of part P of
14 chapter 59 of the laws of 2013, is amended to read as follows:

15 S 511. Operation while license or privilege is suspended or revoked;
16 aggravated unlicensed operation. 1. Aggravated unlicensed operation of a
17 motor vehicle in the [third] FOURTH degree. (a) A person is guilty of
18 the offense of aggravated unlicensed operation of a motor vehicle in the
19 [third] FOURTH degree when such person operates a motor vehicle upon a
20 public highway while knowing or having reason to know that such person's
21 license or privilege of operating such motor vehicle in this state or
22 privilege of obtaining a license to operate such motor vehicle issued by

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

LBD10284-03-5

1 the commissioner is suspended, revoked or otherwise withdrawn by the
2 commissioner.

3 (b) Aggravated unlicensed operation of a motor vehicle in the [third]
4 FOURTH degree is a misdemeanor. When a person is convicted of this
5 offense, the sentence of the court must be: (i) a fine of not less than
6 two hundred dollars nor more than five hundred dollars; [or] AND/OR (ii)
7 a term of imprisonment of not more than thirty days; or (iii) [both such
8 fine and imprisonment] WHERE APPROPRIATE A SENTENCE OF CONDITIONAL
9 DISCHARGE OR PROBATION AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION.

10 (c) When a person is convicted of this offense with respect to the
11 operation of a motor vehicle with a gross vehicle weight rating of more
12 than eighteen thousand pounds, the sentence of the court must be: (i) a
13 fine of not less than five hundred dollars nor more than fifteen hundred
14 dollars; [or] AND/OR (ii) a term of imprisonment of not more than thirty
15 days; or (iii) [both such fine and imprisonment] WHERE APPROPRIATE A
16 SENTENCE OF CONDITIONAL DISCHARGE OR PROBATION AS PROVIDED IN SUBDIVI-
17 SION SIX OF THIS SECTION; OR (IV) A TERM OF IMPRISONMENT AS A CONDITION
18 OF A SENTENCE OF PROBATION AS PROVIDED IN THE PENAL LAW AND CONSISTENT
19 WITH THIS SECTION.

20 2. Aggravated unlicensed operation of a motor vehicle in the [second]
21 THIRD degree. (a) A person is guilty of the offense of aggravated unli-
22 censed operation of a motor vehicle in the [second] THIRD degree when
23 such person commits the offense of aggravated unlicensed operation of a
24 motor vehicle in the [third] FOURTH degree as defined in subdivision one
25 of this section; and

26 (i) has previously been convicted of, OR ADJUDICATED A YOUTHFUL OFFEN-
27 DER FOR, an offense that consists of or includes the elements comprising
28 the offense committed within the immediately preceding eighteen months;
29 or

30 (ii) the suspension or revocation is based upon a refusal to submit to
31 a chemical test pursuant to section eleven hundred ninety-four of this
32 chapter OR THE PROVISIONS OF ANY OTHER JURISDICTION, a finding of driv-
33 ing after having consumed alcohol in violation of section eleven hundred
34 ninety-two-a of this chapter or upon a conviction for, OR AN ADJUDI-
35 CATION AS A YOUTHFUL OFFENDER FOR, a violation of any of the provisions
36 of section eleven hundred ninety-two of this chapter OR THE PROVISIONS
37 OF ANY OTHER JURISDICTION PROVIDED, HOWEVER, THAT SUCH CONDUCT, HAD IT
38 OCCURRED IN THIS STATE, WOULD HAVE CONSTITUTED A MISDEMEANOR OR FELONY
39 VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS CHAPTER; or

40 (iii) the suspension was a mandatory suspension pending prosecution of
41 a charge of a violation of section eleven hundred ninety-two of this
42 chapter ordered pursuant to paragraph (e) of subdivision two of section
43 eleven hundred ninety-three of this chapter or other similar statute IN
44 THIS, OR ANY OTHER JURISDICTION; or

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

49 (V) PHYSICAL INJURY, AS DEFINED IN SUBSECTION NINE OF SECTION 10.00 OF
50 THE PENAL LAW, HAS BEEN CAUSED TO ANOTHER PERSON DUE TO AN INCIDENT
51 INVOLVING THE MOTOR VEHICLE OPERATED BY SUCH PERSON; OR

52 (VI) WHEN SUCH PERSON COMMITS THE OFFENSE OF UNLICENSED OPERATION OF A
53 MOTOR VEHICLE PURSUANT TO SUBDIVISION ONE OF SECTION FIVE HUNDRED NINE
54 OF THIS CHAPTER AND PHYSICAL INJURY, AS DEFINED IN SUBDIVISION NINE OF
55 SECTION 10.00 OF THE PENAL LAW, HAS BEEN CAUSED TO ANOTHER PERSON DUE TO
56 AN INCIDENT INVOLVING THE MOTOR VEHICLE OPERATED BY SUCH PERSON; OR

(VII) WHEN SUCH PERSON COMMITS THE OFFENSE OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE THIRD DEGREE PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION AND PHYSICAL INJURY, AS DEFINED IN SUBDIVISION NINE OF SECTION 10.00 OF THE PENAL LAW, HAS BEEN CAUSED TO ANOTHER PERSON DUE TO AN INCIDENT INVOLVING THE MOTOR VEHICLE OPERATED BY SUCH PERSON.

(b) Aggravated unlicensed operation of a motor vehicle in the [second] THIRD degree is a misdemeanor. When a person is convicted of this crime under subparagraph (i) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars; and (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) where appropriate 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 and consistent with this section. When a person is convicted of this crime under subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than one thousand dollars; and (ii) a term of imprisonment of not less than seven days nor more than one hundred eighty days, or (iii) where appropriate 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 and consistent with this section. A VIOLATION OF SUBPARAGRAPH (V), (VI) OR (VII) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE A CLASS A MISDEMEANOR AND SHALL BE SENTENCED ACCORDING TO THE PROVISIONS OF THE PENAL LAW.

3. Aggravated unlicensed operation of a motor vehicle in the [first] SECOND degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the [first] SECOND degree when such person: (i) commits the offense of aggravated unlicensed operation of a motor vehicle in the [second] THIRD degree as provided in subparagraph (ii), (iii) or (iv) of paragraph (a) of subdivision two of this section and is operating a motor vehicle 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; or

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

(iii) commits the offense of aggravated unlicensed operation of a motor vehicle in the [third] FOURTH 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; OR

(V) WHEN SUCH PERSON OPERATES A MOTOR VEHICLE UPON A PUBLIC HIGHWAY AFTER SUCH PERSON'S APPLICATION FOR RELICENSING HAS BEEN DENIED PURSUANT TO 15 NYCRR 136.5(B)(1) OR (2) OR WHEN SUCH OPERATION OCCURS WITHIN THE PERIOD OF REAPPLICATION DELAY IMPOSED BY THE COMMISSIONER PURSUANT TO 15 NYCRR 136.5(B)(3) OR (4); OR

(VI) WHEN SUCH PERSON COMMITS THE OFFENSE OF UNLICENSED OPERATION OF A MOTOR VEHICLE PURSUANT TO SUBDIVISION ONE OF SECTION FIVE HUNDRED NINE OF THIS TITLE OR AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FOURTH DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION OR AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE SECOND DEGREE PURSUANT TO SUBPARAGRAPH (V) OF THIS PARAGRAPH; SERIOUS PHYSICAL INJURY, AS DEFINED IN SUBDIVISION TEN OF SECTION 10.00 OF THE PENAL LAW, HAS BEEN CAUSED TO ANOTHER PERSON DUE TO AN INCIDENT INVOLVING THE MOTOR VEHICLE OPERATED BY SUCH PERSON.

(B) EXCEPTIONS. SUBPARAGRAPH (VI) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY WHEN THE SUSPENSION WAS ISSUED PURSUANT TO (A) SUBDIVISION FOUR-E OF SECTION FIVE HUNDRED TEN OF THIS ARTICLE DUE TO A SUPPORT ARREARS, OR (B) SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS ARTICLE DUE TO PAST-DUE TAX LIABILITIES.

[(b)] (C) Aggravated unlicensed operation of a motor vehicle in the [first] SECOND 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 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.

4. AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FIRST DEGREE. (A) A PERSON IS GUILTY OF THE OFFENSE OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FIRST DEGREE WHEN SUCH PERSON COMMITS THE OFFENSE OF UNLICENSED OPERATION OF A MOTOR VEHICLE PURSUANT TO SUBDIVISION ONE OF SECTION FIVE HUNDRED NINE OF THIS TITLE OR AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FOURTH DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION OR AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE SECOND DEGREE PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION; AND THE DEATH OF ANOTHER PERSON HAS BEEN CAUSED DUE TO AN INCIDENT INVOLVING THE MOTOR VEHICLE OPERATED BY SUCH PERSON.

(B) EXCEPTIONS. AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FIRST DEGREE SHALL NOT APPLY WHEN THE SUSPENSION WAS ISSUED PURSUANT TO (I) SUBDIVISION FOUR-E OF SECTION FIVE HUNDRED TEN OF THIS ARTICLE DUE TO A SUPPORT ARREARS, OR (II) SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS ARTICLE DUE TO PAST-DUE TAX LIABILITIES.

(C) AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE FIRST DEGREE IS A CLASS D 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 TWO 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.

[4. Defense. In any prosecution under this section or section five hundred eleven-a of this chapter, it is a defense that the person operating the motor vehicle has at the time of the offense a license issued by a foreign country, state, territory or federal district, which

1 license is valid for operation in this state in accordance with the
2 provisions of section two hundred fifty of this chapter.]

3 5. Limitation on pleas. Where an accusatory instrument charges a
4 violation of this section, any plea of guilty entered in satisfaction of
5 such charge must include at least a plea of guilty of one of the
6 offenses defined by this section and no other disposition by plea of
7 guilty to any other charge in satisfaction of such charge shall be
8 authorized; provided, however, that if the district attorney upon
9 reviewing the available evidence determines that the charge of a
10 violation of this section is not warranted, he may set forth upon the
11 record the basis for such determination and consent to a disposition by
12 plea of guilty to another charge in satisfaction of such charge, and the
13 court may accept such plea.

14 6. Sentence of probation. In any case where a sentence of probation is
15 authorized by this section, the court may in its discretion impose such
16 sentence, provided however, if the court is of the opinion that a
17 program of alcohol or drug treatment may be effective in assisting in
18 prevention of future offenses of a similar nature upon imposing such
19 sentence, the court shall require as a condition of the sentence that
20 the defendant participate in such a program.

21 7. Exceptions. When a person is convicted of a violation of subdivi-
22 sion one or two of this section, and the suspension was issued pursuant
23 to (a) subdivision four-e of section five hundred ten of this article
24 due to a support arrears, or (b) subdivision four-f of section five
25 hundred ten of [the] THIS article due to past-due tax liabilities, the
26 mandatory penalties set forth in subdivision one or two of this section
27 shall not be applicable if, on or before the return date or subsequent
28 adjourned date, such person presents proof that such support arrears or
29 past-due tax liabilities have been satisfied as shown by certified
30 check, notice issued by the court ordering the suspension, or notice
31 from a support collection unit or department of taxation and finance as
32 applicable. The sentencing court shall take the satisfaction of arrears
33 or the payment of the past-due tax liabilities into account when impos-
34 ing a sentence for any such conviction. For licenses suspended for non-
35 payment of past-due tax liabilities, the court shall also take into
36 consideration proof, in the form of a notice from the department of
37 taxation and finance, that such person has made payment arrangements
38 that are satisfactory to the commissioner of taxation and finance.

39 S 2. This act shall take effect on the ninetieth day after it shall
40 have become a law.