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

7245--A

2015-2016 Regular Sessions

I N A S S E M B L Y

April 29, 2015

Introduced by M. of A. KAMINSKY, MURRAY -- Multi-Sponsored by -- M. of A. McDONOUGH -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

LBD10284-04-5

the commissioner is suspended, revoked or otherwise withdrawn by the commissioner.

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

(c) When a person is convicted of this offense with respect to the operation of a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than fifteen hundred dollars; [or] AND/OR (ii) a term of imprisonment of not more than thirty days; or (iii) [both such fine and imprisonment] WHERE APPROPRIATE A SENTENCE OF CONDITIONAL DISCHARGE OR 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.

2. Aggravated unlicensed operation of a motor vehicle in the [second] THIRD degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the [second] THIRD degree when such person 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

(i) has previously been convicted of, OR ADJUDICATED A YOUTHFUL OFFENDER FOR, an offense that consists of or includes the elements comprising the offense committed within the immediately preceding eighteen months; or

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

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

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

(V) PHYSICAL INJURY, AS DEFINED IN SUBSECTION 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; 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 CHAPTER 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; 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

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

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

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

7. Exceptions. When a person is convicted of a violation of subdivision one or two of this section, and 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 [the] THIS article due to past-due tax liabilities, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears or past-due tax liabilities have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit or department of taxation and finance as applicable. The sentencing court shall take the satisfaction of arrears or the payment of the past-due tax liabilities into account when imposing a sentence for any such conviction. For licenses suspended for non-payment of past-due tax liabilities, the court shall also take into consideration proof, in the form of a notice from the department of taxation and finance, that such person has made payment arrangements that are satisfactory to the commissioner of taxation and finance.

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