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

8647

I N A S S E M B L Y

January 7, 2016

Introduced by M. of A. KOLB -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the vehicle and traffic law, in relation to persistent driving while intoxicated; 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. Part 3 of the penal law is amended by adding a new title Q to read as follows:

TITLE Q

DRIVING WHILE INTOXICATED

ARTICLE 300

PERSISTENT DRIVING WHILE INTOXICATED

SECTION 300.00 PERSISTENT DRIVING WHILE INTOXICATED IN THE THIRD DEGREE.
300.01 PERSISTENT DRIVING WHILE INTOXICATED IN THE SECOND DEGREE.
300.02 PERSISTENT DRIVING WHILE INTOXICATED IN THE FIRST DEGREE.
300.03 VIOLATION OF ALCOHOL PRIVILEGE REVOKED.

S 300.00 PERSISTENT DRIVING WHILE INTOXICATED IN THE THIRD DEGREE.

A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT DRIVING WHILE INTOXICATED IN THE THIRD DEGREE 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 ON TWO OR MORE OCCASIONS.

IN ADDITION TO THE SENTENCING REQUIREMENTS, ANY PERSON UPON CONVICTION UNDER THIS SECTION SHALL BE PROHIBITED FROM PURCHASING OR CONSUMING ALCOHOLIC BEVERAGES FOR FIVE YEARS AFTER RELEASE FROM PRISON. THE COURT SHALL FURTHER REQUIRE THAT A NOTATION OF THIS RESTRICTION BE AFFIXED TO THE PERSON'S DRIVER'S LICENSE AT THE TIME OF REINSTATEMENT OF THE LICENSE. THE COURT IN WHICH A CONVICTION IS ENTERED MUST FORWARD A COPY OF THE CONVICTION TO THE DEPARTMENT OF MOTOR VEHICLES.

PERSISTENT DRIVING WHILE INTOXICATED IN THE THIRD DEGREE IS A CLASS D FELONY.

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

S 300.01 PERSISTENT DRIVING WHILE INTOXICATED IN THE SECOND DEGREE.

A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT DRIVING WHILE INTOXICATED IN THE SECOND DEGREE 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 ON ONE PRIOR OCCASION AND HAVING BEEN CONVICTED OF VEHICULAR ASSAULT IN THE SECOND OR FIRST DEGREE, AS DEFINED, RESPECTIVELY, IN SECTIONS 120.03 AND 120.04 OF THIS PART OR AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THIS PART OR VEHICULAR MANSLAUGHTER IN THE SECOND OR FIRST DEGREE, AS DEFINED, RESPECTIVELY, IN SECTIONS 125.12 AND 125.13 OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF THIS PART, ON ONE PRIOR OCCASION.

IN ADDITION TO THE SENTENCING REQUIREMENTS, ANY PERSON UPON CONVICTION UNDER THIS SECTION SHALL BE PROHIBITED FROM PURCHASING OR CONSUMING ALCOHOLIC BEVERAGES FOR TEN YEARS AFTER RELEASE FROM PRISON. THE COURT SHALL FURTHER REQUIRE THAT A NOTATION OF THE RESTRICTION BE AFFIXED TO THE PERSON'S DRIVER'S LICENSE AT THE TIME OF REINSTATEMENT OF THE LICENSE. THE COURT IN WHICH A CONVICTION IS ENTERED MUST FORWARD A COPY OF THE CONVICTION TO THE DEPARTMENT OF MOTOR VEHICLES.

PERSISTENT DRIVING WHILE INTOXICATED IN THE SECOND DEGREE IS A CLASS C FELONY.

S 300.02 PERSISTENT DRIVING WHILE INTOXICATED IN THE FIRST DEGREE.

A PERSON IS GUILTY OF THE OFFENSE OF PERSISTENT DRIVING WHILE INTOXICATED IN THE FIRST DEGREE 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 VEHICULAR ASSAULT IN THE SECOND OR FIRST DEGREE, AS DEFINED, RESPECTIVELY, IN SECTIONS 120.03 AND 120.04 OF THIS PART OR 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 OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF THIS PART, ON TWO OR MORE PRIOR OCCASIONS.

IN ADDITION TO THE SENTENCING REQUIREMENTS, ANY PERSON UPON CONVICTION UNDER THIS SECTION, SHALL BE PROHIBITED FROM PURCHASING OR CONSUMING ALCOHOLIC BEVERAGES FOR FIFTEEN YEARS AFTER RELEASE FROM PRISON. THE COURT SHALL FURTHER REQUIRE THAT A NOTATION OF THIS RESTRICTION BE AFFIXED TO THE PERSON'S DRIVER'S LICENSE AT THE TIME OF REINSTATEMENT OF THE LICENSE. THE COURT IN WHICH A CONVICTION IS ENTERED MUST FORWARD A COPY OF THE CONVICTION TO THE DEPARTMENT OF MOTOR VEHICLES.

PERSISTENT DRIVING WHILE INTOXICATED IN THE FIRST DEGREE IS A CLASS B FELONY.

S 300.03 VIOLATION OF ALCOHOL PRIVILEGE REVOKED.

1. WHEN A PERSON HAS VIOLATED THE TERMS OF HIS OR HER CONDITIONAL SENTENCING REQUIREMENT OF THEIR ALCOHOL PRIVILEGES BEING REVOKED, HE OR SHE SHALL BE GUILTY OF A CLASS B MISDEMEANOR, AND SHALL BE PUNISHED BY A FINE OF NO MORE THAT FIVE HUNDRED DOLLARS.

2. WHEN A PERSON HAS VIOLATED THE TERMS OF HIS OR HER CONDITIONAL SENTENCING REQUIREMENT OF THEIR ALCOHOL PRIVILEGES BEING REVOKED AFTER HAVING BEEN CONVICTED OF VIOLATING THEIR CONDITIONAL SENTENCING REQUIREMENT OF THEIR ALCOHOL PRIVILEGE BEING REVOKED, HE OR SHE SHALL BE GUILTY OF A CLASS A MISDEMEANOR, AND SHALL BE PUNISHED BY A FINE OF NO MORE THAN ONE THOUSAND DOLLARS.

S 2. Paragraph (b) of subdivision 3 of section 70.00 of the penal law is relettered paragraph (c) and a new paragraph (b) is added to read as follows:

(B) FOR ALL FELONIES DESCRIBED IN ARTICLE THREE HUNDRED OF THIS CHAPTER, THE MINIMUM PERIOD SHALL BE FIXED BY THE COURT AND SPECIFIED IN THE SENTENCE AND SHALL BE NOT LESS THAN TWO YEARS.

S 3. Subdivision 1 of section 504 of the vehicle and traffic law is amended by adding a new paragraph (a-2) to read as follows:

(A-2) IF A PERSON HAS BEEN CONVICTED UNDER PENAL LAW SECTIONS 300.00, 300.01, 300.02, OR IN VIOLATION OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE OF THIS CHAPTER AND IS GRANTED A STATE-ISSUED PHOTO IDENTIFICATION LICENSE OR A DRIVER'S LICENSE, WITH OR WITHOUT RESTRICTIONS, THE IDENTIFICATION CARD OR LICENSE SHALL INDICATE THAT THE PERSON IS PROHIBITED FROM PURCHASING OR CONSUMING ALCOHOL WITH THE WORDS "ALCOHOL PRIVILEGE REVOKED". ANY COST THE DEPARTMENT OF MOTOR VEHICLES INCURS IN PROCESSING, PRODUCING, AND ISSUING AN IDENTIFICATION CARD OR LICENSE WITH THE INDICATOR REQUIRED BY THIS PARAGRAPH OR OTHERWISE IMPLEMENTING THIS PARAGRAPH, SHALL BE PAID BY THE OFFENDERS TO WHOM THE IDENTIFICATION CARDS OR LICENSES ARE ISSUED IN THE FORM OF AN ISSUANCE FEE. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF THE FEE BY RULE, BUT THE FEE SHALL NOT EXCEED THE COST OF IMPLEMENTING THIS PARAGRAPH.

S 4. Subparagraph (i) of paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 169 of the laws of 2013, is amended to read as follows:

(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 AND IN ADDITION, HE OR SHE MAY BE PROHIBITED FROM PURCHASING OR CONSUMING ALCOHOLIC BEVERAGES FOR UP TO A MAXIMUM OF THREE YEARS. THE COURT SHALL FURTHER REQUIRE THAT A NOTATION OF THIS RESTRICTION BE AFFIXED TO THE PERSON'S DRIVER'S LICENSE AT THE TIME OF REINSTATEMENT OF THE LICENSE.

S 5. Subparagraphs (ii) and (iii) of paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law are REPEALED and a new subparagraph (ii) is added to read as follows:

(II) IN THE CASE OF A PERSON CONVICTED UNDER PENAL LAW SECTIONS 300.00, 300.01, 300.02, OR IN VIOLATION OF THIS PARAGRAPH, THE COURT SHALL ORDER THE PERSON TO ABSTAIN FROM PURCHASING OR CONSUMING ALCOHOL FOR SUCH PERIOD AS REQUIRED BY LAW PURSUANT TO THEIR OFFENSES AND REQUIRE THAT A NOTATION OF THIS RESTRICTION BE AFFIXED TO THE PERSON'S DRIVER'S LICENSE AT THE TIME OF REINSTATEMENT OF THE LICENSE AND NOTICE OF THE ORDER SHALL BE GIVEN TO THE DEPARTMENT. THIS RESTRICTION SHALL REMAIN ON THE DRIVER'S LICENSE FOR SUCH PERIOD REQUIRED BY LAW. THE RESTRICTION MAY BE MODIFIED BY ORDER OF THE COURT AND NOTICE OF THE ORDER SHALL BE GIVEN TO THE DEPARTMENT. UPON THE EXPIRATION OF THE PERI-

OD FOR THE RESTRICTION, THE DEPARTMENT SHALL REMOVE THE RESTRICTION WITHOUT FURTHER COURT ORDER. FAILURE TO COMPLY WITH THE ORDER TO ABSTAIN SHALL BE A VIOLATION OF THE SENTENCE. SUCH A VIOLATION SHALL BE PUNISHABLE UNDER SECTION 300.03 OF THE PENAL LAW.

S 6. The commissioner of motor vehicles shall promulgate such rules and regulations as are necessary that would require violation of subdivisions 2, 2-a, 3, 4 or 4-a of section 1192 of the vehicle and traffic law to remain permanent on a person's driving record.

S 7. This act shall take effect immediately.