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

3785--A

Cal. No. 649

2015-2016 Regular Sessions

I N S E N A T E

February 17, 2015

Introduced by Sens. DeFRANCISCO, AVELLA, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- 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 navigation law, in relation to the effect of prior conviction for operation of certain vehicles while intoxicated upon imposition of penalties for boating while intoxicated

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

Section 1. Short title. This act shall be known and may be cited as "Tiffany Heitkamp's law".

S 2. Paragraphs (a) and (f) of subdivision 2 of section 49-a of the navigation law, as amended by chapter 151 of the laws of 2006, are amended to read as follows:

(a) No person shall operate a vessel upon the waters of the state while his OR HER ability to operate such vessel is impaired by the consumption of alcohol. (1) A violation of this subdivision shall be an offense and shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. (2) A person who operates a vessel in violation of this subdivision after being convicted of a violation of any subdivision of this section within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. (3) A person who operates a vessel in violation of this subdivision after being convicted two or more times of a violation of any

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

LBD01754-06-6

subdivision of this section within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(f)(1) A violation of paragraph (b), (c), (d) or (e) of this subdivision shall be a misdemeanor and shall be punishable by imprisonment in a penitentiary or county jail for not more than one year, or by a fine of not less than five hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment. (2) A person who operates a vessel in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision, or of operating a vessel or public vessel while intoxicated or while under the influence of drugs, within the preceding ten years, shall be guilty of a class E felony and shall be punished by a period of imprisonment as provided in the penal law, or by a fine of not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. (3) A person who operates a vessel in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been twice convicted of a violation of any of such paragraph (b), (c), (d) or (e) of this subdivision or of operating a vessel or public vessel while intoxicated or under the influence of drugs, within the preceding ten years, shall be guilty of a class D felony and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

S 3. Section 49-a of the navigation law is amended by adding a new subdivision 5-a to read as follows:

5-A. SENTENCING; PREVIOUS CONVICTIONS. WHEN SENTENCING A PERSON FOR A VIOLATION OF PARAGRAPH (B), (C), (D) OR (E) OF SUBDIVISION TWO OF THIS SECTION PURSUANT TO SUBPARAGRAPH TWO OF PARAGRAPH (F) OF SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL CONSIDER ANY PRIOR CONVICTIONS THE PERSON MAY HAVE FOR A VIOLATION OF SUBDIVISION TWO, TWO-A THREE, FOUR, OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW WITHIN THE PRECEDING TEN YEARS. WHEN SENTENCING A PERSON FOR A VIOLATION OF PARAGRAPH (B), (C), (D) OR (E) OF SUBDIVISION TWO OF THIS SECTION PURSUANT TO SUBPARAGRAPH THREE OF PARAGRAPH (F) OF SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL CONSIDER ANY PRIOR CONVICTIONS THE PERSON MAY HAVE FOR A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR, OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW WITHIN THE PRECEDING TEN YEARS. WHEN SENTENCING A PERSON FOR A VIOLATION OF SUBPARAGRAPH TWO OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL CONSIDER ANY PRIOR CONVICTIONS THE PERSON MAY HAVE FOR A VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW WITHIN THE PRECEDING FIVE YEARS. WHEN SENTENCING A PERSON FOR A VIOLATION OF SUBPARAGRAPH THREE OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL CONSIDER ANY PRIOR CONVICTIONS THE PERSON MAY HAVE FOR A VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW WITHIN THE PRECEDING TEN YEARS.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.