STATE OF NEW YORK

5348

2019-2020 Regular Sessions

IN SENATE

April 26, 2019

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the suspension of a license to drive a motor vehicle or motorcycle; and to repeal certain provisions of such law related thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 3 of section 226 of the vehicle and traffic law, as amended by chapter 607 of the laws of 1993, paragraph (a) as amended by section 6 of part J of chapter 62 of the laws of 2003 and paragraph (b) as amended by section 2 of part K of chapter 59 of the laws of 2010, is amended to read as follows:

3. Failure to answer or appear; entry of order. [~~(a) If the person charged with the violation shall fail to answer the summons as provided herein, the commissioner may suspend such person's license or driving privilege or, if the charge involves a violation of section three hundred eighty-five, section four hundred one or section five hundred eleven-a of this chapter by a registrant who was not the operator of the vehicle, the registration of such vehicle or the privilege of operation of any motor vehicle owned by such registrant may be suspended, until such person shall answer as provided in subdivision two of this section. If a person shall fail to appear at a hearing, when such is provided for pursuant to this section, such person's license, or registration or privilege of operating or of operation, as appropriate, may be suspended pending appearance at a subsequent hearing, or the disposition of the charges involved. Any suspension permitted by this subdivision, if already in effect, may be terminated or if not yet in effect, may be withdrawn or withheld, prior to the disposition of the charges involved if such person shall appear and post security in the amount of forty dollars to guarantee his or her appearance at any required hearing. The security posted pursuant to this subdivision shall be returned upon~~

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

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~~appearance at the scheduled hearing or an adjourned hearing which results in a final disposition of the charge, and otherwise shall be forfeited. If a suspension has been imposed pursuant to this subdivision and the case is subsequently transferred pursuant to subdivision two of section two hundred twenty-five of this article, such suspension shall remain in effect until the person answers the charges in the court to which the case was transferred. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-1) of subdivision two of section five hundred three of this chapter.~~

~~(b)~~] Failure to answer or appear in accordance with the requirements of this section and any regulations promulgated hereunder shall be deemed an admission to the violation as charged, and an appropriate order may be entered in the department's records, and a fine consistent with the provisions of this chapter and regulations of the commissioner may be imposed by the commissioner or person designated by the commissioner. Prior to entry of an order and imposition of a fine, the commissioner shall notify such person by mail at the address of such person on file with the department or at the current address provided by the United States postal service in accordance with section two hundred fourteen of this chapter: (i) of the violation charged; (ii) of the impending entry of such order and fine; (iii) that such order and fine may be filed as a judgment with the county clerk of the county in which the operator or registrant is located; and (iv) that entry of such order and imposition of such fine may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. In no case shall such an order and fine be entered and imposed more than two years after the date of the alleged violation. Upon application in such manner and form as the commissioner shall prescribe an order and fine shall be vacated upon the ground of excusable default.

§ 2. The vehicle and traffic law is amended by adding a new section 226-a to read as follows:

§ 226-a. Return date notifications. The commissioner shall notify any person who receives a summons or appearance ticket for a violation described in subdivision one of section two hundred twenty-five of this chapter of the time and place of the return date for such summons no later than one week prior to the return date. The commissioner shall (a) send the notification by first class mail at the address of such person on file with the department or at the current address provided by the United States Postal Service in accordance with section two hundred fourteen of this chapter; and (b) in collaboration with state and local law enforcement agencies, make best efforts to provide an additional notification by text message, electronic mail or phone call using the best available phone number or electronic mail address for the intended person.

§ 3. The vehicle and traffic law is amended by adding a new section 229 to read as follows:

§ 229. Reasonable payment plans. 1. The court or hearing officer shall offer the opportunity for a reasonable payment plan at no charge to the person. A reasonable payment plan shall comprehend all fines, fees and mandatory surcharges and shall consist of monthly payments that do not exceed two percent of the person's monthly net income or ten dollars per month, whichever is greater. Monthly net income means total monetary payments from any source, minus deductions required by law, including but not limited to administrative or court-ordered garnishments and support payments. The court or traffic violations agency may accept payments higher than the set amount, but may not undertake additional

collection activity so long as the person meets his or her obligations under the payment plan. The court or hearing officer may require people with payment plans to appear periodically, but no more often than annually, to assess their financial circumstances and may set a new payment amount if the person's financial circumstances have changed. A person who enters into a payment plan and experiences a reduction in income may petition the court or hearing officer at any time to seek a reduction in the monthly payment.

2. The court or hearing officer shall have the discretion in the interests of justice to reduce or waive the amount of any fine, fee or mandatory surcharge assessed for a violation of any of the provisions of this chapter.

3. A person assessed a fine, fee and/or mandatory surcharge for a violation of any of the provisions of this chapter shall be notified of their right to a reasonable payment plan (a) at the time the citation or ticket is issued; (b) at the time of sentencing; and (c) in any communication concerning imposition or collection of the fine, fee or mandatory surcharge. Information about the availability of payment plans shall be prominently posted at each court and traffic violations agency, on its website, if any, and on the commissioner's website.

§ 4. Paragraph a of subdivision 4 of section 227 of the vehicle and traffic law, as amended by section 7 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

a. An order entered upon the failure to answer or appear or after the receipt of an answer admitting the charge or where a determination is made that the charge has been established shall be civil in nature, but shall be treated as a conviction for the purposes of this chapter. The commissioner or his designee may include in such order an imposition of any penalty authorized by any provision of this chapter for a conviction of such violation, except that no penalty therefore shall include imprisonment, nor, if monetary, exceed the amount of the fine which could have been imposed had the charge been heard by a court. [~~The driver's license or privileges, or, if the charge involves a violation of section three hundred eighty-five or section four hundred one of this chapter by a registrant who was not the operator of the vehicle, the registration of such vehicle or privilege of operation of any motor vehicle owned by such registrant may be suspended pending the payment of any penalty so imposed. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-1) of subdivision two of section five hundred three of this chapter.~~]

§ 5. Paragraph (j-1) of subdivision 2 of section 503 of the vehicle and traffic law, as added by section 8 of part J of chapter 62 of the laws of 2003, subparagraph (i) as amended by section 3 of part PP of chapter 59 of the laws of 2009 and subparagraph (iv) as added by section 4 of part PP of chapter 59 of the laws of 2009, is amended to read as follows:

(j-1) (i) [~~When a license issued pursuant to this article, or a privilege of operating a motor vehicle or of obtaining such a license, has been suspended based upon a failure to answer an appearance ticket or a summons or failure to pay a fine, penalty or mandatory surcharge, pursuant to subdivision three of section two hundred twenty-six, subdivision four of section two hundred twenty-seven, subdivision four-a of section five hundred ten or subdivision five-a of section eighteen hundred nine of this chapter, such suspension shall remain in effect until a termination of a suspension fee of seventy dollars is paid to the court or tribunal that initiated the suspension of such license or privilege. In~~

~~no event may the aggregate of the fees imposed by an individual court pursuant to this paragraph for the termination of all suspensions that may be terminated as a result of a person's answers, appearances or payments made in such cases pending before such individual court exceed four hundred dollars. For the purposes of this paragraph, the various locations of the administrative tribunal established under article two-A of this chapter shall be considered an individual court.~~

~~(ii)~~] Any such fee collected by any court, judge, magistrate or other officer specified in subdivision one of section thirty-nine of the judiciary law, establishing a unified court budget, shall be paid to the state commissioner of taxation and finance on a monthly basis no later than ten days after the last day of each month. All such monies collected under this subdivision shall be deposited to the indigent legal services fund established by section ninety-eight-b of the state finance law.

[~~(iii)~~] **(ii)** Any such fee collected by any other court, judge, magistrate or other officer shall, except as provided in paragraph (k) of this subdivision, be paid to the state comptroller within the first ten days of the month following collection. Every such payment to the comptroller shall be accompanied by a statement in such form and detail as the comptroller shall provide. All such monies collected under this subdivision shall be deposited to the indigent legal services fund established by section ninety-eight-b of the state finance law.

[~~(iv)~~] **(iii)** Notwithstanding any other provision of this paragraph, fifty percent of all fees collected pursuant to this paragraph shall be deposited to the credit of the general fund.

§ 6. Subdivision 4-a of section 510 of the vehicle and traffic law is REPEALED.

§ 7. Paragraph (a) of subdivision 2 of section 511 of the vehicle and traffic law, as amended by chapter 607 of the laws of 1993 and subparagraph (ii) as amended by chapter 196 of the laws of 1996, is amended to read as follows:

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the second degree when such person commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and

(i) has previously been convicted of 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, 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 a violation of any of the provisions 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[~~; 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~~].

§ 8. Paragraph (a) of subdivision 3 of section 511 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006 and subpara-

graph (iii) as amended and subparagraph (iv) as added by chapter 169 of the laws of 2013, is amended to read as follows:

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the first degree when such person: (i) commits the offense of aggravated unlicensed operation of a motor vehicle in the second 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 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 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)~~] **(iii)** 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.

§ 9. Subdivision 3 of section 514 of the vehicle and traffic law, as amended by section 11 of part J of chapter 62 of the laws of 2003 and paragraph (b) as amended by chapter 157 of the laws of 2017, is amended to read as follows:

3. (a) Upon the failure of a person to appear or answer, within sixty days of the return date or any subsequent adjourned date, or the failure to pay a fine imposed by a court, pursuant to a summons charging him or her with a violation of any of the provisions of this chapter (except one for parking, stopping or standing), section five hundred two or five hundred twelve of the tax law, section fourteen-f, two hundred eleven or two hundred twelve of the transportation law or of any law, ordinance, rule or regulation made by a local authority, relating to traffic (except for parking, stopping or standing), the trial court or the clerk thereof shall within ten days certify that fact to the commissioner, in the manner and form prescribed by the commissioner, who shall record the same in his or her office. Thereafter and upon the appearance of any such person in response to such summons or the receipt of the fine by the court, the trial court or the clerk thereof shall forthwith certify that fact to the commissioner, in the manner and form prescribed by the commissioner[~~; provided, however, no such certification shall be made unless the court has collected the termination of suspension fee required to be paid pursuant to paragraph (j-1) of subdivision two of section five hundred three of this chapter~~].

(b) Upon the failure of a person to appear or answer, within sixty days of the return date or any subsequent adjourned date, or the failure to pay a fine imposed by a traffic and parking violations agency or a traffic violations agency pursuant to a summons charging him or her with a violation of:

(1) any of the provisions of this chapter except one for parking, stopping or standing and except those violations described in paragraphs (a), (b), (d), (e) and (f) of subdivision two and in paragraphs (a), (b), (d), (e), (f) and (g) of subdivision two-a and in paragraphs (a), (b), (d), (e), (f) and (g) of subdivision two-b of section three hundred seventy-one of the general municipal law;

(2) section five hundred two or subdivision (a) of section eighteen hundred fifteen of the tax law;

(3) section fourteen-f (except paragraph (b) of subdivision four of section fourteen-f), two hundred eleven or two hundred twelve of the transportation law; or

(4) any lawful ordinance or regulation made by a local or public authority relating to traffic (except one for parking, stopping or standing);

the clerk thereof shall within ten days certify that fact to the commissioner, in the manner and form prescribed by the commissioner, who shall record the same in his or her office. Thereafter and upon the appearance of any such person in response to such summons or the receipt of the fine by the agency, the traffic and parking violations agency, the traffic violations agency or the clerk thereof shall forthwith certify that fact to the commissioner, in the manner and form prescribed by the commissioner[~~; provided, however, no such certification shall be made unless the traffic and parking violations agency or the traffic violations agency has collected the termination of suspension fee required to be paid pursuant to paragraph (j-1) of subdivision two of section five hundred three of this chapter~~].

§ 10. The vehicle and traffic law is amended by adding a new section 519 to read as follows:

§ 519. Termination of suspensions for failure to answer or failure to pay. Within three months of the effective date of this section, the commissioner shall terminate all suspensions of licenses, privileges to operate a motor vehicle and registrations based upon a failure to answer an appearance ticket or summons or failure to pay a fine, penalty or mandatory surcharge pursuant to subdivision three of section two hundred twenty-six, subdivision four of section two hundred twenty-seven, or subdivision four-a of section five hundred ten of this chapter, then in effect. The commissioner shall waive all fees and penalties associated with the termination of a suspension, including but not limited to those described in subparagraph (i) of paragraph (j-1) of subdivision two of section five hundred three, subdivision three of section five hundred fourteen and paragraph a of subdivision four of section two hundred twenty-seven of this chapter, as in existence prior to the effective date of this section.

§ 11. Subdivision 5-a of section 1809 of the vehicle and traffic law is REPEALED.

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