

5338--B

2011-2012 Regular Sessions

I N   S E N A T E

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Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse -- recommitted to the Committee on Alcoholism and Drug Abuse in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law and the executive law, in relation to enacting "Vince's law" to increase fines, terms of imprisonment and license conditions for violations of provisions of law relating to driving while intoxicated or impaired by drugs

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

1     Section 1. This act shall be known and may be cited as "Vince's law".  
2     S 2. Paragraphs (b) and (c) of subdivision 1 of section 1193 of the  
3 vehicle and traffic law, as amended by chapter 496 of the laws of 2009,  
4 are amended to read as follows:  
5     (b) Driving while intoxicated or while ability impaired by drugs or  
6 while ability impaired by the combined influence of drugs or of alcohol  
7 and any drug or drugs; aggravated driving while intoxicated; misdemeanor  
8 offenses. (i) A violation of subdivision two, three, four or four-a of  
9 section eleven hundred ninety-two of this article shall be a misdemeanor  
10 and shall be punishable by a fine of not less than [five hundred] ONE  
11 THOUSAND dollars nor more than one thousand FIVE HUNDRED dollars, or by  
12 imprisonment in a penitentiary or county jail for not more than one  
13 year, or by both such fine and imprisonment. A violation of paragraph  
14 (a) of subdivision two-a of section eleven hundred ninety-two of this  
15 article shall be a misdemeanor and shall be punishable by a fine of not  
16 less than one thousand FIVE HUNDRED dollars nor more than [two] THREE  
17 thousand [five hundred] dollars or by imprisonment in a penitentiary or

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

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1 county jail for not more than one year, or by both such fine and imprisonment.  
2

3 (ii) In addition to the imposition of any fine or period of imprisonment  
4 set forth in this paragraph, the court shall also sentence such  
5 person convicted of a violation of subdivision two, two-a or three of  
6 section eleven hundred ninety-two of this article to a period of  
7 probation or conditional discharge, as a condition of which it shall  
8 order such person to install and maintain, in accordance with the  
9 provisions of section eleven hundred ninety-eight of this article, an  
10 ignition interlock device in any motor vehicle owned or operated by such  
11 person during the term of such probation or conditional discharge  
12 imposed for such violation of section eleven hundred ninety-two of this  
13 article and in no event for less than six months. Provided, however, the  
14 court may not authorize the operation of a motor vehicle by any person  
15 whose license or privilege to operate a motor vehicle has been revoked  
16 pursuant to the provisions of this section.

17 (III) IN ADDITION TO THE IMPOSITION OF ANY FINE OR PERIOD OF IMPRISON-  
18 MENT SET FORTH IN THIS PARAGRAPH, THE COURT SHALL ALSO SENTENCE SUCH  
19 PERSON CONVICTED OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF  
20 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE TO A PERIOD OF  
21 PROBATION OR CONDITIONAL DISCHARGE, AS A CONDITION OF WHICH IT SHALL  
22 ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH PERSON BE  
23 LIMITED IN ITS SCOPE TO AUTHORIZE SUCH PERSON TO OPERATE A MOTOR VEHICLE  
24 ONLY FOR THE PURPOSES OF TRAVELING TO OR FROM WORK OR TO OR FROM A  
25 HOSPITAL, DOCTOR'S OFFICE, DENTIST OFFICE, EMERGENCY ROOM OR OTHER  
26 LOCATION WHERE MEDICAL SERVICES ARE PROVIDED FOR A PERIOD OF NOT LESS  
27 THAN EIGHTEEN MONTHS. ANY VIOLATION OF THE CONDITIONS SET FORTH IN THIS  
28 SUBPARAGRAPH SHALL RESULT IN THE IMMEDIATE REVOCATION OF SUCH PERSON'S  
29 LICENSE TO OPERATE A MOTOR VEHICLE FOR A PERIOD OF NOT LESS THAN EIGH-  
30 TEEN MONTHS FROM THE DATE OF SUCH VIOLATION. PROVIDED, HOWEVER, THE  
31 COURT MAY NOT AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY ANY PERSON  
32 WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE HAS BEEN REVOKED  
33 PURSUANT TO THE PROVISIONS OF THIS SECTION.

34 (c) Felony offenses. (i) A person who operates a vehicle (A) in  
35 violation of subdivision two, two-a, three, four or four-a of section  
36 eleven hundred ninety-two of this article after having been convicted of  
37 a violation of subdivision two, two-a, three, four or four-a of such  
38 section or of vehicular assault in the second or first degree, as  
39 defined, respectively, in sections 120.03 and 120.04 and aggravated  
40 vehicular assault as defined in section 120.04-a of the penal law or of  
41 vehicular manslaughter in the second or first degree, as defined,  
42 respectively, in sections 125.12 and 125.13 and aggravated vehicular  
43 homicide as defined in section 125.14 of such law, within the preceding  
44 ten years, or (B) in violation of paragraph (b) of subdivision two-a of  
45 section eleven hundred ninety-two of this article shall be guilty of a  
46 class E felony, and shall be punished by a fine of not less than [one]  
47 TWO thousand FIVE HUNDRED dollars nor more than five thousand dollars  
48 [or] AND by a period of imprisonment as provided in the penal law[, or  
49 by both such fine and imprisonment].

50 (ii) A person who operates a vehicle in violation of subdivision two,  
51 two-a, three, four or four-a of section eleven hundred ninety-two of  
52 this article after having been convicted of a violation of subdivision  
53 two, two-a, three, four or four-a of such section or of vehicular  
54 assault in the second or first degree, as defined, respectively, in  
55 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
56 in section 120.04-a of the penal law or of vehicular manslaughter in the

1 second or first degree, as defined, respectively, in sections 125.12 and  
2 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
3 such law, twice within the preceding ten years, shall be guilty of a  
4 class D felony, and shall be punished by a fine of not less than [two]  
5 FIVE thousand dollars nor more than ten thousand dollars [or] AND by a  
6 period of imprisonment as provided in the penal law, [or by both such  
7 fine and imprisonment] PROVIDED THAT SUCH PERIOD OF IMPRISONMENT SHALL  
8 NOT BE LESS THAN FIVE YEARS NOR MORE THAN SEVEN YEARS.

9 (II-A) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION  
10 TWO, TWO-A, THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO  
11 OF THIS ARTICLE AFTER HAVING BEEN CONVICTED ON TWO OR MORE OCCASIONS OF  
12 ANY COMBINATION OF A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR  
13 FOUR-A OF SUCH SECTION OR OF VEHICULAR ASSAULT IN THE SECOND OR FIRST  
14 DEGREE, AS DEFINED, RESPECTIVELY, IN SECTIONS 120.03 AND 120.04 AN  
15 AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THE PENAL  
16 LAW OR OF VEHICULAR MANSLAUGHTER IN THE SECOND OR FIRST DEGREE, AS  
17 DEFINED, RESPECTIVELY, IN SECTIONS 125.12 AND 125.13 AND AGGRAVATED  
18 VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF SUCH LAW, WITHIN THE  
19 PRECEDING TEN YEARS, SHALL BE GUILTY OF A CLASS C FELONY, AND SHALL BE  
20 PUNISHED BY A FINE OF NOT LESS THAN TEN THOUSAND DOLLARS NOR MORE THAN  
21 FIFTEEN THOUSAND DOLLARS OR BY A PERIOD OF IMPRISONMENT OF NOT MORE THAN  
22 FIFTEEN YEARS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

23 (iii) A. In addition to the imposition of any fine or period of impri-  
24 sonment set forth in this paragraph, the court shall also sentence such  
25 person convicted of a violation of subdivision two, two-a or three of  
26 section eleven hundred ninety-two of this article to a period of  
27 probation or conditional discharge, as a condition of which it shall  
28 order such person to install and maintain, in accordance with the  
29 provisions of section eleven hundred ninety-eight of this article, an  
30 ignition interlock device in any motor vehicle owned or operated by such  
31 person during the term of such probation or conditional discharge  
32 imposed for such violation of section eleven hundred ninety-two of this  
33 article and in no event for a period of less than six months. Provided,  
34 however, the court may not authorize the operation of a motor vehicle by  
35 any person whose license or privilege to operate a motor vehicle has  
36 been revoked pursuant to the provisions of this section.

37 B. IN ADDITION TO THE IMPOSITION OF ANY FINE AND PERIOD OF IMPRISON-  
38 MENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT SHALL  
39 ALSO ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH  
40 PERSON SHALL BE REVOKED FOR A PERIOD OF EIGHTEEN MONTHS.

41 C. IN ADDITION TO THE IMPOSITION OF ANY FINE AND PERIOD OF IMPRISON-  
42 MENT SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT SHALL  
43 ALSO ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH  
44 PERSON SHALL BE REVOKED FOR A PERIOD OF SEVEN YEARS.

45 D. IN ADDITION TO THE IMPOSITION OF ANY FINE AND PERIOD OF IMPRISON-  
46 MENT SET FORTH IN SUBPARAGRAPH (II-A) OF THIS PARAGRAPH, THE COURT SHALL  
47 ALSO ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH  
48 PERSON SHALL BE REVOKED FOR A PERIOD OF TEN YEARS.

49 S 3. Section 1193 of the vehicle and traffic law is amended by adding  
50 a new subdivision 1-b to read as follows:

51 1-B. ALCOHOL AND CONTROLLED SUBSTANCE MONITORING. (A) IN ADDITION TO  
52 ANY OTHER SANCTIONS PROVIDED BY THIS SECTION, THE COURT SHALL UPON  
53 CONVICTION OF A PERSON OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE  
54 OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR VEHICULAR  
55 ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.03 OF THE PENAL  
56 LAW, OR VEHICULAR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION

1 120.04 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN  
2 SECTION 120.04-A OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE  
3 SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, OR VEHICU-  
4 LAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE  
5 PENAL LAW, OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14  
6 OF THE PENAL LAW, WHEN SUCH COURT SENTENCES SUCH PERSON TO A PERIOD OF  
7 PROBATION, MAKE A CONDITION OF SUCH PROBATION THE WEARING OF A SECURE  
8 CONTINUOUS REMOTE ALCOHOL MONITOR FOR THE DETECTION OF THE USE OF ALCO-  
9 HOL OR A CONTROLLED SUBSTANCE BY THE SENTENCED PERSON; PROVIDED, HOWEV-  
10 ER, SUCH COURT SHALL NOT AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY  
11 ANY SUCH PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE  
12 HAS BEEN SUSPENDED OR REVOKED.

13 (B) A COURT SHALL CONDITION ANY BOND OR PRE-TRIAL RELEASE FOR A CHARGE  
14 OF ANY OF THE OFFENSES LISTED IN PARAGRAPH (A) OF THIS SUBDIVISION UPON  
15 THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR, AND THE  
16 PAYMENT OF THE ASSOCIATED COSTS AND EXPENSES. FURTHERMORE, THE COURT  
17 SHALL CONDITION THE SUSPENDED IMPOSITION OF SENTENCE OR SUSPENDED  
18 EXECUTION OF SENTENCE UPON SUCH WEARING, AND THE PAYMENT OF THE ASSOCI-  
19 ATED COSTS AND EXPENSES. A COURT MAY WAIVE A FINE OR BOND IN LIEU OF  
20 PARTICIPATION IN THE ALCOHOL AND CONTROLLED SUBSTANCE MONITORING ESTAB-  
21 LISHED PURSUANT TO THIS SUBDIVISION. IN ADDITION, A COURT MAY WAIVE THE  
22 PAYMENT OF THE ASSOCIATED COST AND EXPENSE OF SUCH PROGRAM WHERE THE  
23 PROBATIONER OR DEFENDANT MEETS THE ELIGIBILITY REQUIREMENTS FOR A PUBLIC  
24 DEFENDER.

25 (C) THE FAILURE OF ANY PERSON TO COMPLY WITH THE REQUIREMENTS OF THE  
26 ALCOHOL AND CONTROLLED SUBSTANCE MONITORING PROGRAM SHALL RESULT IN THE  
27 ISSUANCE OF A REVOCATION ORDER. NO PROVISION OF THIS SUBDIVISION SHALL  
28 AUTHORIZE A COURT TO SENTENCE ANY PERSON TO A PERIOD OF PROBATION FOR  
29 SUBJECTING HIM OR HER TO THE PROGRAM ESTABLISHED BY THIS SUBDIVISION,  
30 UNLESS SUCH PERSON WOULD OTHERWISE HAVE BEEN ELIGIBLE TO BE SENTENCED TO  
31 PROBATION.

32 (D) EVERY PERSON SENTENCED PURSUANT TO THIS SUBDIVISION SHALL PROVIDE  
33 PROOF OF COMPLIANCE TO THE SENTENCING COURT IN SUCH MANNER AND AT SUCH  
34 TIMES AS THE COURT SHALL REQUIRE.

35 (E) ALL COSTS AND EXPENSES COLLECTED PURSUANT TO THIS SUBDIVISION  
36 SHALL BE PAID IN THE TREASURY OF THE COUNTY OR CITY OF NEW YORK, THE  
37 PROCEEDS OF WHICH SHALL BE USED SOLELY FOR THE PURPOSE OF DEFRAYING  
38 RECURRING COSTS INCLUDING MAINTAINING EQUIPMENT, FUNDING SUPPORT  
39 SERVICES AND ENSURING COMPLIANCE.

40 S 4. Section 243 of the executive law is amended by adding a new  
41 subdivision 5 to read as follows:

42 5. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS FOR THE ADMIN-  
43 ISTRATION OF ALCOHOL AND CONTROLLED SUBSTANCE MONITORING PURSUANT TO  
44 SUBDIVISION ONE-B OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE  
45 AND TRAFFIC LAW. SUCH RULES AND REGULATIONS SHALL:

46 (A) PROVIDE FOR PROCEDURES AND APPARATUS FOR TESTING THE ELECTRONIC  
47 MONITORING DEVICES;

48 (B) SET PARTICIPATION AND USER FEES, PROVIDED, THAT SUCH USER FEES  
49 SHALL NOT BE LESS THAN THE PRO RATA COST OF THE PURCHASE AND USE OF THE  
50 SECURE CONTINUOUS REMOTE ALCOHOL MONITOR; AND

51 (C) REQUIRE THE SUBMISSION OF REPORTS AND INFORMATION BY LOCAL  
52 PROBATION DEPARTMENTS.

53 S 5. This act shall take effect on the first of November next succeed-  
54 ing the date on which it shall have become a law.