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

4772

2013-2014 Regular Sessions

I N S E N A T E

April 23, 2013

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

AN ACT to amend the penal law, in relation to aggravated vehicular homicide

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

Section 1. Section 125.14 of the penal law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

S 125.14 Aggravated vehicular homicide.

A person is guilty of aggravated vehicular homicide when he or she EITHER:

(1) engages in reckless driving as defined by section twelve hundred twelve of the vehicle and traffic law, and commits the crime of vehicular manslaughter in the second degree as defined in section 125.12 of this article, and either:

[(1)] (A) commits such crimes while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

[(2)] (B) commits such crimes while knowing or having reason to know that: [(a)] (I) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or [(b)] (II) his or her license or his or her privilege of operating a motor vehicle in this state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspen-

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

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sion or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

[(3)] (C) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law;

[(4)] (D) causes the death of more than one other person;

[(5)] (E) causes the death of one person and the serious physical injury of at least one other person;

[(6)] (F) has previously been convicted of violating any provision of this article or article one hundred twenty of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty of this title; or

[(7)] (G) commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes the death of such child[.]; OR

(2) COMMITS THE CRIME OF VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THIS ARTICLE, AND HAS PREVIOUSLY BEEN CONVICTED THREE TIMES OF VIOLATING ANY PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW WITHIN THE PRECEDING TEN YEARS, PROVIDED THAT, FOR THE PURPOSES OF THIS SUBDIVISION, A CONVICTION IN ANY OTHER STATE OR JURISDICTION FOR AN OFFENSE WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW, SHALL BE TREATED AS A VIOLATION OF SUCH LAW.

If it is established that the person operating such motor vehicle caused such death or deaths while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such death or deaths, as required by this section and section 125.12 of this article.

Aggravated vehicular homicide is a class B felony.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.