

485--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. STAVISKY -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law and the penal law, in relation to operating a vehicle while fatigued; in relation to vehicular assault and vehicular manslaughter; and providing for the mandatory suspension of a driver's license upon conviction of operating a vehicle while fatigued

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

1 Section 1. The vehicle and traffic law is amended by adding a new
2 section 1212-a to read as follows:
3 S 1212-A. OPERATING A VEHICLE WHILE FATIGUED. (A) A PERSON IS GUILTY
4 OF OPERATING A VEHICLE WHILE FATIGUED WHEN HE OR SHE OPERATES ANY VEHICLE
5 WHILE HIS OR HER ABILITY TO DRIVE IS IMPAIRED BY FATIGUE. PROOF OF
6 FATIGUED OPERATION SHALL INCLUDE, BUT NOT BE LIMITED TO:
7 (1) EVIDENCE THAT THE DEFENDANT FELL ASLEEP WHILE DRIVING;
8 (2) EVIDENCE THAT THE DEFENDANT WAS AWARE OR SHOULD REASONABLY HAVE
9 BEEN EXPECTED TO BE AWARE THAT HE OR SHE HAS BEEN WITHOUT SLEEP FOR
10 TWENTY-FOUR OR MORE CONSECUTIVE HOURS.
11 EVIDENCE OF SUCH LACK OF SLEEP AS SET FORTH IN THIS SUBDIVISION SHALL
12 CREATE A REBUTTABLE PRESUMPTION THAT SUCH PERSON'S ABILITY TO DRIVE WAS
13 IMPAIRED BY FATIGUE.
14 (B) FOR THE PURPOSES OF THIS SECTION, THE TERM "VEHICLE" SHALL MEAN A
15 MOTOR VEHICLE, MOTORCYCLE, VESSEL, PUBLIC VESSEL, SNOWMOBILE, ALL-TERRAIN
16 VEHICLE OR ANY OTHER VEHICLE PROPELLED BY ANY POWER OTHER THAN
17 MUSCULAR POWER.

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

LBD03118-03-4

(C) THIS SECTION SHALL NOT APPLY TO EMERGENCY PERSONNEL ENGAGED IN THE RESPONSE TO A CATASTROPHIC EVENT WHICH AFFECTS PUBLIC SAFETY; OR MEDICAL, FIRE OR AMBULANCE PERSONNEL RESPONDING TO CERTAIN EMERGENCIES OR CALLS FOR ASSISTANCE; OR PERSONS IMPAIRED BY FATIGUE UNDER CIRCUMSTANCES IN WHICH A REASONABLE PERSON WOULD NOT HAVE ANTICIPATED THE ONSET OF FATIGUE NOR HAD A REASONABLE OPPORTUNITY TO DISCONTINUE OPERATION OF HIS OR HER VEHICLE.

(D) EVERY PERSON VIOLATING THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR. A FIRST VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS; ANY SUBSEQUENT VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A FINE NOT TO EXCEED ONE THOUSAND DOLLARS AND MANDATORY LICENSE SUSPENSION IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIVE HUNDRED TEN OF THIS CHAPTER.

S 2. Paragraph b of subdivision 2 of section 510 of the vehicle and traffic law is amended by adding a new subparagraph (xviii) to read as follows:

(XVIII) FOR A PERIOD OF SIX MONTHS WHERE THE HOLDER IS CONVICTED OF A VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THIS CHAPTER.

S 3. Subparagraph 2 of paragraph (a) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 196 of the laws of 1996, is amended and a new subparagraph 3 is added to read as follows:

(2) Persons under the age of twenty-one; driving after having consumed alcohol. Six months, where the holder has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article where such person was under the age of twenty-one at the time of commission of such violation[.];

(3) PERSONS UNDER THE AGE OF TWENTY-ONE; OPERATING A VEHICLE WHILE FATIGUED. SIX MONTHS, WHERE THE HOLDER HAS BEEN FOUND TO HAVE OPERATED A VEHICLE WHILE FATIGUED IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THIS CHAPTER WHERE SUCH PERSON WAS UNDER THE AGE OF TWENTY-ONE AT THE TIME OF COMMISSION OF SUCH VIOLATION.

S 4. Section 120.03 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

S 120.03 Vehicular assault in the second degree.

A person is guilty of vehicular assault in the second degree when he or she causes serious physical injury to another person, and either:

(1) operates a motor vehicle in violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person, or

(2) operates a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives in violation of subdivision one of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and such flammable gas, radioactive materials or explosives is the cause of such serious physical injury, and as a result of such impairment by the use of alcohol, OR BY FATIGUE, operates such motor vehicle in a manner that causes such serious physical injury to such other person, or

1 (3) operates a snowmobile in violation of paragraph (b), (c) or (d) of
2 subdivision one of section 25.24 of the parks, recreation and historic
3 preservation law or operates an all terrain vehicle as defined in para-
4 graph (a) of subdivision one of section twenty-two hundred eighty-one of
5 the vehicle and traffic law and in violation of subdivision two, three,
6 four, or four-a of section eleven hundred ninety-two of the vehicle and
7 traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED
8 TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and as a result of such intoxi-
9 cation or impairment by the use of a drug, or by the combined influence
10 of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, operates
11 such snowmobile or all terrain vehicle in a manner that causes such
12 serious physical injury to such other person.

13 If it is established that the person operating such motor vehicle,
14 vessel, public vessel, snowmobile or all terrain vehicle caused such
15 serious physical injury while: (A) unlawfully intoxicated or impaired by
16 the use of alcohol or a drug[,]; OR (B) UNLAWFULLY IMPAIRED BY FATIGUE
17 then there shall be a rebuttable presumption that, as a result of such
18 intoxication or impairment by the use of alcohol or a drug, or by the
19 combined influence of drugs or of alcohol and any drug or drugs, OR BY
20 FATIGUE, such person operated the motor vehicle, vessel, public vessel,
21 snowmobile or all terrain vehicle in a manner that caused such serious
22 physical injury, as required by this section.

23 Vehicular assault in the second degree is a class E felony.

24 S 5. The second undesignated paragraph of section 120.04 of the penal
25 law, as amended by chapter 496 of the laws of 2009, is amended to read
26 as follows:

27 If it is established that the person operating such motor vehicle
28 caused such serious physical injury or injuries while: (A) unlawfully
29 intoxicated or impaired by the use of alcohol or a drug, or by the
30 combined influence of drugs or of alcohol and any drug or drugs[,]; OR
31 (B) UNLAWFULLY IMPAIRED BY FATIGUE then there shall be a rebuttable
32 presumption that, as a result of such intoxication or impairment by the
33 use of alcohol or a drug, or by the combined influence of drugs or of
34 alcohol and any drug or drugs, OR BY FATIGUE, such person operated the
35 motor vehicle in a manner that caused such serious physical injury or
36 injuries, as required by this section and section 120.03 of this arti-
37 cle.

38 S 6. Section 125.12 of the penal law, as amended by chapter 732 of the
39 laws of 2006, is amended to read as follows:

40 S 125.12 Vehicular manslaughter in the second degree.

41 A person is guilty of vehicular manslaughter in the second degree when
42 he or she causes the death of another person, and either:

43 (1) operates a motor vehicle in violation of subdivision two, three,
44 four or four-a of section eleven hundred ninety-two of the vehicle and
45 traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED
46 TWELVE-A OF THE VEHICLE AND TRAFFIC LAW or operates a vessel or public
47 vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two
48 of section forty-nine-a of the navigation law, and as a result of such
49 intoxication or impairment by the use of a drug, or by the combined
50 influence of drugs or of alcohol and any drug or drugs OR FATIGUE, oper-
51 ates such motor vehicle, vessel or public vessel in a manner that causes
52 the death of such other person, or

53 (2) operates a motor vehicle with a gross vehicle weight rating of
54 more than eighteen thousand pounds which contains flammable gas, radio-
55 active materials or explosives in violation of subdivision one of
56 section eleven hundred ninety-two of the vehicle and traffic law OR

1 OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF
2 THE VEHICLE AND TRAFFIC LAW, and such flammable gas, radioactive materi-
3 als or explosives is the cause of such death, and as a result of such
4 impairment by the use of alcohol, OR BY FATIGUE, operates such motor
5 vehicle in a manner that causes the death of such other person, or
6 (3) operates a snowmobile in violation of paragraph (b), (c) or (d) of
7 subdivision one of section 25.24 of the parks, recreation and historic
8 preservation law or operates an all terrain vehicle as defined in para-
9 graph (a) of subdivision one of section twenty-two hundred eighty-one of
10 the vehicle and traffic law in violation of subdivision two, three,
11 four, or four-a of section eleven hundred ninety-two of the vehicle and
12 traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED
13 TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and as a result of such intoxi-
14 cation or impairment by the use of a drug, or by the combined influence
15 of drugs or of alcohol and any drug or drugs OR FATIGUE, operates such
16 snowmobile or all terrain vehicle in a manner that causes the death of
17 such other person.

18 If it is established that the person operating such motor vehicle,
19 vessel, public vessel, snowmobile or all terrain vehicle caused such
20 death while: (A) unlawfully intoxicated or impaired by the use of alco-
21 hol or a drug[,]; OR (B) UNLAWFULLY IMPAIRED BY FATIGUE then there shall
22 be a rebuttable presumption that, as a result of such intoxication or
23 impairment by the use of alcohol or a drug, or by the combined influence
24 of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, such person
25 operated the motor vehicle, vessel, public vessel, snowmobile or all
26 terrain vehicle in a manner that caused such death, as required by this
27 section.

28 Vehicular manslaughter in the second degree is a class D felony.

29 S 7. The second undesignated paragraph of section 125.13 of the penal
30 law, as amended by chapter 496 of the laws of 2009, is amended to read
31 as follows:

32 If it is established that the person operating such motor vehicle
33 caused such death or deaths while: (A) unlawfully intoxicated or
34 impaired by the use of alcohol or a drug, or by the combined influence
35 of drugs or of alcohol and any drug or drugs[,]; OR (B) UNLAWFULLY
36 IMPAIRED BY FATIGUE then there shall be a rebuttable presumption that,
37 as a result of such intoxication or impairment by the use of alcohol or
38 a drug, or by the combined influence of drugs or of alcohol and any drug
39 or drugs, OR BY FATIGUE such person operated the motor vehicle in a
40 manner that caused such death or deaths, as required by this section and
41 section 125.12 of this article.

42 S 8. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law.