

STATE OF NEW YORK

6072

2017-2018 Regular Sessions

IN ASSEMBLY

February 23, 2017

Introduced by M. of A. KOLB, HAWLEY, MONTESANO, RAIA, OAKS, DiPIETRO, GIGLIO -- Multi-Sponsored by -- M. of A. CROUCH, McLAUGHLIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the vehicle and traffic law, in relation to persistent driving while intoxicated; and to repeal certain provisions of the vehicle and traffic law relating thereto

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

Section 1. Part 3 of the penal law is amended by adding a new title Q to read as follows:

TITLE Q

DRIVING WHILE INTOXICATED

ARTICLE 300

PERSISTENT DRIVING WHILE INTOXICATED

Section 300.00 Persistent driving while intoxicated in the third degree.

300.01 Persistent driving while intoxicated in the second degree.

300.02 Persistent driving while intoxicated in the first degree.

300.03 Violation of alcohol privilege revoked.

§ 300.00 Persistent driving while intoxicated in the third degree.

A person is guilty of the offense of persistent driving while intoxicated in the third degree when such person operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law after having been convicted of any violation of subdivision two, two-a, three, four or four-a of such section on two or more occasions.

In addition to the sentencing requirements, any person upon conviction under this section shall be prohibited from purchasing or consuming alcoholic beverages for five years after release from prison. The court shall further require that a notation of this restriction be affixed to the person's driver's license at the time of reinstatement of the

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

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1 license. The court in which a conviction is entered must forward a copy
2 of the conviction to the department of motor vehicles.

3 Persistent driving while intoxicated in the third degree is a class D
4 felony.

5 § 300.01 Persistent driving while intoxicated in the second degree.

6 A person is guilty of the offense of persistent driving while intoxi-
7 cated in the second degree when such person operates a vehicle in
8 violation of subdivision two, two-a, three, four or four-a of section
9 eleven hundred ninety-two of the vehicle and traffic law after having
10 been convicted of any violation of subdivision two, two-a, three, four
11 or four-a of such section on one prior occasion and having been
12 convicted of vehicular assault in the second or first degree, as
13 defined, respectively, in sections 120.03 and 120.04 of this part or
14 aggravated vehicular assault as defined in section 120.04-a of this part
15 or vehicular manslaughter in the second or first degree, as defined,
16 respectively, in sections 125.12 and 125.13 or aggravated vehicular
17 homicide as defined in section 125.14 of this part, on one prior occa-
18 sion.

19 In addition to the sentencing requirements, any person upon conviction
20 under this section shall be prohibited from purchasing or consuming
21 alcoholic beverages for ten years after release from prison. The court
22 shall further require that a notation of the restriction be affixed to
23 the person's driver's license at the time of reinstatement of the
24 license. The court in which a conviction is entered must forward a copy
25 of the conviction to the department of motor vehicles.

26 Persistent driving while intoxicated in the second degree is a class C
27 felony.

28 § 300.02 Persistent driving while intoxicated in the first degree.

29 A person is guilty of the offense of persistent driving while intoxi-
30 cated in the first degree when such person operates a vehicle in
31 violation of subdivision two, two-a, three, four or four-a of section
32 eleven hundred ninety-two of the vehicle and traffic law after having
33 been convicted of vehicular assault in the second or first degree, as
34 defined, respectively, in sections 120.03 and 120.04 of this part or
35 aggravated vehicular assault as defined in section 120.04-a of this part
36 or of vehicular manslaughter in the second or first degree, as defined,
37 respectively, in sections 125.12 and 125.13 or aggravated vehicular
38 homicide as defined in section 125.14 of this part, on two or more prior
39 occasions.

40 In addition to the sentencing requirements, any person upon conviction
41 under this section, shall be prohibited from purchasing or consuming
42 alcoholic beverages for fifteen years after release from prison. The
43 court shall further require that a notation of this restriction be
44 affixed to the person's driver's license at the time of reinstatement of
45 the license. The court in which a conviction is entered must forward a
46 copy of the conviction to the department of motor vehicles.

47 Persistent driving while intoxicated in the first degree is a class B
48 felony.

49 § 300.03 Violation of alcohol privilege revoked.

50 1. When a person has violated the terms of his or her conditional
51 sentencing requirement of their alcohol privileges being revoked, he or
52 she shall be guilty of a class B misdemeanor, and shall be punished by a
53 fine of no more that five hundred dollars.

54 2. When a person has violated the terms of his or her conditional
55 sentencing requirement of their alcohol privileges being revoked after
56 having been convicted of violating their conditional sentencing require-

1 ment of their alcohol privilege being revoked, he or she shall be guilty
2 of a class A misdemeanor, and shall be punished by a fine of no more
3 than one thousand dollars.

4 § 2. Paragraph (b) of subdivision 3 of section 70.00 of the penal law
5 is relettered paragraph (c) and a new paragraph (b) is added to read as
6 follows:

7 (b) For all felonies described in article three hundred of this chap-
8 ter, the minimum period shall be fixed by the court and specified in the
9 sentence and shall be not less than two years.

10 § 3. Subdivision 1 of section 504 of the vehicle and traffic law is
11 amended by adding a new paragraph (a-2) to read as follows:

12 (a-2) If a person has been convicted under penal law sections 300.00,
13 300.01, 300.02, or in violation of paragraph (c) of subdivision one of
14 section eleven hundred ninety-three of this chapter and is granted a
15 state-issued photo identification license or a driver's license, with or
16 without restrictions, the identification card or license shall indicate
17 that the person is prohibited from purchasing or consuming alcohol with
18 the words "ALCOHOL PRIVILEGE REVOKED". Any cost the department of motor
19 vehicles incurs in processing, producing, and issuing an identification
20 card or license with the indicator required by this paragraph or other-
21 wise implementing this paragraph, shall be paid by the offenders to whom
22 the identification cards or licenses are issued in the form of an issu-
23 ance fee. The department shall determine the amount of the fee by rule,
24 but the fee shall not exceed the cost of implementing this paragraph.

25 § 4. Subparagraph (i) of paragraph (c) of subdivision 1 of section
26 1193 of the vehicle and traffic law, as amended by chapter 169 of the
27 laws of 2013, is amended to read as follows:

28 (i) A person who operates a vehicle (A) in violation of subdivision
29 two, two-a, three, four or four-a of section eleven hundred ninety-two
30 of this article after having been convicted of a violation of subdivi-
31 sion two, two-a, three, four or four-a of such section or of vehicular
32 assault in the second or first degree, as defined, respectively, in
33 sections 120.03 and 120.04 and aggravated vehicular assault as defined
34 in section 120.04-a of the penal law or of vehicular manslaughter in the
35 second or first degree, as defined, respectively, in sections 125.12 and
36 125.13 and aggravated vehicular homicide as defined in section 125.14 of
37 such law, within the preceding ten years, or (B) in violation of para-
38 graph (b) of subdivision two-a of section eleven hundred ninety-two of
39 this article shall be guilty of a class E felony, and shall be punished
40 by a fine of not less than one thousand dollars nor more than five thou-
41 sand dollars or by a period of imprisonment as provided in the penal
42 law, or by both such fine and imprisonment and in addition, he or she
43 may be prohibited from purchasing or consuming alcoholic beverages for
44 up to a maximum of three years. The court shall further require that a
45 notation of this restriction be affixed to the person's driver's license
46 at the time of reinstatement of the license.

47 § 5. Subparagraphs (ii) and (iii) of paragraph (c) of subdivision 1 of
48 section 1193 of the vehicle and traffic law are REPEALED and a new
49 subparagraph (ii) is added to read as follows:

50 (ii) In the case of a person convicted under penal law sections
51 300.00, 300.01, 300.02, or in violation of this paragraph, the court
52 shall order the person to abstain from purchasing or consuming alcohol
53 for such period as required by law pursuant to their offenses and
54 require that a notation of this restriction be affixed to the person's
55 driver's license at the time of reinstatement of the license and notice
56 of the order shall be given to the department. This restriction shall

1 remain on the driver's license for such period required by law. The
2 restriction may be modified by order of the court and notice of the
3 order shall be given to the department. Upon the expiration of the peri-
4 od for the restriction, the department shall remove the restriction
5 without further court order. Failure to comply with the order to abstain
6 shall be a violation of the sentence. Such a violation shall be punisha-
7 ble under section 300.03 of the penal law.

8 § 6. The commissioner of motor vehicles shall promulgate such rules
9 and regulations as are necessary that would require violation of subdi-
10 visions 2, 2-a, 3, 4 or 4-a of section 1192 of the vehicle and traffic
11 law to remain permanent on a person's driving record.

12 § 7. This act shall take effect immediately.