

STATE OF NEW YORK

894

2017-2018 Regular Sessions

IN ASSEMBLY

January 9, 2017

Introduced by M. of A. GANTT -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to increasing the criminal penalties for driving while ability impaired and driving while intoxicated or while ability impaired by drugs and increasing the penalties for aggravated unlicensed operation of a vehicle in the first and second degrees

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

1 Section 1. Subdivision 1 of section 1193 of the vehicle and traffic
2 law, as added by chapter 47 of the laws of 1988, paragraph (a) as
3 amended by chapter 75 of the laws of 1994, paragraphs (b) and (c) as
4 amended by chapter 169 of the laws of 2013, subparagraph (ii-a) of para-
5 graph (c) as added by chapter 191 of the laws of 2014, paragraph (d) as
6 amended by chapter 732 of the laws of 2006, paragraph (f) as added by
7 chapter 714 of the laws of 1990 and paragraph (g) as amended by section
8 57 of part A of chapter 56 of the laws of 2010, is amended to read as
9 follows:
10 1. Criminal penalties. (a) Driving while ability impaired. A violation
11 of subdivision one of section eleven hundred ninety-two of this article
12 shall be a traffic infraction and shall be punishable by a fine of not
13 less than [~~three~~ **five** hundred dollars nor more than [~~five~~ **seven**
14 hundred **fifty** dollars or by imprisonment in a penitentiary or county
15 jail for not more than fifteen days, or by both such fine and imprison-
16 ment. A person who operates a vehicle in violation of such subdivision
17 after having been convicted of a violation of any subdivision of section
18 eleven hundred ninety-two of this article within the preceding five
19 years shall be punished by a fine of not less than [~~five~~ **seven** hundred
20 **fifty** dollars nor more than [~~seven hundred fifty~~ **one thousand** dollars,
21 or by imprisonment of not more than thirty days in a penitentiary or
22 county jail or by both such fine and imprisonment. A person who operates

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

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1 a vehicle in violation of such subdivision after having been convicted
2 two or more times of a violation of any subdivision of section eleven
3 hundred ninety-two of this article within the preceding ten years shall
4 be guilty of a misdemeanor, and shall be punished by a fine of not less
5 than [~~seven hundred fifty~~] one thousand dollars nor more than fifteen
6 hundred dollars, or by imprisonment of not more than one hundred eighty
7 days in a penitentiary or county jail or by both such fine and imprison-
8 ment.

9 (b) Driving while intoxicated or while ability impaired by drugs or
10 while ability impaired by the combined influence of drugs or of alcohol
11 and any drug or drugs; aggravated driving while intoxicated; misdemeanor
12 offenses. (i) A violation of subdivision two, three, four or four-a of
13 section eleven hundred ninety-two of this article shall be a misdemeanor
14 and shall be punishable by a fine of not less than [~~five~~] seven hundred
15 fifty dollars nor more than one thousand five hundred dollars, or by
16 imprisonment in a penitentiary or county jail for not more than one
17 year, or by both such fine and imprisonment. A violation of paragraph
18 (a) of subdivision two-a of section eleven hundred ninety-two of this
19 article shall be a misdemeanor and shall be punishable by a fine of not
20 less than one thousand dollars nor more than two thousand five hundred
21 dollars or by imprisonment in a penitentiary or county jail for not more
22 than one year, or by both such fine and imprisonment.

23 (ii) In addition to the imposition of any fine or period of imprison-
24 ment set forth in this paragraph, the court shall also sentence such
25 person convicted of, or adjudicated a youthful offender for, a violation
26 of subdivision two, two-a or three of section eleven hundred ninety-two
27 of this article to a term of probation or conditional discharge, as a
28 condition of which it shall order such person to install and maintain,
29 in accordance with the provisions of section eleven hundred ninety-eight
30 of this article, an ignition interlock device in any motor vehicle owned
31 or operated by such person during the term of such probation or condi-
32 tional discharge imposed for such violation of section eleven hundred
33 ninety-two of this article and in no event for a period of less than
34 twelve months; provided, however, that such period of interlock
35 restriction shall terminate upon submission of proof that such person
36 installed and maintained an ignition interlock device for at least six
37 months, unless the court ordered such person to install and maintain an
38 ignition interlock device for a longer period as authorized by this
39 subparagraph and specified in such order. The period of interlock
40 restriction shall commence from the earlier of the date of sentencing,
41 or the date that an ignition interlock device was installed in advance
42 of sentencing. Provided, however, the court may not authorize the opera-
43 tion of a motor vehicle by any person whose license or privilege to
44 operate a motor vehicle has been revoked pursuant to the provisions of
45 this section.

46 (c) Felony offenses. (i) A person who operates a vehicle (A) in
47 violation of subdivision two, two-a, three, four or four-a of section
48 eleven hundred ninety-two of this article after having been convicted of
49 a violation of subdivision two, two-a, three, four or four-a of such
50 section or of vehicular assault in the second or first degree, as
51 defined, respectively, in sections 120.03 and 120.04 and aggravated
52 vehicular assault as defined in section 120.04-a of the penal law or of
53 vehicular manslaughter in the second or first degree, as defined,
54 respectively, in sections 125.12 and 125.13 and aggravated vehicular
55 homicide as defined in section 125.14 of such law, within the preceding
56 ten years, or (B) in violation of paragraph (b) of subdivision two-a of

1 section eleven hundred ninety-two of this article shall be guilty of a
2 class E felony, and shall be punished by a fine of not less than one
3 thousand five hundred dollars nor more than five thousand dollars or by
4 a period of imprisonment as provided in the penal law, or by both such
5 fine and imprisonment.

6 (ii) A person who operates a vehicle in violation of subdivision two,
7 two-a, three, four or four-a of section eleven hundred ninety-two of
8 this article after having been convicted of a violation of subdivision
9 two, two-a, three, four or four-a of such section or of vehicular
10 assault in the second or first degree, as defined, respectively, in
11 sections 120.03 and 120.04 and aggravated vehicular assault as defined
12 in section 120.04-a of the penal law or of vehicular manslaughter in the
13 second or first degree, as defined, respectively, in sections 125.12 and
14 125.13 and aggravated vehicular homicide as defined in section 125.14 of
15 such law, twice within the preceding ten years, shall be guilty of a
16 class D felony, and shall be punished by a fine of not less than two
17 thousand five hundred dollars nor more than ten thousand dollars or by a
18 period of imprisonment as provided in the penal law, or by both such
19 fine and imprisonment.

20 (ii-a) A person who operates a vehicle in violation of subdivision
21 two, two-a, three, four or four-a of section eleven hundred ninety-two
22 of this article after having been convicted of a violation of subdivi-
23 sion two, two-a, three, four or four-a of such section or of vehicular
24 assault in the second or first degree, as defined, respectively, in
25 sections 120.03 and 120.04 and aggravated vehicular assault as defined
26 in section 120.04-a of the penal law or of vehicular manslaughter in the
27 second or first degree, as defined, respectively, in sections 125.12 and
28 125.13 and aggravated vehicular homicide as defined in section 125.14 of
29 such law, three or more times within the preceding fifteen years, shall
30 be guilty of a class D felony, and shall be punished by a fine of not
31 less than two thousand dollars nor more than ten thousand dollars or by
32 a period of imprisonment as provided in the penal law, or by both such
33 fine and imprisonment.

34 (iii) In addition to the imposition of any fine or period of imprison-
35 ment set forth in this paragraph, the court shall also sentence such
36 person convicted of, or adjudicated a youthful offender for, a violation
37 of subdivision two, two-a or three of section eleven hundred ninety-two
38 of this article to a period of probation or conditional discharge, as a
39 condition of which it shall order such person to install and maintain,
40 in accordance with the provisions of section eleven hundred ninety-eight
41 of this article, an ignition interlock device in any motor vehicle owned
42 or operated by such person during the term of such probation or condi-
43 tional discharge imposed for such violation of section eleven hundred
44 ninety-two of this article and in no event for a period of less than
45 twelve months; provided, however, that such period of interlock
46 restriction shall terminate upon submission of proof that such person
47 installed and maintained an ignition interlock device for at least six
48 months, unless the court ordered such person to install and maintain a
49 ignition interlock device for a longer period as authorized by this
50 subparagraph and specified in such order. The period of interlock
51 restriction shall commence from the earlier of the date of sentencing,
52 or the date that an ignition interlock device was installed in advance
53 of sentencing. Provided, however, the court may not authorize the opera-
54 tion of a motor vehicle by any person whose license or privilege to
55 operate a motor vehicle has been revoked pursuant to the provisions of
56 this section.

(d) Alcohol or drug related offenses; special vehicles. (1) Except as provided in subparagraph four of this paragraph, a violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a misdemeanor punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(1-a) A violation of subdivision one of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a misdemeanor punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(2) A violation of subdivision five of section eleven hundred ninety-two of this article shall be a traffic infraction punishable as provided in paragraph (a) of this subdivision. Except as provided in subparagraph three or five of this paragraph, a violation of subdivision one, two, three, four, four-a or six of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a misdemeanor. A violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision six of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two thousand five hundred dollars or by a period of imprisonment not to exceed one hundred eighty days, or by both such fine and imprisonment. A person who operates any such vehicle in violation of such subdivision six after having been convicted of a violation of subdivision one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years shall be punishable by a fine of not less than two thousand five hundred dollars nor more than [~~fifteen hundred~~] five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A

1 violation of subdivision two-a of section eleven hundred ninety-two of
2 this article wherein the violator is operating a commercial motor vehi-
3 cle, or any motor vehicle registered or registerable under schedule F of
4 subdivision seven of section four hundred one of this chapter shall be a
5 class E felony punishable by a fine of not less than one thousand
6 dollars nor more than five thousand dollars or by a period of imprison-
7 ment as provided in the penal law, or by both such fine and imprison-
8 ment.

9 (3) A violation of subdivision one of section eleven hundred ninety-
10 two of this article wherein the violator is operating a motor vehicle
11 with a gross vehicle weight rating of more than eighteen thousand pounds
12 which contains flammable gas, radioactive materials or explosives shall
13 be a misdemeanor punishable by a fine of not less than two thousand five
14 hundred dollars nor more than [~~fifteen hundred~~] five thousand dollars or
15 by a period of imprisonment as provided in the penal law, or by both
16 such fine and imprisonment.

17 (4) (i) A person who operates a vehicle in violation of subdivision
18 one, two, two-a, three, four or four-a of section eleven hundred nine-
19 ty-two of this article and which is punishable as provided in subpara-
20 graph one, one-a, two or three of this paragraph after having been
21 convicted of a violation of any such subdivision of section eleven
22 hundred ninety-two of this article and penalized under subparagraph one,
23 one-a, two or three of this paragraph within the preceding ten years,
24 shall be guilty of a class E felony, which shall be punishable by a fine
25 of not less than [~~one~~] two thousand five hundred dollars nor more than
26 [~~five~~] ten thousand dollars, or by a period of imprisonment as provided
27 in the penal law, or by both such fine and imprisonment. A person who
28 operates a vehicle in violation of subdivision six of section eleven
29 hundred ninety-two of this article after having been convicted of two or
30 more violations of subdivisions one, two, two-a, three, four, four-a or
31 six of section eleven hundred ninety-two of this article within the
32 preceding five years, any one of which was a misdemeanor, shall be guilty
33 of a class E felony, which shall be punishable by a fine of not less
34 than [~~one~~] three thousand five hundred dollars nor more than [~~five~~] ten
35 thousand dollars, or by a period of imprisonment as provided in the
36 penal law, or by both such fine and imprisonment. In addition, any
37 person sentenced pursuant to this subparagraph shall be subject to the
38 disqualification provided in subparagraph three of paragraph (e) of
39 subdivision two of this section.

40 (ii) A person who operates a vehicle in violation of subdivision one,
41 two, two-a, three, four or four-a of section eleven hundred ninety-two
42 of this article and which is punishable as provided in subparagraph one,
43 one-a, two or three of this paragraph after having been convicted of a
44 violation of any such subdivision of section eleven hundred ninety-two
45 of this article and penalized under subparagraph one, one-a, two or
46 three of this paragraph twice within the preceding ten years, shall be
47 guilty of a class D felony, which shall be punishable by a fine of not
48 less than [~~two~~] five thousand dollars nor more than ten thousand
49 dollars, or by a period of imprisonment as provided in the penal law, or
50 by both such fine and imprisonment. A person who operates a vehicle in
51 violation of subdivision six of section eleven hundred ninety-two of
52 this article after having been convicted of three or more violations of
53 subdivisions one, two, two-a, three, four, four-a or six of section
54 eleven hundred ninety-two of this article within the preceding five
55 years, any one of which was a misdemeanor, shall be guilty of a class D
56 felony, which shall be punishable by a fine of not less than [~~two~~] five

1 thousand dollars nor more than ten thousand dollars, or by a period of
2 imprisonment as provided in the penal law, or by both such fine and
3 imprisonment. In addition, any person sentenced pursuant to this subpar-
4 agraph shall be subject to the disqualification provided in subparagraph
5 three of paragraph (e) of subdivision two of this section.

6 (4-a) A violation of subdivision two, three, four or four-a of section
7 eleven hundred ninety-two of this article wherein the violator is oper-
8 ating a school bus as defined in section one hundred forty-two of this
9 chapter and such school bus is carrying at least one student passenger
10 shall be a class E felony punishable by a fine of not less than [~~one~~]
11 two thousand five hundred dollars nor more than [~~five~~] ten thousand
12 dollars, or by a period of imprisonment as provided in the penal law, or
13 by both such fine and imprisonment. A violation of subdivision two-a of
14 section eleven hundred ninety-two of this article wherein the violator
15 is operating a school bus as defined in section one hundred forty-two of
16 this chapter and such school bus is carrying at least one student
17 passenger shall be a class D felony punishable by a fine of not less
18 than two thousand dollars nor more than ten thousand dollars, or by a
19 period of imprisonment as provided in the penal law, or by both such
20 fine and imprisonment.

21 (5) A violation of subdivision two, three, four or four-a of section
22 eleven hundred ninety-two of this article wherein the violator is oper-
23 ating a motor vehicle with a gross vehicle weight rating of more than
24 eighteen thousand pounds which contains flammable gas, radioactive mate-
25 rials or explosives, shall be a class E felony punishable by a fine of
26 not less than [~~one~~] two thousand five hundred dollars nor more than ten
27 thousand dollars and such other penalties as provided for in the penal
28 law; provided, however, that a conviction for such violation shall not
29 be considered a predicate felony pursuant to section 70.06 of such law,
30 or a previous felony conviction pursuant to section 70.10 of such law. A
31 violation of subdivision two-a of section eleven hundred ninety-two of
32 this article wherein the violator is operating a motor vehicle with a
33 gross vehicle weight rating of more than eighteen thousand pounds which
34 contains flammable gas, radioactive materials or explosives, shall be a
35 class D felony punishable by a fine of not less than two thousand nor
36 more than ten thousand dollars and such other penalties as provided for
37 in the penal law; provided, however, that a conviction for such
38 violation shall not be considered a predicate felony pursuant to section
39 70.06 of such law, or a previous felony conviction pursuant to section
40 70.10 of such law.

41 (6) The sentences required to be imposed by subparagraph one, one-a,
42 two, three, four, four-a or five of this paragraph shall be imposed
43 notwithstanding any contrary provision of this chapter or the penal law.

44 (7) Nothing contained in this paragraph shall prohibit the imposition
45 of a charge of any other felony set forth in this or any other provision
46 of law for any acts arising out of the same incident.

47 (e) Certain sentences prohibited. Notwithstanding any provisions of
48 the penal law, no judge or magistrate shall impose a sentence of uncon-
49 ditional discharge for a violation of any subdivision of section eleven
50 hundred ninety-two of this article nor shall a judge or magistrate
51 impose a sentence of conditional discharge, imprisonment or probation
52 unless such conditional discharge, imprisonment or probation is accompa-
53 nied by a sentence of a fine as provided in this subdivision.

54 (f) Where the court imposes a sentence for a violation of section
55 eleven hundred ninety-two of this article, the court may require the
56 defendant, as a part of or as a condition of such sentence, to attend a

1 single session conducted by a victims impact program. For purposes of
2 this section, "victims impact program" means a program operated by a
3 county, a city with a population of one million or more, by a not-for-
4 profit organization authorized by any such county or city, or a combina-
5 tion thereof, in which presentations are made concerning the impact of
6 operating a motor vehicle while under the influence of alcohol or drugs
7 to one or more persons who have been convicted of such offenses. A
8 description of any such program shall be filed with the commissioner and
9 with the coordinator of the special traffic options program for driving
10 while intoxicated established pursuant to section eleven hundred nine-
11 ty-seven of this article, and shall be made available to the court upon
12 request. Nothing contained herein shall be construed to require any
13 governmental entity to create such a victim impact program.

14 (g) The office of probation and correctional alternatives shall recom-
15 mend to the commissioner of the division of criminal justice services
16 regulations governing the monitoring of compliance by persons ordered to
17 install and maintain ignition interlock devices to provide standards for
18 monitoring by departments of probation, and options for monitoring of
19 compliance by such persons, that counties may adopt as an alternative to
20 monitoring by a department of probation.

21 § 2. Paragraph (b) of subdivision 2 of section 511 of the vehicle and
22 traffic law, as amended by chapter 607 of the laws of 1993, is amended
23 to read as follows:

24 (b) Aggravated unlicensed operation of a motor vehicle in the second
25 degree is a misdemeanor. When a person is convicted of this crime under
26 subparagraph (i) of paragraph (a) of this subdivision, the sentence of
27 the court must be: (i) a fine of not less than five hundred dollars; and
28 (ii) a term of imprisonment not to exceed one hundred eighty days; or
29 (iii) where appropriate a sentence of probation as provided in subdivi-
30 sion six of this section; or (iv) a term of imprisonment as a condition
31 of a sentence of probation as provided in the penal law and consistent
32 with this section. When a person is convicted of this crime under
33 subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision,
34 the sentence of the court must be: (i) a fine of not less than [~~five~~
35 ~~hundred~~] one thousand dollars nor more than [~~one~~] two thousand five
36 hundred dollars; and (ii) a term of imprisonment of not less than seven
37 days nor more than one hundred eighty days, or (iii) where appropriate a
38 sentence of probation as provided in subdivision six of this section; or
39 (iv) a term of imprisonment as a condition of a sentence of probation as
40 provided in the penal law and consistent with this section.

41 § 3. Paragraph (b) of subdivision 3 of section 511 of the vehicle and
42 traffic law, as separately amended by chapters 786 and 892 of the laws
43 of 1990, is amended to read as follows:

44 (b) Aggravated unlicensed operation of a motor vehicle in the first
45 degree is a class E felony. When a person is convicted of this crime,
46 the sentence of the court must be: (i) a fine in an amount not less than
47 [~~five hundred~~] two thousand dollars nor more than five thousand dollars;
48 and (ii) a term of imprisonment as provided in the penal law, or (iii)
49 where appropriate and a term of imprisonment is not required by the
50 penal law, a sentence of probation as provided in subdivision six of
51 this section, or (iv) a term of imprisonment as a condition of a
52 sentence of probation as provided in the penal law.

53 § 4. This act shall take effect on the one hundred twentieth day after
54 it shall have become a law.