

1637

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. BING, BENJAMIN, ORTIZ, CAHILL, TITUS, GABRYSZAK
-- Multi-Sponsored by -- M. of A. BOYLAND, BROOK-KRASNY, COOK,
CYMBROWITZ, DIAZ, HOOPER, LAVINE, MILLMAN, PERALTA, QUINN, TOWNS --
read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the penal law, in
relation to driving while drowsy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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. DRIVING WHILE DROWSY. (A) A PERSON IS GUILTY OF DRIVING
4 WHILE DROWSY WHEN HE OR SHE OPERATES ANY MOTOR VEHICLE, MOTORCYCLE, OR
5 ANY OTHER VEHICLE PROPELLED BY ANY POWER OTHER THAN MUSCULAR POWER,
6 WHILE HIS OR HER ABILITY TO DRIVE IS IMPAIRED BY FATIGUE. FOR PURPOSES
7 OF THIS SECTION, PROOF THAT A PERSON FELL ASLEEP WHILE DRIVING OR PROOF
8 THAT A PERSON HAS BEEN WITHOUT SLEEP FOR TWENTY-FOUR OR MORE CONSECUTIVE
9 HOURS SHALL CREATE A REBUTTABLE PRESUMPTION THAT SUCH PERSON'S ABILITY
10 TO DRIVE WAS IMPAIRED BY FATIGUE.
11 (B) THIS SECTION SHALL NOT APPLY TO EMERGENCY PERSONNEL ENGAGED IN THE
12 RESPONSE TO A CATASTROPHIC EVENT WHICH AFFECTS PUBLIC SAFETY; OR
13 MEDICAL, FIRE OR AMBULANCE PERSONNEL RESPONDING TO CERTAIN EMERGENCIES
14 OR CALLS FOR ASSISTANCE.
15 (C) EVERY PERSON VIOLATING THIS SECTION SHALL BE GUILTY OF A CLASS A
16 MISDEMEANOR. A FIRST VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A
17 FINE NOT TO EXCEED FIVE HUNDRED DOLLARS; ANY SUBSEQUENT VIOLATION OF
18 THIS SECTION SHALL BE SUBJECT TO A FINE NOT TO EXCEED ONE THOUSAND
19 DOLLARS AND LICENSE REVOCATION WITHIN THE DISCRETION OF THE COURT.
20 S 2. Section 120.03 of the penal law is amended by adding a new subdi-
21 vision 1-a to read as follows:

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

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1 (1-A) CAUSES SUCH SERIOUS PHYSICAL INJURY BY OPERATION OF A VEHICLE IN
2 VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC
3 LAW, OR

4 S 3. The penal law is amended by adding a new section 125.23 to read
5 as follows:

6 S 125.23 VEHICULAR HOMICIDE CAUSED BY DRIVING WHILE ABILITY IMPAIRED BY
7 FATIGUE.

8 A PERSON IS GUILTY OF VEHICULAR HOMICIDE CAUSED BY DRIVING WHILE ABIL-
9 ITY IMPAIRED BY FATIGUE WHEN HE OR SHE:

10 (1) COMMITS THE CRIME OF CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN
11 SECTION 125.10, AND

12 (2) CAUSES THE DEATH OF SUCH OTHER PERSON BY OPERATION OF A VEHICLE IN
13 VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC
14 LAW.

15 VEHICULAR HOMICIDE CAUSED BY DRIVING WHILE ABILITY IMPAIRED BY FATIGUE
16 IS A CLASS E FELONY, PUNISHABLE BY AN INDETERMINATE SENTENCE OF IMPRI-
17 SONMENT OF UP TO THREE YEARS AND SUBJECT TO LICENSE REVOCATION PURSUANT
18 TO SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAF-
19 FIC LAW.

20 S 4. This act shall take effect on the first of November next succeed-
21 ing the date on which it shall have become a law.