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

2612

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. SWEENEY, JOHN, PHEFFER, FIELDS, GALEF, HOOPER -- Multi-Sponsored by -- M. of A. GUNTHER, KOON, SEMINERIO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to penalties for causing serious injury or death while knowingly operating a motor vehicle with a revoked or suspended license

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

Section 1. 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 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, 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, 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, operates such motor vehicle in a manner that causes such serious physical injury to such other person, or

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

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(3) operates a snowmobile in violation of paragraph (b), (c) or (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law or operates an all terrain vehicle as defined in paragraph (a) of subdivision one of section twenty-two hundred eighty-one of the vehicle and traffic law and in violation of subdivision two, three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic 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, operates such snowmobile or all terrain vehicle in a manner that causes such serious physical injury to such other person[.], OR

(4) CAUSES SUCH SERIOUS PHYSICAL INJURY BY OPERATION OF A MOTOR VEHICLE WHILE KNOWING OR HAVING REASON TO KNOW THAT HIS OR HER LICENSE OR PRIVILEGE OF OPERATING A MOTOR VEHICLE IS SUSPENDED OR REVOKED PURSUANT TO PROVISIONS OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW.

If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such serious physical injury while unlawfully intoxicated or impaired by the use of alcohol or a drug, 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, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such serious physical injury, as required by this section.

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

S 2. Section 125.12 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

S 125.12 Vehicular manslaughter in the second degree.

A person is guilty of vehicular manslaughter in the second degree when he or she causes the death of 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 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, operates such motor vehicle, vessel or public vessel in a manner that causes the death of 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, and such flammable gas, radioactive materials or explosives is the cause of such death, and as a result of such impairment by the use of alcohol, operates such motor vehicle in a manner that causes the death of such other person, or

(3) operates a snowmobile in violation of paragraph (b), (c) or (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law or operates an all terrain vehicle as defined in paragraph (a) of subdivision one of section twenty-two hundred eighty-one of the vehicle and traffic law in violation of subdivision two, three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic 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, operates such snowmobile or all terrain vehicle in a manner that causes the death of such other person[.], OR

(4) CAUSES THE DEATH OF SUCH OTHER PERSON BY OPERATION OF A MOTOR VEHICLE WHILE KNOWING OR HAVING REASON TO KNOW THAT HIS OR HER LICENSE OR PRIVILEGE OF OPERATING A MOTOR VEHICLE IS SUSPENDED OR REVOKED PURSUANT TO PROVISIONS OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW.

If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such death while unlawfully intoxicated or impaired by the use of alcohol or a drug, 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, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such death, as required by this section.

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

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.