

5866

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 20, 2009

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Introduced by M. of A. McKEVITT, WALKER, KOLB, ALFANO, GABRYSZAK, McDO-  
NOUGH, GIGLIO -- Multi-Sponsored by -- M. of A. BARCLAY, BARRA,  
CROUCH, HAWLEY -- read once and referred to the Committee on Transpor-  
tation

AN ACT to amend the vehicle and traffic law, in relation to increasing  
fines and license revocation periods for repeat alcohol and drug  
related offenses

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

1     Section 1. Subparagraph (i) of paragraph (c) of subdivision 1 of  
2     section 1193 of the vehicle and traffic law, as amended by chapter 345  
3     of the laws of 2007, is amended to read as follows:  
4     (i) A person who operates a vehicle in violation of subdivision two,  
5     two-a, three, four or four-a of section eleven hundred ninety-two of  
6     this article after having been convicted of a violation of subdivision  
7     two, two-a, three, four or four-a of such section or of vehicular  
8     assault in the second or first degree, as defined, respectively, in  
9     sections 120.03 and 120.04 and aggravated vehicular assault as defined  
10    in section 120.04-a of the penal law or of vehicular manslaughter in the  
11    second or first degree, as defined, respectively, in sections 125.12 and  
12    125.13 and aggravated vehicular homicide as defined in section 125.14 of  
13    such law, within the preceding ten years, shall be guilty of a class E  
14    felony, and shall be punished by a fine of not less than [one thousand]  
15    TWENTY-FIVE HUNDRED dollars nor more than five thousand dollars or by a  
16    period of imprisonment as provided in the penal law, or by both such  
17    fine and imprisonment.  
18    S 2. Subparagraph 3 of paragraph (b) of subdivision 2 of section 1193  
19    of the vehicle and traffic law, as amended by chapter 732 of the laws of  
20    2006, is amended to read as follows:  
21    (3) Driving while intoxicated or while ability impaired by drugs or  
22    while ability impaired by the combined influence of drugs or of alcohol

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

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1 and any drug or drugs; aggravated driving while intoxicated; prior  
2 offense. [One year] TWO YEARS, where the holder is convicted of a  
3 violation of subdivision two, three, four or four-a of section eleven  
4 hundred ninety-two of this article committed within ten years of a  
5 conviction for a violation of subdivision two, three, four or four-a of  
6 section eleven hundred ninety-two of this article. [Eighteen months,  
7 where the holder is convicted of a violation of subdivision two-a of  
8 section eleven hundred ninety-two of this article committed within ten  
9 years of a conviction for a violation of subdivision two, two-a, three,  
10 four or four-a of section eleven hundred ninety-two of this article; or  
11 where] WHERE the holder is convicted of a violation of subdivision two,  
12 TWO-A, three, four or four-a of section eleven hundred ninety-two of  
13 this article [committed] AFTER HAVING BEEN CONVICTED TWO OR MORE TIMES  
14 OF A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF  
15 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE within THE PRECEDING  
16 ten years [of a conviction for a violation of subdivision two-a of  
17 section eleven hundred ninety-two of this article], SUCH HOLDER SHALL BE  
18 PERMANENTLY DISQUALIFIED FROM OPERATING A MOTOR VEHICLE.

19 S 3. Subparagraph 3 of paragraph (e) of subdivision 2 of section 1193  
20 of the vehicle and traffic law, as amended by chapter 173 of the laws of  
21 1990 and clause b as amended by section 17 of part E of chapter 60 of  
22 the laws of 2005, is amended to read as follows:

23 (3) Permanent disqualification from operating certain motor vehicles.

24 a. ANY PERSON SENTENCED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (C)  
25 OF SUBDIVISION ONE OF THIS SECTION SHALL BE PERMANENTLY DISQUALIFIED  
26 FROM OPERATING A MOTOR VEHICLE. IN ADDITION, THE COMMISSIONER SHALL NOT  
27 ISSUE SUCH PERSON A LICENSE VALID FOR THE OPERATION OF ANY VEHICLE.  
28 HOWEVER, THE COMMISSIONER MAY WAIVE SUCH DISQUALIFICATION AND PROHIBI-  
29 TION HEREINBEFORE PROVIDED AFTER A PERIOD OF TEN YEARS HAS EXPIRED FROM  
30 SUCH SENTENCE AND MAY ISSUE A PERMANENTLY PROBATIONARY LICENSE PROVIDED:

31 (I) THAT DURING SUCH TEN YEAR PERIOD SUCH PERSON HAS NOT VIOLATED ANY  
32 OF THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE  
33 OR ANY ALCOHOL OR DRUG RELATED TRAFFIC OFFENSE IN THIS STATE OR IN ANY  
34 JURISDICTION OUTSIDE THIS STATE;

35 (II) THAT SUCH PERSON PROVIDES ACCEPTABLE DOCUMENTATION TO THE COMMIS-  
36 SIONER THAT SUCH PERSON IS NOT IN NEED OF ALCOHOL OR DRUG TREATMENT OR  
37 HAS SATISFACTORILY COMPLETED A PRESCRIBED COURSE OF SUCH TREATMENT; AND

38 (III) AFTER SUCH DOCUMENTATION IS ACCEPTED, THAT SUCH PERSON IS GRANT-  
39 ED A CERTIFICATE OF RELIEF FROM DISABILITIES AS PROVIDED FOR IN SECTION  
40 SEVEN HUNDRED ONE OF THE CORRECTION LAW BY THE COURT IN WHICH SUCH  
41 PERSON WAS LAST PENALIZED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE  
42 OF THIS SECTION.

43 B. Except as otherwise provided herein, in addition to any revocation  
44 set forth in subparagraph four or five of paragraph (b) of this subdivi-  
45 sion, any person sentenced pursuant to subparagraph three of paragraph  
46 (d) of subdivision one of this section shall be permanently disqualified  
47 from operating any vehicle set forth in such paragraph. In addition, the  
48 commissioner shall not issue such person a license valid for the opera-  
49 tion of any vehicle set forth therein by such person. The commissioner  
50 may waive such disqualification and prohibition hereinbefore provided  
51 after a period of five years has expired from such sentencing provided:

52 (i) that during such five year period such person has not violated any  
53 of the provisions of section eleven hundred ninety-two of this article  
54 or any alcohol or drug related traffic offense in this state or in any  
55 jurisdiction outside this state;

1 (ii) that such person provides acceptable documentation to the commis-  
2 sioner that such person is not in need of alcohol or drug treatment or  
3 has satisfactorily completed a prescribed course of such treatment; and

4 (iii) after such documentation is accepted, that such person is grant-  
5 ed a certificate of relief from disabilities as provided for in section  
6 seven hundred one of the correction law by the court in which such  
7 person was last penalized pursuant to paragraph (d) of subdivision one  
8 of this section.

9 [b] C. Any person who holds a commercial driver's license and is  
10 convicted of a violation of any subdivision of section eleven hundred  
11 ninety-two of this article who has had a prior finding of refusal to  
12 submit to a chemical test pursuant to section eleven hundred ninety-four  
13 of this article or has had a prior conviction of any of the following  
14 offenses: any violation of section eleven hundred ninety-two of this  
15 article; any violation of subdivision one or two of section six hundred  
16 of this chapter; or has a prior conviction of any felony involving the  
17 use of a motor vehicle pursuant to paragraph (a) of subdivision one of  
18 section five hundred ten-a of this chapter, shall be permanently  
19 disqualified from operating a commercial motor vehicle. The commissioner  
20 may waive such disqualification and prohibition hereinbefore provided  
21 after a period of ten years has expired from such sentence provided:

22 (i) that during such ten year period such person has not been found to  
23 have refused a chemical test pursuant to section eleven hundred ninety-  
24 four of this article while operating a motor vehicle and has not been  
25 convicted of any one of the following offenses while operating a motor  
26 vehicle: any violation of section eleven hundred ninety-two of this  
27 article; any violation of subdivision one or two of section six hundred  
28 of this chapter; or has a prior conviction of any felony involving the  
29 use of a motor vehicle pursuant to paragraph (a) of subdivision one of  
30 section five hundred ten-a of this chapter;

31 (ii) that such person provides acceptable documentation to the commis-  
32 sioner that such person is not in need of alcohol or drug treatment or  
33 has satisfactorily completed a prescribed course of such treatment; and

34 (iii) after such documentation is accepted, that such person is grant-  
35 ed a certificate of relief from disabilities as provided for in section  
36 seven hundred one of the correction law by the court in which such  
37 person was last penalized pursuant to paragraph (d) of subdivision one  
38 of this section.

39 [c] D. Upon a third finding of refusal and/or conviction of any of  
40 the offenses which require a permanent commercial driver's license revo-  
41 cation, such permanent revocation may not be waived by the commissioner  
42 under any circumstances.

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