

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Section 120.03 of the penal law, as amended by chapter 732
2 of the laws of 2006, is amended to read as follows:
3 S 120.03 Vehicular assault in the second degree.
4 A person is guilty of vehicular assault in the second degree when he
5 or she causes serious physical injury to another person, and either:
6 (1) operates a motor vehicle in violation of subdivision two, three,
7 four or four-a of section eleven hundred ninety-two of the vehicle and
8 traffic law or operates a vessel or public vessel in violation of para-
9 graph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of
10 the navigation law, and as a result of such intoxication or impairment
11 by the use of a drug, or by the combined influence of drugs or of alco-
12 hol and any drug or drugs, operates such motor vehicle, vessel or public
13 vessel in a manner that causes such serious physical injury to such
14 other person, or
15 (2) operates a motor vehicle with a gross vehicle weight rating of
16 more than eighteen thousand pounds which contains flammable gas, radio-
17 active materials or explosives in violation of subdivision one of
18 section eleven hundred ninety-two of the vehicle and traffic law, and
19 such flammable gas, radioactive materials or explosives is the cause of
20 such serious physical injury, and as a result of such impairment by the
21 use of alcohol, operates such motor vehicle in a manner that causes such
22 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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1 (3) operates a snowmobile in violation of paragraph (b), (c) or (d) of
2 subdivision one of section 25.24 of the parks, recreation and historic
3 preservation law or operates an all terrain vehicle as defined in para-
4 graph (a) of subdivision one of section twenty-two hundred eighty-one of
5 the vehicle and traffic law and in violation of subdivision two, three,
6 four, or four-a of section eleven hundred ninety-two of the vehicle and
7 traffic law, and as a result of such intoxication or impairment by the
8 use of a drug, or by the combined influence of drugs or of alcohol and
9 any drug or drugs, operates such snowmobile or all terrain vehicle in a
10 manner that causes such serious physical injury to such other person[.],
11 OR

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

17 If it is established that the person operating such motor vehicle,
18 vessel, public vessel, snowmobile or all terrain vehicle caused such
19 serious physical injury while unlawfully intoxicated or impaired by the
20 use of alcohol or a drug, then there shall be a rebuttable presumption
21 that, as a result of such intoxication or impairment by the use of alco-
22 hol or a drug, or by the combined influence of drugs or of alcohol and
23 any drug or drugs, such person operated the motor vehicle, vessel,
24 public vessel, snowmobile or all terrain vehicle in a manner that caused
25 such serious physical injury, as required by this section.

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

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

29 S 125.12 Vehicular manslaughter in the second degree.

30 A person is guilty of vehicular manslaughter in the second degree when
31 he or she causes the death of another person, and either:

32 (1) operates a motor vehicle in violation of subdivision two, three,
33 four or four-a of section eleven hundred ninety-two of the vehicle and
34 traffic law or operates a vessel or public vessel in violation of para-
35 graph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of
36 the navigation law, and as a result of such intoxication or impairment
37 by the use of a drug, or by the combined influence of drugs or of alco-
38 hol and any drug or drugs, operates such motor vehicle, vessel or public
39 vessel in a manner that causes the death of such other person, or

40 (2) operates a motor vehicle with a gross vehicle weight rating of
41 more than eighteen thousand pounds which contains flammable gas, radio-
42 active materials or explosives in violation of subdivision one of
43 section eleven hundred ninety-two of the vehicle and traffic law, and
44 such flammable gas, radioactive materials or explosives is the cause of
45 such death, and as a result of such impairment by the use of alcohol,
46 operates such motor vehicle in a manner that causes the death of such
47 other person, or

48 (3) operates a snowmobile in violation of paragraph (b), (c) or (d) of
49 subdivision one of section 25.24 of the parks, recreation and historic
50 preservation law or operates an all terrain vehicle as defined in para-
51 graph (a) of subdivision one of section twenty-two hundred eighty-one of
52 the vehicle and traffic law in violation of subdivision two, three,
53 four, or four-a of section eleven hundred ninety-two of the vehicle and
54 traffic law, and as a result of such intoxication or impairment by the
55 use of a drug, or by the combined influence of drugs or of alcohol and

1 any drug or drugs, operates such snowmobile or all terrain vehicle in a
2 manner that causes the death of such other person[.], OR

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

8 If it is established that the person operating such motor vehicle,
9 vessel, public vessel, snowmobile or all terrain vehicle caused such
10 death while unlawfully intoxicated or impaired by the use of alcohol or
11 a drug, then there shall be a rebuttable presumption that, as a result
12 of such intoxication or impairment by the use of alcohol or a drug, or
13 by the combined influence of drugs or of alcohol and any drug or drugs,
14 such person operated the motor vehicle, vessel, public vessel, snowmo-
15 bile or all terrain vehicle in a manner that caused such death, as
16 required by this section.

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

18 S 3. This act shall take effect on the first of November next succeed-
19 ing the date on which it shall have become a law.