

6125

2009-2010 Regular Sessions

I N S E N A T E

August 12, 2009

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the vehicle and traffic law and the penal law, in relation to the operation of a motor vehicle while driving while impaired in certain circumstances and increasing the penalties therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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] AND EITHER (A) HAS ANY PASSENGER IN THE  
7 VEHICLE UNDER THE AGE OF SIXTEEN; OR (B) HAS been convicted of a  
8 violation of subdivision two, two-a, three, four or four-a of such  
9 section or of vehicular assault in the second or first degree, as  
10 defined, respectively, in sections 120.03 and 120.04 and aggravated  
11 vehicular assault as defined in section 120.04-a of the penal law or of  
12 vehicular manslaughter in the second or first degree, as defined,  
13 respectively, in sections 125.12 and 125.13 and aggravated vehicular  
14 homicide as defined in section 125.14 of such law, within the preceding  
15 ten years, shall be guilty of a class E felony, and shall be punished by  
16 a fine of not less than one thousand dollars nor more than five thousand  
17 dollars or by a period of imprisonment as provided in the penal law, or  
18 by both such fine and imprisonment.

19 S 2. Section 125.14 of the penal law, as added by chapter 345 of the  
20 laws of 2007, is amended to read as follows:

21 S 125.14 Aggravated vehicular homicide.

22 A person is guilty of aggravated vehicular homicide when he or she  
23 engages in reckless driving as defined by section twelve hundred twelve

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

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1 of the vehicle and traffic law, and commits the crime of vehicular  
2 manslaughter in the second degree as defined in section 125.12 of this  
3 article, and either:

4 (1) commits such crimes while operating a motor vehicle while such  
5 person has .18 of one per centum or more by weight of alcohol in such  
6 person's blood as shown by chemical analysis of such person's blood,  
7 breath, urine or saliva made pursuant to the provisions of section elev-  
8 en hundred ninety-four of the vehicle and traffic law;

9 (2) commits such crimes while knowing or having reason to know that:

10 (a) his or her license or his or her privilege of operating a motor  
11 vehicle in another state or his or her privilege of obtaining a license  
12 to operate a motor vehicle in another state is suspended or revoked and  
13 such suspension or revocation is based upon a conviction in such other  
14 state for an offense which would, if committed in this state, constitute  
15 a violation of any of the provisions of section eleven hundred ninety-  
16 two of the vehicle and traffic law; or (b) his or her license or his or  
17 her privilege of operating a motor vehicle in this state or his or her  
18 privilege of obtaining a license issued by the commissioner of motor  
19 vehicles is suspended or revoked and such suspension or revocation is  
20 based upon either a refusal to submit to a chemical test pursuant to  
21 section eleven hundred ninety-four of the vehicle and traffic law or  
22 following a conviction for a violation of any of the provisions of  
23 section eleven hundred ninety-two of the vehicle and traffic law;

24 (3) has previously been convicted of violating any of the provisions  
25 of section eleven hundred ninety-two of the vehicle and traffic law  
26 within the preceding ten years, provided that, for the purposes of this  
27 subdivision, a conviction in any other state or jurisdiction for an  
28 offense which, if committed in this state, would constitute a violation  
29 of section eleven hundred ninety-two of the vehicle and traffic law,  
30 shall be treated as a violation of such law;

31 (4) causes the death of more than one other person;

32 (5) causes the death of one person and the serious physical injury of  
33 at least one other person; [or]

34 (6) has previously been convicted of violating any provision of this  
35 article or article one hundred twenty of this title involving the opera-  
36 tion of a motor vehicle, or was convicted in any other state or juris-  
37 diction of an offense involving the operation of a motor vehicle which,  
38 if committed in this state, would constitute a violation of this article  
39 or article one hundred twenty of this title; OR

40 (7) CAUSES THE DEATH OF A PERSON UNDER THE AGE OF SIXTEEN.

41 If it is established that the person operating such motor vehicle  
42 caused such death or deaths while unlawfully intoxicated or impaired by  
43 the use of alcohol or a drug, or by the combined influence of drugs or  
44 of alcohol and any drug or drugs, then there shall be a rebuttable  
45 presumption that, as a result of such intoxication or impairment by the  
46 use of alcohol or a drug, or by the combined influence of drugs or of  
47 alcohol and any drug or drugs, such person operated the motor vehicle in  
48 a manner that caused such death or deaths, as required by this section  
49 and section 125.12 of this article.

50 Aggravated vehicular homicide is a class B VIOLENT felony.

51 S 3. Section 120.04-a of the penal law, as added by chapter 345 of the  
52 laws of 2007, is amended to read as follows:

53 S 120.04-a Aggravated vehicular assault.

54 A person is guilty of aggravated vehicular assault when he or she  
55 engages in reckless driving as defined by section twelve hundred twelve  
56 of the vehicle and traffic law, and commits the crime of vehicular

1 assault in the second degree as defined in section 120.03 of this arti-  
2 cle, and either:

3 (1) commits such crimes while operating a motor vehicle while such  
4 person has .18 of one per centum or more by weight of alcohol in such  
5 person's blood as shown by chemical analysis of such person's blood,  
6 breath, urine or saliva made pursuant to the provisions of section elev-  
7 en hundred ninety-four of the vehicle and traffic law;

8 (2) commits such crimes while knowing or having reason to know that:

9 (a) his or her license or his or her privilege of operating a motor  
10 vehicle in another state or his or her privilege of obtaining a license  
11 to operate a motor vehicle in another state is suspended or revoked and  
12 such suspension or revocation is based upon a conviction in such other  
13 state for an offense which would, if committed in this state, constitute  
14 a violation of any of the provisions of section eleven hundred ninety-  
15 two of the vehicle and traffic law; or (b) his or her license or his or  
16 her privilege of operating a motor vehicle in this state or his or her  
17 privilege of obtaining a license issued by the commissioner of motor  
18 vehicles is suspended or revoked and such suspension or revocation is  
19 based upon either a refusal to submit to a chemical test pursuant to  
20 section eleven hundred ninety-four of the vehicle and traffic law or  
21 following a conviction for a violation of any of the provisions of  
22 section eleven hundred ninety-two of the vehicle and traffic law;

23 (3) has previously been convicted of violating any of the provisions  
24 of section eleven hundred ninety-two of the vehicle and traffic law  
25 within the preceding ten years, provided that, for the purposes of this  
26 subdivision, a conviction in any other state or jurisdiction for an  
27 offense which, if committed in this state, would constitute a violation  
28 of section eleven hundred ninety-two of the vehicle and traffic law,  
29 shall be treated as a violation of such law;

30 (4) causes serious physical injury to more than one other person; [or]

31 (5) has previously been convicted of violating any provision of this  
32 article or article one hundred twenty-five of this title involving the  
33 operation of a motor vehicle, or was convicted in any other state or  
34 jurisdiction of an offense involving the operation of a motor vehicle  
35 which, if committed in this state, would constitute a violation of this  
36 article or article one hundred twenty-five of this title; OR

37 (6) CAUSES SERIOUS PHYSICAL INJURY TO A PERSON UNDER THE AGE OF  
38 SIXTEEN.

39 If it is established that the person operating such motor vehicle  
40 caused such serious physical injury or injuries while unlawfully intoxi-  
41 cated or impaired by the use of alcohol or a drug, or by the combined  
42 influence of drugs or of alcohol and any drug or drugs, then there shall  
43 be a rebuttable presumption that, as a result of such intoxication or  
44 impairment by the use of alcohol or a drug, or by the combined influence  
45 of drugs or of alcohol and any drug or drugs, such person operated the  
46 motor vehicle in a manner that caused such serious physical injury or  
47 injuries, as required by this section and section 120.03 of this arti-  
48 cle.

49 Aggravated vehicular assault is a class C VIOLENT felony.

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