

2668

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. GANTT, GABRYSZAK -- read once and referred to the
Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to increasing
the criminal penalties for driving while ability impaired and driving
while intoxicated or while ability impaired by drugs and increasing
the penalties for aggravated unlicensed operation of a vehicle in the
first and second degrees

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

1 Section 1. Subdivision 1 of section 1193 of the vehicle and traffic
2 law, as added by chapter 47 of the laws of 1988, paragraph (a) as
3 amended by chapter 75 of the laws of 1994, paragraph (b) as amended by
4 chapter 669 of the laws of 2007, paragraphs (c) and (d) as amended by
5 chapter 732 of the laws of 2006, subparagraphs (i) and (ii) of paragraph
6 (c) as amended by chapter 345 of the laws of 2007 and paragraph (f) as
7 added by chapter 714 of the laws of 1990, is amended to read as follows:
8 1. Criminal penalties. (a) Driving while ability impaired. A violation
9 of subdivision one of section eleven hundred ninety-two of this article
10 shall be a traffic infraction and shall be punishable by a fine of not
11 less than [three] FIVE hundred dollars nor more than [five] SEVEN
12 hundred FIFTY dollars or by imprisonment in a penitentiary or county
13 jail for not more than fifteen days, or by both such fine and imprison-
14 ment. A person who operates a vehicle in violation of such subdivision
15 after having been convicted of a violation of any subdivision of section
16 eleven hundred ninety-two of this article within the preceding five
17 years shall be punished by a fine of not less than [five] SEVEN hundred
18 FIFTY dollars nor more than [seven hundred fifty] ONE THOUSAND dollars,
19 or by imprisonment of not more than thirty days in a penitentiary or
20 county jail or by both such fine and imprisonment. A person who operates
21 a vehicle in violation of such subdivision after having been convicted
22 two or more times of a violation of any subdivision of section eleven

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

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1 hundred ninety-two of this article within the preceding ten years shall
2 be guilty of a misdemeanor, and shall be punished by a fine of not less
3 than [seven hundred fifty] ONE THOUSAND dollars nor more than fifteen
4 hundred dollars, or by imprisonment of not more than one hundred eighty
5 days in a penitentiary or county jail or by both such fine and imprison-
6 ment.

7 (b) Driving while intoxicated or while ability impaired by drugs or
8 while ability impaired by the combined influence of drugs or of alcohol
9 and any drug or drugs; aggravated driving while intoxicated; misdemeanor
10 offenses. A violation of subdivision two, three, four or four-a of
11 section eleven hundred ninety-two of this article shall be a misdemeanor
12 and shall be punishable by a fine of not less than [five] SEVEN hundred
13 FIFTY dollars nor more than one thousand FIVE HUNDRED dollars, or by
14 imprisonment in a penitentiary or county jail for not more than one
15 year, or by both such fine and imprisonment. A violation of subdivision
16 two-a of section eleven hundred ninety-two of this article shall be a
17 misdemeanor and shall be punishable by a fine of not less than one thou-
18 sand dollars nor more than two thousand five hundred dollars or by
19 imprisonment in a penitentiary or county jail for not more than one
20 year, or by both such fine and imprisonment. In addition to the imposi-
21 tion of any fine or period of imprisonment set forth in this paragraph,
22 the court shall require that any person who has been convicted of a
23 violation of subdivision two-a of section eleven hundred ninety-two of
24 this article and who is sentenced to a period of probation, to install
25 and maintain, as a condition of such probation and in accordance with
26 section eleven hundred ninety-eight of this article, a functioning
27 ignition interlock device in any vehicle owned or operated by the person
28 during the term of such probation; provided, however, the court may not
29 authorize the operation of a motor vehicle by any person whose license
30 or privilege to operate a motor vehicle has been revoked pursuant to the
31 provisions of this section.

32 (c) Felony offenses. (i) A person who operates a vehicle in violation
33 of subdivision two, two-a, three, four or four-a of section eleven
34 hundred ninety-two of this article after having been convicted of a
35 violation of subdivision two, two-a, three, four or four-a of such
36 section or of vehicular assault in the second or first degree, as
37 defined, respectively, in sections 120.03 and 120.04 and aggravated
38 vehicular assault as defined in section 120.04-a of the penal law or of
39 vehicular manslaughter in the second or first degree, as defined,
40 respectively, in sections 125.12 and 125.13 and aggravated vehicular
41 homicide as defined in section 125.14 of such law, within the preceding
42 ten years, shall be guilty of a class E felony, and shall be punished by
43 a fine of not less than one thousand FIVE HUNDRED dollars nor more than
44 five thousand dollars or by a period of imprisonment as provided in the
45 penal law, or by both such fine and imprisonment.

46 (ii) A person who operates a vehicle in violation of subdivision two,
47 two-a, three, four or four-a of section eleven hundred ninety-two of
48 this article after having been convicted of a violation of subdivision
49 two, two-a, three, four or four-a of such section or of vehicular
50 assault in the second or first degree, as defined, respectively, in
51 sections 120.03 and 120.04 and aggravated vehicular assault as defined
52 in section 120.04-a of the penal law or of vehicular manslaughter in the
53 second or first degree, as defined, respectively, in sections 125.12 and
54 125.13 and aggravated vehicular homicide as defined in section 125.14 of
55 such law, twice within the preceding ten years, shall be guilty of a
56 class D felony, and shall be punished by a fine of not less than two

1 thousand FIVE HUNDRED dollars nor more than ten thousand dollars or by a
2 period of imprisonment as provided in the penal law, or by both such
3 fine and imprisonment.

4 (d) Alcohol or drug related offenses; special vehicles. (1) Except as
5 provided in subparagraph four of this paragraph, a violation of subdivi-
6 sion one, two, three, four or four-a of section eleven hundred ninety-
7 two of this article wherein the violator is operating a taxicab as
8 defined in section one hundred forty-eight-a of this chapter, or livery
9 as defined in section one hundred twenty-one-e of this chapter, and such
10 taxicab or livery is carrying a passenger for compensation, or a truck
11 with a GVWR of more than eighteen thousand pounds but not more than
12 twenty-six thousand pounds and which is not a commercial motor vehicle
13 shall be a misdemeanor punishable by a fine of not less than [five
14 hundred] ONE THOUSAND dollars nor more than [fifteen] TWO THOUSAND FIVE
15 hundred dollars or by a period of imprisonment as provided in the penal
16 law, or by both such fine and imprisonment. A violation of subdivision
17 two-a of section eleven hundred ninety-two of this article wherein the
18 violator is operating a taxicab as defined in section one hundred
19 forty-eight-a of this chapter, or livery as defined in section one
20 hundred twenty-one-e of this chapter, and such taxicab or livery is
21 carrying a passenger for compensation, or a truck with a GVWR of more
22 than eighteen thousand pounds but not more than twenty-six thousand
23 pounds and which is not a commercial motor vehicle shall be a class E
24 felony punishable by a fine of not less than one thousand dollars nor
25 more than five thousand dollars or by a period of imprisonment as
26 provided in the penal law, or by both such fine and imprisonment.

27 (1-a) A violation of subdivision one of section eleven hundred nine-
28 ty-two of this article wherein the violator is operating a school bus as
29 defined in section one hundred forty-two of this chapter and such school
30 bus is carrying at least one student passenger shall be a misdemeanor
31 punishable by a fine of not less than [five hundred] ONE THOUSAND
32 dollars nor more than [fifteen] TWO THOUSAND FIVE hundred dollars or by
33 a period of imprisonment as provided in the penal law, or by both such
34 fine and imprisonment.

35 (2) A violation of subdivision five of section eleven hundred ninety-
36 two of this article shall be a traffic infraction punishable as provided
37 in paragraph (a) of this subdivision. Except as provided in subparagraph
38 three or five of this paragraph, a violation of subdivision one, two,
39 three, four, four-a or six of section eleven hundred ninety-two of this
40 article wherein the violator is operating a commercial motor vehicle, or
41 any motor vehicle registered or registerable under schedule F of subdivi-
42 sion seven of section four hundred one of this chapter shall be a
43 misdemeanor. A violation of subdivision one, two, three, four or four-a
44 of section eleven hundred ninety-two of this article shall be punishable
45 by a fine of not less than [five hundred] ONE THOUSAND dollars nor more
46 than [fifteen] TWO THOUSAND FIVE hundred dollars or by a period of
47 imprisonment as provided in the penal law, or by both such fine and
48 imprisonment. A violation of subdivision six of section eleven hundred
49 ninety-two of this article shall be punishable by a fine of not less
50 than [five hundred] ONE THOUSAND dollars nor more than [fifteen] TWO
51 THOUSAND FIVE hundred dollars or by a period of imprisonment not to
52 exceed one hundred eighty days, or by both such fine and imprisonment. A
53 person who operates any such vehicle in violation of such subdivision
54 six after having been convicted of a violation of subdivision one, two,
55 two-a, three, four, four-a or six of section eleven hundred ninety-two
56 of this article within the preceding five years shall be punishable by a

1 fine of not less than TWO THOUSAND five hundred dollars nor more than
2 [fifteen hundred] FIVE THOUSAND dollars or by a period of imprisonment
3 as provided in the penal law, or by both such fine and imprisonment. A
4 violation of subdivision two-a of section eleven hundred ninety-two of
5 this article wherein the violator is operating a commercial motor vehi-
6 cle, or any motor vehicle registered or registerable under schedule F of
7 subdivision seven of section four hundred one of this chapter shall be a
8 class E felony punishable by a fine of not less than one thousand
9 dollars nor more than five thousand dollars or by a period of imprison-
10 ment as provided in the penal law, or by both such fine and imprison-
11 ment.

12 (3) A violation of subdivision one of section eleven hundred ninety-
13 two of this article wherein the violator is operating a motor vehicle
14 with a gross vehicle weight rating of more than eighteen thousand pounds
15 which contains flammable gas, radioactive materials or explosives shall
16 be a misdemeanor punishable by a fine of not less than TWO THOUSAND five
17 hundred dollars nor more than [fifteen hundred] FIVE THOUSAND dollars or
18 by a period of imprisonment as provided in the penal law, or by both
19 such fine and imprisonment.

20 (4) (i) A person who operates a vehicle in violation of subdivision
21 one, two, two-a, three, four or four-a of section eleven hundred nine-
22 ty-two of this article and which is punishable as provided in subpara-
23 graph one, one-a, two or three of this paragraph after having been
24 convicted of a violation of any such subdivision of section eleven
25 hundred ninety-two of this article and penalized under subparagraph one,
26 one-a, two or three of this paragraph within the preceding ten years,
27 shall be guilty of a class E felony, which shall be punishable by a fine
28 of not less than [one] TWO thousand FIVE HUNDRED dollars nor more than
29 [five] TEN thousand dollars, or by a period of imprisonment as provided
30 in the penal law, or by both such fine and imprisonment. A person who
31 operates a vehicle in violation of subdivision six of section eleven
32 hundred ninety-two of this article after having been convicted of two or
33 more violations of subdivisions one, two, two-a, three, four, four-a or
34 six of section eleven hundred ninety-two of this article within the
35 preceding five years, any one of which was a misdemeanor, shall be guil-
36 ty of a class E felony, which shall be punishable by a fine of not less
37 than [one] THREE thousand FIVE HUNDRED dollars nor more than [five] TEN
38 thousand dollars, or by a period of imprisonment as provided in the
39 penal law, or by both such fine and imprisonment. In addition, any
40 person sentenced pursuant to this subparagraph shall be subject to the
41 disqualification provided in subparagraph three of paragraph (e) of
42 subdivision two of this section.

43 (ii) A person who operates a vehicle in violation of subdivision one,
44 two, two-a, three, four or four-a of section eleven hundred ninety-two
45 of this article and which is punishable as provided in subparagraph one,
46 one-a, two or three of this paragraph after having been convicted of a
47 violation of any such subdivision of section eleven hundred ninety-two
48 of this article and penalized under subparagraph one, one-a, two or
49 three of this paragraph twice within the preceding ten years, shall be
50 guilty of a class D felony, which shall be punishable by a fine of not
51 less than [two] FIVE thousand dollars nor more than ten thousand
52 dollars, or by a period of imprisonment as provided in the penal law, or
53 by both such fine and imprisonment. A person who operates a vehicle in
54 violation of subdivision six of section eleven hundred ninety-two of
55 this article after having been convicted of three or more violations of
56 subdivisions one, two, two-a, three, four, four-a or six of section

1 eleven hundred ninety-two of this article within the preceding five
2 years, any one of which was a misdemeanor, shall be guilty of a class D
3 felony, which shall be punishable by a fine of not less than [two] FIVE
4 thousand dollars nor more than ten thousand dollars, or by a period of
5 imprisonment as provided in the penal law, or by both such fine and
6 imprisonment. In addition, any person sentenced pursuant to this subpar-
7 agraph shall be subject to the disqualification provided in subparagraph
8 three of paragraph (e) of subdivision two of this section.

9 (4-a) A violation of subdivision two, three, four or four-a of section
10 eleven hundred ninety-two of this article wherein the violator is oper-
11 ating a school bus as defined in section one hundred forty-two of this
12 chapter and such school bus is carrying at least one student passenger
13 shall be a class E felony punishable by a fine of not less than [one]
14 TWO thousand FIVE HUNDRED dollars nor more than [five] TEN thousand
15 dollars, or by a period of imprisonment as provided in the penal law, or
16 by both such fine and imprisonment. A violation of subdivision two-a of
17 section eleven hundred ninety-two of this article wherein the violator
18 is operating a school bus as defined in section one hundred forty-two of
19 this chapter and such school bus is carrying at least one student
20 passenger shall be a class D felony punishable by a fine of not less
21 than two thousand dollars nor more than ten thousand dollars, or by a
22 period of imprisonment as provided in the penal law, or by both such
23 fine and imprisonment.

24 (5) A violation of subdivision two, three, four or four-a of section
25 eleven hundred ninety-two of this article wherein the violator is oper-
26 ating a motor vehicle with a gross vehicle weight rating of more than
27 eighteen thousand pounds which contains flammable gas, radioactive mate-
28 rials or explosives, shall be a class E felony punishable by a fine of
29 not less than [one] TWO thousand FIVE HUNDRED dollars NOR MORE THAN TEN
30 THOUSAND DOLLARS and such other penalties as provided for in the penal
31 law; provided, however, that a conviction for such violation shall not
32 be considered a predicate felony pursuant to section 70.06 of such law,
33 or a previous felony conviction pursuant to section 70.10 of such law. A
34 violation of subdivision two-a of section eleven hundred ninety-two of
35 this article wherein the violator is operating a motor vehicle with a
36 gross vehicle weight rating of more than eighteen thousand pounds which
37 contains flammable gas, radioactive materials or explosives, shall be a
38 class D felony punishable by a fine of not less than two thousand nor
39 more than ten thousand dollars and such other penalties as provided for
40 in the penal law; provided, however, that a conviction for such
41 violation shall not be considered a predicate felony pursuant to section
42 70.06 of such law, or a previous felony conviction pursuant to section
43 70.10 of such law.

44 (6) The sentences required to be imposed by subparagraph one, one-a,
45 two, three, four, four-a or five of this paragraph shall be imposed
46 notwithstanding any contrary provision of this chapter or the penal law.

47 (7) Nothing contained in this paragraph shall prohibit the imposition
48 of a charge of any other felony set forth in this or any other provision
49 of law for any acts arising out of the same incident.

50 (e) Certain sentences prohibited. Notwithstanding any provisions of
51 the penal law, no judge or magistrate shall impose a sentence of uncon-
52 ditional discharge for a violation of any subdivision of section eleven
53 hundred ninety-two of this article nor shall a judge or magistrate
54 impose a sentence of conditional discharge, IMPRISONMENT or probation
55 unless such conditional discharge, IMPRISONMENT or probation is accompa-
56 nied by a sentence of a fine as provided in this subdivision.

1 (f) Where the court imposes a sentence for a violation of section
2 eleven hundred ninety-two of this article, the court may require the
3 defendant, as a part of or as a condition of such sentence, to attend a
4 single session conducted by a victims impact program. For purposes of
5 this section, "victims impact program" means a program operated by a
6 county, a city with a population of one million or more, by a not-for-
7 profit organization authorized by any such county or city, or a combina-
8 tion thereof, in which presentations are made concerning the impact of
9 operating a motor vehicle while under the influence of alcohol or drugs
10 to one or more persons who have been convicted of such offenses. A
11 description of any such program shall be filed with the commissioner and
12 with the coordinator of the special traffic options program for driving
13 while intoxicated established pursuant to section eleven hundred nine-
14 ty-seven of this article, and shall be made available to the court upon
15 request. Nothing contained herein shall be construed to require any
16 governmental entity to create such a victim impact program.

17 S 2. Paragraph (b) of subdivision 2 of section 511 of the vehicle and
18 traffic law, as amended by chapter 607 of the laws of 1993, is amended
19 to read as follows:

20 (b) Aggravated unlicensed operation of a motor vehicle in the second
21 degree is a misdemeanor. When a person is convicted of this crime under
22 subparagraph (i) of paragraph (a) of this subdivision, the sentence of
23 the court must be: (i) a fine of not less than five hundred dollars; and
24 (ii) a term of imprisonment not to exceed one hundred eighty days; or
25 (iii) where appropriate a sentence of probation as provided in subdivi-
26 sion six of this section; or (iv) a term of imprisonment as a condition
27 of a sentence of probation as provided in the penal law and consistent
28 with this section. When a person is convicted of this crime under
29 subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision,
30 the sentence of the court must be: (i) a fine of not less than [five
31 hundred] ONE THOUSAND dollars nor more than [one] TWO thousand FIVE
32 HUNDRED dollars; and (ii) a term of imprisonment of not less than seven
33 days nor more than one hundred eighty days, or (iii) where appropriate a
34 sentence of probation as provided in subdivision six of this section; or
35 (iv) a term of imprisonment as a condition of a sentence of probation as
36 provided in the penal law and consistent with this section.

37 S 3. Paragraph (b) of subdivision 3 of section 511 of the vehicle and
38 traffic law, as separately amended by chapters 786 and 892 of the laws
39 of 1990, is amended to read as follows:

40 (b) Aggravated unlicensed operation of a motor vehicle in the first
41 degree is a class E felony. When a person is convicted of this crime,
42 the sentence of the court must be: (i) a fine in an amount not less than
43 [five hundred] TWO THOUSAND dollars nor more than five thousand dollars;
44 and (ii) a term of imprisonment as provided in the penal law, or (iii)
45 where appropriate and a term of imprisonment is not required by the
46 penal law, a sentence of probation as provided in subdivision six of
47 this section, or (iv) a term of imprisonment as a condition of a
48 sentence of probation as provided in the penal law.

49 S 4. This act shall take effect on the one hundred twentieth day after
50 it shall have become a law.