

5804

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. PRETLOW -- Multi-Sponsored by -- M. of A. CLARK,  
DINOWITZ, GALEF, GLICK, HIKIND, HOOPER, HOYT, SEMINERIO -- read once  
and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the criminal  
penalties for operating a motor vehicle under the influence of alcohol  
or drugs and providing for impoundment of the vehicle driven while  
under the influence of alcohol or drugs

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

1     Section 1. Paragraphs (a) and (b) of subdivision 1 of section 1193 of  
2     the vehicle and traffic law, paragraph (a) as amended by chapter 75 of  
3     the laws of 1994 and paragraph (b) as amended by chapter 669 of the laws  
4     of 2007, are amended to read as follows:  
5     (a) Driving while ability impaired. A violation of subdivision one of  
6     section eleven hundred ninety-two of this article shall be a traffic  
7     infraction and shall be punishable by a fine of not less than three  
8     hundred dollars nor more than five hundred dollars or by imprisonment in  
9     a penitentiary or county jail for not more than fifteen days OR BY  
10    IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE  
11    THAN FIFTEEN DAYS, or by both such fine and imprisonment OR BY BOTH SUCH  
12    FINE AND IMPOUNDMENT. A person who operates a vehicle in violation of  
13    such subdivision after having been convicted of a violation of any  
14    subdivision of section eleven hundred ninety-two of this article within  
15    the preceding five years shall be punished by a fine of not less than  
16    five hundred dollars nor more than seven hundred fifty dollars, or by  
17    imprisonment of not more than thirty days in a penitentiary or county  
18    jail OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD  
19    OF NOT MORE THAN THIRTY DAYS or by both such fine and imprisonment OR BY  
20    BOTH SUCH FINE AND IMPOUNDMENT. A person who operates a vehicle in  
21    violation of such subdivision after having been convicted two or more  
22    times of a violation of any subdivision of section eleven hundred nine-

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

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ty-two of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN NINETY DAYS or by both such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT.

(b) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; misdemeanor offenses. A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN ONE YEAR, or by both such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT. A violation of subdivision two-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall require that any person who has been convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article and who is sentenced to a period of probation, to install and maintain, as a condition of such probation and in accordance with section eleven hundred ninety-eight of this article, a functioning ignition interlock device in any vehicle owned or operated by the person during the term of such probation; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

S 2. Subdivision 1 of section 1193 of the vehicle and traffic law is amended by adding a new paragraph (g) to read as follows:

(G) NO SENTENCE OF IMPOUNDMENT MAY BE IMPOSED PURSUANT TO THIS SUBDIVISION UNTIL THE OWNER OF THE MOTOR VEHICLE USED IN THE OFFENSE HAS BEEN NOTIFIED THAT IMPOUNDMENT MAY BE ORDERED AND THEY ARE GIVEN A REASONABLE OPPORTUNITY TO DEMONSTRATE WHY SUCH SENTENCE SHOULD NOT BE IMPOSED. IN EXERCISING ITS SENTENCING DISCRETION IN ANY CASE WHERE THE OWNER OF THE MOTOR VEHICLE USED IN THE OFFENSE IS NOT THE DEFENDANT, THE COURT SHALL CONSIDER (1) THE DUE DILIGENCE EXERCISED BY THE OWNER TO PREVENT THE UNLAWFUL USE OF THE MOTOR VEHICLE BY THE DEFENDANT, AND (2) THE UNDUE HARDSHIP TO THE OWNER IN THE EVENT OF A SENTENCE OF IMPOUNDMENT.

S 3. The vehicle and traffic law is amended by adding a new section 1193-a to read as follows:

S 1193-A. IMPOUNDMENT AND REDEMPTION OF VEHICLES. 1. WHEN A SENTENCE OF IMPOUNDMENT IS IMPOSED BY THE COURT PURSUANT TO SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE OF THIS ARTICLE, THE OWNER SHALL SURRENDER THE VEHICLE USED IN THE OFFENSE TO AN OFFICER OF THE LOCAL AUTHORITY, WHO SHALL REMOVE OR ARRANGE FOR THE REMOVAL OF THE VEHICLE TO A GARAGE, AUTOMOBILE POUND, OR OTHER PLACE OF SAFETY WHERE IT SHALL REMAIN IMPOUNDED FOR THE TIME IMPOSED BY THE SENTENCING COURT. THE VEHICLE SHALL BE ENTERED INTO THE NEW YORK STATEWIDE POLICE INFORMATION NETWORK AS AN IMPOUNDED VEHICLE.

1 2. A MOTOR VEHICLE SO IMPOUNDED SHALL BE IN THE CUSTODY OF THE LOCAL  
2 AUTHORITY AND SHALL NOT BE RELEASED UNTIL:

3 (A) THE EXPIRATION OF THE IMPOUNDMENT PERIOD IMPOSED BY THE SENTENCING  
4 COURT.

5 (B) PAYMENT HAS BEEN MADE FOR THE REASONABLE COSTS OF REMOVAL, STORAGE  
6 AND PROCESSING OF THE MOTOR VEHICLE. THE REGISTERED OWNER OF THE VEHICLE  
7 SHALL BE RESPONSIBLE FOR SUCH PAYMENT PROVIDED, HOWEVER, THAT IF HE OR  
8 SHE WAS NOT THE OPERATOR AT THE TIME OF THE OFFENSE HE OR SHE SHALL HAVE  
9 A CAUSE OF ACTION AGAINST SUCH OPERATOR TO RECOVER SUCH COSTS.

10 (C) WHERE THE MOTOR VEHICLE WAS OPERATED BY A PERSON WHO AT THE TIME  
11 OF THE OFFENSE WAS THE OWNER THEREOF, SATISFACTORY EVIDENCE THAT THE  
12 REGISTERED OWNER OR OTHER PERSON SEEKING TO REDEEM THE VEHICLE HAS A  
13 LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE IN THIS STATE.

14 3. IF FIFTEEN DAYS HAVE ELAPSED FROM THE EXPIRATION OF THE TERM OF  
15 IMPOUNDMENT IMPOSED BY THE SENTENCING COURT, AND THE MOTOR VEHICLE HAS  
16 NOT BEEN RELEASED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE LOCAL  
17 AUTHORITY SHALL MAKE INQUIRY IN THE MANNER PRESCRIBED BY THE COMMISSION-  
18 ER AS TO THE NAME AND ADDRESS OF THE OWNER AND ANY LIENHOLDER AND UPON  
19 RECEIPT OF SUCH INFORMATION SHALL NOTIFY THE OWNER AND THE LIENHOLDER,  
20 IF ANY, AT HIS OR HER LAST KNOWN ADDRESS BY CERTIFIED MAIL, RETURN  
21 RECEIPT REQUESTED, THAT IF THE VEHICLE IS NOT RETRIEVED PURSUANT TO  
22 SUBDIVISION TWO OF THIS SECTION WITHIN THIRTY DAYS FROM THE DATE THE  
23 NOTICE IS GIVEN, IT WILL BE FORFEITED. IF THE VEHICLE WAS REGISTERED IN  
24 NEW YORK STATE THE LAST KNOWN ADDRESS SHALL BE THAT ADDRESS ON FILE WITH  
25 THE COMMISSIONER. IF THE VEHICLE WAS REGISTERED OUT-OF-STATE OR WAS NOT  
26 REGISTERED, NOTIFICATION SHALL BE MADE IN THE MANNER PRESCRIBED BY THE  
27 COMMISSIONER.

28 4. A MOTOR VEHICLE THAT HAS BEEN IMPOUNDED AND NOT RETRIEVED PURSUANT  
29 TO THE FOREGOING PROVISIONS OF THIS SECTION SHALL BE FORFEITED TO THE  
30 LOCAL AUTHORITY UPON EXPIRATION OF THE PERIOD OF NOTICE SET FORTH IN  
31 SUBDIVISION THREE OF THIS SECTION. A PROCEEDING TO DECREE SUCH FORFEI-  
32 TURE AND TO RECOVER TOWING AND STORAGE COSTS, IF ANY, TO THE EXTENT SUCH  
33 COSTS EXCEED THE FAIR MARKET VALUE OF THE VEHICLE, MAY BE BROUGHT BY THE  
34 LOCAL AUTHORITY IN THE COURT IN WHICH THE DEFENDANT WAS SENTENCED FOR  
35 THE CRIME OF DRIVING WHILE ABILITY IMPAIRED OR DRIVING WHILE INTOXICATED  
36 BY PETITION FOR AN ORDER DECREERING FORFEITURE OF THE MOTOR VEHICLE  
37 ACCOMPANIED BY AN AFFIDAVIT ATTESTING TO FACTS SHOWING THAT FORFEITURE  
38 IS WARRANTED. IF THE IDENTITY AND ADDRESS OF THE OWNER AND/OR LIENHOLDER  
39 IS KNOWN TO THE LOCAL AUTHORITY, TEN DAYS NOTICE SHALL BE GIVEN TO SUCH  
40 PARTY, WHO SHALL HAVE AN OPPORTUNITY TO APPEAR AND BE HEARD PRIOR TO  
41 ENTRY OF AN ORDER DECREERING FORFEITURE. WHERE THE COURT IS SATISFIED  
42 THAT FORFEITURE OF A MOTOR VEHICLE IS WARRANTED IN ACCORDANCE WITH THIS  
43 SECTION, IT SHALL ENTER AN ORDER DECREERING THE FORFEITURE OF SUCH VEHI-  
44 CLE. PROVIDED, HOWEVER, THAT THE COURT AT ANY TIME PRIOR TO ENTRY OF  
45 SUCH ORDER MAY AUTHORIZE RELEASE OF THE VEHICLE IN ACCORDANCE WITH  
46 SUBDIVISION TWO OF THIS SECTION UPON A SHOWING OF GOOD CAUSE FOR FAILURE  
47 TO RETRIEVE SAME PRIOR TO COMMENCEMENT OF THE PROCEEDING TO DECREE  
48 FORFEITURE, BUT IF THE COURT ORDERS RELEASE OF THE MOTOR VEHICLE AS  
49 HEREIN PROVIDED AND THE VEHICLE IS NOT REDEEMED WITHIN TEN DAYS FROM THE  
50 DATE OF SUCH ORDER, THE VEHICLE SHALL BE DEEMED TO HAVE BEEN ABANDONED  
51 AND THE COURT, UPON APPLICATION OF THE LOCAL AUTHORITY, MUST ENTER AN  
52 ORDER DECREERING ITS FORFEITURE.

53 5. A MOTOR VEHICLE FORFEITED IN ACCORDANCE WITH THE PROVISIONS OF THIS  
54 SECTION SHALL BE AND BECOME THE PROPERTY OF THE LOCAL AUTHORITY, SUBJECT  
55 HOWEVER TO ANY LIEN THAT WAS RECORDED PRIOR TO THE IMPOUNDMENT OF THE  
56 VEHICLE.

1 6. FOR THE PURPOSES OF THIS SECTION, THE TERM "LOCAL AUTHORITY" MEANS  
2 THE MUNICIPALITY IN WHICH THE MOTOR VEHICLE WAS SEIZED; EXCEPT THAT IF  
3 THE MOTOR VEHICLE WAS SEIZED ON PROPERTY OF THE NEW YORK STATE THRUWAY  
4 AUTHORITY OR PROPERTY UNDER THE JURISDICTION OF THE OFFICE OF PARKS,  
5 RECREATION AND HISTORIC PRESERVATION, THE DEPARTMENT OF TRANSPORTATION,  
6 OR A PUBLIC AUTHORITY OR COMMISSION, THE TERM "LOCAL AUTHORITY" MEANS  
7 SUCH AUTHORITY, OFFICE, DEPARTMENT, OR COMMISSION. A COUNTY MAY PROVIDE  
8 BY LOCAL LAW THAT THE COUNTY MAY ACT AS THE AGENT FOR A LOCAL AUTHORITY  
9 UNDER THIS SECTION.

10 7. WHEN A VEHICLE HAS BEEN IMPOUNDED PURSUANT TO THIS SECTION, THE  
11 LOCAL AUTHORITY OR ANY PERSON HAVING CUSTODY OF THE VEHICLE SHALL MAKE  
12 THE VEHICLE AVAILABLE OR GRANT ACCESS TO IT TO ANY OWNER OR ANY PERSON  
13 DESIGNATED OR AUTHORIZED BY SUCH OWNER FOR THE PURPOSE OF (A) TAKING  
14 POSSESSION OF ANY PERSONAL PROPERTY FOUND WITHIN THE VEHICLE AND (B)  
15 OBTAINING PROOF OF REGISTRATION, FINANCIAL SECURITY, TITLE OR DOCUMENTA-  
16 TION IN SUPPORT THEREOF.

17 8. UPON APPLICATION BY THE DEFENDANT, THE SENTENCING COURT MAY FASHION  
18 AN ALTERNATIVE METHOD OF DISABLING AND/OR SECURING THE CAR FROM USE BY  
19 THE DEFENDANT FOR THE DURATION OF THE IMPOUNDMENT PERIOD.

20 9. ANY PERSON WHO KNOWINGLY FAILS TO SURRENDER A VEHICLE FOR IMPOUND-  
21 MENT PURSUANT TO THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR PUNISHA-  
22 BLE BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE  
23 THOUSAND DOLLARS, OR BY IMPRISONMENT IN A PENITENTIARY OR COUNTY JAIL  
24 FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT.

25 S 4. This act shall take effect immediately and shall apply to  
26 proceedings commenced on and after such effective date.