

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.