S T A T E O F N E W Y O R K

1348

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 1193 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, paragraph (a) as amended by chapter 75 of the laws of 1994, paragraphs (b) and (c) as amended by chapter 496 of the laws of 2009, paragraph (d) as amended by chapter 732 of the laws of 2006, paragraph (f) as added by chapter 714 of the laws of 1990 and paragraph (g) as amended by section 57 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

1. Criminal penalties. (a) Driving while ability impaired. A violation of subdivision one of section eleven hundred ninety-two of this article shall be a traffic infraction and shall be punishable by a fine of not less than [three] FIVE hundred dollars nor more than [five] SEVEN hundred FIFTY dollars or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years shall be punished by a fine of not less than [five] SEVEN hundred FIFTY dollars nor more than [seven hundred fifty] ONE THOUSAND dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted

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

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two or more times of a violation of any subdivision of section eleven hundred ninety-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] ONE THOUSAND 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 both such fine and imprisonment.

(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. (i) 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] SEVEN hundred FIFTY dollars nor more than one 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. A violation of paragraph (a) 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.

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for less than six months. 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.

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

(ii) A person who operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in

sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, twice within the preceding ten years, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand FIVE HUNDRED dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than six months. 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.

(d) Alcohol or drug related offenses; special vehicles. (1) Except as provided in subparagraph four of this paragraph, a violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a misdemeanor punishable by a fine of not less than [five hundred] ONE THOUSAND dollars nor more than [fifteen] TWO THOUSAND FIVE hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

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

(2) A violation of subdivision five of section eleven hundred ninety-two of this article shall be a traffic infraction punishable as provided

in paragraph (a) of this subdivision. Except as provided in subparagraph three or five of this paragraph, a violation of subdivision one, two, three, four, four-a or six of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a misdemeanor. A violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than [five hundred] ONE THOUSAND dollars nor more than [fifteen] TWO THOUSAND FIVE hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision six of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than [five hundred] ONE THOUSAND dollars nor more than [fifteen] TWO THOUSAND FIVE hundred dollars or by a period of imprisonment not to exceed one hundred eighty days, or by both such fine and imprisonment. A person who operates any such vehicle in violation of such subdivision six after having been convicted of a violation of subdivision one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years shall be punishable by a fine of not less than TWO THOUSAND five hundred dollars nor more than [fifteen hundred] FIVE THOUSAND dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

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

(4) (i) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph within the preceding ten years, shall be guilty of a class E felony, which shall be punishable by a fine of not less than [one] TWO thousand FIVE HUNDRED dollars nor more than [five] TEN thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of two or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class E felony, which shall be punishable by a fine of not less

than [one] THREE thousand FIVE HUNDRED dollars nor more than [five] TEN thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

(ii) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph twice within the preceding ten years, shall be guilty of a class D felony, which shall be punishable by a fine of not less than [two] FIVE thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of three or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class D felony, which shall be punishable by a fine of not less than [two] FIVE thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

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

(5) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives, shall be a class E felony punishable by a fine of not less than [one] TWO thousand FIVE HUNDRED dollars NOR MORE THAN TEN THOUSAND DOLLARS and such other penalties as provided for in the penal law; provided, however, that a conviction for such violation shall not be considered a predicate felony pursuant to section 70.06 of such law, or a previous felony conviction pursuant to section 70.10 of such law. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which

contains flammable gas, radioactive materials or explosives, shall be a class D felony punishable by a fine of not less than two thousand nor more than ten thousand dollars and such other penalties as provided for in the penal law; provided, however, that a conviction for such violation shall not be considered a predicate felony pursuant to section 70.06 of such law, or a previous felony conviction pursuant to section 70.10 of such law.

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

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

(e) Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of any subdivision of section eleven hundred ninety-two of this article nor shall a judge or magistrate impose a sentence of conditional discharge, IMPRISONMENT or probation unless such conditional discharge, IMPRISONMENT or probation is accompanied by a sentence of a fine as provided in this subdivision.

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

(g) The office of probation and correctional alternatives shall recommend to the commissioner of the division of criminal justice services regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by departments of probation, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a department of probation.

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

(b) Aggravated unlicensed operation of a motor vehicle in the second degree is a misdemeanor. When a person is convicted of this crime under subparagraph (i) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars; and (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section. When a person is convicted of this crime under subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision,

the sentence of the court must be: (i) a fine of not less than [five hundred] ONE THOUSAND dollars nor more than [one] TWO thousand FIVE HUNDRED dollars; and (ii) a term of imprisonment of not less than seven days nor more than one hundred eighty days, or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section.

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

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

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