

7459

2011-2012 Regular Sessions

I N   A S S E M B L Y

May 4, 2011

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Introduced by M. of A. SWEENEY, COOK, LANCMAN, ZEBROWSKI, GALEF, P. RIVERA, JAFFEE, ROBINSON, GUNTHER, ROBERTS, ENGLEBRIGHT, M. MILLER, STEVENSON, GABRYSZAK -- Multi-Sponsored by -- M. of A. LUPARDO, MAGEE, REILLY, THIELE, TITONE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to operating a motor vehicle while under the influence of alcohol or drugs and aggravated unlicensed operation of a motor vehicle in the first degree

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

1     Section 1. Paragraph (b) of subdivision 3 of section 511 of the vehi-  
2     cle and traffic law, as separately amended by chapters 786 and 892 of  
3     the laws of 1990, is amended to read as follows:  
4     (b) Aggravated unlicensed operation of a motor vehicle in the first  
5     degree IN VIOLATION OF SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF  
6     THIS SUBDIVISION is a class E felony. AGGRAVATED UNLICENSED OPERATION  
7     OF A MOTOR VEHICLE IN THE FIRST DEGREE IN VIOLATION OF SUBPARAGRAPH  
8     (III) OF PARAGRAPH (A) OF THIS SUBDIVISION IS A CLASS D FELONY. When a  
9     person is convicted of this crime, the sentence of the court must be:  
10    (i) a fine in an amount not less than five hundred dollars nor more than  
11    five thousand dollars; and (ii) a term of imprisonment as provided in  
12    the penal law, or (iii) where appropriate and a term of imprisonment is  
13    not required by the penal law, a sentence of probation as provided in  
14    subdivision six of this section, or (iv) a term of imprisonment as a  
15    condition of a sentence of probation as provided in the penal law.  
16    S 2. Subparagraphs (i) and (ii) of paragraph (c) of subdivision 1 of  
17    section 1193 of the vehicle and traffic law, as amended by chapter 496  
18    of the laws of 2009, are amended to read as follows:  
19    (i) A person who operates a vehicle (A) in violation of subdivision  
20    two, two-a, three, four or four-a of section eleven hundred ninety-two  
21    of this article after having been convicted of a violation of subdivi-

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

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1 sion two, two-a, three, four or four-a of such section or of vehicular  
2 assault in the second or first degree, as defined, respectively, in  
3 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
4 in section 120.04-a of the penal law or of vehicular manslaughter in the  
5 second or first degree, as defined, respectively, in sections 125.12 and  
6 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
7 such law, within the preceding ten years NOT INCLUDING ANY PERIOD OF  
8 IMPRISONMENT, or (B) in violation of paragraph (b) of subdivision two-a  
9 of section eleven hundred ninety-two of this article shall be guilty of  
10 a class E felony, and shall be punished by a fine of not less than one  
11 thousand dollars nor more than five thousand dollars or by a period of  
12 imprisonment as provided in the penal law, or by both such fine and  
13 imprisonment.

14 (ii) A person who operates a vehicle in violation of subdivision two,  
15 two-a, three, four or four-a of section eleven hundred ninety-two of  
16 this article after having been convicted of a violation of subdivision  
17 two, two-a, three, four or four-a of such section or of vehicular  
18 assault in the second or first degree, as defined, respectively, in  
19 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
20 in section 120.04-a of the penal law or of vehicular manslaughter in the  
21 second or first degree, as defined, respectively, in sections 125.12 and  
22 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
23 such law, twice within the preceding ten years NOT INCLUDING ANY PERIOD  
24 OF IMPRISONMENT, shall be guilty of a class D felony, and shall be  
25 punished by a fine of not less than two thousand dollars nor more than  
26 ten thousand dollars or by a period of imprisonment as provided in the  
27 penal law, or by both such fine and imprisonment.

28 S 3. Clause (a) of subparagraph 12 of paragraph (b) of subdivision 2  
29 of section 1193 of the vehicle and traffic law, as added by chapter 732  
30 of the laws of 2006, is amended to read as follows:

31 (a) Notwithstanding any other provision of this chapter to the contra-  
32 ry, whenever a revocation is imposed upon a person for the refusal to  
33 submit to a chemical test pursuant to the provisions of section eleven  
34 hundred ninety-four of this article or conviction for any violation of  
35 section eleven hundred ninety-two of this article for which a sentence  
36 of imprisonment may be imposed, and such person has: (i) within the  
37 previous four years been twice convicted of any provisions of section  
38 eleven hundred ninety-two of this article or a violation of the penal  
39 law for which a violation of such section eleven hundred ninety-two is  
40 an essential element and at least one such conviction was for a crime,  
41 or has twice been found to have refused to submit to a chemical test  
42 pursuant to section eleven hundred ninety-four of this article, or has  
43 any combination of two such convictions and findings of refusal not  
44 arising out of the same incident; or (ii) within the previous eight  
45 years been convicted three times of any provision of section eleven  
46 hundred ninety-two of this article for which a sentence of imprisonment  
47 may be imposed or a violation of the penal law for which a violation of  
48 such section eleven hundred ninety-two is an essential element and at  
49 least two such convictions were for crimes, or has been found, on three  
50 separate occasions, to have refused to submit to a chemical test pursu-  
51 ant to section eleven hundred ninety-four of this article, or has any  
52 combination of such convictions and findings of refusal not arising out  
53 of the same incident; OR (III) BEEN FOUR TIMES CONVICTED OF ANY  
54 PROVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE OR A  
55 VIOLATION OF THE PENAL LAW FOR WHICH A VIOLATION OF SUCH SECTION ELEVEN  
56 HUNDRED NINETY-TWO IS AN ESSENTIAL ELEMENT AND AT LEAST THREE SUCH

1 CONVICTIONS WERE FOR CRIMES, OR HAS FOUR TIMES BEEN FOUND TO HAVE  
2 REFUSED TO SUBMIT TO A CHEMICAL TEST PURSUANT TO SECTION ELEVEN HUNDRED  
3 NINETY-FOUR OF THIS ARTICLE, OR HAS ANY COMBINATION OF FOUR SUCH  
4 CONVICTIONS AND FINDINGS OF REFUSAL NOT ARISING OUT OF THE SAME  
5 INCIDENT, such revocation shall be permanent.

6 S 4. This act shall take effect on the ninetieth day after it shall  
7 have become a law.