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

1536

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the penal law, in relation to operating a vehicle while fatigued; in relation to vehicular assault and vehicular manslaughter; and providing for the mandatory suspension of a driver's license upon conviction of operating a vehicle while fatigued

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

Section 1. The vehicle and traffic law is amended by adding a new section 1212-a to read as follows:

S 1212-A. OPERATING A VEHICLE WHILE FATIGUED. (A) A PERSON IS GUILTY OF OPERATING A VEHICLE WHILE FATIGUED WHEN HE OR SHE OPERATES ANY VEHICLE WHILE HIS OR HER ABILITY TO DRIVE IS IMPAIRED BY FATIGUE. PROOF OF FATIGUED OPERATION SHALL INCLUDE, BUT NOT BE LIMITED TO:

(1) EVIDENCE THAT THE DEFENDANT FELL ASLEEP WHILE DRIVING;

(2) EVIDENCE THAT THE DEFENDANT WAS AWARE OR SHOULD REASONABLY HAVE BEEN EXPECTED TO BE AWARE THAT HE OR SHE HAS BEEN WITHOUT SLEEP FOR TWENTY-FOUR OR MORE CONSECUTIVE HOURS.

EVIDENCE OF SUCH LACK OF SLEEP AS SET FORTH IN THIS SUBDIVISION SHALL CREATE A REBUTTABLE PRESUMPTION THAT SUCH PERSON'S ABILITY TO DRIVE WAS IMPAIRED BY FATIGUE.

(B) FOR THE PURPOSES OF THIS SECTION, THE TERM "VEHICLE" SHALL MEAN A MOTOR VEHICLE, MOTORCYCLE, VESSEL, PUBLIC VESSEL, SNOWMOBILE, ALL-TERRAIN VEHICLE OR ANY OTHER VEHICLE PROPELLED BY ANY POWER OTHER THAN MUSCULAR POWER.

(C) THIS SECTION SHALL NOT APPLY TO EMERGENCY PERSONNEL ENGAGED IN THE RESPONSE TO A CATASTROPHIC EVENT WHICH AFFECTS PUBLIC SAFETY; OR MEDICAL, FIRE OR AMBULANCE PERSONNEL RESPONDING TO CERTAIN EMERGENCIES OR CALLS FOR ASSISTANCE; OR PERSONS IMPAIRED BY FATIGUE UNDER CIRCUMSTANCES IN WHICH A REASONABLE PERSON WOULD NOT HAVE ANTICIPATED THE

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

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ONSET OF FATIGUE NOR HAD A REASONABLE OPPORTUNITY TO DISCONTINUE OPERATION OF HIS OR HER VEHICLE.

(D) EVERY PERSON VIOLATING THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR. A FIRST VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS; ANY SUBSEQUENT VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A FINE NOT TO EXCEED ONE THOUSAND DOLLARS AND MANDATORY LICENSE SUSPENSION IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIVE HUNDRED TEN OF THIS CHAPTER.

S 2. Paragraph b of subdivision 2 of section 510 of the vehicle and traffic law is amended by adding a new subparagraph (xvi) to read as follows:

(XVI) FOR A PERIOD OF SIX MONTHS WHERE THE HOLDER IS CONVICTED OF A VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THIS CHAPTER.

S 3. Subparagraph 2 of paragraph (a) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 196 of the laws of 1996, is amended and a new subparagraph 3 is added to read as follows:

(2) Persons under the age of twenty-one; driving after having consumed alcohol. Six months, where the holder has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article where such person was under the age of twenty-one at the time of commission of such violation[.];

(3) PERSONS UNDER THE AGE OF TWENTY-ONE; OPERATING A VEHICLE WHILE FATIGUED. SIX MONTHS, WHERE THE HOLDER HAS BEEN FOUND TO HAVE OPERATED A VEHICLE WHILE FATIGUED IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THIS CHAPTER WHERE SUCH PERSON WAS UNDER THE AGE OF TWENTY-ONE AT THE TIME OF COMMISSION OF SUCH VIOLATION.

S 4. Section 120.03 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

S 120.03 Vehicular assault in the second degree.

A person is guilty of vehicular assault in the second degree when he or she causes serious physical injury to another person, and either:

(1) operates a motor vehicle in violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person, or

(2) operates a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives in violation of subdivision one of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and such flammable gas, radioactive materials or explosives is the cause of such serious physical injury, and as a result of such impairment by the use of alcohol, OR BY FATIGUE, operates such motor vehicle in a manner that causes such serious physical injury to such other person, or

(3) operates a snowmobile in violation of paragraph (b), (c) or (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law or operates an all terrain vehicle as defined in paragraph (a) of subdivision one of section twenty-two hundred eighty-one of the vehicle and traffic law and in violation of subdivision two, three,

four, or four-a of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, operates such snowmobile or all terrain vehicle in a manner that causes such serious physical injury to such other person.

If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such serious physical injury while: (A) unlawfully intoxicated or impaired by the use of alcohol or a drug[,]; OR (B) UNLAWFULLY IMPAIRED BY FATIGUE then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, such person operated the motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such serious physical injury, as required by this section.

Vehicular assault in the second degree is a class E felony.

S 5. The second undesignated paragraph of section 120.04 of the penal law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

If it is established that the person operating such motor vehicle caused such serious physical injury or injuries while: (A) unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs[,]; OR (B) UNLAWFULLY IMPAIRED BY FATIGUE then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, such person operated the motor vehicle in a manner that caused such serious physical injury or injuries, as required by this section and section 120.03 of this article.

S 6. Section 125.12 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

S 125.12 Vehicular manslaughter in the second degree.

A person is guilty of vehicular manslaughter in the second degree when he or she causes the death of another person, and either:

(1) operates a motor vehicle in violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs OR FATIGUE, operates such motor vehicle, vessel or public vessel in a manner that causes the death of such other person, or

(2) operates a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives in violation of subdivision one of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and such flammable gas, radioactive materials or explosives is the cause of such death, and as a result of such impairment by the use of alcohol, OR BY FATIGUE, operates such motor vehicle in a manner that causes the death of such other person, or

(3) operates a snowmobile in violation of paragraph (b), (c) or (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law or operates an all terrain vehicle as defined in paragraph (a) of subdivision one of section twenty-two hundred eighty-one of the vehicle and traffic law in violation of subdivision two, three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic law OR OPERATES A VEHICLE IN VIOLATION OF SECTION TWELVE HUNDRED TWELVE-A OF THE VEHICLE AND TRAFFIC LAW, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs OR FATIGUE, operates such snowmobile or all terrain vehicle in a manner that causes the death of such other person.

If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such death while: (A) unlawfully intoxicated or impaired by the use of alcohol or a drug[,]; OR (B) UNLAWFULLY IMPAIRED BY FATIGUE then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE, such person operated the motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such death, as required by this section.

Vehicular manslaughter in the second degree is a class D felony.

S 7. The second undesignated paragraph of section 125.13 of the penal law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

If it is established that the person operating such motor vehicle caused such death or deaths while: (A) unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs[,]; OR (B) UNLAWFULLY IMPAIRED BY FATIGUE then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, OR BY FATIGUE such person operated the motor vehicle in a manner that caused such death or deaths, as required by this section and section 125.12 of this article.

S 8. This act shall take effect on the one hundred eightieth day after it shall have become a law.