

2329

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

Introduced by M. of A. PRETLOW -- Multi-Sponsored by -- M. of A. CLARK,  
DINOWITZ, GALEF, GLICK, HIKIND, HOOPER, HOYT -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) and subparagraph (i) of paragraph (b) of  
2 subdivision 1 of section 1193 of the vehicle and traffic law, paragraph  
3 (a) as amended by chapter 75 of the laws of 1994 and subparagraph (i) of  
4 paragraph (b) as amended by chapter 496 of the laws of 2009, are amended  
5 to read as follows:

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

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

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1 times of a violation of any subdivision of section eleven hundred nine-  
2 ty-two of this article within the preceding ten years shall be guilty of  
3 a misdemeanor, and shall be punished by a fine of not less than seven  
4 hundred fifty dollars nor more than fifteen hundred dollars, or by  
5 imprisonment of not more than one hundred eighty days in a penitentiary  
6 or county jail OR BY IMPOUNDMENT OF THE VEHICLE USED IN THE OFFENSE FOR  
7 A PERIOD OF NOT MORE THAN NINETY DAYS or by both such fine and imprison-  
8 ment OR BY BOTH SUCH FINE AND IMPOUNDMENT.

9 (i) A violation of subdivision two, three, four or four-a of section  
10 eleven hundred ninety-two of this article shall be a misdemeanor and  
11 shall be punishable by a fine of not less than five hundred dollars nor  
12 more than one thousand dollars, or by imprisonment in a penitentiary or  
13 county jail for not more than one year OR BY IMPOUNDMENT OF THE VEHICLE  
14 USED IN THE OFFENSE FOR A PERIOD OF NOT MORE THAN ONE YEAR, or by both  
15 such fine and imprisonment OR BY BOTH SUCH FINE AND IMPOUNDMENT. A  
16 violation of paragraph (a) of subdivision two-a of section eleven  
17 hundred ninety-two of this article shall be a misdemeanor and shall be  
18 punishable by a fine of not less than one thousand dollars nor more than  
19 two thousand five hundred dollars or by imprisonment in a penitentiary  
20 or county jail for not more than one year, or by both such fine and  
21 imprisonment.

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

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

33 S 3. The vehicle and traffic law is amended by adding a new section  
34 1193-a to read as follows:

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

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

46 (A) THE EXPIRATION OF THE IMPOUNDMENT PERIOD IMPOSED BY THE SENTENCING  
47 COURT.

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

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

1 3. IF FIFTEEN DAYS HAVE ELAPSED FROM THE EXPIRATION OF THE TERM OF  
2 IMPOUNDMENT IMPOSED BY THE SENTENCING COURT, AND THE MOTOR VEHICLE HAS  
3 NOT BEEN RELEASED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE LOCAL  
4 AUTHORITY SHALL MAKE INQUIRY IN THE MANNER PRESCRIBED BY THE COMMISSION-  
5 ER AS TO THE NAME AND ADDRESS OF THE OWNER AND ANY LIENHOLDER AND UPON  
6 RECEIPT OF SUCH INFORMATION SHALL NOTIFY THE OWNER AND THE LIENHOLDER,  
7 IF ANY, AT HIS OR HER LAST KNOWN ADDRESS BY CERTIFIED MAIL, RETURN  
8 RECEIPT REQUESTED, THAT IF THE VEHICLE IS NOT RETRIEVED PURSUANT TO  
9 SUBDIVISION TWO OF THIS SECTION WITHIN THIRTY DAYS FROM THE DATE THE  
10 NOTICE IS GIVEN, IT WILL BE FORFEITED. IF THE VEHICLE WAS REGISTERED IN  
11 NEW YORK STATE THE LAST KNOWN ADDRESS SHALL BE THAT ADDRESS ON FILE WITH  
12 THE COMMISSIONER. IF THE VEHICLE WAS REGISTERED OUT-OF-STATE OR WAS NOT  
13 REGISTERED, NOTIFICATION SHALL BE MADE IN THE MANNER PRESCRIBED BY THE  
14 COMMISSIONER.

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

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

44 6. FOR THE PURPOSES OF THIS SECTION, THE TERM "LOCAL AUTHORITY" MEANS  
45 THE MUNICIPALITY IN WHICH THE MOTOR VEHICLE WAS SEIZED; EXCEPT THAT IF  
46 THE MOTOR VEHICLE WAS SEIZED ON PROPERTY OF THE NEW YORK STATE THRUWAY  
47 AUTHORITY OR PROPERTY UNDER THE JURISDICTION OF THE OFFICE OF PARKS,  
48 RECREATION AND HISTORIC PRESERVATION, THE DEPARTMENT OF TRANSPORTATION,  
49 OR A PUBLIC AUTHORITY OR COMMISSION, THE TERM "LOCAL AUTHORITY" MEANS  
50 SUCH AUTHORITY, OFFICE, DEPARTMENT, OR COMMISSION. A COUNTY MAY PROVIDE  
51 BY LOCAL LAW THAT THE COUNTY MAY ACT AS THE AGENT FOR A LOCAL AUTHORITY  
52 UNDER THIS SECTION.

53 7. WHEN A VEHICLE HAS BEEN IMPOUNDED PURSUANT TO THIS SECTION, THE  
54 LOCAL AUTHORITY OR ANY PERSON HAVING CUSTODY OF THE VEHICLE SHALL MAKE  
55 THE VEHICLE AVAILABLE OR GRANT ACCESS TO IT TO ANY OWNER OR ANY PERSON  
56 DESIGNATED OR AUTHORIZED BY SUCH OWNER FOR THE PURPOSE OF (A) TAKING

1 POSSESSION OF ANY PERSONAL PROPERTY FOUND WITHIN THE VEHICLE AND (B)  
2 OBTAINING PROOF OF REGISTRATION, FINANCIAL SECURITY, TITLE OR DOCUMENTA-  
3 TION IN SUPPORT THEREOF.

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

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

12 S 4. This act shall take effect immediately and shall apply to  
13 proceedings commenced on and after such date.