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

5338--B

2011-2012 Regular Sessions

I N S E N A T E

May 9, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse -- recommitted to the Committee on Alcoholism and Drug Abuse in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law and the executive law, in relation to enacting "Vince's law" to increase fines, terms of imprisonment and license conditions for violations of provisions of law relating to driving while intoxicated or impaired by drugs

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

Section 1. This act shall be known and may be cited as "Vince's law".

S 2. Paragraphs (b) and (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, are amended to read as follows:

(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 hundred] ONE THOUSAND 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 FIVE HUNDRED dollars nor more than [two] THREE thousand [five hundred] dollars or by imprisonment in a penitentiary or

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

LBD11135-04-2

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.

(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 THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH PERSON BE LIMITED IN ITS SCOPE TO AUTHORIZE SUCH PERSON TO OPERATE A MOTOR VEHICLE ONLY FOR THE PURPOSES OF TRAVELING TO OR FROM WORK OR TO OR FROM A HOSPITAL, DOCTOR'S OFFICE, DENTIST OFFICE, EMERGENCY ROOM OR OTHER LOCATION WHERE MEDICAL SERVICES ARE PROVIDED FOR A PERIOD OF NOT LESS THAN EIGHTEEN MONTHS. ANY VIOLATION OF THE CONDITIONS SET FORTH IN THIS SUBPARAGRAPH SHALL RESULT IN THE IMMEDIATE REVOCATION OF SUCH PERSON'S LICENSE TO OPERATE A MOTOR VEHICLE FOR A PERIOD OF NOT LESS THAN EIGHTEEN MONTHS FROM THE DATE OF SUCH VIOLATION. 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] TWO thousand FIVE HUNDRED dollars nor more than five thousand dollars [or] AND 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] FIVE thousand dollars nor more than ten thousand dollars [or] AND by a period of imprisonment as provided in the penal law, [or by both such fine and imprisonment] PROVIDED THAT SUCH PERIOD OF IMPRISONMENT SHALL NOT BE LESS THAN FIVE YEARS NOR MORE THAN SEVEN YEARS.

(II-A) 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 ON TWO OR MORE OCCASIONS OF ANY COMBINATION 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 AN 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, SHALL BE GUILTY OF A CLASS C FELONY, AND SHALL BE PUNISHED BY A FINE OF NOT LESS THAN TEN THOUSAND DOLLARS NOR MORE THAN FIFTEEN THOUSAND DOLLARS OR BY A PERIOD OF IMPRISONMENT OF NOT MORE THAN FIFTEEN YEARS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

(iii) A. 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.

B. IN ADDITION TO THE IMPOSITION OF ANY FINE AND PERIOD OF IMPRISONMENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT SHALL ALSO ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH PERSON SHALL BE REVOKED FOR A PERIOD OF EIGHTEEN MONTHS.

C. IN ADDITION TO THE IMPOSITION OF ANY FINE AND PERIOD OF IMPRISONMENT SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT SHALL ALSO ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH PERSON SHALL BE REVOKED FOR A PERIOD OF SEVEN YEARS.

D. IN ADDITION TO THE IMPOSITION OF ANY FINE AND PERIOD OF IMPRISONMENT SET FORTH IN SUBPARAGRAPH (II-A) OF THIS PARAGRAPH, THE COURT SHALL ALSO ORDER THAT THE LICENSE TO OPERATE A MOTOR VEHICLE HELD BY SUCH PERSON SHALL BE REVOKED FOR A PERIOD OF TEN YEARS.

S 3. Section 1193 of the vehicle and traffic law is amended by adding a new subdivision 1-b to read as follows:

1-B. ALCOHOL AND CONTROLLED SUBSTANCE MONITORING. (A) IN ADDITION TO ANY OTHER SANCTIONS PROVIDED BY THIS SECTION, THE COURT SHALL UPON CONVICTION OF A PERSON OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR VEHICULAR ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.03 OF THE PENAL LAW, OR VEHICULAR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION

120.04 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF THE PENAL LAW, WHEN SUCH COURT SENTENCES SUCH PERSON TO A PERIOD OF PROBATION, MAKE A CONDITION OF SUCH PROBATION THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR FOR THE DETECTION OF THE USE OF ALCOHOL OR A CONTROLLED SUBSTANCE BY THE SENTENCED PERSON; PROVIDED, HOWEVER, SUCH COURT SHALL NOT AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY ANY SUCH PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE HAS BEEN SUSPENDED OR REVOKED.

(B) A COURT SHALL CONDITION ANY BOND OR PRE-TRIAL RELEASE FOR A CHARGE OF ANY OF THE OFFENSES LISTED IN PARAGRAPH (A) OF THIS SUBDIVISION UPON THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR, AND THE PAYMENT OF THE ASSOCIATED COSTS AND EXPENSES. FURTHERMORE, THE COURT SHALL CONDITION THE SUSPENDED IMPOSITION OF SENTENCE OR SUSPENDED EXECUTION OF SENTENCE UPON SUCH WEARING, AND THE PAYMENT OF THE ASSOCIATED COSTS AND EXPENSES. A COURT MAY WAIVE A FINE OR BOND IN LIEU OF PARTICIPATION IN THE ALCOHOL AND CONTROLLED SUBSTANCE MONITORING ESTABLISHED PURSUANT TO THIS SUBDIVISION. IN ADDITION, A COURT MAY WAIVE THE PAYMENT OF THE ASSOCIATED COST AND EXPENSE OF SUCH PROGRAM WHERE THE PROBATIONER OR DEFENDANT MEETS THE ELIGIBILITY REQUIREMENTS FOR A PUBLIC DEFENDER.

(C) THE FAILURE OF ANY PERSON TO COMPLY WITH THE REQUIREMENTS OF THE ALCOHOL AND CONTROLLED SUBSTANCE MONITORING PROGRAM SHALL RESULT IN THE ISSUANCE OF A REVOCATION ORDER. NO PROVISION OF THIS SUBDIVISION SHALL AUTHORIZE A COURT TO SENTENCE ANY PERSON TO A PERIOD OF PROBATION FOR SUBJECTING HIM OR HER TO THE PROGRAM ESTABLISHED BY THIS SUBDIVISION, UNLESS SUCH PERSON WOULD OTHERWISE HAVE BEEN ELIGIBLE TO BE SENTENCED TO PROBATION.

(D) EVERY PERSON SENTENCED PURSUANT TO THIS SUBDIVISION SHALL PROVIDE PROOF OF COMPLIANCE TO THE SENTENCING COURT IN SUCH MANNER AND AT SUCH TIMES AS THE COURT SHALL REQUIRE.

(E) ALL COSTS AND EXPENSES COLLECTED PURSUANT TO THIS SUBDIVISION SHALL BE PAID IN THE TREASURY OF THE COUNTY OR CITY OF NEW YORK, THE PROCEEDS OF WHICH SHALL BE USED SOLELY FOR THE PURPOSE OF DEFRAYING RECURRING COSTS INCLUDING MAINTAINING EQUIPMENT, FUNDING SUPPORT SERVICES AND ENSURING COMPLIANCE.

S 4. Section 243 of the executive law is amended by adding a new subdivision 5 to read as follows:

5. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS FOR THE ADMINISTRATION OF ALCOHOL AND CONTROLLED SUBSTANCE MONITORING PURSUANT TO SUBDIVISION ONE-B OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW. SUCH RULES AND REGULATIONS SHALL:

(A) PROVIDE FOR PROCEDURES AND APPARATUS FOR TESTING THE ELECTRONIC MONITORING DEVICES;

(B) SET PARTICIPATION AND USER FEES, PROVIDED, THAT SUCH USER FEES SHALL NOT BE LESS THAN THE PRO RATA COST OF THE PURCHASE AND USE OF THE SECURE CONTINUOUS REMOTE ALCOHOL MONITOR; AND

(C) REQUIRE THE SUBMISSION OF REPORTS AND INFORMATION BY LOCAL PROBATION DEPARTMENTS.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.