

3347

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. SWEENEY, COOK, ZEBROWSKI, GALEF, JAFFEE, ROBINSON, ROBERTS, MILLER, STEVENSON, GABRYSZAK, SCHIMEL, GIBSON -- Multi-Sponsored by -- M. of A. THIELE, TITONE, WEISENBERG -- 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-
22 sion two, two-a, three, four or four-a of such section or of vehicular

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

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

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

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

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

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

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