

5398

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

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

AN ACT to amend the navigation law, in relation to operating a vessel 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. Subdivisions 2, 3, 5, paragraph (a) of subdivision 7 and
2 subdivision 11 of section 49-a of the navigation law, as added by chap-
3 ter 805 of the laws of 1992, subdivision 2 as amended by chapter 151 of
4 the laws of 2006 and subparagraph 1 of paragraph (a) of subdivision 3 as
5 amended by chapter 599 of the laws of 2008, are amended to read as
6 follows:
7 2. Offenses: criminal penalties. (a) No person shall operate a vessel
8 upon the waters of the state while his OR HER ability to operate such
9 vessel is impaired by the consumption of alcohol. A violation of this
10 [subdivision] PARAGRAPH shall be an offense and shall be punishable by a
11 fine of not less than three hundred dollars nor more than five hundred
12 dollars, or by imprisonment in a penitentiary or county jail for not
13 more than fifteen days, or by both such fine and imprisonment. A person
14 who operates a vessel in violation of this [subdivision] PARAGRAPH after
15 being convicted of a violation of any [subdivision] PARAGRAPH of this
16 [section] SUBDIVISION within the preceding five years shall be punished
17 by a fine of not less than five hundred dollars nor more than seven
18 hundred fifty dollars, or by imprisonment of not more than thirty days
19 in a penitentiary or county jail or by both such fine and imprisonment.
20 A person who operates a vessel in violation of this [subdivision] PARA-
21 GRAPH after being convicted two or more times of a violation of any
22 [subdivision] PARAGRAPH of this [section] SUBDIVISION within the preced-
23 ing ten years shall be guilty of a misdemeanor, and shall be punished by
24 a fine of not less than seven hundred fifty dollars nor more than
25 fifteen hundred dollars, or by imprisonment of not more than one hundred

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

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1 eighty days in a penitentiary or county jail or by both such fine and
2 imprisonment.

3 (b) No such person shall operate a vessel other than a public vessel
4 while he OR SHE has .08 of one per centum or more by weight of alcohol
5 in his OR HER blood, breath, urine, or saliva, as determined by the
6 chemical test made pursuant to the provisions of subdivision seven of
7 this section.

8 (B-1) NO PERSON SHALL OPERATE A VESSEL WHILE SUCH PERSON HAS A .18 OF
9 ONE PER CENTUM OR MORE BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD AS
10 SHOWN BY CHEMICAL ANALYSIS OF SUCH PERSON'S BLOOD, BREATH, URINE OR
11 SALIVA MADE PURSUANT TO THE PROVISIONS OF SUBDIVISION SEVEN OF THIS
12 SECTION.

13 (B-2) NO PERSON SHALL OPERATE A VESSEL IN VIOLATION OF PARAGRAPH (B)
14 OF THIS SUBDIVISION WHILE A CHILD WHO IS FIFTEEN YEARS OF AGE OR LESS IS
15 A PASSENGER IN SUCH VESSEL.

16 (c) No such person shall operate a public vessel while he OR SHE has
17 .04 of one per centum or more by weight of alcohol in his OR HER blood,
18 breath, urine, or saliva, as determined by the chemical test made pursu-
19 ant to the provisions of subdivision seven of this section.

20 (d) No person shall operate a vessel while he OR SHE is in an intoxi-
21 cated condition.

22 (e) No person shall operate a vessel while his OR HER ability to oper-
23 ate such vessel is impaired by the use of a drug as defined by section
24 one hundred fourteen-a of the vehicle and traffic law.

25 (E-1) NO PERSON SHALL OPERATE A VESSEL WHILE THE PERSON'S ABILITY TO
26 OPERATE SUCH VESSEL IS IMPAIRED BY THE COMBINED INFLUENCE OF DRUGS OR OF
27 ALCOHOL AND ANY DRUG OR DRUGS. FOR THE PURPOSES OF THIS PARAGRAPH, DRUG
28 SHALL HAVE THE SAME MEANING AS IN SECTION ONE HUNDRED FOURTEEN-A OF THE
29 VEHICLE AND TRAFFIC LAW.

30 (f) A violation of paragraph (b), (c), (d) [or], (e) OR (E-1) of this
31 subdivision shall be a misdemeanor and shall be punishable by imprison-
32 ment in a penitentiary or county jail for not more than one year, or by
33 a fine of not less than five hundred dollars nor more than one thousand
34 dollars, or by both such fine and imprisonment. A VIOLATION OF PARA-
35 GRAPH (B-1) OF THIS SUBDIVISION SHALL BE A MISDEMEANOR AND SHALL BE
36 PUNISHABLE BY IMPRISONMENT IN A PENITENTIARY OR COUNTY JAIL FOR NOT MORE
37 THAN ONE YEAR, OR BY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS NOR
38 MORE THAN TWO THOUSAND DOLLARS, OR BY BOTH SUCH FINE AND IMPRISONMENT. A
39 VIOLATION OF PARAGRAPH (B-2) OF THIS SUBDIVISION SHALL BE A CLASS E
40 FELONY. A person who operates a vessel in violation of paragraph (b),
41 (B-1), (c), (d) [or], (e) OR (E-1) of this subdivision after having been
42 convicted of a violation of paragraph (b), (B-1), (B-2), (c), (d) [or],
43 (e) OR (E-1) of this subdivision, or of operating a vessel or public
44 vessel while intoxicated or while under the influence of drugs, within
45 the preceding ten years, shall be guilty of a class E felony and shall
46 be punished by a period of imprisonment as provided in the penal law, or
47 by a fine of not less than one thousand dollars nor more than five thou-
48 sand dollars, or by both such fine and imprisonment. A PERSON WHO OPER-
49 ATES A VESSEL IN VIOLATION OF PARAGRAPH (B-2) OF THIS SUBDIVISION AFTER
50 HAVING BEEN CONVICTED OF A VIOLATION OF PARAGRAPH (B), (B-1), (B-2),
51 (C), (D), (E) OR (E-1) OF THIS SUBDIVISION, OR OF OPERATING A VESSEL OR
52 PUBLIC VESSEL WHILE INTOXICATED OR WHILE UNDER THE INFLUENCE OF DRUGS,
53 WITHIN THE PRECEDING TEN YEARS, SHALL BE GUILTY OF A CLASS D FELONY. A
54 person who operates a vessel in violation of paragraph (b), (B-1), (c),
55 (d) [or], (e) OR (E-1) of this subdivision after having been twice
56 convicted of a violation of any of such paragraph (b), (B-1), (B-2),

1 (c), (d) [or], (e) OR (E-1) of this subdivision or of operating a vessel
2 or public vessel while intoxicated or under the influence of drugs,
3 within the preceding ten years, shall be guilty of a class D felony and
4 shall be punished by a fine of not less than two thousand dollars nor
5 more than ten thousand dollars or by a period of imprisonment as
6 provided in the penal law, or by both such fine and imprisonment. A
7 PERSON WHO OPERATES A VESSEL IN VIOLATION OF PARAGRAPH (B-2) OF THIS
8 SUBDIVISION AFTER HAVING BEEN TWICE CONVICTED OF A VIOLATION OF PARA-
9 GRAPH (B), (B-1), (B-2), (C), (D), (E) OR (E-1) OF THIS SUBDIVISION, OR
10 OF OPERATING A VESSEL OR PUBLIC VESSEL WHILE INTOXICATED OR WHILE UNDER
11 THE INFLUENCE OF DRUGS, WITHIN THE PRECEDING TEN YEARS, SHALL BE GUILTY
12 OF A CLASS C FELONY.

13 3. Privilege to operate a vessel; suspensions. (a) The court shall
14 suspend a person's privilege to operate a vessel and may suspend a
15 vessel registration for:

16 (1) a period of at least six but less than twelve months where an
17 operator is convicted of a violation of paragraph (a) of subdivision two
18 of this section. In determining the length of such suspension or suspen-
19 sions, the court may take into consideration the seriousness of the
20 offense and may impose a period of suspension whereby such suspension
21 may be in effect during a portion of the current or subsequent boating
22 season;

23 (2) a period of twelve months where an operator is convicted of a
24 violation of paragraph (b), (B-1), (c), (d) [or], (e) OR (E-1) of subdi-
25 vision two of this section;

26 (3) a period of twenty-four months where a person is convicted of a
27 violation of paragraph (B-2) OF SUBDIVISION TWO OF THIS SECTION, OR
28 WHERE A PERSON IS CONVICTED OF A VIOLATION OF PARAGRAPH (b), (B-1), (c),
29 (d) [or], (e) OR (E-1) of subdivision two of this section after having
30 been convicted of a violation of paragraph (b), (B-1), (B-2), (c), (d)
31 [or], (e) OR (E-1) of subdivision two of this section or of operating a
32 vessel or public vessel while intoxicated or under the influence of
33 drugs within the preceding ten years[.]; OR

34 (4) A PERIOD OF THIRTY MONTHS WHERE A PERSON IS CONVICTED OF A
35 VIOLATION OF PARAGRAPH (B-2) OF SUBDIVISION TWO OF THIS SECTION AFTER
36 HAVING BEEN CONVICTED OF A VIOLATION OF PARAGRAPH (B), (B-1), (B-2),
37 (C), (D), (E) OR (E-1) OF SUBDIVISION TWO OF THIS SECTION OR OF OPERAT-
38 ING A VESSEL OR PUBLIC VESSEL WHILE INTOXICATED OR UNDER THE INFLUENCE
39 OF DRUGS WITHIN THE PRECEDING TEN YEARS.

40 (b) The court shall report each conviction recorded pursuant to this
41 section to the commissioner of motor vehicles and the commissioner of
42 parks, recreation and historic preservation on forms provided by the
43 department of motor vehicles. Such reports shall include the length of
44 any suspension imposed on the privilege to operate a vessel and any
45 suspension imposed against a vessel registration. The department of
46 motor vehicles shall maintain a record of all convictions and suspen-
47 sions in order to effectuate the provisions of this section.

48 5. Sentencing limitations. Notwithstanding any provision of the penal
49 law, no judge or magistrate shall impose a sentence of unconditional
50 discharge for a violation of paragraph (b), (B-1), (B-2), (c), (d) [or],
51 (e) OR (E-1) of subdivision two of this section nor shall he or she
52 impose a sentence of conditional discharge unless such conditional
53 discharge is accompanied by a sentence of a fine as provided in this
54 section.

55 (a) Any person who operates a vessel on the waters of the state shall
56 be requested to consent to a chemical test of one or more of the follow-

1 ing: breath, blood, urine, or saliva for the purpose of determining the
2 alcoholic or drug content of his OR HER blood, provided that such test
3 is administered at the direction of a police officer: (1) having reason-
4 able cause to believe such person to have been operating in violation of
5 this subdivision or paragraph (a), (b), (B-1), (B-2), (c), (d) [or], (e)
6 OR (E-1) of subdivision two of this section and within two hours after
7 such person has been placed under arrest for any such violation or (2)
8 within two hours after a breath test as provided in paragraph (b) of
9 subdivision six of this section indicates that alcohol has been consumed
10 by such person and in accordance with the rules and regulations estab-
11 lished by the police force of which the officer is a member.

12 11. Limitations. (a) A vessel operator may be convicted of a violation
13 of [paragraphs] PARAGRAPH (a), (b), (B-1), (B-2), (d) [and], (e) OR
14 (E-1) of subdivision two of this section, notwithstanding that the
15 charge laid before the court alleged a violation of paragraph (b),
16 (B-1), (B-2), (d) [or], (e) OR (E-1) of subdivision two of this section,
17 and regardless of whether or not such condition is based on a plea of
18 guilty.

19 (b) In any case wherein the charge laid before the court alleges a
20 violation of paragraph (b), (B-1), (B-2), (c), (d) [or], (e) OR (E-1) of
21 subdivision two of this section, any plea of guilty thereafter entered
22 in satisfaction of such charge must include at least a plea of guilty to
23 the violation of the provisions of one of the paragraphs of such subdivi-
24 sion two and no other disposition by plea of guilty to any other
25 charge in satisfaction of such charge shall be authorized; provided,
26 however, if the district attorney upon reviewing the available evidence
27 determines that the charge of a violation of subdivision two of this
28 section is not warranted, he OR SHE may consent, and the court may allow
29 a disposition by plea of guilty to another charge in satisfaction of
30 such charge.

31 S 2. This act shall take effect on the one hundred eightieth day after
32 it shall have become a law and shall apply to convictions occurring on
33 and after such date.