

4150

2013-2014 Regular Sessions

I N S E N A T E

March 12, 2013

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

AN ACT to amend the penal law, in relation to aggravated vehicular homicide and violent felony offenses; to amend the navigation law, in relation to the definition of pleasure vessel; and to amend the vehicle and traffic law, in relation to reckless driving

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

1 Section 1. Section 125.14 of the penal law, as amended by chapter 496
2 of the laws of 2009, is amended to read as follows:
3 S 125.14 Aggravated vehicular homicide.
4 A person is guilty of aggravated vehicular homicide when he or she
5 engages in reckless driving as defined by section twelve hundred twelve
6 of the vehicle and traffic law, and commits the crime of vehicular
7 manslaughter in the second degree as defined in section 125.12 of this
8 article, and either:
9 (1) commits such crimes while operating a [motor] vehicle while such
10 person has .18 of one per centum or more by weight of alcohol in such
11 person's blood as shown by chemical analysis of such person's blood,
12 breath, urine or saliva made pursuant to the provisions of section eleven
13 hundred ninety-four of the vehicle and traffic law OR WHILE OPERATING
14 A VESSEL OR PUBLIC VESSEL WHILE SUCH PERSON HAS .18 OF ONE PER CENTUM OR
15 MORE BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD AS SHOWN BY CHEMICAL
16 ANALYSIS OF SUCH PERSON'S BLOOD, BREATH, URINE OR SALIVA MADE PURSUANT
17 TO THE PROVISIONS OF SECTION FORTY-NINE-A OF THE NAVIGATION LAW;
18 (2) commits such crimes while knowing or having reason to know that:
19 (a) his or her license or his or her privilege of operating a [motor]
20 vehicle in another state or his or her privilege of obtaining a license
21 to operate a [motor] vehicle in another state is suspended or revoked
22 and such suspension or revocation is based upon a conviction in such
23 other state for an offense which would, if committed in this state,

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

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1 constitute a violation of any of the provisions of section eleven
2 hundred ninety-two of the vehicle and traffic law OR SECTION
3 FORTY-NINE-A OF THE NAVIGATION LAW; or (b) his or her license or his or
4 her privilege of operating a [motor] vehicle in this state or his or her
5 privilege of obtaining a license issued by the commissioner of motor
6 vehicles is suspended or revoked and such suspension or revocation is
7 based upon either a refusal to submit to a chemical test pursuant to
8 section eleven hundred ninety-four of the vehicle and traffic law OR
9 SECTION FORTY-NINE-A OF THE NAVIGATION LAW or following a conviction for
10 a violation of any of the provisions of section eleven hundred ninety-
11 two of the vehicle and traffic law OR A VIOLATION OF ANY PROVISIONS OF
12 SECTION FORTY-NINE-A OF THE NAVIGATION LAW;

13 (3) has previously been convicted of violating any of the provisions
14 of section eleven hundred ninety-two of the vehicle and traffic law OR
15 SECTION FORTY-NINE-A OF THE NAVIGATION LAW within the preceding ten
16 years, provided that, for the purposes of this subdivision, a conviction
17 in any other state or jurisdiction for an offense which, if committed in
18 this state, would constitute a violation of section eleven hundred nine-
19 ty-two of the vehicle and traffic law, OR SECTION FORTY-NINE-A OF THE
20 NAVIGATION LAW shall be treated as a violation of such law;

21 (4) causes the death of more than one other person;

22 (5) causes the death of one person and the serious physical injury of
23 at least one other person;

24 (6) has previously been convicted of violating any provision of this
25 article or article one hundred twenty of this title involving the opera-
26 tion of a [motor] vehicle, or was convicted in any other state or juris-
27 diction of an offense involving the operation of a [motor] vehicle
28 which, if committed in this state, would constitute a violation of this
29 article or article one hundred twenty of this title; or

30 (7) commits such crime while operating a [motor] vehicle while a child
31 who is fifteen years of age or less is a passenger in such [motor] vehi-
32 cle and causes the death of such child.

33 If it is established that the person operating such [motor] vehicle
34 caused such death or deaths while unlawfully intoxicated or impaired by
35 the use of alcohol or a drug, or by the combined influence of drugs or
36 of alcohol and any drug or drugs, then there shall be a rebuttable
37 presumption that, as a result of such intoxication or impairment by the
38 use of alcohol or a drug, or by the combined influence of drugs or of
39 alcohol and any drug or drugs, such person operated the [motor] vehicle
40 in a manner that caused such death or deaths, as required by this
41 section and section 125.12 of this article.

42 Aggravated vehicular homicide is a class B felony.

43 S 2. Paragraph (c) of subdivision 6 of section 2 of the navigation
44 law, as amended by chapter 484 of the laws of 2005, is amended to read
45 as follows:

46 (c) "Pleasure vessel" shall mean and include every vessel INCLUDING
47 ANY VESSEL POWERED BY SAIL, not within the classification of public
48 vessel or residential vessel. However, the provisions of this chapter
49 shall not apply to rowboats, canoes and kayaks except as otherwise
50 expressly provided.

51 S 3. Section 1212 of the vehicle and traffic law, as added by chapter
52 47 of the laws of 1988, is amended to read as follows:

53 S 1212. Reckless driving. Reckless driving shall mean driving or using
54 any motor vehicle, VESSEL OR PUBLIC VESSEL AS DEFINED BY SECTION FORTY-
55 NINE-A OF THE NAVIGATION LAW, motorcycle, SNOWMOBILE, SNOW PLOWS, TRAC-
56 TORS, FARM EQUIPMENT, ALL TERRAIN TYPE VEHICLES, or any other vehicle OR

1 VESSEL propelled by any power other than muscular power or any appliance
2 or accessory thereof in a manner which unreasonably interferes with the
3 free and proper use of the public highway OR NAVIGABLE WATERWAYS, or
4 unreasonably endangers users of the public highway OR NAVIGABLE WATER-
5 WAYS. Reckless driving is prohibited. Every person violating this
6 provision shall be guilty of a misdemeanor.

7 S 4. Paragraph (a) of subdivision 1 of section 70.02 of the penal law,
8 as amended by chapter 320 of the laws of 2006, is amended to read as
9 follows:

10 (a) Class B violent felony offenses: an attempt to commit the class
11 A-I felonies of murder in the second degree as defined in section
12 125.25, kidnapping in the first degree as defined in section 135.25, and
13 arson in the first degree as defined in section 150.20; manslaughter in
14 the first degree as defined in section 125.20, aggravated manslaughter
15 in the first degree as defined in section 125.22, rape in the first
16 degree as defined in section 130.35, criminal sexual act in the first
17 degree as defined in section 130.50, aggravated sexual abuse in the
18 first degree as defined in section 130.70, course of sexual conduct
19 against a child in the first degree as defined in section 130.75;
20 assault in the first degree as defined in section 120.10, AGGRAVATED
21 VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14, kidnapping in the
22 second degree as defined in section 135.20, burglary in the first degree
23 as defined in section 140.30, arson in the second degree as defined in
24 section 150.15, robbery in the first degree as defined in section
25 160.15, incest in the first degree as defined in section 255.27, crimi-
26 nal possession of a weapon in the first degree as defined in section
27 265.04, criminal use of a firearm in the first degree as defined in
28 section 265.09, criminal sale of a firearm in the first degree as
29 defined in section 265.13, aggravated assault upon a police officer or a
30 peace officer as defined in section 120.11, gang assault in the first
31 degree as defined in section 120.07, intimidating a victim or witness in
32 the first degree as defined in section 215.17, hindering prosecution of
33 terrorism in the first degree as defined in section 490.35, criminal
34 possession of a chemical weapon or biological weapon in the second
35 degree as defined in section 490.40, and criminal use of a chemical
36 weapon or biological weapon in the third degree as defined in section
37 490.47.

38 S 5. Section 134 of the vehicle and traffic law is amended to read as
39 follows:

40 S 134. Public highway. Any highway, road, street, avenue, alley,
41 public place, public driveway, PUBLIC WATERWAY OR WATERS OF THE STATE AS
42 DEFINED IN SECTION FORTY-NINE-A OF THE NAVIGATION LAW or any other
43 public way.

44 S 6. Section 125.13 of the penal law, as amended by chapter 496 of the
45 laws of 2009, is amended to read as follows:

46 S 125.13 Vehicular manslaughter in the first degree.

47 A person is guilty of vehicular manslaughter in the first degree when
48 he or she commits the crime of vehicular manslaughter in the second
49 degree as defined in section 125.12 of this article, and either:

50 (1) commits such crime while operating a [motor] vehicle while such
51 person has .18 of one per centum or more by weight of alcohol in such
52 person's blood as shown by chemical analysis of such person's blood,
53 breath, urine or saliva made pursuant to the provisions of section elev-
54 en hundred ninety-four of the vehicle and traffic law OR WHILE OPERATING
55 A VESSEL OR PUBLIC VESSEL WHILE SUCH PERSON HAS .18 OF ONE PER CENTUM OR
56 MORE BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD AS SHOWN BY CHEMICAL

1 ANALYSIS OF SUCH PERSON'S BLOOD, BREATH, URINE OR SALIVA MADE PURSUANT
2 TO THE PROVISIONS OF SECTION FORTY-NINE-A OF THE NAVIGATION LAW;

3 (2) commits such crime while knowing or having reason to know that:
4 (a) his or her license or his or her privilege of operating a [motor]
5 vehicle in another state or his or her privilege of obtaining a license
6 to operate a [motor] vehicle in another state is suspended or revoked
7 and such suspension or revocation is based upon a conviction in such
8 other state for an offense which would, if committed in this state,
9 constitute a violation of any of the provisions of section eleven
10 hundred ninety-two of the vehicle and traffic law OR SECTION
11 FORTY-NINE-A OF THE NAVIGATION LAW; or (b) his or her license or his or
12 her privilege of operating a [motor] vehicle in the state or his or her
13 privilege of obtaining a license issued by the commissioner of motor
14 vehicles is suspended or revoked and such suspension or revocation is
15 based upon either a refusal to submit to a chemical test pursuant to
16 section eleven hundred ninety-four of the vehicle and traffic law OR
17 SECTION FORTY-NINE-A OF THE NAVIGATION LAW, or following a conviction
18 for a violation of any of the provisions of section eleven hundred nine-
19 ty-two of the vehicle and traffic law OR A VIOLATION OF ANY PROVISIONS
20 OF SECTION FORTY-NINE-A OF THE NAVIGATION LAW;

21 (3) has previously been convicted of violating any of the provisions
22 of section eleven hundred ninety-two of the vehicle and traffic law OR
23 SECTION FORTY-NINE-A OF THE NAVIGATION LAW within the preceding ten
24 years, provided that, for the purposes of this subdivision, a conviction
25 in any other state or jurisdiction for an offense which, if committed in
26 this state, would constitute a violation of section eleven hundred nine-
27 ty-two of the vehicle and traffic law OR SECTION FORTY-NINE-A OF THE
28 NAVIGATION LAW, shall be treated as a violation of such law;

29 (4) causes the death of more than one other person;

30 (5) has previously been convicted of violating any provision of this
31 article or article one hundred twenty of this title involving the opera-
32 tion of a [motor] vehicle, or was convicted in any other state or juris-
33 diction of an offense involving the operation of a [motor] vehicle
34 which, if committed in this state, would constitute a violation of this
35 article or article one hundred twenty of this title; or

36 (6) commits such crime while operating a [motor] vehicle while a child
37 who is fifteen years of age or less is a passenger in such [motor] vehi-
38 cle and causes the death of such child.

39 If it is established that the person operating such [motor] vehicle
40 caused such death or deaths while unlawfully intoxicated or impaired by
41 the use of alcohol or a drug, or by the combined influence of drugs or
42 of alcohol and any drug or drugs, then there shall be a rebuttable
43 presumption that, as a result of such intoxication or impairment by the
44 use of alcohol or a drug, or by the combined influence of drugs or of
45 alcohol and any drug or drugs, such person operated the [motor] vehicle
46 in a manner that caused such death or deaths, as required by this
47 section and section 125.12 of this article.

48 Vehicular manslaughter in the first degree is a class C felony.

49 S 7. Section 125.12 of the penal law, as amended by chapter 732 of the
50 laws of 2006, is amended to read as follows:

51 S 125.12 Vehicular manslaughter in the second degree.

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

54 (1) operates a [motor] vehicle in violation of subdivision two, three,
55 four or four-a of section eleven hundred ninety-two of the vehicle and
56 traffic law or operates a vessel or public vessel in violation of para-

graph (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, 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 SECTION FORTY-NINE-A OF THE NAVIGATION 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, 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, 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, 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 unlawfully intoxicated or impaired by the use of alcohol or a drug, 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, 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 8. This act shall take effect on the one hundred twentieth day after it shall have become a law.