

196

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. GANTT -- read once and referred to the Committee
on Transportation

AN ACT to amend the vehicle and traffic law, in relation to increasing
the criminal penalties for driving while ability impaired and driving
while intoxicated or while ability impaired by drugs and increasing
the penalties for aggravated unlicensed operation of a vehicle in the
first and second degrees

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

1 Section 1. Subdivision 1 of section 1193 of the vehicle and traffic
2 law, as added by chapter 47 of the laws of 1988, paragraph (a) as
3 amended by chapter 75 of the laws of 1994, paragraphs (b) and (c) as
4 amended by chapter 169 of the laws of 2013, subparagraph (ii-a) of para-
5 graph (c) as added by chapter 191 of the laws of 2014, paragraph (d) as
6 amended by chapter 732 of the laws of 2006, paragraph (f) as added by
7 chapter 714 of the laws of 1990 and paragraph (g) as amended by section
8 57 of part A of chapter 56 of the laws of 2010, is amended to read as
9 follows:
10 1. Criminal penalties. (a) Driving while ability impaired. A violation
11 of subdivision one of section eleven hundred ninety-two of this article
12 shall be a traffic infraction and shall be punishable by a fine of not
13 less than [three] FIVE hundred dollars nor more than [five] SEVEN
14 hundred FIFTY dollars or by imprisonment in a penitentiary or county
15 jail for not more than fifteen days, or by both such fine and imprison-
16 ment. A person who operates a vehicle in violation of such subdivision
17 after having been convicted of a violation of any subdivision of section
18 eleven hundred ninety-two of this article within the preceding five
19 years shall be punished by a fine of not less than [five] SEVEN hundred
20 FIFTY dollars nor more than [seven hundred fifty] ONE THOUSAND dollars,
21 or by imprisonment of not more than thirty days in a penitentiary or
22 county jail or by both such fine and imprisonment. A person who operates
23 a vehicle in violation of such subdivision after having been convicted
24 two or more times of a violation of any subdivision of section eleven

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

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1 hundred ninety-two of this article within the preceding ten years shall
2 be guilty of a misdemeanor, and shall be punished by a fine of not less
3 than [seven hundred fifty] ONE THOUSAND dollars nor more than fifteen
4 hundred dollars, or by imprisonment of not more than one hundred eighty
5 days in a penitentiary or county jail or by both such fine and imprison-
6 ment.

7 (b) Driving while intoxicated or while ability impaired by drugs or
8 while ability impaired by the combined influence of drugs or of alcohol
9 and any drug or drugs; aggravated driving while intoxicated; misdemeanor
10 offenses. (i) A violation of subdivision two, three, four or four-a of
11 section eleven hundred ninety-two of this article shall be a misdemeanor
12 and shall be punishable by a fine of not less than [five] SEVEN hundred
13 FIFTY dollars nor more than one thousand FIVE HUNDRED dollars, or by
14 imprisonment in a penitentiary or county jail for not more than one
15 year, or by both such fine and imprisonment. A violation of paragraph
16 (a) of subdivision two-a of section eleven hundred ninety-two of this
17 article shall be a misdemeanor and shall be punishable by a fine of not
18 less than one thousand dollars nor more than two thousand five hundred
19 dollars or by imprisonment in a penitentiary or county jail for not more
20 than one year, or by both such fine and imprisonment.

21 (ii) In addition to the imposition of any fine or period of imprison-
22 ment set forth in this paragraph, the court shall also sentence such
23 person convicted of, or adjudicated a youthful offender for, a violation
24 of subdivision two, two-a or three of section eleven hundred ninety-two
25 of this article to a term of probation or conditional discharge, as a
26 condition of which it shall order such person to install and maintain,
27 in accordance with the provisions of section eleven hundred ninety-eight
28 of this article, an ignition interlock device in any motor vehicle owned
29 or operated by such person during the term of such probation or condi-
30 tional discharge imposed for such violation of section eleven hundred
31 ninety-two of this article and in no event for a period of less than
32 twelve months; provided, however, that such period of interlock
33 restriction shall terminate upon submission of proof that such person
34 installed and maintained an ignition interlock device for at least six
35 months, unless the court ordered such person to install and maintain an
36 ignition interlock device for a longer period as authorized by this
37 subparagraph and specified in such order. The period of interlock
38 restriction shall commence from the earlier of the date of sentencing,
39 or the date that an ignition interlock device was installed in advance
40 of sentencing. Provided, however, the court may not authorize the opera-
41 tion of a motor vehicle by any person whose license or privilege to
42 operate a motor vehicle has been revoked pursuant to the provisions of
43 this section.

44 (c) Felony offenses. (i) A person who operates a vehicle (A) in
45 violation of subdivision two, two-a, three, four or four-a of section
46 eleven hundred ninety-two of this article after having been convicted of
47 a violation of subdivision two, two-a, three, four or four-a of such
48 section or of vehicular assault in the second or first degree, as
49 defined, respectively, in sections 120.03 and 120.04 and aggravated
50 vehicular assault as defined in section 120.04-a of the penal law or of
51 vehicular manslaughter in the second or first degree, as defined,
52 respectively, in sections 125.12 and 125.13 and aggravated vehicular
53 homicide as defined in section 125.14 of such law, within the preceding
54 ten years, or (B) in violation of paragraph (b) of subdivision two-a of
55 section eleven hundred ninety-two of this article shall be guilty of a
56 class E felony, and shall be punished by a fine of not less than one

1 thousand FIVE HUNDRED dollars nor more than five thousand dollars or by
2 a period of imprisonment as provided in the penal law, or by both such
3 fine and imprisonment.

4 (ii) A person who operates a vehicle in violation of subdivision two,
5 two-a, three, four or four-a of section eleven hundred ninety-two of
6 this article after having been convicted of a violation of subdivision
7 two, two-a, three, four or four-a of such section or of vehicular
8 assault in the second or first degree, as defined, respectively, in
9 sections 120.03 and 120.04 and aggravated vehicular assault as defined
10 in section 120.04-a of the penal law or of vehicular manslaughter in the
11 second or first degree, as defined, respectively, in sections 125.12 and
12 125.13 and aggravated vehicular homicide as defined in section 125.14 of
13 such law, twice within the preceding ten years, shall be guilty of a
14 class D felony, and shall be punished by a fine of not less than two
15 thousand FIVE HUNDRED dollars nor more than ten thousand dollars or by a
16 period of imprisonment as provided in the penal law, or by both such
17 fine and imprisonment.

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

32 (iii) In addition to the imposition of any fine or period of imprison-
33 ment set forth in this paragraph, the court shall also sentence such
34 person convicted of, or adjudicated a youthful offender for, a violation
35 of subdivision two, two-a or three of section eleven hundred ninety-two
36 of this article to a period of probation or conditional discharge, as a
37 condition of which it shall order such person to install and maintain,
38 in accordance with the provisions of section eleven hundred ninety-eight
39 of this article, an ignition interlock device in any motor vehicle owned
40 or operated by such person during the term of such probation or condi-
41 tional discharge imposed for such violation of section eleven hundred
42 ninety-two of this article and in no event for a period of less than
43 twelve months; provided, however, that such period of interlock
44 restriction shall terminate upon submission of proof that such person
45 installed and maintained an ignition interlock device for at least six
46 months, unless the court ordered such person to install and maintain a
47 ignition interlock device for a longer period as authorized by this
48 subparagraph and specified in such order. The period of interlock
49 restriction shall commence from the earlier of the date of sentencing,
50 or the date that an ignition interlock device was installed in advance
51 of sentencing. Provided, however, the court may not authorize the opera-
52 tion of a motor vehicle by any person whose license or privilege to
53 operate a motor vehicle has been revoked pursuant to the provisions of
54 this section.

55 (d) Alcohol or drug related offenses; special vehicles. (1) Except as
56 provided in subparagraph four of this paragraph, a violation of subdivi-

1 sion one, two, three, four or four-a of section eleven hundred ninety-
2 two of this article wherein the violator is operating a taxicab as
3 defined in section one hundred forty-eight-a of this chapter, or livery
4 as defined in section one hundred twenty-one-e of this chapter, and such
5 taxicab or livery is carrying a passenger for compensation, or a truck
6 with a GVWR of more than eighteen thousand pounds but not more than
7 twenty-six thousand pounds and which is not a commercial motor vehicle
8 shall be a misdemeanor punishable by a fine of not less than [five
9 hundred] ONE THOUSAND dollars nor more than [fifteen] TWO THOUSAND FIVE
10 hundred dollars or by a period of imprisonment as provided in the penal
11 law, or by both such fine and imprisonment. A violation of subdivision
12 two-a of section eleven hundred ninety-two of this article wherein the
13 violator is operating a taxicab as defined in section one hundred
14 forty-eight-a of this chapter, or livery as defined in section one
15 hundred twenty-one-e of this chapter, and such taxicab or livery is
16 carrying a passenger for compensation, or a truck with a GVWR of more
17 than eighteen thousand pounds but not more than twenty-six thousand
18 pounds and which is not a commercial motor vehicle shall be a class E
19 felony punishable by a fine of not less than one thousand dollars nor
20 more than five thousand dollars or by a period of imprisonment as
21 provided in the penal law, or by both such fine and imprisonment.

22 (1-a) A violation of subdivision one of section eleven hundred nine-
23 ty-two of this article wherein the violator is operating a school bus as
24 defined in section one hundred forty-two of this chapter and such school
25 bus is carrying at least one student passenger shall be a misdemeanor
26 punishable by a fine of not less than [five hundred] ONE THOUSAND
27 dollars nor more than [fifteen] TWO THOUSAND FIVE hundred dollars or by
28 a period of imprisonment as provided in the penal law, or by both such
29 fine and imprisonment.

30 (2) A violation of subdivision five of section eleven hundred ninety-
31 two of this article shall be a traffic infraction punishable as provided
32 in paragraph (a) of this subdivision. Except as provided in subparagraph
33 three or five of this paragraph, a violation of subdivision one, two,
34 three, four, four-a or six of section eleven hundred ninety-two of this
35 article wherein the violator is operating a commercial motor vehicle, or
36 any motor vehicle registered or registerable under schedule F of subdi-
37 vision seven of section four hundred one of this chapter shall be a
38 misdemeanor. A violation of subdivision one, two, three, four or four-a
39 of section eleven hundred ninety-two of this article shall be punishable
40 by a fine of not less than [five hundred] ONE THOUSAND dollars nor more
41 than [fifteen] TWO THOUSAND FIVE hundred dollars or by a period of
42 imprisonment as provided in the penal law, or by both such fine and
43 imprisonment. A violation of subdivision six of section eleven hundred
44 ninety-two of this article shall be punishable by a fine of not less
45 than [five hundred] ONE THOUSAND dollars nor more than [fifteen] TWO
46 THOUSAND FIVE hundred dollars or by a period of imprisonment not to
47 exceed one hundred eighty days, or by both such fine and imprisonment. A
48 person who operates any such vehicle in violation of such subdivision
49 six after having been convicted of a violation of subdivision one, two,
50 two-a, three, four, four-a or six of section eleven hundred ninety-two
51 of this article within the preceding five years shall be punishable by a
52 fine of not less than TWO THOUSAND five hundred dollars nor more than
53 [fifteen hundred] FIVE THOUSAND dollars or by a period of imprisonment
54 as provided in the penal law, or by both such fine and imprisonment. A
55 violation of subdivision two-a of section eleven hundred ninety-two of
56 this article wherein the violator is operating a commercial motor vehi-

cle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(3) A violation of subdivision one of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives shall be a misdemeanor punishable by a fine of not less than TWO THOUSAND five hundred dollars nor more than [fifteen hundred] FIVE THOUSAND dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(4) (i) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph within the preceding ten years, shall be guilty of a class E felony, which shall be punishable by a fine of not less than [one] TWO thousand FIVE HUNDRED dollars nor more than [five] TEN thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of two or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class E felony, which shall be punishable by a fine of not less than [one] THREE thousand FIVE HUNDRED dollars nor more than [five] TEN thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

(ii) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph twice within the preceding ten years, shall be guilty of a class D felony, which shall be punishable by a fine of not less than [two] FIVE thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of three or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class D felony, which shall be punishable by a fine of not less than [two] FIVE thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and

1 imprisonment. In addition, any person sentenced pursuant to this subpar-
2 agraph shall be subject to the disqualification provided in subparagraph
3 three of paragraph (e) of subdivision two of this section.

4 (4-a) A violation of subdivision two, three, four or four-a of section
5 eleven hundred ninety-two of this article wherein the violator is oper-
6 ating a school bus as defined in section one hundred forty-two of this
7 chapter and such school bus is carrying at least one student passenger
8 shall be a class E felony punishable by a fine of not less than [one]
9 TWO thousand FIVE HUNDRED dollars nor more than [five] TEN thousand
10 dollars, or by a period of imprisonment as provided in the penal law, or
11 by both such fine and imprisonment. A violation of subdivision two-a of
12 section eleven hundred ninety-two of this article wherein the violator
13 is operating a school bus as defined in section one hundred forty-two of
14 this chapter and such school bus is carrying at least one student
15 passenger shall be a class D felony punishable by a fine of not less
16 than two thousand dollars nor more than ten thousand dollars, or by a
17 period of imprisonment as provided in the penal law, or by both such
18 fine and imprisonment.

19 (5) A violation of subdivision two, three, four or four-a of section
20 eleven hundred ninety-two of this article wherein the violator is oper-
21 ating a motor vehicle with a gross vehicle weight rating of more than
22 eighteen thousand pounds which contains flammable gas, radioactive mate-
23 rials or explosives, shall be a class E felony punishable by a fine of
24 not less than [one] TWO thousand FIVE HUNDRED dollars NOR MORE THAN TEN
25 THOUSAND DOLLARS and such other penalties as provided for in the penal
26 law; provided, however, that a conviction for such violation shall not
27 be considered a predicate felony pursuant to section 70.06 of such law,
28 or a previous felony conviction pursuant to section 70.10 of such law. A
29 violation of subdivision two-a of section eleven hundred ninety-two of
30 this article wherein the violator is operating a motor vehicle with a
31 gross vehicle weight rating of more than eighteen thousand pounds which
32 contains flammable gas, radioactive materials or explosives, shall be a
33 class D felony punishable by a fine of not less than two thousand nor
34 more than ten thousand dollars and such other penalties as provided for
35 in the penal law; provided, however, that a conviction for such
36 violation shall not be considered a predicate felony pursuant to section
37 70.06 of such law, or a previous felony conviction pursuant to section
38 70.10 of such law.

39 (6) The sentences required to be imposed by subparagraph one, one-a,
40 two, three, four, four-a or five of this paragraph shall be imposed
41 notwithstanding any contrary provision of this chapter or the penal law.

42 (7) Nothing contained in this paragraph shall prohibit the imposition
43 of a charge of any other felony set forth in this or any other provision
44 of law for any acts arising out of the same incident.

45 (e) Certain sentences prohibited. Notwithstanding any provisions of
46 the penal law, no judge or magistrate shall impose a sentence of uncon-
47 ditional discharge for a violation of any subdivision of section eleven
48 hundred ninety-two of this article nor shall a judge or magistrate
49 impose a sentence of conditional discharge, IMPRISONMENT or probation
50 unless such conditional discharge, IMPRISONMENT or probation is accompa-
51 nied by a sentence of a fine as provided in this subdivision.

52 (f) Where the court imposes a sentence for a violation of section
53 eleven hundred ninety-two of this article, the court may require the
54 defendant, as a part of or as a condition of such sentence, to attend a
55 single session conducted by a victims impact program. For purposes of
56 this section, "victims impact program" means a program operated by a

1 county, a city with a population of one million or more, by a not-for-
2 profit organization authorized by any such county or city, or a combina-
3 tion thereof, in which presentations are made concerning the impact of
4 operating a motor vehicle while under the influence of alcohol or drugs
5 to one or more persons who have been convicted of such offenses. A
6 description of any such program shall be filed with the commissioner and
7 with the coordinator of the special traffic options program for driving
8 while intoxicated established pursuant to section eleven hundred nine-
9 ty-seven of this article, and shall be made available to the court upon
10 request. Nothing contained herein shall be construed to require any
11 governmental entity to create such a victim impact program.

12 (g) The office of probation and correctional alternatives shall recom-
13 mend to the commissioner of the division of criminal justice services
14 regulations governing the monitoring of compliance by persons ordered to
15 install and maintain ignition interlock devices to provide standards for
16 monitoring by departments of probation, and options for monitoring of
17 compliance by such persons, that counties may adopt as an alternative to
18 monitoring by a department of probation.

19 S 2. Paragraph (b) of subdivision 2 of section 511 of the vehicle and
20 traffic law, as amended by chapter 607 of the laws of 1993, is amended
21 to read as follows:

22 (b) Aggravated unlicensed operation of a motor vehicle in the second
23 degree is a misdemeanor. When a person is convicted of this crime under
24 subparagraph (i) of paragraph (a) of this subdivision, the sentence of
25 the court must be: (i) a fine of not less than five hundred dollars; and
26 (ii) a term of imprisonment not to exceed one hundred eighty days; or
27 (iii) where appropriate a sentence of probation as provided in subdivi-
28 sion six of this section; or (iv) a term of imprisonment as a condition
29 of a sentence of probation as provided in the penal law and consistent
30 with this section. When a person is convicted of this crime under
31 subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision,
32 the sentence of the court must be: (i) a fine of not less than [five
33 hundred] ONE THOUSAND dollars nor more than [one] TWO thousand FIVE
34 HUNDRED dollars; and (ii) a term of imprisonment of not less than seven
35 days nor more than one hundred eighty days, or (iii) where appropriate a
36 sentence of probation as provided in subdivision six of this section; or
37 (iv) a term of imprisonment as a condition of a sentence of probation as
38 provided in the penal law and consistent with this section.

39 S 3. Paragraph (b) of subdivision 3 of section 511 of the vehicle and
40 traffic law, as separately amended by chapters 786 and 892 of the laws
41 of 1990, is amended to read as follows:

42 (b) Aggravated unlicensed operation of a motor vehicle in the first
43 degree is a class E felony. When a person is convicted of this crime,
44 the sentence of the court must be: (i) a fine in an amount not less than
45 [five hundred] TWO THOUSAND dollars nor more than five thousand dollars;
46 and (ii) a term of imprisonment as provided in the penal law, or (iii)
47 where appropriate and a term of imprisonment is not required by the
48 penal law, a sentence of probation as provided in subdivision six of
49 this section, or (iv) a term of imprisonment as a condition of a
50 sentence of probation as provided in the penal law.

51 S 4. This act shall take effect on the one hundred twentieth day after
52 it shall have become a law.