

STATE OF NEW YORK

2181

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

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

AN ACT to amend the vehicle and traffic law, in relation to sanctions and criminal penalties for operating a motor vehicle while under the influence of alcohol; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1192 of the vehicle and traffic law is amended by
2 adding two new subdivisions 2-b and 2-c to read as follows:

3 2-b. Criminal intoxication; per se. No person shall operate a motor
4 vehicle while such person has .25 of one per centum or more and less
5 than .30 of one per centum by weight of alcohol in the person's blood as
6 shown by a chemical analysis of such person's blood, breath, urine or
7 saliva, made pursuant to the provisions of section eleven hundred nine-
8 ty-four of this article.

9 2-c. Aggravated criminal intoxication; per se. No person shall oper-
10 ate a motor vehicle while such person has .30 of one per centum or more
11 by weight of alcohol in the person's blood as shown by a chemical analy-
12 sis of such person's blood, breath, urine or saliva, made pursuant to
13 the provisions of section eleven hundred ninety-four of this article.

14 § 2. Section 1193 of the vehicle and traffic law is REPEALED and a new
15 section 1193 is added to read as follows:

16 § 1193. Sanctions. 1. Criminal penalties. (a) Driving while ability
17 impaired. A violation of subdivision one, two or two-a of section eleven
18 hundred ninety-two of this article shall be a felony and shall be
19 punishable by a fine of one thousand dollars and by imprisonment in a
20 state correctional facility for not less than one year nor more than two
21 years.

22 (b) Aggravated driving while intoxicated. A violation of subdivision
23 two-a of section eleven hundred ninety-two of this article shall be a

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

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1 felony and shall be punishable by a fine of two thousand dollars and by
2 imprisonment in a state correctional facility for not less than two
3 years nor more than three years.

4 (c) Criminal intoxication. A violation of subdivision two-b of section
5 eleven hundred ninety-two of this article shall be a felony and shall be
6 punishable by a fine of three thousand dollars and by imprisonment in a
7 state correctional facility for not less than three years nor more than
8 four years.

9 (d) Aggravated criminal intoxication. A violation of subdivision two-c
10 of section eleven hundred ninety-two of this article shall be a felony
11 and shall be punishable by a fine of five thousand dollars and by impri-
12 sonment in a state correctional facility for not less than three years
13 nor more than five years.

14 (e) Ability impaired by drugs; misdemeanor offense. A violation of
15 subdivision four of section eleven hundred ninety-two of this article
16 shall be a misdemeanor and shall be punishable by a fine of not less
17 than five hundred dollars nor more than one thousand dollars, or by
18 imprisonment in a penitentiary or county jail for not more than one
19 year, or by both such fine and imprisonment.

20 (f) Certain sentences prohibited. Notwithstanding any provisions of
21 the penal law, no judge or magistrate shall impose a sentence of uncon-
22 ditional discharge for a violation of any subdivision of section eleven
23 hundred ninety-two of this article nor shall a judge or magistrate
24 impose a sentence of conditional discharge or probation unless such
25 conditional discharge or probation is accompanied by a sentence of a
26 fine as provided in this subdivision.

27 (g) The sentences required to be imposed by this subdivision shall be
28 imposed notwithstanding any contrary provision of this chapter or the
29 penal law.

30 (h) Nothing contained in this paragraph shall prohibit the imposition
31 of a charge of any other felony set forth in this or any other provision
32 of law for any acts arising out of the same incident.

33 (i) Where the court imposes a sentence for a violation of section
34 eleven hundred ninety-two of this article, the court may require the
35 defendant, as a part of or as a condition of such sentence, to attend a
36 single session conducted by a victims impact program. For purposes of
37 this section, "victims impact program" means a program operated by a
38 county, a city with a population of one million or more, by a not-for-
39 profit organization authorized by any such county or city, or a combina-
40 tion thereof, in which presentations are made concerning the impact of
41 operating a motor vehicle while under the influence of alcohol or drugs
42 to one or more persons who have been convicted of such offenses. A
43 description of any such program shall be filed with the commissioner and
44 with the coordinator of the special traffic options program for driving
45 while intoxicated established pursuant to section eleven hundred nine-
46 ty-seven of this article, and shall be made available to the court upon
47 request. Nothing contained herein shall be construed to require any
48 governmental entity to create such a victims impact program.

49 2. License sanctions. (a) Revocations. A license shall be revoked and
50 a registration may be revoked for the following minimum periods:

51 (1) Driving while ability impaired. One year, where the holder is
52 convicted of a violation of subdivision two of section eleven hundred
53 ninety-two of this article committed within five years of a conviction
54 for a violation of any subdivision of section eleven hundred ninety-two
55 of this article.

1 (2) Driving while ability impaired by drugs or by the combined influ-
2 ence of drugs or of alcohol and any drug or drugs. Six months, where
3 the holder is convicted of a violation of subdivision four or four-a of
4 section eleven hundred ninety-two of this article.

5 (3) Aggravated driving while intoxicated. Two years, where the holder
6 is convicted of a violation of subdivision two-a of section eleven
7 hundred ninety-two of this article committed within five years of a
8 conviction for a violation of any subdivision of section eleven hundred
9 ninety-two of this article.

10 (4) Criminal intoxication. Three years, where the holder is convicted
11 of a violation of subdivision two-b of section eleven hundred ninety-two
12 of this article committed within five years of a conviction for a
13 violation of any subdivision of section eleven hundred ninety-two of
14 this article.

15 (5) Aggravated criminal intoxication. Four years, where the holder is
16 convicted of a violation of subdivision two-c of section eleven hundred
17 ninety-two of this article committed within five years of a conviction
18 for a violation of any subdivision of section eleven hundred ninety-two
19 of this article.

20 (6) Out-of-state offenses. Ninety days, where the holder is convicted
21 of an offense consisting of operating a motor vehicle under the influ-
22 ence of intoxicating liquor or drugs where the conviction was had
23 outside this state.

24 (7) Effect of rehabilitation program. No period of revocation arising
25 out of this paragraph may be set aside by the commissioner for the
26 reason that such person was a participant in the alcohol and drug reha-
27 bilitation program set forth in section eleven hundred ninety-six of
28 this article.

29 (8) Action required by commissioner. Where a court fails to impose, or
30 incorrectly imposes, a suspension or revocation required by this subdi-
31 vision, the commissioner shall, upon receipt of a certificate of
32 conviction filed pursuant to section five hundred fourteen of this chap-
33 ter, impose such mandated suspension or revocation, which shall super-
34 seede any such order which the court may have imposed.

35 (b) Reissuance of licenses; restrictions. Where a license is revoked
36 pursuant to this subdivision, no new license shall be issued after the
37 expiration of the minimum period, except in the discretion of the
38 commissioner; provided, however, that in no event shall a new license be
39 issued where a person has been twice convicted of a violation of subdi-
40 vision two-a, two-b, two-c, three, four or four-a of section eleven
41 hundred ninety-two of this article or of driving while intoxicated or of
42 driving while ability is impaired by the use of a drug where physical
43 injury, as defined in section 10.00 of the penal law, has resulted from
44 such offense in each instance.

45 (c) Suspension or revocation; sentencing. (1) Notwithstanding anything
46 to the contrary contained in a certificate of relief from disabilities
47 issued pursuant to article twenty-three of the correction law, where a
48 suspension or revocation, other than a revocation required to be issued
49 by the commissioner, is mandatory pursuant to paragraph (a) or (d) of
50 this subdivision, the magistrate, justice or judge shall issue an order
51 suspending or revoking such license upon sentencing, and the license
52 holder shall surrender such license to the court. Except as hereinafter
53 provided, such suspension or revocation shall take effect immediately.

54 (2) Except where the license holder has been charged with a violation
55 of article one hundred twenty or one hundred twenty-five of the penal
56 law arising out of the same incident or convicted of such violation or a

1 violation of any subdivision of section eleven hundred ninety-two of
2 this article within the preceding five years, the judge, justice or
3 magistrate may issue an order making said license suspension or revoca-
4 tion take effect twenty days after the date of sentencing. The license
5 holder shall be given a copy of said order permitting the continuation
6 of driving privileges for twenty days after sentencing, if granted by
7 the court. The court shall forward to the commissioner the certificates
8 required in sections five hundred thirteen and five hundred fourteen of
9 this chapter, along with a copy of any order issued pursuant to this
10 paragraph and the license, within ninety-six hours of sentencing.

11 (d) Special provisions. (1) Suspension pending prosecution; procedure.
12 a. Without notice, pending any prosecution, the court shall suspend such
13 license, where the holder has been charged with a violation of subdivi-
14 sion two, two-a, two-b, two-c, three, four or four-a of section eleven
15 hundred ninety-two of this article and either (i) a violation of a felo-
16 ny under article one hundred twenty or one hundred twenty-five of the
17 penal law arising out of the same incident, or (ii) has been convicted
18 of any violation under section eleven hundred ninety-two of this article
19 within the preceding five years.

20 b. The suspension under clause a of this subparagraph shall occur no
21 later than twenty days after the holder's first appearance before the
22 court on the charges or at the conclusion of all proceedings required
23 for the arraignment. In order for the court to impose such suspension it
24 must find that the accusatory instrument conforms to the requirements of
25 section 100.40 of the criminal procedure law and there exists reasonable
26 cause to believe that the holder operated a motor vehicle in violation
27 of subdivision two, two-a, two-b, two-c, three, four or four-a of
28 section eleven hundred ninety-two of this article and either (i) the
29 person had been convicted of any violation under such section eleven
30 hundred ninety-two of this article within the preceding five years; or
31 (ii) that the holder committed a violation of a felony under article one
32 hundred twenty or one hundred twenty-five of the penal law. At such time
33 the holder shall be entitled to an opportunity to make a statement
34 regarding the enumerated issues and to present evidence tending to rebut
35 the court's findings. Where such suspension is imposed upon a pending
36 charge or a violation of a felony under article one hundred twenty or
37 one hundred twenty-five of the penal law and the holder has requested a
38 hearing pursuant to article one hundred eighty of the criminal procedure
39 law, the court shall conduct such hearing. If upon completion of the
40 hearing, the court fails to find that there is reasonable cause to
41 believe that the holder committed a felony under article one hundred
42 twenty or one hundred twenty-five of the penal law and the holder has
43 not been previously convicted of any violation of section eleven hundred
44 ninety-two of this article within the preceding five years the court
45 shall promptly notify the commissioner and direct restoration of such
46 license to the license holder unless such license is suspended or
47 revoked pursuant to any other provision of this chapter.

48 (2) Bail forfeiture. A license shall be suspended where the holder
49 forfeits bail upon a charge of a violation of any subdivision of section
50 eleven hundred ninety-two of this article. Such suspension shall not be
51 terminated until the holder submits to the jurisdiction of the court in
52 which the bail was forfeited.

53 (3) Permanent disqualification from operating certain motor vehicles.
54 a. Except as otherwise provided in this section, in addition to any
55 revocation set forth in paragraph (a) of this subdivision, any person
56 sentenced pursuant to subdivision one of this section shall be perma-

1 nently disqualified from operating any vehicle set forth in such para-
2 graph. In addition, the commissioner shall not issue such person a
3 license valid for the operation of any vehicle set forth therein by such
4 person. The commissioner may waive such disqualification and prohibition
5 hereinbefore provided after a period of five years has expired from such
6 sentencing provided:

7 (i) that during such five year period such person has not violated any
8 of the provisions of section eleven hundred ninety-two of this article
9 or any alcohol or drug related traffic offense in this state or in any
10 jurisdiction outside this state;

11 (ii) that such person provides acceptable documentation to the commis-
12 sioner that such person is not in need of alcohol or drug treatment or
13 has satisfactorily completed a prescribed course of such treatment; and

14 (iii) after such documentation is accepted, that such person is grant-
15 ed a certificate of relief from disabilities as provided for in section
16 seven hundred one of the correction law by the court in which such
17 person was last penalized pursuant to paragraph (d) of subdivision one
18 of this section.

19 b. Any person convicted of a violation of any subdivision of section
20 eleven hundred ninety-two of this article while operating a commercial
21 motor vehicle who has had a prior finding of refusal to submit to a
22 chemical test pursuant to section eleven hundred ninety-four of this
23 article while operating a commercial motor vehicle or has had a prior
24 conviction of any of the following offenses while operating a commercial
25 motor vehicle: any violation of section eleven hundred ninety-two of
26 this article; any violation of subdivision two of section six hundred of
27 this chapter; or has a prior conviction of any felony involving the use
28 of a commercial motor vehicle pursuant to paragraph (a) of subdivision
29 one of section five hundred ten-a of this chapter, shall be permanently
30 disqualified from operating a commercial motor vehicle. The commissioner
31 may waive such disqualification and prohibition hereinbefore provided
32 after a period of ten years has expired from such sentence provided: (i)
33 that during such ten year period such person has not been found to have
34 refused a chemical test pursuant to section eleven hundred ninety-four
35 of this article while operating a commercial motor vehicle and has not
36 been convicted of any one of the following offenses while operating a
37 commercial motor vehicle: any violation of section eleven hundred nine-
38 ty-two of this article; any violation of subdivision two of section six
39 hundred of this chapter; or has a prior conviction of any felony involv-
40 ing the use of a commercial motor vehicle pursuant to paragraph (a) of
41 subdivision one of section five hundred ten-a of this chapter; (ii) that
42 such person provides acceptable documentation to the commissioner that
43 such person is not in need of alcohol or drug treatment or has satisfac-
44 torily completed a prescribed course of such treatment; and (iii) after
45 such documentation is accepted, that such person is granted a certif-
46 icate of relief from disabilities as provided for in section seven
47 hundred one of the correction law by the court in which such person was
48 last penalized pursuant to paragraph (d) of subdivision one of this
49 section.

50 c. Upon a third finding of refusal and/or conviction of any of the
51 offenses which require a permanent commercial driver's license revoca-
52 tion, such permanent revocation may not be waived by the commissioner
53 under any circumstances.

54 (4) Probation. When a license to operate a motor vehicle has been
55 revoked pursuant to this chapter, and the holder has been sentenced to a
56 period of probation pursuant to section 65.00 of the penal law for a

1 violation of any provision of this chapter, or any other provision of
2 the laws of this state, and a condition of such probation is that the
3 holder thereof not operate a motor vehicle or not apply for a license to
4 operate a motor vehicle during the period of such condition of
5 probation, the commissioner may not restore such license until the peri-
6 od of the condition of probation has expired.

7 (5) Application for new license. Where a license has been revoked
8 pursuant to this subdivision, or where the holder is subject to a condi-
9 tion of probation as provided in subparagraph four of this paragraph,
10 application for a new license may be made within forty-five days prior
11 to the expiration of such minimum period of revocation or condition of
12 probation, whichever expires last.

13 (6) Suspension pending prosecution; excessive blood alcohol content.
14 a. A court shall suspend a driver's license, pending prosecution, of any
15 person charged with a violation of subdivision two or three of section
16 eleven hundred ninety-two of this article who, at the time of arrest, is
17 alleged to have had .08 of one percent or more by weight of alcohol in
18 such driver's blood as shown by chemical analysis of blood, breath,
19 urine or saliva, made pursuant to subdivision two or three of section
20 eleven hundred ninety-four of this article.

21 b. The suspension occurring under this subparagraph shall occur no
22 later than at the conclusion of all proceedings required for the
23 arraignment; provided, however, that if the results of any test adminis-
24 tered pursuant to section eleven hundred ninety-four of this article are
25 not available within such time period, the complainant police officer or
26 other public servant shall transmit such results to the court at the
27 time they become available, and the court shall, as soon as practicable
28 following the receipt of such results and in compliance with the
29 requirements of this subparagraph, suspend such license. In order for
30 the court to impose such suspension it must find that the accusatory
31 instrument conforms to the requirements of section 100.40 of the crimi-
32 nal procedure law and there exists reasonable cause to believe that the
33 holder operated a motor vehicle while such holder had .08 of one percent
34 or more by weight of alcohol in his or her blood as was shown by chemi-
35 cal analysis of such person's blood, breath, urine or saliva, made
36 pursuant to the provisions of section eleven hundred ninety-four of this
37 article. At the time of such license suspension the holder shall be
38 entitled to an opportunity to make a statement regarding these two
39 issues and to present evidence tending to rebut the court's findings.

40 c. Nothing contained in this subparagraph shall be construed to
41 prohibit or limit a court from imposing any other suspension pending
42 prosecution required or permitted by law.

43 d. Notwithstanding any contrary provision of this chapter, if any
44 suspension occurring under this subparagraph has been in effect for a
45 period of thirty days, the holder may be issued a conditional license,
46 in accordance with section eleven hundred ninety-six of this article,
47 provided the holder of such license is otherwise eligible to receive
48 such conditional license. The commissioner shall prescribe by regulation
49 the procedures for the issuance of such conditional license.

50 e. If the court finds that the suspension imposed pursuant to this
51 subparagraph will result in extreme hardship, the court must issue such
52 suspension, but may grant a hardship privilege, which shall be issued on
53 a form prescribed by the commissioner. For the purposes of this clause,
54 "extreme hardship" shall mean the inability to obtain alternative means
55 of travel to or from the licensee's employment, or to or from necessary
56 medical treatment for the licensee or a member of the licensee's house-

1 hold, or if the licensee is a matriculating student enrolled in an
2 accredited school, college or university travel to or from such
3 licensee's school, college or university if such travel is necessary for
4 the completion of the educational degree or certificate. The burden of
5 proving extreme hardship shall be on the licensee who may present mate-
6 rial and relevant evidence. A finding of extreme hardship may not be
7 based solely upon the testimony of the licensee. In no event shall
8 arraignment be adjourned or otherwise delayed more than three business
9 days solely for the purpose of allowing the licensee to present evidence
10 of extreme hardship. The court shall set forth upon the record, or
11 otherwise set forth in writing, the factual basis for such finding. The
12 hardship privilege shall permit the operation of a vehicle only for
13 travel to or from the licensee's employment, or to or from necessary
14 medical treatment for the licensee or a member of the licensee's house-
15 hold, or if the licensee is a matriculating student enrolled in an
16 accredited school, college or university travel to or from such
17 licensee's school, college or university if such travel is necessary for
18 the completion of the educational degree or certificate.

19 § 3. This act shall take effect on the one hundred eightieth day after
20 it shall have become a law.