STATE OF NEW YORK

2149

2019-2020 Regular Sessions

IN SENATE

January 22, 2019

Introduced by Sens. GIANARIS, ADDABBO, BRESLIN, HOYLMAN, LANZA, PARKER, STAVISKY -- 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 including within the offense of vehicular assault in the second degree, the causing of serious injury while knowingly operating a motor vehicle with a revoked or suspended license or while not holding a license and establishing the offense of vehicular homicide

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

Section 1. Section 120.03 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

§ 120.03 Vehicular assault in the second degree.

A person is guilty of vehicular assault in the second degree when he or she causes:

1. serious physical injury to another person, and either:

[~~(1)~~] (a) operates a motor vehicle in violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law or operates a vessel or public vessel in violation of paragraph (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 such serious physical injury to such other person, or

[~~(2)~~](b) 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, and such flammable gas, radioactive materials or explosives is the cause of such serious physical injury, and as a result of such impairment by the

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

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use of alcohol, operates such motor vehicle in a manner that causes such serious physical injury to such other person, or

[~~(3)~~] **(c)** 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 and 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 such serious physical injury to such other person.

If it is established that the person operating such motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle caused such serious physical injury 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 serious physical injury, as required by this [~~section.~~] **subdivision; or**

2. serious physical injury to another person, while operating a motor vehicle, knowing or having reason to know that his or her license to or privilege to operate a motor vehicle is suspended or revoked pursuant to subdivision two or two-a of section five hundred ten or subdivision one or three of section five hundred ten-a of the vehicle and traffic law for conduct relating to the operation of a motor vehicle, or knowing or having reason to know that he or she is not licensed to operate a motor vehicle on a public highway pursuant to the vehicle and traffic law.

Vehicular assault in the second degree is a class E felony.

§ 2. The opening paragraph of section 120.04 of the penal law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

A person is guilty of vehicular assault in the first degree when he or she commits the crime of vehicular assault in the second degree as defined in **subdivision one of** section 120.03 of this article, and either:

§ 3. The penal law is amended by adding a new section 125.13-a to read as follows:

§ 125.13-a Vehicular homicide.

A person is guilty of vehicular homicide when he or she causes the death of another person, while operating a motor vehicle, knowing or having reason to know that his or her license to or privilege to operate a motor vehicle is suspended or revoked pursuant to subdivision two or two-a of section five hundred ten or subdivision one or three of section five hundred ten-a of the vehicle and traffic law for conduct relating to the operation of a motor vehicle, or knowing or having reason to know that he or she is not licensed to operate a motor vehicle on a public highway pursuant to the vehicle and traffic law.

Vehicular homicide is a class D felony.

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