S T A T E O F N E W Y O R K

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Cal. No. 899

2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. KAVANAGH, KOON, MENG, GALEF -- Multi-Sponsored by -- M. of A. COOK, GABRYSZAK, HOOPER, PHEFFER, SCHIMEL, THIELE, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the vehicle and traffic law, in relation to the requirement of exercising due care in the operation of a motor vehicle

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

Section 1. This act shall be known and may be cited as the "Hayley Ng and Diego Martinez law."

S 2. Section 1146 of the vehicle and traffic law, as amended by chapter 559 of the laws of 1988, is amended to read as follows:

S 1146. Drivers to exercise due care. (A) Notwithstanding the provisions of any other law to the contrary, every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary. For the purposes of this section, the term "domestic animal" shall mean domesticated sheep, cattle, and goats which are under the supervision and control of a pedestrian.

(B) 1. A DRIVER OF A MOTOR VEHICLE WHO CAUSES PHYSICAL INJURY AS DEFINED IN ARTICLE TEN OF THE PENAL LAW TO A PEDESTRIAN OR BICYCLIST WHILE FAILING TO EXERCISE DUE CARE IN VIOLATION OF SUBDIVISION (A) OF

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

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THIS SECTION, SHALL BE GUILTY OF A TRAFFIC INFRACTION PUNISHABLE BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT.

2. IF SUCH DRIVER OF A MOTOR VEHICLE CAUSES PHYSICAL INJURY WHILE FAILING TO EXERCISE DUE CARE IN VIOLATION OF SUBDIVISION (A) OF THIS SECTION, THEN THERE SHALL BE A REBUTTABLE PRESUMPTION THAT, AS A RESULT OF SUCH FAILURE TO EXERCISE DUE CARE, SUCH PERSON OPERATED THE MOTOR VEHICLE IN A MANNER THAT CAUSED SUCH PHYSICAL INJURY.

(C) 1. A DRIVER OF A MOTOR VEHICLE WHO CAUSES SERIOUS PHYSICAL INJURY AS DEFINED IN ARTICLE TEN OF THE PENAL LAW TO A PEDESTRIAN OR BICYCLIST WHILE FAILING TO EXERCISE DUE CARE IN VIOLATION OF SUBDIVISION (A) OF THIS SECTION, SHALL BE GUILTY OF A TRAFFIC INFRACTION PUNISHABLE BY A FINE OF NOT MORE THAN SEVEN HUNDRED FIFTY DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR BY REQUIRED PARTICIPATION IN A MOTOR VEHICLE ACCIDENT PREVENTION COURSE PURSUANT TO PARAGRAPH (E-1) OF SUBDIVISION TWO OF SECTION 65.10 OF THE PENAL LAW OR BY ANY COMBINATION OF SUCH FINE, IMPRISONMENT OR COURSE, AND BY SUSPENSION OF A LICENSE OR REGISTRATION PURSUANT TO SUBPARAGRAPH (XIV) OR (XV) OF PARAGRAPH B OF SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THIS CHAPTER.

2. IF SUCH DRIVER OF A MOTOR VEHICLE CAUSES SERIOUS PHYSICAL INJURY WHILE FAILING TO EXERCISE DUE CARE IN VIOLATION OF SUBDIVISION (A) OF THIS SECTION, THEN THERE SHALL BE A REBUTTABLE PRESUMPTION THAT, AS A RESULT OF SUCH FAILURE TO EXERCISE DUE CARE, SUCH PERSON OPERATED THE MOTOR VEHICLE IN A MANNER THAT CAUSED SUCH SERIOUS PHYSICAL INJURY.

(D) A VIOLATION OF SUBDIVISION (B) OR (C) OF THIS SECTION COMMITTED BY A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF ANY VIOLATION OF SUCH SUBDIVISIONS WITHIN THE PRECEDING FIVE YEARS, SHALL CONSTITUTE A CLASS B MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW.

(E) NOTHING CONTAINED IN THIS SECTION SHALL PREVENT THE COURT FROM IMPOSING ANY OTHER AUTHORIZED DISPOSITION, INCLUDING A PERIOD OF COMMUNITY SERVICE.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.