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

2765

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

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

AN ACT to amend the vehicle and traffic law and the public officers law, in relation to providing for the review of the privilege to operate a motor vehicle by persons with a diagnosed medical impairment

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

Section 1. The vehicle and traffic law is amended by adding two new sections 117-e and 122-d to read as follows:

S 117-E. MEDICAL IMPAIRMENT. MEDICAL IMPAIRMENT MEANS A PHYSICAL OR MENTAL IMPAIRMENT FROM ANATOMICAL, PHYSIOLOGICAL, GENETIC OR NEUROLOGICAL CONDITIONS WHICH PREVENTS OR HINDERS THE ABILITY OF A PERSON TO OPERATE A MOTOR VEHICLE SAFELY.

S 122-D. HEALTH CARE PROFESSIONAL. HEALTH CARE PROFESSIONAL MEANS A PHYSICIAN LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THE EDUCATION LAW OR A NURSE PRACTITIONER CERTIFIED PURSUANT TO SECTION SIXTY-NINE HUNDRED TEN OF THE EDUCATION LAW.

S 2. Subdivision 1 of section 502 of the vehicle and traffic law, as amended by chapter 639 of the laws of 2006, is amended to read as follows:

1. Application for license. Application for a driver's license shall be made to the commissioner. The fee prescribed by law may be submitted with such application. The applicant shall furnish such proof of identity, age, and fitness as may be required by the commissioner. THE COMMISSIONER MAY REQUIRE AN APPLICANT WITH A DIAGNOSED MEDICAL IMPAIRMENT TO SUBMIT A REPORT FROM A HEALTH CARE PROFESSIONAL IN ORDER TO REVIEW ELIGIBILITY FOR A DRIVER'S LICENSE WHETHER WITH OR WITHOUT RESTRICTIONS. The commissioner may also provide that the application procedure shall include the taking of a photo image or images of the applicant in accordance with rules and regulations prescribed by the commissioner. In addition, the commissioner also shall require that the applicant provide

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

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his or her social security number and provide space on the application so that the applicant may register in the New York state organ and tissue donor registry under section forty-three hundred ten of the public health law. In addition, an applicant for a commercial driver's license who will operate a commercial motor vehicle in interstate commerce shall certify that such applicant meets the requirements to operate a commercial motor vehicle, as set forth in public law 99-570, title XII, and title 49 of the code of federal regulations, and all regulations promulgated by the United States secretary of transportation under the hazardous materials transportation act. Upon a determination that the holder of a commercial driver's license has made any false statement, with respect to the application for such license, the commissioner shall revoke such license.

S 3. Paragraph (c) of subdivision 2 of section 501 of the vehicle and traffic law, as added by chapter 173 of the laws of 1990, is amended to read as follows:

(c) Restrictions. Notwithstanding the foregoing provisions of this subdivision, the operation of vehicles may be limited by a restriction or restrictions placed on a license. The following restrictions may be issued by the commissioner based upon the representative vehicle in which the road test was taken, or if the license is issued based on driving experience, the vehicle in which the experience was gained. In addition, the commissioner may by regulation provide for additional restrictions based upon other types of vehicles or other factors deemed appropriate by the commissioner INCLUDING MEDICAL IMPAIRMENTS.

(i) A restriction prohibiting the operation of a vehicle with air brakes.

(ii) A restriction limiting the operation of a combination of vehicles to truck-trailer combinations.

(iii) A restriction limiting operation to vehicles of not more than a specified GVWR.

(IV) A RESTRICTION LIMITING THE OPERATION OF A VEHICLE WITHIN A LIMITED MILEAGE RADIUS.

(V) A RESTRICTION PROHIBITING THE OPERATION OF A VEHICLE DURING CERTAIN HOURS OF THE DAY.

(VI) A RESTRICTION LIMITING THE OPERATION OF A VEHICLE ON CERTAIN HIGHWAYS.

(VII) A RESTRICTION PROHIBITING THE OPERATION OF A VEHICLE WITHOUT THE PRESENCE OF A LICENSED DRIVER AT LEAST EIGHTEEN YEARS OF AGE.

S 4. Subdivision 3 of section 502 of the vehicle and traffic law, as amended by chapter 692 of the laws of 1985, is amended to read as follows:

3. Application for learner's permit. An application for a learner's permit shall be included in the application for a license. A learner's permit shall be issued in such form as the commissioner shall determine but shall not be issued unless the applicant has successfully passed the vision test required by this section and the test set forth in paragraph (a) of subdivision four of this section with respect to laws relating to traffic and ability to read and comprehend traffic signs and symbols and has satisfactorily completed any course required pursuant to paragraph (a) of subdivision four of this section. Upon acceptance of an application for a learner's permit the commissioner shall provide the applicant with a driver's manual which includes but is not limited to the laws relating to traffic, the laws relating to and physiological effects of driving while ability impaired and driving while intoxicated, explanations of traffic signs and symbols and such other matters as the commis-

sioner may prescribe, INCLUDING INFORMATION ON DRIVING WITH MEDICAL IMPAIRMENTS.

S 5. Paragraph (a) of subdivision 6 of section 502 of the vehicle and traffic law, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

(a) A license issued pursuant to subdivision five of this section shall be valid until the expiration date contained thereon, unless such license is suspended, revoked or cancelled. Such license may be renewed by submission of an application for renewal, the fee prescribed by law, proofs of prior licensing, fitness and acceptable vision prescribed by the commissioner, the applicant's social security number, and if required by the commissioner a photo image of the applicant in such numbers and form as the commissioner shall prescribe. THE COMMISSIONER MAY REQUIRE AN APPLICANT WITH A DIAGNOSED MEDICAL IMPAIRMENT TO SUBMIT A REPORT FROM A HEALTH CARE PROFESSIONAL; WHERE THE COMMISSIONER, AFTER A REVIEW OF ALL INFORMATION AVAILABLE TO HIM OR HER, INCLUDING THE INFORMATION IN SUCH REPORT, DETERMINES THAT A DIAGNOSED MEDICAL IMPAIRMENT OF AN APPLICANT MAY HINDER THE ABILITY OF SUCH APPLICANT TO SAFELY OPERATE A MOTOR VEHICLE, SUCH COMMISSIONER MAY REQUIRE SUCH APPLICANT TO TAKE AND PASS A TEST AS PROVIDED FOR IN SUBDIVISION FOUR OF THIS SECTION, AND/OR SUBMIT TO A ROAD TEST PRIOR TO RENEWING SUCH LICENSE. In addition, an applicant for renewal of a license containing a hazardous material endorsement shall pass an examination to retain such endorsement. A renewal of such license shall be issued by the commissioner upon approval of such application, except that no such license shall be issued if its issuance would be inconsistent with the provisions of section five hundred sixteen of this chapter, and except that the commissioner may refuse to renew such license if the applicant is the holder of a currently valid or renewable license to drive issued by another state or foreign country unless the applicant surrenders such license.

S 6. Section 502 of the vehicle and traffic law is amended by adding two new subdivisions 8 and 9 to read as follows:

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER SHALL PROVIDE FOR REEVALUATION OF CURRENT LICENSEES UPON A REQUEST MADE BY A CURRENT LICENSEE OR UPON A DETERMINATION IN CONSULTATION WITH THE MEDICAL ADVISORY BOARD THAT A DIAGNOSED MEDICAL IMPAIRMENT OF AN APPLICANT MAY HINDER THE ABILITY OF SUCH LICENSEE TO SAFELY OPERATE A MOTOR VEHICLE. SUCH REEVALUATION MAY REQUIRE SUCH APPLICANT TO TAKE AND PASS A TEST AS PROVIDED FOR IN SUBDIVISION FOUR OF THIS SECTION AND/OR SUBMIT TO A ROAD TEST.

9. THE COMMISSIONER WITH THE ADVICE AND ASSISTANCE OF THE MEDICAL ADVISORY BOARD ESTABLISHED PURSUANT TO ARTICLE TWENTY-ONE-B OF THIS CHAPTER SHALL, BY RULE AND REGULATION, PROMULGATE A LIST OF MEDICAL IMPAIRMENTS FOR WHICH MOTORISTS OR LICENSEES OR PROSPECTIVE LICENSEES MAY BE REQUIRED TO SUBMIT A REPORT FROM A HEALTH CARE PROFESSIONAL.

S 7. The vehicle and traffic law is amended by adding three new sections 504-a, 506-a and 506-b to read as follows:

S 504-A. LICENSE APPLICATIONS; REQUIREMENTS. 1. THE COMMISSIONER SHALL, WITH EACH ORIGINAL AND RENEWAL MOTOR VEHICLE LICENSE APPLICATION TRANSMITTED AFTER JANUARY FIRST, TWO THOUSAND TEN, INCLUDE A NOTICE OF THE AVAILABILITY OF INFORMATION AS SET FORTH IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

2. (A) THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND THE MEDICAL ADVISORY BOARD ESTABLISHED PURSUANT TO ARTICLE TWENTY-ONE-B OF THIS CHAPTER, DEVELOP INFORMATIONAL MATERIALS PERTAINING

TO MEDICAL IMPAIRMENTS WHICH MAY INTERFERE WITH AN OPERATOR'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE, THE EFFECTS OF MEDICATION ON DRIVING, DRIVER REEVALUATION AND RETRAINING, THE ISSUANCE OF LICENSES WITH RESTRICTIONS FOR MEDICAL IMPAIRMENTS, AND THE USE OF ADAPTIVE MOTOR VEHICLE EQUIPMENT. SUCH INFORMATIONAL MATERIAL ALSO SHALL ENCOURAGE THE PUBLIC EXPERIENCING MEDICAL IMPAIRMENTS TO CONTACT A HEALTH CARE PROFESSIONAL.

(B) THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND THE MEDICAL ADVISORY BOARD ESTABLISHED PURSUANT TO ARTICLE TWENTY-ONE-B OF THIS CHAPTER, DEVELOP INFORMATIONAL MATERIALS TO PROVIDE HEALTH CARE PROFESSIONALS WITH INFORMATION ON THEIR ROLE IN COUNSELING THEIR PATIENTS WITH REGARD TO SAFE DRIVING AND MEDICAL IMPAIRMENTS, AND GUIDELINES WHICH SUCH HEALTH CARE PROFESSIONALS SHOULD FOLLOW IN PREPARING THE REPORTING FORM ON WHICH SUCH HEALTH CARE PROFESSIONAL MAY SUBMIT FINDINGS TO THE COMMISSIONER PURSUANT TO THE PROVISIONS OF SECTION FIVE HUNDRED SIX-A OF THIS ARTICLE.

3. THE COMMISSIONER AND THE DEPARTMENT OF HEALTH SHALL MAKE THE INFORMATIONAL MATERIALS DEVELOPED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AVAILABLE TO ALL HEALTH CARE PROFESSIONALS AND THE GENERAL PUBLIC.

S 506-A. REPORTING OF MEDICAL IMPAIRMENTS. 1. WHENEVER A HEALTH CARE PROFESSIONAL DIAGNOSES A PATIENT WITH A MEDICAL IMPAIRMENT, OR PRESCRIBES MEDICATION TO SUCH PATIENT WHICH COULD INTERFERE WITH SUCH PATIENT'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE, SUCH HEALTH CARE PROFESSIONAL SHALL ADVISE SUCH PATIENT OF SUCH FINDINGS, AND DIRECT SUCH PATIENT TO NOTIFY THE COMMISSIONER OF SUCH FINDINGS. THE COMMISSIONER SHALL DETERMINE WHETHER SUCH PATIENT SHALL BE REQUIRED TO SUBMIT TO FURTHER DRIVER EVALUATION PROCEDURES.

2. HEALTH CARE PROFESSIONALS MAY VOLUNTARILY SUBMIT A REPORT TO THE COMMISSIONER OF A PATIENT'S DIAGNOSED MEDICAL IMPAIRMENT, IF SUCH HEALTH CARE PROFESSIONAL DETERMINES THAT SUCH PATIENT HAS NOT NOTIFIED THE COMMISSIONER OF SUCH DIAGNOSED CONDITION. A HEALTH CARE PROFESSIONAL SHALL PROVIDE A COPY OF SUCH REPORT TO THE PATIENT WHO IS THE SUBJECT OF SUCH REPORT NO MORE THAN TEN BUSINESS DAYS AFTER SUCH REPORT WAS SUBMITTED TO THE COMMISSIONER.

3. SUCH REPORT BY A HEALTH CARE PROFESSIONAL SHALL BE MADE ON A FORM PRESCRIBED BY THE COMMISSIONER AND SHALL GIVE THE NAME, DATE OF BIRTH, AND ADDRESS OF ANY PERSON SIXTEEN YEARS OF AGE OR OLDER WITH A DIAGNOSED MEDICAL IMPAIRMENT, AND SHALL INCLUDE ALL DESCRIPTIVE INDICATIONS OF SUCH IMPAIRMENT.

4. THE COMMISSIONER SHALL ESTABLISH METHODS TO FACILITATE THE REPORTING OF DIAGNOSED MEDICAL IMPAIRMENTS BY PATIENTS AND HEALTH CARE PROFESSIONALS.

S 506-B. CONFIDENTIALITY OF MEDICAL REPORTS. 1. ANY AND ALL REPORTS OF MEDICAL IMPAIRMENTS SUBMITTED TO THE COMMISSIONER SHALL BE CONFIDENTIAL AND SHALL BE USED SOLELY FOR THE PURPOSES OF DETERMINING THE QUALIFICATIONS OF A PERSON TO SAFELY OPERATE A MOTOR VEHICLE AND TAKING ADMINISTRATIVE ACTION TO DENY AN ORIGINAL OR RENEWAL DRIVER'S LICENSE APPLICATION OR TO PLACE RESTRICTIONS UPON A DRIVER'S LICENSE. SUCH REPORTS AND THEIR CONTENTS SHALL NOT BE DIVULGED TO ANY PERSON, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, OR GOVERNMENTAL AGENCY, NOR BE USED AS EVIDENCE IN ANY CIVIL OR CRIMINAL TRIAL OR PROCEEDING.

2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, THE COMMISSIONER SHALL PROVIDE A COPY OF A REPORT OF A MEDICAL IMPAIRMENT SUBMITTED TO HIM OR HER, UPON DEMAND, TO THE PERSON WHO IS THE SUBJECT OF SUCH REPORT OR TO SUCH PERSON'S AUTHORIZED REPRESENTATIVE.

S 8. Paragraph b of subdivision 2 of section 510 of the vehicle and traffic law is amended by adding a new subparagraph (xvi) to read as follows:

(XVI) WHEN A PERSON FAILS TO SUBMIT A REPORT FROM A HEALTH CARE PROFESSIONAL WHEN REQUESTED TO DO SO BY THE COMMISSIONER AND/OR THE MEDICAL ADVISORY BOARD UNTIL SUCH TIME AS SUCH REPORT HAS BEEN FILED.

S 9. Subdivision 3 of section 510 of the vehicle and traffic law is amended by adding a new paragraph l to read as follows:

L. WHERE THE COMMISSIONER DETERMINES THAT A PERSON IS NOT CAPABLE OF SAFELY OPERATING A MOTOR VEHICLE AS A RESULT OF A DIAGNOSED MEDICAL IMPAIRMENT.

S 10. Section 541 of the vehicle and traffic law, as added by chapter 527 of the laws of 1990, is amended to read as follows:

S 541. Purpose. The medical advisory board shall advise the commissioner on medical criteria and vision standards for the licensing of drivers. SUCH BOARD SHALL ALSO ADVISE THE COMMISSIONER ON THE TYPES OF MEDICAL IMPAIRMENTS FOR WHICH APPLICANTS FOR LICENSES, RENEWAL OF LICENSES AND CURRENT LICENSEES SHALL SUBMIT A REPORT FROM A HEALTH CARE PROFESSIONAL AND SHALL EXAMINE, REVIEW AND MAKE RECOMMENDATIONS IN REGARD TO INDIVIDUAL DRIVER LICENSING CASES INVOLVING MEDICAL IMPAIRMENTS.

S 11. The vehicle and traffic law is amended by adding four new sections 545-a, 545-b, 545-c and 545-d to read as follows:

S 545-A. MEDICAL ADVISORY BOARD REVIEW. UPON THE RECEIPT OF A REPORT PURSUANT TO SECTION FIVE HUNDRED SIX-A OF THIS TITLE, THE COMMISSIONER MAY REFER ANY INFORMATION THEREIN TO THE MEDICAL ADVISORY BOARD FOR ITS CONSIDERATION AND RECOMMENDATION. THE BOARD MAY THEN REQUEST THE APPLICANT TO PROVIDE ADDITIONAL TESTIMONY OR INFORMATION.

S 545-B. MEDICAL ADVISORY BOARD DETERMINATIONS. ANY RECOMMENDATION OF THE BOARD MADE WITH RESPECT TO ANY LICENSE APPLICANT SHALL BE SUBJECT TO THE PROVISIONS OF SECTION FIVE HUNDRED SIX-B OF THIS TITLE.

S 545-C. FINDINGS. IMMUNITY OF HEALTH CARE PROFESSIONALS AND MEDICAL ADVISORY BOARD MEMBERS FROM CIVIL AND CRIMINAL ACTIONS. 1. NO CIVIL OR CRIMINAL ACTION MAY BE BROUGHT AGAINST THE BOARD OR ANY OF ITS MEMBERS FOR PROVIDING ANY REPORTS, RECORDS, EXAMINATIONS, OPINIONS OR RECOMMENDATIONS PURSUANT TO THIS CHAPTER.

2. NO CIVIL OR CRIMINAL ACTION MAY BE BROUGHT AGAINST ANY HEALTH CARE PROFESSIONAL WHO MAKES OR IS REQUESTED TO MAKE A REPORT IN ACCORDANCE WITH SECTION FIVE HUNDRED SIX-B OF THIS TITLE.

3. ANY PERSON OTHER THAN A HEALTH CARE PROFESSIONAL, WHO REPORTS A MEDICAL IMPAIRMENT SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER, ACTING IN GOOD FAITH AND WITHOUT MALICIOUS INTENT, SHALL BE IMMUNE FROM A CIVIL LIABILITY WHICH MIGHT BE OTHERWISE INCURRED OR IMPOSED.

S 545-D. RESEARCH PROJECTS. IN ORDER TO IMPLEMENT AND ADMINISTER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY ESTABLISH RESEARCH PROJECTS WITH RESPECT TO DRIVER SAFETY.

S 12. Section 523-a of the vehicle and traffic law, as amended by chapter 47 of the laws of 1988, is amended to read as follows:

S 523-a. Driver improvement clinic programs. In addition to the driver rehabilitation program authorized by section eleven hundred ninety-six of this chapter, the commissioner may establish, by regulation, guidelines for alcohol AND DRUGS and highway safety programs. The purpose of such programs should be to inform participants of the effects of alcohol AND DRUGS on driving, to discuss problem drinking and its effects, TO DISCUSS THE EFFECTS OF THE CONSUMPTION OF DRUGS, to provide

assistance to individuals with referral to alcoholism treatment agencies, TO PROVIDE ASSISTANCE TO INDIVIDUALS WITH MEDICAL IMPAIRMENTS WHICH COULD INTERFERE WITH THE SAFE OPERATION OF A VEHICLE and to provide instruction with respect to proper driving techniques and driver attitude. The commissioner shall establish criteria for requiring attendance at such clinics, and may, pending attendance at such clinic, suspend the driver's license or privilege of any person who fails to attend such clinic as required by such regulations. Such criteria may provide for the required attendance at such clinic of any person who, as a result of the conviction for a moving traffic violation, is referred by the trial court for such attendance. The commissioner shall establish a fee to be paid by any person who attends any such program. Such fee shall be used to defray the ongoing expenses of the program. Where the commissioner has approved any driver improvement program conducted by local authorities, any such fee shall be paid to the agency conducting such program.

S 13. Subdivision 2 of section 87 of the public officers law is amended by adding a new paragraph (k) to read as follows:

(K) ARE REPORTS OF MEDICAL IMPAIRMENTS PREPARED UNDER AUTHORITY OF SECTION FIVE HUNDRED SIX-A OR FIVE HUNDRED SIX-B OF THE VEHICLE AND TRAFFIC LAW, OR ARE RECOMMENDATIONS IN REGARD TO INDIVIDUAL DRIVER'S LICENSE APPLICANTS PREPARED UNDER AUTHORITY OF SECTIONS FIVE HUNDRED FORTY-ONE, FIVE HUNDRED FORTY-FIVE-A AND FIVE HUNDRED FORTY-FIVE-B OF THE VEHICLE AND TRAFFIC LAW.

S 14. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.