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

6409--A

2011-2012 Regular Sessions

I N A S S E M B L Y

March 16, 2011

Introduced by M. of A. CUSICK, CASTRO, LANCMAN, N. RIVERA -- Multi-Sponsored by -- M. of A. BOYLAND, GABRYSZAK, LINARES, MARKEY, P. RIVERA, TITONE, WEISENBERG -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the vehicle and traffic law, in relation to safety in active work zones

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

Section 1. The penal law is amended by adding two new sections 120.75 and 120.80 to read as follows:

S 120.75 VEHICULAR ASSAULT IN AN ACTIVE WORK ZONE IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF VEHICULAR ASSAULT IN AN ACTIVE WORK ZONE IN THE SECOND DEGREE WHEN, WITH CRIMINAL NEGLIGENCE, HE OR SHE:

A. ENTERS OR INTRUDES INTO AN ACTIVE WORK ZONE WITHOUT PERMISSION WHILE OPERATING A MOTOR VEHICLE; AND

B. SUCH ENTRY OR INTRUSION CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

2. FOR PURPOSES OF THIS SECTION:

A. "ACTIVE WORK ZONE" SHALL MEAN THE PHYSICAL AREA OF A HIGHWAY, STREET OR PRIVATE ROAD ON WHICH CONSTRUCTION, MAINTENANCE OR UTILITY WORK IS BEING CONDUCTED, WHICH AREA IS MARKED BY SIGNS, CHANNELING DEVICES, BARRIERS, PAVEMENT MARKINGS, AND/OR WORK VEHICLES, AND WHERE WORKERS ARE PHYSICALLY PRESENT; AND

B. "PERMISSION" SHALL MEAN DIRECTION FROM A FLAG PERSON, POLICE OFFICER OR OTHER VISIBLY DESIGNATED PERSON IN CHARGE OF TRAFFIC CONTROL OR DIRECTION FROM A TRAFFIC CONTROL DEVICE REGULATING ENTRY THEREIN.

VEHICULAR ASSAULT IN AN ACTIVE WORK ZONE IN THE SECOND DEGREE IS A CLASS E FELONY.

S 120.80 VEHICULAR ASSAULT IN AN ACTIVE WORK ZONE IN THE FIRST DEGREE.

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

LBD00552-03-1

1. A PERSON IS GUILTY OF VEHICULAR ASSAULT IN AN ACTIVE WORK ZONE IN THE FIRST DEGREE WHEN HE OR SHE RECKLESSLY:

A. ENTERS OR INTRUDES INTO AN ACTIVE WORK ZONE WITHOUT PERMISSION WHILE OPERATING A MOTOR VEHICLE; AND

B. SUCH ENTRY OR INTRUSION CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

2. FOR PURPOSES OF THIS SECTION:

A. "ACTIVE WORK ZONE" SHALL MEAN THE PHYSICAL AREA OF A HIGHWAY, STREET OR PRIVATE ROAD ON WHICH CONSTRUCTION, MAINTENANCE OR UTILITY WORK IS BEING CONDUCTED, WHICH AREA IS MARKED BY SIGNS, CHANNELING DEVICES, BARRIERS, PAVEMENT MARKINGS, AND/OR WORK VEHICLES, AND WHERE WORKERS ARE PHYSICALLY PRESENT; AND

B. "PERMISSION" SHALL MEAN DIRECTION FROM A FLAG PERSON, POLICE OFFICER OR OTHER VISIBLY DESIGNATED PERSON IN CHARGE OF TRAFFIC CONTROL OR DIRECTION FROM A TRAFFIC CONTROL DEVICE REGULATING ENTRY THEREIN.

VEHICULAR ASSAULT IN AN ACTIVE WORK ZONE IN THE FIRST DEGREE IS A CLASS D FELONY.

S 2. The penal law is amended by adding two new sections 125.65 and 125.70 to read as follows:

S 125.65 VEHICULAR MANSLAUGHTER IN AN ACTIVE WORK ZONE IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF VEHICULAR MANSLAUGHTER IN AN ACTIVE WORK ZONE IN THE SECOND DEGREE WHEN, WITH CRIMINAL NEGLIGENCE, HE OR SHE:

(A) ENTERS OR INTRUDES INTO AN ACTIVE WORK ZONE WITHOUT PERMISSION WHILE OPERATING A MOTOR VEHICLE; AND

(B) SUCH ENTRY OR INTRUSION CAUSES THE DEATH OF ANOTHER PERSON.

2. FOR PURPOSES OF THIS SECTION:

(A) "ACTIVE WORK ZONE" SHALL MEAN THE PHYSICAL AREA OF A HIGHWAY, STREET OR PRIVATE ROAD ON WHICH CONSTRUCTION, MAINTENANCE OR UTILITY WORK IS BEING CONDUCTED, WHICH AREA IS MARKED BY SIGNS, CHANNELING DEVICES, BARRIERS, PAVEMENT MARKINGS, AND/OR WORK VEHICLES, AND WHERE WORKERS ARE PHYSICALLY PRESENT; AND

(B) "PERMISSION" SHALL MEAN DIRECTION FROM A FLAG PERSON, POLICE OFFICER OR OTHER VISIBLY DESIGNATED PERSON IN CHARGE OF TRAFFIC CONTROL OR DIRECTION FROM A TRAFFIC CONTROL DEVICE REGULATING ENTRY THEREIN.

VEHICULAR MANSLAUGHTER IN AN ACTIVE WORK ZONE IN THE SECOND DEGREE IS A CLASS C FELONY.

S 125.70 VEHICULAR MANSLAUGHTER IN AN ACTIVE WORK ZONE IN THE FIRST DEGREE.

1. A PERSON IS GUILTY OF VEHICULAR MANSLAUGHTER IN AN ACTIVE WORK ZONE IN THE FIRST DEGREE WHEN HE OR SHE RECKLESSLY:

(A) ENTERS OR INTRUDES INTO AN ACTIVE WORK ZONE WITHOUT PERMISSION WHILE OPERATING A MOTOR VEHICLE; AND

(B) SUCH ENTRY OR INTRUSION CAUSES THE DEATH OF ANOTHER PERSON.

2. FOR PURPOSES OF THIS SECTION:

(A) "ACTIVE WORK ZONE" SHALL MEAN THE PHYSICAL AREA OF A HIGHWAY, STREET OR PRIVATE ROAD ON WHICH CONSTRUCTION, MAINTENANCE OR UTILITY WORK IS BEING CONDUCTED, WHICH AREA IS MARKED BY SIGNS, CHANNELING DEVICES, BARRIERS, PAVEMENT MARKINGS, AND/OR WORK VEHICLES, AND WHERE WORKERS ARE PHYSICALLY PRESENT; AND

(B) "PERMISSION" SHALL MEAN DIRECTION FROM A FLAG PERSON, POLICE OFFICER OR OTHER VISIBLY DESIGNATED PERSON IN CHARGE OF TRAFFIC CONTROL OR DIRECTION FROM A TRAFFIC CONTROL DEVICE REGULATING ENTRY THEREIN.

VEHICULAR MANSLAUGHTER IN AN ACTIVE WORK ZONE IN THE FIRST DEGREE IS A CLASS B FELONY.

S 3. The vehicle and traffic law is amended by adding a new section 1221-a to read as follows:

S 1221-A. INTRUSION INTO AN ACTIVE WORK ZONE. 1. NO DRIVER OF A VEHICLE SHALL ENTER OR INTRUDE INTO AN ACTIVE WORK ZONE EXCEPT UPON DIRECTION FROM A FLAG PERSON, POLICE OFFICER OR OTHER VISIBLY DESIGNATED PERSON IN CHARGE OF TRAFFIC CONTROL OR DIRECTION FROM A TRAFFIC CONTROL DEVICE REGULATING ENTRY THEREIN. FOR PURPOSES OF THIS SECTION, THE TERM "ACTIVE WORK ZONE" SHALL MEAN THE PHYSICAL AREA OF A HIGHWAY, STREET OR PRIVATE ROAD ON WHICH CONSTRUCTION, MAINTENANCE OR UTILITY WORK IS BEING CONDUCTED, WHICH AREA IS MARKED BY SIGNS, CHANNELING DEVICES, BARRIERS, PAVEMENT MARKINGS, AND/OR WORK VEHICLES, AND WHERE WORKERS ARE PHYSICALLY PRESENT.

2. A VIOLATION OF SUBDIVISION ONE OF THIS SECTION SHALL CONSTITUTE A CLASS B MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS, OR BY A PERIOD OF IMPRISONMENT NOT TO EXCEED THREE MONTHS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

S 4. This act shall take effect immediately.