STATE OF NEW YORK

4141

2021-2022 Regular Sessions

IN SENATE

February 2, 2021

Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to prohibiting the operation of a bicycle while under the influence of alcohol or drugs

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

Section 1. Section 1242-a of the vehicle and traffic law, as added by section 9 of part XX of chapter 58 of the laws of 2020, is amended to read as follows:

§ 1242-a. Operation of a **bicycle or** bicycle with electric assist while under the influence of alcohol or drugs. 1. Offenses; criminal penalties. (a) Operating a **bicycle or** bicycle with electric assist while ability impaired. No person shall operate a **bicycle or** bicycle with electric assist while the person's ability to operate such **bicycle or** bicycle with electric assist is impaired by the consumption of alcohol.

(i) A violation of this paragraph shall be a traffic infraction and shall be punishable by a fine of not more than three hundred dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment.

(ii) A person who operates a **bicycle or** bicycle with electric assist in violation of this paragraph after having been convicted of a violation of any paragraph of this subdivision within the preceding five years shall be punished by a fine of not more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment.

(iii) A person who operates a **bicycle or** bicycle with electric assist in violation of this paragraph after being convicted two or more times of a violation of any paragraph of this subdivision within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment of not

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

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more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) Operating a **bicycle or** bicycle with electric assist while intoxicated; per se. No person shall operate a **bicycle or** bicycle with electric assist while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of subdivision five of this section.

(c) Operating a **bicycle or** bicycle with electric assist while intoxicated. No person shall operate a **bicycle or** bicycle with electric assist while in an intoxicated condition.

(d) Operating a **bicycle or** bicycle with electric assist while ability impaired by drugs. No person shall operate a **bicycle or** bicycle with electric assist while the person's ability to operate such bicycle or bicycle with electric assist is impaired by the use of a drug as defined in this chapter.

(e) Operating a **bicycle or** bicycle with electric assist while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate a **bicycle or** bicycle with electric assist while the person's ability to operate such **bicycle or** bicycle with electric assist is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

(f) Penalty. (i) A violation of paragraph (b), (c), (d) or (e) of this subdivision shall be a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) A person who operates a **bicycle or** bicycle with electric assist in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision within the preceding ten years shall be guilty of a class E felony, and shall be punished by a fine of not more than one thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(iii) A person who operates a **bicycle or** bicycle with electric assist in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision two or more times within the preceding ten years shall be guilty of a class E felony, and shall be punished by a fine of not more than four thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

2. Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section.

3. Sentencing; previous convictions. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section pursuant to subparagraph (ii) of paragraph (f) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a of section eleven hundred ninety-two of this title within the preceding ten years. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision one of this section pursuant to subparagraph (iii) of paragraph (f) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of subdivision two, two-a, three, four, or four-a

of section eleven hundred ninety-two of this title within the preceding ten years. When sentencing a person for a violation of subparagraph (ii) of paragraph (a) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of this title within the preceding five years. When sentencing a person for a violation of subparagraph (iii) of paragraph (a) of subdivision one of this section, the court shall consider any prior convictions the person may have for a violation of any subdivision of section eleven hundred ninety-two of this title within the preceding ten years.

4. Arrest and field testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of any paragraph of subdivision one of this section, if such violation is coupled with an accident or collision in which such person is involved, which in fact had been committed, though not in the police officer's presence, when the officer has reasonable cause to believe that the violation was committed by such person. For the purposes of this subdivision, police officer shall also include a peace officer authorized to enforce this chapter when the alleged violation constitutes a crime.

(b) Field testing. Every person operating a **bicycle or** bicycle with electric assist which has been involved in an accident shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision five of this section.

5. Chemical tests; when authorized. A police officer may request any person who operates a bicycle or bicycle with electric assist in this state to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of such person's blood, provided that such test is administered at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer: (a) having reasonable grounds to believe such person to have been operating in violation of paragraph (a), (b), (c), (d) or (e) of subdivision one of this section and within two hours after such person has been placed under arrest for any such violation; or (b) within two hours after a breath test, as provided in paragraph (b) of subdivision four of this section, indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

6. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony. (i) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (A) a physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the department of health; or (B) under the supervision and at the direction of a physician, registered physician assistant or certified nurse practitioner acting within his or her lawful scope of practice, or upon the express consent of the person eighteen years of age or older from whom such blood is to be withdrawn: a clinical laboratory technician or clinical laboratory technologist licensed pursuant to article one hundred

sixty-five of the education law; a phlebotomist; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(ii) No person entitled to withdraw blood pursuant to subparagraph (i) of this paragraph or hospital employing such person, and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(iii) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under subparagraph (ii) of this paragraph, may maintain such action against the state if any person entitled to withdraw blood pursuant to this paragraph acted at the request of a police officer employed by the state, or against the appropriate political subdivision of the state if such person acted at the request of a police officer employed by a political subdivision of the state. No action shall be maintained pursuant to this subparagraph unless notice of claim is duly filed or served in compliance with law.

(iv) Notwithstanding subparagraphs (i), (ii) and (iii) of this paragraph, an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to subparagraph (i) of this paragraph or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this paragraph to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence or bad faith on the part of such person.

(v) The testimony of any person other than a physician, entitled to withdraw blood pursuant to subparagraph (i) of this paragraph, in respect to any such withdrawal of blood made by such person may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(vi) The provisions of subparagraphs (ii), (iii) and (iv) of this paragraph shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(b) Right to additional test. The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

(c) Rules and regulations. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this paragraph do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

7. Chemical test evidence. (a) Admissibility. Upon the trial of any such action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any paragraph of

subdivision one of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision five of this section.

(b) Probative value. The following effect shall be given to evidence of blood-alcohol content, as determined by such tests, of a person arrested for a violation of subdivision one of this section:

(i) evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a **bicycle or** bicycle with electric assist was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition;

(ii) evidence that there was more than .05 of one per centum but less than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a **bicycle or** bicycle with electric assist was impaired by the consumption of alcohol; and

(iii) evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate **bicycle or** bicycle with electric assist was impaired by the consumption of alcohol.

8. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic, any other parking lot, and sidewalks. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two-family residence.

9. Enforcement upon crash. Notwithstanding any provision of this section, no part of this section may be enforced unless in conjunction with a crash involving an operator of a **bicycle or** bicycle with electric assist. For the purposes of this subdivision, "crash" shall mean colliding with a vehicle, person, building or other object.

§ 2. This act shall take effect immediately.