

# 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:

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

4 § 1242-a. Operation of a bicycle or bicycle with electric assist while  
5 under the influence of alcohol or drugs. 1. Offenses; criminal penal-  
6 ties. (a) Operating a bicycle or bicycle with electric assist while  
7 ability impaired. No person shall operate a bicycle or bicycle with  
8 electric assist while the person's ability to operate such bicycle or  
9 bicycle with electric assist is impaired by the consumption of alcohol.

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

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

20 (iii) A person who operates a bicycle or bicycle with electric assist  
21 in violation of this paragraph after being convicted two or more times  
22 of a violation of any paragraph of this subdivision within the preceding  
23 ten years shall be guilty of a misdemeanor, and shall be punished by a  
24 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.

LBD09304-01-1

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

3 (b) Operating a bicycle or bicycle with electric assist while intoxi-  
4 cated; per se. No person shall operate a bicycle or bicycle with elec-  
5 tric assist while such person has .08 of one per centum or more by  
6 weight of alcohol in the person's blood as shown by chemical analysis of  
7 such person's blood, breath, urine or saliva, made pursuant to the  
8 provisions of subdivision five of this section.

9 (c) Operating a bicycle or bicycle with electric assist while intoxi-  
10 cated. No person shall operate a bicycle or bicycle with electric assist  
11 while in an intoxicated condition.

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

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

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

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

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

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

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

1 of section eleven hundred ninety-two of this title within the preceding  
2 ten years. When sentencing a person for a violation of subparagraph (ii)  
3 of paragraph (a) of subdivision one of this section, the court shall  
4 consider any prior convictions the person may have for a violation of  
5 any subdivision of section eleven hundred ninety-two of this title with-  
6 in the preceding five years. When sentencing a person for a violation of  
7 subparagraph (iii) of paragraph (a) of subdivision one of this section,  
8 the court shall consider any prior convictions the person may have for a  
9 violation of any subdivision of section eleven hundred ninety-two of  
10 this title within the preceding ten years.

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

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

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

45 6. Testing procedures. (a) Persons authorized to withdraw blood; immu-  
46 nity; testimony. (i) At the request of a police officer, the following  
47 persons may withdraw blood for the purpose of determining the alcoholic  
48 or drug content therein: (A) a physician, a registered professional  
49 nurse, a registered physician assistant, a certified nurse practitioner,  
50 or an advanced emergency medical technician as certified by the depart-  
51 ment of health; or (B) under the supervision and at the direction of a  
52 physician, registered physician assistant or certified nurse practition-  
53 er acting within his or her lawful scope of practice, or upon the  
54 express consent of the person eighteen years of age or older from whom  
55 such blood is to be withdrawn: a clinical laboratory technician or clin-  
56 ical laboratory technologist licensed pursuant to article one hundred

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 § 2. This act shall take effect immediately.