

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.