STATE OF NEW YORK

6202

2021-2022 Regular Sessions

IN SENATE

April 15, 2021

Introduced by Sens. KENNEDY, GOUNARDES, HOYLMAN -- 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 and the insurance law, in relation to reckless driving and the implementation of a reckless driving and vehicular violence awareness component of the pre-licensing course for driver's licenses

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

Section 1. Legislative intent. The Legislature recognizes the heightened responsibility of operating a multi-ton car or truck and that such motor vehicle is a dangerous instrument under state law that, in an instant, can cause lethal physical harm. For example, when operating a car at 30 miles per hour the average risk of a pedestrian dying upon impact with such car is 40%, at 40 miles per hour the risk of death is 80%, and at speeds greater than 50 miles per hour the likelihood of death is near certain at nearly 100%.

When deaths resulting from alcohol-impaired driving were reduced from approximately 30,000 annually in the early 1980s across the United States to approximately 10,000 annually in recent years, that remarkable reduction was achieved in part by the certainty experienced by drivers that they would suffer legal consequences for driving impaired and risking the lives of themselves and others, resulting from changes in laws prohibiting impaired driving. However, that certainty does not exist for other types of dangerous driving. A 2016 survey by the National Safety Council showed that "although 83% of drivers surveyed believe driving is a safety concern, a startling number say they are comfortable speeding (64%) and texting either manually or through voice controls (47%)," whereas far fewer (10%) say they are comfortable driving after they feel they've had too much alcohol. This shows that, while drunk driving has become socially unacceptable, most other forms of dangerous driving have

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

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not, and New Yorkers are paying the price with lives lost and bodies and families shattered. Moreover, the New York City Department of Transportation estimated in 2010 that the annual cost of all traffic crashes just in New York City to be $4.29 billion annually, about 1% of the Gross City Product.

As evidenced by our country's experience combatting drunk driving, research has shown that perceived certainty of legal consequences is necessary to deter or prevent harmful acts, including dangerous driving. The original statutory language of the New York vehicle and traffic law section 1212, in and of itself, is favorable to a reasonable standard for reckless or dangerous driving, specifying that driving in a manner that "unreasonably interferes with" or "unreasonably endangers others" constitutes a violation of that section and is an unclassified misdemeanor. However, that reasonableness standard has subsequently been heightened by New York judicial interpretations that require factors such as a finding of seriously blameworthy conduct, an "affirmative act" by the driver, a "gross deviation" from the standard of conduct a reasonable person would observe, and additional "aggravating factors" on behalf of the driver -- all judicial interpretations not required by the original statutory text. This judicially imposed requirement fails to recognize the awesome responsibility that operating a multi-ton car or truck is and as a consequence, evidenced in part by the staggering injuries and deaths in our state, the statute has failed to achieve what it intended. Cars and trucks are dangerous instruments under state law and should be recognized as such when applying vehicle and traffic law section 1212. For these reasons the Legislature is correcting the misapplication of vehicle and traffic law section 1212 and restore the statute to its original intent to deter and prevent dangerous operation of heavy motor vehicles that pose a daily threat to public health and risk the lives of New Yorkers throughout our state.

§ 2. Section 1212 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, is amended to read as follows:

§ 1212. Reckless driving. **(a)** Reckless driving shall mean [~~**driving**~~] **operating** or using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and [~~**proper**~~] **safe** use of the public highway, or unreasonably endangers users of the public highway. Reckless driving is prohibited. Every person violating this provision shall be guilty of a misdemeanor. **Notwithstanding any other provision of this chapter or the penal law, there shall be a rebuttable presumption that every person violating this section and who causes physical injury, serious physical injury or death to another person shall be found to have acted with criminal negligence under section 15.05 of the penal law, and every person violating this section while acting with criminal negligence shall be guilty of a class A misdemeanor. A violation of this section does not require a finding of a minimum number of violations of law or a finding that a person was aware of, had perceived, or had created the risk of harm to another person.**

(b) Provided further, if the operator of a motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof operates in a manner that causes physical injury, serious physical injury or death to another person while violating one or more sections of this chapter or of a law, ordinance, order, rule or regulation relating to traffic, except parking, standing, or stopping offenses, then there shall be a rebuttable

presumption such driver was operating in violation of subdivision (a) of this section. Nothing contained in this section shall be deemed to supersede the provisions of any other applicable section of law.

(c) A driver of a motor vehicle or motorcycle guilty of violating this section shall additionally be required to participate in a motor vehicle accident prevention course approved by the commissioner pursuant to article twelve-B of this chapter.

§ 3. Section 1146 of the vehicle and traffic law, as amended by chapter 333 of the laws of 2010, is amended to read as follows:

§ 1146. Drivers to exercise due care. [~~(a)~~] Notwithstanding the provisions of any other law to the contrary, every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary. For the purposes of this section, the term "domestic animal" shall mean domesticated sheep, cattle, and goats which are under the supervision and control of a pedestrian.

[~~(b) 1. A driver of a motor vehicle who causes physical injury as defined in article ten of the penal law to a pedestrian or bicyclist while failing to exercise due care in violation of subdivision (a) of this section, shall be guilty of a traffic infraction punishable by a fine of not more than five hundred dollars or by imprisonment for not more than fifteen days or by both such fine and imprisonment.~~

~~2. If such driver of a motor vehicle causes physical injury while failing to exercise due care in violation of subdivision (a) of this section, then there shall be a rebuttable presumption that, as a result of such failure to exercise due care, such person operated the motor vehicle in a manner that caused such physical injury.~~

~~(c) 1. A driver of a motor vehicle who causes serious physical injury as defined in article ten of the penal law to a pedestrian or bicyclist while failing to exercise due care in violation of subdivision (a) of this section, shall be guilty of a traffic infraction punishable by a fine of not more than seven hundred fifty dollars or by imprisonment for not more than fifteen days or by required participation in a motor vehicle accident prevention course pursuant to paragraph (e-1) of subdivision two of section 65.10 of the penal law or by any combination of such fine, imprisonment or course, and by suspension of a license or registration pursuant to subparagraph (xiv) or (xv) of paragraph b of subdivision two of section five hundred ten of this chapter.~~

~~2. If such driver of a motor vehicle causes serious physical injury while failing to exercise due care in violation of subdivision (a) of this section, then there shall be a rebuttable presumption that, as a result of such failure to exercise due care, such person operated the motor vehicle in a manner that caused such serious physical injury.~~

~~(d) A violation of subdivision (b) or (c) of this section committed by a person who has previously been convicted of any violation of such subdivisions within the preceding five years, shall constitute a class B misdemeanor punishable by a fine of not more than one thousand dollars in addition to any other penalties provided by law.~~

~~(e) Nothing contained in this section shall prevent the court from imposing any other authorized disposition, including a period of community service.~~]

§ 4. Subparagraph (i) of paragraph (a) and paragraphs (b) and (d) of subdivision 4 of section 502 of the vehicle and traffic law, as amended by chapter 513 of the laws of 2019, are amended and a new paragraph (c-5) is added to read as follows:

(i) Upon submission of an application for a driver's license, the applicant shall be required to take and pass a test, or submit evidence of passage of a test, with respect to the laws relating to traffic, the laws relating to driving while ability is impaired and while intoxicated, under the overpowering influence of "Road Rage", "Work Zone Safety" awareness and "Motorcycle Safety" awareness as defined by the commissioner, "School Bus Safety" awareness, **the laws relating to "Reckless Driving and Vehicular Violence" awareness,** the law relating to exercising due care to avoid colliding with a parked, stopped or standing authorized emergency vehicle or hazard vehicle pursuant to section eleven hundred forty-four-a of this chapter, the ability to read and comprehend traffic signs and symbols and such other matters as the commissioner may prescribe, and to satisfactorily complete a course prescribed by the commissioner of not less than four hours and not more than five hours, consisting of classroom driver training and highway safety instruction or the equivalent thereof. Such test shall include at least seven written questions concerning the effects of consumption of alcohol or drugs on the ability of a person to operate a motor vehicle and the legal and financial consequences resulting from violations of section eleven hundred ninety-two of this chapter, prohibiting the operation of a motor vehicle while under the influence of alcohol or drugs. Such test shall include one or more written questions concerning the devastating effects of "Road Rage" on the ability of a person to operate a motor vehicle and the legal and financial consequences resulting from assaulting, threatening or interfering with the lawful conduct of another person legally using the roadway. Such test shall include one or more questions concerning the potential dangers to persons and equipment resulting from the unsafe operation of a motor vehicle in a work zone. **Such test shall include one or more questions concerning reckless driving and exercising due care to avoid colliding with bicyclists and pedestrians.** Such test may include one or more questions concerning motorcycle safety. Such test may include one or more questions concerning the law for exercising due care to avoid colliding with a parked, stopped or standing vehicle pursuant to section eleven hundred forty-four-a of this chapter. Such test may include one or more questions concerning school bus safety. Such test shall be administered by the commissioner. The commissioner shall cause the applicant to take a vision test and a test for color blindness. Upon passage of the vision test, the application may be accepted and the application fee shall be payable.

(b) Upon successful completion of the requirements set forth in paragraph (a) of this subdivision which shall include an alcohol and drug education component as described in paragraph (c) of this subdivision, a "Road Rage" awareness component as described in paragraph (c-1) of this subdivision and a "Work Zone Safety" awareness component as described in paragraph (c-2) of this subdivision, a "Motorcycle Safety" awareness component as described in paragraph (c-3) of this subdivision, [~~and~~] a "School Bus Safety" awareness component as described in paragraph (c-4) of this subdivision**, and a "Reckless Driving and Vehicular Violence" awareness component as described in paragraph (c-5) of this subdivision** the commissioner shall cause the applicant to take a road test in a representative vehicle of a type prescribed by the commissioner which shall be appropriate to the type of license for which application is made, except that the commissioner may waive the road test requirements for certain classes of applicants. The commissioner shall have the power to establish a program to allow persons other than employees of the

department to conduct road tests in representative vehicles when such tests are required for applicants to obtain a class A, B or C license. If **he or** she chooses to do so, **he or** she shall set forth **his or** her reasons in writing and conduct a public hearing on the matter. [~~She~~] **He or she** shall only establish such a program after holding the public hearing.

(c-5) "Reckless Driving and Vehicular Violence" awareness component. (i) The commissioner shall provide in the pre-licensing course, set forth in paragraph (b) of this subdivision, a mandatory component in "Reckless Driving and Vehicular Violence" awareness education as a prerequisite for obtaining a license to operate a motor vehicle. The purpose of the component is to educate prospective licensees on the potential dangers to pedestrians, bicyclists, and other non-motorized vehicles created by motor vehicles, and the consequences of committing a vehicular crime that causes injury or death to another individual.

(ii) The curriculum shall include, but shall not be limited to, an overview of traffic laws governing motor vehicle operators' duty to exercise due care with respect to pedestrians and bicyclists, including but not limited to understanding bicyclists' and pedestrians' rights of way, safe operation near bicyclists and pedestrians, including children and blind, deaf, elderly and disabled pedestrians, bicycle lanes as defined in section one hundred two-a of this chapter, safety overtaking a bicycle, the dangers of distracted driving and reckless driving, driving at appropriate reduced speeds when special hazards exist with respect to pedestrians or other weather or highway conditions, safely turning, stopping, standing, and parking, motor vehicle operators' obligations to comply with article twenty-two of this chapter, traffic control devices and markings related to bicyclists and pedestrians, and an overview of laws governing conduct committed while operating a motorized vehicle that causes injury or death to another person.

(iii) In developing such curriculum, the commissioner shall consult with the commissioner of transportation, the superintendent of state police, the commissioners of transportation and police of the city of New York, medical professionals and bicycle and pedestrian safety advocates.

(d) The commissioner shall make available for distribution upon registration at each location where the pre-licensing course will be given, instructional handbooks outlining the content of the entire curriculum of the pre-licensing course including the information required to be included in the course pursuant to paragraphs (c), (c-1), (c-2), (c-3) [~~and~~]**,** (c-4) **and (c-5)** of this subdivision. The commissioner shall also provide for the additional training of the instructors necessary for the competent instruction of the alcohol and drug education, "Road Rage" awareness, "Work Zone Safety" awareness, "Motorcycle Safety" awareness and "School Bus Safety" awareness subject matters of the pre-licensing course.

§ 5. Paragraph 1 of subsection (a) of section 2336 of the insurance law, as amended by section 3 of chapter 4 of the laws of 2021, is amended to read as follows:

(1) Any schedule of rates or rating plan for motor vehicle liability and collision insurance submitted to the superintendent shall provide for an actuarially appropriate reduction in premium charges for any insured for a three year period after successfully completing a motor vehicle accident prevention course, known as the national safety council's defensive driving course, or any driver improvement course approved by the department of motor vehicles as being equivalent to the

national safety council's defensive driving course, provided that, except as provided in article twelve-C of the vehicle and traffic law, there shall be no reduction in premiums for a self-instruction defensive driving course or a course that does not provide for actual classroom instruction for a minimum number of hours as determined by the department of motor vehicles. Such reduction in premium charges shall be subsequently modified to the extent appropriate, based upon analysis of loss experience statistics and other relevant factors. All such accident prevention courses shall be monitored by the department of motor vehicles and shall include components of instruction in "Road Rage" awareness [~~and~~], in "Work Zone Safety" awareness **and in "Reckless Driving and Vehicular Violence" awarness** as defined by the commissioner of motor vehicles. The provisions of this section shall not apply to attendance at a program pursuant to article twenty-one of the vehicle and traffic law as a result of any traffic infraction.

§ 6. Paragraph 1 of subsection (a) of section 2336 of the insurance law, as amended by section 4 of chapter 4 of the laws of 2021, is amended to read as follows:

(1) Any schedule of rates or rating plan for motor vehicle liability and collision insurance submitted to the superintendent shall provide for an actuarially appropriate reduction in premium charges for any insured for a three year period after successfully completing a motor vehicle accident prevention course, known as the national safety council's defensive driving course, or any driver improvement course approved by the department of motor vehicles as being equivalent to the national safety council's defensive driving course, provided that in either event there shall be no reduction in premiums for a self-instruction defensive driving course or a course that does not provide for actual classroom instruction for a minimum number of hours as determined by the department of motor vehicles. Such reduction in premium charges shall be subsequently modified to the extent appropriate, based upon analysis of loss experience statistics and other relevant factors. All such accident prevention courses shall be monitored by the department of motor vehicles and shall include components of instruction in "Road Rage" awareness [~~and~~], in "Work Zone Safety" awareness **and in "Reckless Driving and Vehicular Violence" awareness** as defined by the commissioner of motor vehicles. The provisions of this section shall not apply to attendance at a program pursuant to article twenty-one of the vehicle and traffic law as a result of any traffic infraction.

§ 7. This act shall take effect on the one hundred eightieth day after it shall have become a law provided, however, that the amendments to subsection (a) of section 2336 of the insurance law made by section five of this act shall be subject to the expiration and reversion of such subsection pursuant to section 5 of chapter 751 of the laws of 2005, as amended, when upon such date the provisions of section six of this act shall take effect.