

# STATE OF NEW YORK

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3138

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

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Introduced by M. of A. REILLY -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the penal law, in relation to classifying operating a motor vehicle while under the influence of drugs by an individual under the age of twenty-one as a per se offense

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

1 Section 1. Section 1192-a of the vehicle and traffic law, as added by  
2 chapter 196 of the laws of 1996, is amended to read as follows:

3 § 1192-a. Operating a motor vehicle after having consumed alcohol or  
4 drugs; under the age of twenty-one; per se. No person under the age of  
5 twenty-one shall operate a motor vehicle after having consumed alcohol  
6 as defined in this section or drugs as defined in section one hundred  
7 fourteen-a of this chapter. For purposes of this section, a person  
8 under the age of twenty-one is deemed to have consumed alcohol only if  
9 such person has .02 of one per centum or more but not more than .07 of  
10 one per centum by weight of alcohol in the person's blood, as shown by  
11 chemical analysis of such person's blood, breath, urine or saliva, made  
12 pursuant to the provisions of section eleven hundred ninety-four of this  
13 article. Any person who operates a motor vehicle in violation of this  
14 section, and who is not charged with a violation of any subdivision of  
15 section eleven hundred ninety-two of this article arising out of the  
16 same incident shall be referred to the department for action in accord-  
17 ance with the provisions of section eleven hundred ninety-four-a of this  
18 article. Except as otherwise provided in subdivision five of section  
19 eleven hundred ninety-two of this article, this section shall not apply  
20 to a person who operates a commercial motor vehicle. Notwithstanding any  
21 provision of law to the contrary, a finding that a person under the age  
22 of twenty-one operated a motor vehicle after having consumed alcohol in

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

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1 violation of this section is not a judgment of conviction for a crime or  
2 any other offense.

3 § 2. Section 114-a of the vehicle and traffic law, as amended by chap-  
4 ter 92 of the laws of 2021, is amended to read as follows:

5 § 114-a. Drug. The term "drug" when used in this chapter, means and  
6 includes any substance listed in section thirty-three hundred six of the  
7 public health law ~~and~~, cannabis and concentrated cannabis as defined  
8 in section 222.00 of the penal law and any substance or combination of  
9 substances that impair, to any extent, physical or mental abilities.

10 § 3. Subdivision 4 of section 222.05 of the penal law, as added by  
11 chapter 92 of the laws of 2021, is amended to read as follows:

12 4. Paragraph (b) of subdivision three of this section shall not apply  
13 when a law enforcement officer is investigating whether a person is  
14 operating a motor vehicle, vessel or snowmobile while impaired by drugs  
15 or the combined influence of drugs or of alcohol and any drug or drugs  
16 in violation of subdivision four or subdivision four-a of section eleven  
17 hundred ninety-two or section eleven hundred ninety-two-a of the vehicle  
18 and traffic law, or paragraph (e) of subdivision two of section forty-  
19 nine-a of the navigation law, or paragraph (d) of subdivision one of  
20 section 25.24 of the parks, recreation and historic preservation law.  
21 During such investigations, the odor of burnt cannabis shall not provide  
22 probable cause to search any area of a vehicle that is not readily  
23 accessible to the driver and reasonably likely to contain evidence rele-  
24 vant to the driver's condition.

25 § 4. This act shall take effect immediately.