STATE OF NEW YORK

3138

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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:

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

§ 1192-a. Operating a motor vehicle after having consumed alcohol **or drugs**; under the age of twenty-one; per se. No person under the age of twenty-one shall operate a motor vehicle after having consumed alcohol as defined in this section **or drugs as defined in section one hundred fourteen-a of this chapter**. For purposes of this section, a person under the age of twenty-one is deemed to have consumed alcohol only if such person has .02 of one per centum or more but not more than .07 of one per centum 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 section eleven hundred ninety-four of this article. Any person who operates a motor vehicle in violation of this section, and who is not charged with a violation of any subdivision of section eleven hundred ninety-two of this article arising out of the same incident shall be referred to the department for action in accordance with the provisions of section eleven hundred ninety-four-a of this article. Except as otherwise provided in subdivision five of section eleven hundred ninety-two of this article, this section shall not apply to a person who operates a commercial motor vehicle. Notwithstanding any provision of law to the contrary, a finding that a person under the age 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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violation of this section is not a judgment of conviction for a crime or any other offense.

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

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

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

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

§ 4. This act shall take effect immediately.