# STATE OF NEW YORK

4647

2023-2024 Regular Sessions

# IN SENATE

February 13, 2023

Introduced by Sens. KENNEDY, ADDABBO, MATTERA, SKOUFIS -- 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 transportation law, in relation to work zone safety; and to amend the state finance law, in relation to establishing the work zone safety fund

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

Section 1. The vehicle and traffic law is amended by adding a new section 1221-a to read as follows:

**§ 1221-a. Endangerment of a highway worker. 1. A driver of a motor vehicle commits endangerment of a highway worker if the driver is operating a motor vehicle within a work area as defined in section one hundred sixty-one of this chapter at any time one or more highway workers are in the work area and does any of the following:**

**(a) enters a work area in any lane not clearly designated for use by motor vehicles; or**

**(b) fails to obey traffic control devices controlling the flow of motor vehicles through the work area for any reason other than:**

**(i) an emergency;**

**(ii) the avoidance of an obstacle; or**

**(iii) the protection of the health and safety of another person.**

**2. (a) A driver of a motor vehicle who violates this section shall be guilty of a traffic infraction punishable by a fine of not more than one thousand dollars and not less than five hundred dollars or by imprisonment for not more than fifteen days or by both such fine and imprisonment.**

**(b) A driver of a motor vehicle who causes physical injury as defined in article ten of the penal law to a highway worker in the work area while violating paragraph one of this section shall be guilty of a traffic infraction punishable by a fine of not more than two thousand**

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

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dollars and not less than one thousand dollars or by imprisonment for not more than forty-five days or by both such fine and imprisonment.

(c) A driver of a motor vehicle who causes serious physical injury as defined in article ten of the penal law to a highway worker in the work area while violating paragraph one of this section shall be guilty of a traffic infraction punishable by a fine of not more than five thousand dollars and not less than two thousand dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment.

3. In any case wherein the charge laid before the court alleges a violation of this section, any plea of guilty thereafter entered in satisfaction of such charge must include the fine imposed pursuant to this section and no other plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the prosecuting attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such prosecuting attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition. Such fine shall not be waived or reduced below the minimum as provided in subdivision two of this section. Sixty percent of fines collected pursuant to this section shall be paid to the work zone safety fund established by section ninety-nine-qq of the state finance law.

4. No person shall be guilty of endangerment of a highway worker for any act or omission otherwise constituting a violation under this section if the act or omission results, in whole or in part, from mechanical failure of the person's motor vehicle or from the negligence of a highway worker or another person.

5. Nothing contained in this section shall prohibit the imposition of a charge of any other offense set forth in this or any other provision of law for any acts arising out of the same incident.

§ 2. The vehicle and traffic law is amended by adding a new section 1221-b to read as follows:

§ 1221-b. Work area safety and outreach. The governor's traffic safety committee, upon consultation with the commissioner of transportation, the superintendent of state police, the commissioner, the chairman of the New York state thruway authority, local law enforcement agencies, and representatives for contractors, laborers, and public employees, shall design and implement a public education and outreach program to increase motorist awareness of the importance of highway work area safety, to reduce the number of work area incidents, including speeding, unauthorized intrusions into work areas, and any conduct resulting in hazards or injuries to highway workers, and to increase and promote work area safety.

§ 3. Section 161 of the vehicle and traffic law, as added by chapter 92 of the laws of 1984 and as renumbered by chapter 303 of the laws of 2014, is amended to read as follows:

§ 161. Work area or work zone. [~~That part of a highway being used or occupied for the conduct of highway work, within which workers, vehicles, equipment, materials, supplies, excavations, or other obstructions are present.~~] The area of a highway, bridge, shoulder, median, or associated right-of-way, where construction, maintenance, utility work, accident response, or other incident response is being performed. The work area must be marked by signs, traffic control devices, traffic-control signals, barriers, pavement markings, authorized emergency vehicles, or hazard vehicles, and extends from the first traffic control

device erected for purposes of controlling the flow of motor vehicles through the work area, including signs reducing the normal speed limit but excluding signs notifying motorists of an impending speed limit reduction, to the "END ROAD WORK" sign or the last temporary traffic control device. The signs, traffic control devices, traffic control signals, barriers, pavement markings, or authorized emergency vehicles, or hazard vehicles must meet department of transportation standards and the provisions of this chapter, and must be installed properly so that they are clearly visible to motorists in accordance with the manual on uniform traffic control devices.

§ 4. The vehicle and traffic law is amended by adding a new section 118-a to read as follows:

§ 118-a. Highway worker. Any person employed by or on behalf of the state, a county, city, town or village, a public authority, a local authority, or a public utility company, or the agent or contractor of any such entity, who has been assigned to perform work on a highway, including maintenance, repair, flagging, utility work, inspection, construction, reconstruction or operation of equipment on public highway infrastructure and associated rights-of-way in highway work areas, and shall also include any flagperson as defined in section one hundred fifteen-b of this article.

§ 5. Section 22 of the transportation law, as added by chapter 223 of the laws of 2005, is amended to read as follows:

§ 22. Work zone safety and enforcement. The department shall, in cooperation with the superintendent of state police, the commissioner of motor vehicles, the chairman of the New York state thruway authority, local law enforcement agencies and representatives for contractors [~~and~~] , laborers and public employees, develop and implement rules and regulations for the increased safety of work zones. Such rules and regulations shall include, but shall not be limited to, a police presence at all major active work zones as defined by rules and regulations set forth by the commissioner, the use of radar speed display signs at all major active work zones as defined by rules and regulations set forth by the commissioner, and a system for reviewing work zone safety and design for all work zones under the jurisdiction of the department.

§ 6. The state finance law is amended by adding a new section 99-qq to read as follows:

§ 99-qq. Work zone safety fund. 1. There is hereby established in the custody of the state comptroller a special fund to be known as the "work zone safety fund."

2. The fund shall consist of all monies appropriated for its purpose, all monies required by this section or any other provision of law to be paid into or credited to such fund, collected by the mandatory fines imposed pursuant to section twelve hundred twenty-one-a of the vehicle and traffic law, and all other monies appropriated, credited, or transferred thereto from any other fund or source pursuant to law. Any interest received by the comptroller on monies on deposit in the work zone safety fund shall be retained in and become a part of such fund.

3. Monies of the fund shall, following appropriation by the legislature, be disbursed to provide work zone safety enforcement, work zone markings, radar speed display signs, and police monitoring of work zones pursuant to section twenty-two of the transportation law. Monies of the fund shall be expended only for the purposes listed in this paragraph, and shall not be used to supplant any other funds which would otherwise have been expended for work zone safety and enforcement, including with-

out limitation work zone safety enforcement, work zone markings, radar speed display signs, and police monitoring of work zones.

4. Monies shall be payable from the fund on the audit and warrant of the comptroller.

5. On or before the first day of February each year, the comptroller shall certify to the governor, temporary president of the senate, speaker of the assembly, and chairs of the assembly and senate transportation committees, the amount of money deposited in the work zone safety fund during the preceding calendar year as the result of revenue derived pursuant to section one thousand two hundred twenty-one-a of the vehicle and traffic law.

6. On or before the first day of February each year, the director of the division of budget, in consultation with the relevant agencies and authorities, shall provide a written report to the temporary president of the senate, speaker of the assembly, chair of the senate and assembly transportation committees, the state comptroller and the public. Such report shall include how the monies of the fund were utilized during the preceding calendar year, and shall include:

(i) the amount of money disbursed from the fund and the award process used for such disbursements;

(ii) recipients of disbursements from the fund;

(iii) the amount awarded to each;

(iv) the purposes for which such disbursements were made; and

(v) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results of the prior fiscal year.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law.