



## NEW JERSEY LAW REVISION COMMISSION

### **Draft Tentative Report Regarding the Use of the Term “Personal Conveyance” in – N.J.S. 39:4-92.4**

**February 07, 2022**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” N.J.S. 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **April 18, 2022**

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report, or direct any related inquiries, to:

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## Project Summary

In August of 2021, Governor Phil Murphy signed into law a bill<sup>1</sup> to protect pedestrians and “vulnerable road users” from the possibility of being injured by motor vehicles.<sup>2</sup> Pursuant to the new law, N.J.S. 39:4-92.4, when the operator of a motor vehicle approaches a “pedestrian, bicycle, low-speed electric bicycle, low-speed electric scooter, or any other lawful personal conveyance” they are required to do so with “due caution.”<sup>3</sup>

N.J.S. 39:4-92.4, which becomes effective March 1, 2022, provides a definition for bicycle, low-speed electric bicycle, low-speed electric scooter, and pedestrian, but it does not define “lawful personal conveyance.”<sup>4</sup> Although Commission consideration of a statute that has not taken effect is unusual, it appears that, without clarification, the statutory language could cause confusion.

The issue raised for Commission consideration is what constitutes a “lawful personal conveyance.”<sup>5</sup> After a nationwide examination of this subject, the Commission recommends the modification of N.J.S. 39:4-92.4 to eliminate the potential ambiguity created by the reference to “lawful personal conveyance,” and to replace it with the term “vulnerable user of a roadway.”<sup>6</sup>

## Statute Considered

N.J.S. 39:4-92.4, entitled “Approach of pedestrians and bicycles by motor vehicle; definitions requirements penalties,” states in relevant part that:

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b. The operator of a motor vehicle approaching a pedestrian, bicycle, low-speed electric bicycle, low-speed electric scooter, or **any other lawful personal conveyance** located or operating in an area designated for pedestrians or those conveyances, as appropriate, on the roadways of this State shall approach with due caution and shall, absent any other direction by a law enforcement officer, proceed as follows:

(1) when possible under existing safety and traffic conditions, make a lane

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<sup>1</sup> N.J.S. 39:4-92.4. A.B. 5656, 219th Leg., Second Ann. Sess. (N.J. 2021) (L. 2021, c.194, § 1, eff. Mar. 01, 2022).

<sup>2</sup> Larry Higgs, *Drivers Must now Move Over when Passing People Walking and on Bikes*, NJ.com (Aug. 07, 2021), <https://www.nj.com/news/2021/08/drivers-must-now-move-over-when-passing-people-walking-and-on-bikes.html?outputType=amp>.

<sup>3</sup> N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2021). In exercising “due caution” the operator of a motor vehicle may (1) make a lane change into a lane not adjacent to the pedestrian or personal conveyance; (2) if a lane change is not possible they may allow a minimum of four feet between the car and the person being passed; or (3) they shall slow to twenty-five miles per hour and prepare to stop.

<sup>4</sup> N.J. STAT. ANN. § 39:4-92.4a. (West 2021).

<sup>5</sup> The absence of a statutory definition for “lawful personal conveyance” was brought to Staff’s attention via an e-mail from William Yarzab, St. Smart NJ Coordinator, North Jersey Transp. Planning Auth., to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Oct. 06, 2021, 3:51 PM EST) (on file with the NJLRC). Before retiring in Feb. of 2013, William Yarzab served as a Lieutenant of the Randolph Police Dept. where he was the Division Commander for the Administrative Division.

<sup>6</sup> See *infra* Appendix. See UTAH CODE ANN. § 41-6A-706.5 (West 2022).

change into a lane not adjacent to the pedestrian or **personal conveyance**;

(2) if a lane change cannot be made pursuant to paragraph (1) of this subsection, leave a reasonable and safe distance of not less than four feet while approaching the pedestrian or **personal conveyance** and maintain a distance of at least four feet until the motor vehicle has safely passed the **conveyance**; or

(3) if it is not possible, prohibited by law, or unsafe to make a lane change pursuant to paragraph (1) of this subsection or to leave a reasonable and safe distance of not less than four feet pursuant to paragraph (2) of this subsection, the motor vehicle operator shall reduce the speed of the motor vehicle to 25 miles per hour or a lower posted speed and be prepared to stop; the operator may pass the pedestrian or **personal conveyance** only if, considering the size and speed of the motor vehicle, traffic conditions, weather, visibility, and the surface and width of the roadway, passing does not endanger the safety of a pedestrian, operator of the **personal conveyance**, or any other person on the roadway.<sup>7</sup>

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## Background

In just over a decade, cities nationwide have experienced a proliferation of micromobility transportation technology.<sup>8</sup> The Federal Highway Administration (FHWA) defines micromobility as: “[a]ny, small, low-speed, human or electric-powered transportation device, including bicycles, scooters, electric-assist bicycles... electric scooters... and other small lightweight, wheeled conveyances.”<sup>9</sup> The Federal Highway Administration has categorized micromobility users as “vulnerable road users,” akin to pedestrians, because these modes of transportation lack the protection of an enclosed vehicle.<sup>10</sup>

During 2020 and 2021, there was an increase in road use in New Jersey by people “walking, bicycling, and using scooters.”<sup>11</sup> This increase was accompanied by a 9% pedestrian fatality rate.<sup>12</sup> People of color, the elderly, and people who did not have cars accounted for 34% of those deaths.<sup>13</sup> In 2020, New Jersey had the eighth highest number of pedestrian deaths in the United States.<sup>14</sup>

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<sup>7</sup> N.J.S. 39:4-92.4 (emphasis added).

<sup>8</sup> *Micromobility, Emergence of New Transp. Modes*, \*1 (U.S. Dept. of Transp., Wash. D.C.) available at [https://rosap.ntl.bts.gov/view/dot/54137/dot\\_54137\\_DS1.pdf?#:~:text=FHWA%20defines%20micromobility%20as%3A,small%2C%20lightweight%2C%20wheeled%20conveyances](https://rosap.ntl.bts.gov/view/dot/54137/dot_54137_DS1.pdf?#:~:text=FHWA%20defines%20micromobility%20as%3A,small%2C%20lightweight%2C%20wheeled%20conveyances) (last visited Dec. 07, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*2.

<sup>11</sup> Larry Higgs, *Law Requires Cars to Move Over to Pass Cyclists, Pedestrians headed to Gov’s Desk*, NJ.Com (Aug. 07, 2021), <https://www.nj.com/news/2021/06/law-requiring-cars-to-move-over-to-pass-cyclists-pedestrians-headed-to-govs-desk.html>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

To protect vulnerable road users, the majority of states have enacted “safe passing” laws.<sup>15</sup> When New Jersey’s Governor signed N.J.S. 39:4-92.4, New Jersey joined forty-two other states and the District of Columbia in requiring the operator of a motor vehicle to leave either a minimum distance or a “safe distance” when passing a bicyclist.<sup>16</sup>

A number of states, including New Jersey, use “safe passing” statutes to protect not just bicyclists, but other vulnerable roadway users as well.<sup>17</sup> These statutes create a legal framework to protect vulnerable users of the roadways, create a “less arbitrary standard,” and raise awareness of the importance of safe road practices.<sup>18</sup> In addition to specified modes of transportation, N.J.S. 39:4-92.4 offers protection to individuals operating a “lawful personal conveyance.” Concern

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<sup>15</sup> NCSL, *Safely Passing Bicyclists Chart*, (Sept. 10, 2021) <https://www.ncsl.org/research/transportation/safely-passing-bicyclists.aspx>.

<sup>16</sup> ALA. CODE § 32-5A-82 (West 2022); ARIZ. REV. STAT. ANN. § 28-735 (West 2022); ARK. CODE ANN. § 27-51-311 (West 2022); CAL. VEH. CODE § 21760 (West 2022); COLO. REV. STAT. ANN. § 42-4-1002 (West 2022); CONN. GEN. STAT. ANN. § 14-232 (West 2022); DEL. CODE ANN. TIT. 21, § 4116 (West 2022); D.C. MUN. REGS. TIT. 18, § 2202 (West 2022); FLA. STAT. § 316.083 (West 2022); GA. CODE ANN. § 40-6-56 (West 2022); HAW. REV. STAT. ANN. § 291C-43 (West 2022); 625 ILL. COMP. STAT. ANN. 5/11-703 (West 2022); KAN. STAT. ANN. § 8-1516 (West 2022); KY. REV. STAT. ANN. § 189.340 (West 2022); LA. STAT. ANN. § 32:76.1 (West 2022); ME. REV. STAT. TIT. 29-A, § 2070 (West 2022); MD. CODE ANN., TRANSP. § 21-1209 (West 2022); MICH. COMP. LAWS ANN. § 257.636 (West 2022); MINN. STAT. ANN. § 169.18 (West 2022); MISS. CODE ANN. § 63-3-1309 (West 2022); NEB. REV. STAT. ANN. § 60-6,133 (West 2022); NEV. REV. STAT. ANN. § 484B.270 (West 2022); N.H. REV. STAT. ANN. § 265:143-A (West 2022); **N.J. STAT. ANN. § 39:4-92.4b (West 2022)**; N.D. CENT. CODE ANN. § 39-10-11.1 (West 2022); OHIO REV. CODE ANN. § 4511.27 (West 2022); OKLA. STAT. ANN. TIT. 47, § 11-1208 (West 2022); 75 PA. STAT. AND CONS. STAT. ANN. § 3303 (Purdon’s 2022); S.D. CODIFIED LAWS § 32-26-26.1 (West 2022); TENN. CODE ANN. § 55-8-175 (West 2022); UTAH CODE ANN. § 41-6A-706.5 (West 2022); VA. CODE ANN. § 46.2-839 (West 2022); VA. CODE ANN. § 46.2-905 (West 2022); WASH. REV. CODE ANN. § 46.61.110 (West 2022); W. VA. CODE ANN. § 17C-7-3 (West 2022); WYO. STAT. ANN. § 31-5-203 (West 2022) (West 2022) (**requiring a motorist to leave at least three, or more, feet when passing a bicyclist**). *Compare* MASS. GEN. LAWS ANN. CH. 89, § 2 (West 2022); MO. ANN. STAT. § 300.411 (West 2022); MONT. CODE ANN. § 61-8-320 (West 2022); N.Y. VEH. & TRAF. LAW § 1122-A (McKinney 2022); OR. REV. STAT. ANN. § 811.065 (West 2022); 31 R.I. GEN. LAWS ANN. § 31-15-18 (West 2022); S.C. CODE ANN. § 56-5-3435 (West 2022); VT. STAT. ANN. TIT. 23, § 1033 (West 2022) (**requiring motorists to pass at a “safe distance”**).

<sup>17</sup> CONN. GEN. STAT. ANN. § 14-232 (West 2022) (including electric foot scooters, garbage compactors, tank vehicles, United States postal vehicles, express delivery carriers, and agricultural tractors); FLA. STAT. § 316.083 (West 2022) (including non-motorized vehicles); 625 ILL. COMP. STAT. ANN. 5/11-703 (West 2022) (including pedestrians, persons riding animals and animal-drawn vehicles); KY. REV. STAT. ANN. § 189.340 (West 2022) (including electric low speed scooters); ME. REV. STAT. TIT. 29-A, § 2070 (West 2022) (including roller skis); MD. CODE ANN., TRANSP. § 21-1209 (West 2022) (including motor scooters and electronic personal assist mobility devices - EPAMDs); MINN. STAT. ANN. § 169.18 (West 2022) (including pedestrians); NEB. REV. STAT. ANN. § 60-6,133 (West 2022) (including EPAMDs); NEV. REV. STAT. ANN. § 484B.270 (West 2022) (including electric scooters and pedestrians); **N.J. STAT. ANN. § 39:4-92.4b (West 2022)** (including electric scooters, pedestrians and personal conveyances); UTAH CODE ANN. § 41-6a-706.5 (West 2022) (defining “vulnerable user of a highway” as those operating motor scooters, skateboards, roller skates, in-line skates, motor drive-cycles, manual wheelchairs, golfcarts, mopeds, agricultural tractors, pedestrians, persons riding animals, EPAMDs); VA. CODE ANN. § 46.2-839 (West 2022) (including motorized skateboards, mopeds, persons riding animals, animal drawn vehicles; EPAMDs); VT. STAT. ANN. TIT. 23, § 1033 (West 2022) (defining vulnerable user a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as roller skates, rollerblades, or roller skis); a person operating a motor-assisted bicycle or an electric bicycle; or a person riding, driving, or herding an animal); WASH. REV. CODE ANN. § 46.61.110 (West 2022) (defining a vulnerable user to include pedestrians, motor scooters, motor driven cycles, mopeds, farm tractors; a person riding an animal, a motorized foot scooter, EPAMDs, a motorcycle).

<sup>18</sup> See *supra* note 14.

about the absence of a definition of “lawful personal conveyance” was brought to the attention of the Commission by a member of the public.<sup>19</sup>

### Analysis

The newly-enacted safe passing statute, N.J.S. 39:4-92.4, is similar to the New Jersey statute that requires the operator of a motor vehicle to use “due caution” when approaching a stationary, authorized emergency vehicle.<sup>20</sup> It requires the operator of a motor vehicle to take certain actions when they encounter a pedestrian, or three other specified and statutorily defined road users – bicycles, low-speed electric bicycles, and low-speed electric scooters.<sup>21</sup> The statute requires the operator of a motor vehicle to take the same actions when they encounter an individual operating “any other lawful personal conveyance.”<sup>22</sup>

An examination of the New Jersey statutes and the New Jersey Administrative Code revealed that the term “personal conveyance” is not defined in either, although the term appears six times in three New Jersey statutes and twice in the New Jersey Administrative Code.<sup>23</sup> A search of the term in Title 23 of the Code of Federal Regulations also did not yield a definition.<sup>24</sup>

In New Jersey’s Motor Vehicle statutes, the term “personal conveyance” is used exclusively in the definition of “recreation vehicle” as “a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping or travel purposes and used solely as a family or **personal conveyance**.”<sup>25</sup>

An examination of the transportation statutes from across the country, and the District of Columbia, confirm that only one other state – Kansas – uses the term *personal conveyance* when referring to a method of transportation.<sup>26</sup> In Kansas, the head of a state agency is prohibited from reimbursing a state employee for “any loss sustained to a state employee’s *personal conveyance*, or any related expense, when the conveyance was used on official state business.”<sup>27</sup> Like New Jersey, Kansas does not define the term.<sup>28</sup>

“Personal conveyance” is defined by the United States Department of Transportation’s Federal Motor Carrier Safety Administration as “the movement of a commercial motor vehicle

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<sup>19</sup> See Yarzab *supra* note 4.

<sup>20</sup> N.J. STAT. ANN. § 39:4-92.2 (West 2022), commonly referred to as the “move over law.” Larry Higgs, *Drivers Must Now Move Over When Passing People Walking and on Bikes*, NJ.Com (Aug. 05, 2021), <https://www.nj.com/news/2021/08/drivers-must-now-move-over-when-passing-people-walking-and-on-bikes.html>.

<sup>21</sup> N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2022).

<sup>22</sup> *Id.*

<sup>23</sup> N.J. STAT. ANN. § 39:1-1 (West 2021); N.J. STAT. ANN. § 39:3-10.11 (West 2022); N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2021); N.J. ADMIN. CODE § 13:21-23.1 (West 2022), and N.J. ADMIN. CODE § 19:9-1.1 (West 2022).

<sup>24</sup> See 23 C.F.R. § 490.205 (2021), entitled “Definitions,” (noting that number of non-motorized fatalities means the total number of fatalities involving pedestrian, bicyclist, other cyclist, and person on personal conveyance).

<sup>25</sup> N.J. STAT. ANN. § 39:1-1 (West 2022); N.J. STAT. ANN. § 39:3-10.11 (West 2022). The definition of “recreation vehicle” is identical in each statute and in the administrative code.

<sup>26</sup> KAN. STAT. ANN. § 46-922(f). (West 2022).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

(CMV) for personal use while off-duty.”<sup>29</sup> In this context, the term indicates the capacity – professional or personal – in which an individual is operating a motor vehicle.

The absence of a statutory definition of “personal conveyance” in New Jersey means that the term may be subject to competing interpretations for purposes of determining what constitutes a violation of the statute.

Every state with safe passing statutes provides protection for bicyclists.<sup>30</sup> Fourteen states provide protection to road users other than bicyclists.<sup>31</sup> Of the fourteen, no two set forth an identical list of protected roadway users.<sup>32</sup> Three states, Utah,<sup>33</sup> Vermont,<sup>34</sup> and Washington,<sup>35</sup> use the term “vulnerable users” to refer to persons traveling on roadways using an enumerated method of transportation. The Utah statute provides the most comprehensive protection for vulnerable road users, is easily accessible, and reflects contemporary drafting standards. It serves as the template for the proposed modifications to N.J.S. 39:4-92.4.<sup>36</sup>

### **Pending Bills**

No pending bills in New Jersey concern the issue raised in this Report.

### **Conclusion**

The Commission recommends modifying the language of N.J.S. 39:4-92.4 to eliminate any potential ambiguity resulting from the undefined term “personal conveyance” and support the Legislature’s goals of protecting vulnerable users of New Jersey’s roadways.

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<sup>29</sup> The Federal Motor Carrier Safety Administration is the lead federal government agency responsible for regulating and providing safety oversight of commercial motor vehicles. U.S. DEPT. OF TRANSP., FEDERAL MOTOR CARRIER SAFETY ADMIN., “Who We Are,” <https://www.fmcsa.dot.gov/mission/who> (last visited Dec. 08, 2021).

<sup>30</sup> *See supra* note 16.

<sup>31</sup> *See supra* note 17.

<sup>32</sup> *Id.*

<sup>33</sup> UTAH CODE ANN. § 41-6a-706.5 (West 2022) (defining “vulnerable user of a highway” as those operating motor scooters, skateboards, roller skates, in-line skates, motor drive-cycles, manual wheelchairs, golfcarts, mopeds, agricultural tractors, pedestrians, persons riding animals, EPAMDs).

<sup>34</sup> VT. STAT. ANN. TIT. 23, § 1033 (West 2022) (defining vulnerable user a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as roller skates, rollerblades, or roller skis); a person operating a motor-assisted bicycle or an electric bicycle; or a person riding, driving, or herding an animal).

<sup>35</sup> WASH. REV. CODE ANN. § 46.61.110 (West 2022) (defining a vulnerable user to include pedestrians, motor scooters, motor driven cycles, mopeds, farm tractors; a person riding an animal, a motorized foot scooter, EPAMDs, a motorcycle).

<sup>36</sup> *See infra* Appendix.

## Appendix

The proposed modifications to the existing New Jersey statutes to incorporate the provisions of the Act are shown with underlining (to signify the addition of text) and ~~striketrough~~ (to mark the removal of text) as follows:

### **N.J.S. 39:4-92.4 Approach of pedestrians and bicycles by motor vehicle; definitions; requirements; penalties**

a. As used in this section, “vulnerable user of a roadway”<sup>37</sup> [highway]<sup>38</sup> means:

~~“Bicycle” shall have the same meaning as set forth in R.S.39:4-14.5.~~

~~“Low-speed electric bicycle” shall have the same meaning as set forth in R.S.39:1-1.~~

~~“Low-speed electric scooter” shall have the same meaning as set forth in R.S.39:1-1.~~

~~“Pedestrian” shall include, but not be limited to, a pedestrian as defined in R.S.39:1-1, a person in a wheelchair or motorized wheelchair as defined in R.S.39:1-1, a person employed by or who contracts with any public utility company in this State, a property maintenance worker, or any other person who is permitted by law to be upon the roadway for work or recreation.~~

(1) a pedestrian as defined in N.J.S. 39:1-1,<sup>39</sup> including:

(A) a person who operates or is a passenger in an authorized emergency vehicle<sup>40</sup> as set forth in N.J.S. 39:4-92.2a.;<sup>41</sup>

(B) a person who operates or is a passenger in one of the vehicles set forth in N.J.S. 39:4-92.2b.;<sup>42</sup>

(C) a person employed by, or who contracts with, any public utility company in this State;

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<sup>37</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “roadway” to mean “that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term “roadway” as used herein shall refer to any such roadway separately, but not to all such roadways collectively.”).

<sup>38</sup> Compare N.J. STAT. ANN. § 39:1-1 (defining “highway” to mean “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.”).

<sup>39</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “pedestrian” as a person afoot).

<sup>40</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “authorized emergency vehicle” as vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the chief administrator when operated in response to an emergency call).

<sup>41</sup> N.J. STAT. ANN. § 39:4-92.2 (West 2022) is commonly referred to as the “move over law” that protects first responders and is entitled “Duties of Motor Vehicle Operator When Approaching Certain Stationary Vehicles Displaying Flashing, Blinking or Alternating Lights; Penalties.”

<sup>42</sup> *Id.*

(D) a property maintenance worker;<sup>43</sup> or

(E) any other person who is permitted by law to be upon the roadway for work or recreation.<sup>44</sup>

(2) a person operating any of the following on a roadway, including:

(A) a bicycle as defined in N.J.S. 39:4-14.5;<sup>45</sup>

(B) a low-speed bicycle as defined in N.J.S. 39:1-1;<sup>46</sup>

(C) a low-speed electric scooter as defined in N.J.S. 39:1-1;<sup>47</sup>

(D) a manual wheelchair;<sup>48</sup>

(E) a motorized wheelchair as defined in N.J.S. 39:1-1;<sup>49</sup>

(F) a skateboard as described in N.J.S. 39:4-10.5;<sup>50</sup>

(G) roller skates as defined in N.J.S. 39:4-10.5;<sup>51</sup>

(H) an electric personal assistive mobility device as defined in N.J.S. 39:4-14.10;<sup>52</sup> or

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<sup>43</sup> “Property maintenance worker” is not defined in the Motor Vehicle statutes. This term appears exclusively in the definition of pedestrian in N.J. STAT. ANN. § 39:4-92.4 (West 2022).

<sup>44</sup> This clause originally appeared in the in the definition of pedestrian in N.J. STAT. ANN. § 39:4-92.4 (West 2022).

<sup>45</sup> N.J. STAT. ANN. § 39:4-14.5 (West 2022) (defining bicycle as any two-wheeled vehicle having a rear drive wheel which is solely human-powered and having a seat height of 25 inches or greater when the seat is in the lowest adjustable position).

<sup>46</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “low-speed electric bicycle” as a two or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts, that meets the requirements of one of the following classifications: “class 1 low-speed electric bicycle” which means a low-speed electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour; or “class 2 low-speed electric bicycle” which means a low-speed electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour).

<sup>47</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “Low-speed electric scooter” as a scooter with a floorboard that can be stood upon by the operator, with handlebars, and an electric motor that is capable of propelling the device with or without human propulsion at a maximum speed of less than 19 miles per hour).

<sup>48</sup> The term “wheelchair” is not defined in the New Jersey Motor Vehicle statutes.

<sup>49</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “motorized wheelchair” as any motor-driven wheelchair utilized to increase the independent mobility, in the activities of daily living, of an individual who has limited or no ambulation abilities and includes mobility scooters manufactured specifically for such purposes and designed primarily for indoor use).

<sup>50</sup> N.J. STAT. ANN. § 39:4-10.5 (West 2022) (the term skateboard is not defined in the New Jersey statutes. It is referenced in subsections b. and c. of this statute).

<sup>51</sup> N.J. STAT. ANN. § 39:4-10.5 (West 2022) (defining “roller skates” as a pair of devices worn on the feet with a set of wheels attached, regardless of the number or placement of those wheels, and used to glide or propel the user over the ground).

<sup>52</sup> N.J. STAT. ANN. § 39:4-14.10 (West 2022) (defining “electric personal assistive mobility device” as a self-balancing non-tandem two wheeled device designed to transport one person which uses an electric propulsion system with



(1) a farm tractor or implement of husbandry as defined in N.J.S. 39:1-1.<sup>53</sup>

b. The operator of a motor vehicle shall:

(1) ~~approaching a pedestrian, bicycle, low-speed electric bicycle, low-speed electric scooter, or any other lawful personal conveyance~~ vulnerable user of a roadway located or operating in an area designated for ~~pedestrians or those conveyances~~ such users on the roadways of this State with due caution; and,

(2) absent any other direction by a law enforcement officer, proceed as follows:

(1) (A) when possible under existing safety and traffic conditions, make a lane change into a lane not adjacent to the ~~pedestrian or personal conveyance~~ vulnerable user of a roadway;

(2) (B) if a lane change cannot be made pursuant to paragraph (1) (A) of this subsection, leave a reasonable and safe distance of not less than four feet while approaching the ~~pedestrian or personal conveyance~~ vulnerable user of a roadway and maintain a distance of at least four feet until the motor vehicle has safely passed the ~~conveyance~~ vulnerable user; or

(3) (C) if it is not possible, is prohibited by law, or is unsafe to make a lane change pursuant to paragraph (1) (A) of this subsection or to leave a reasonable and safe distance of not less than four feet pursuant to paragraph (2) (B) of this subsection, the motor vehicle operator shall reduce the speed of the motor vehicle to 25 miles per hour or a lower posted speed and be prepared to stop; the operator may pass the ~~pedestrian or personal conveyance~~ vulnerable user of a roadway only if, considering the size and speed of the motor vehicle, traffic conditions, weather, visibility, and the surface and width of the roadway, passing does not endanger the safety of a ~~pedestrian, operator of the personal conveyance~~ the vulnerable user of a roadway, or any other person on the roadway.

c. A person who commits a violation of the provisions of this section which results in bodily injury as defined in N.J.S.2C:11-1 shall be fined \$500 and assessed two motor vehicle penalty points; if no bodily injury results, the violator shall be fined \$100 and shall not be assessed any penalty points.

d. Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of any offense defined by the laws of this State or for any violation of Title 39 of

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average power of 750 watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while operated by a person weighing 170 pounds is less than 20 miles per hour. The device shall not be considered a motorized wheelchair, motorized bicycle, motorcycle, motorized scooter, motorized skateboard, vehicle, or motor vehicle).

<sup>53</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “farm tractor” as every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry).

the Revised Statutes.

## Comments

- *Subsection a.*

The proposed modification to subsection a. includes the incorporation of the term “vulnerable user of a roadway.”<sup>54</sup> The proposed definition of a “vulnerable user of a roadway” is set forth in two subsections – a.(1) which incorporates pedestrians and a.(2) which incorporates persons operating specified modes of transportation.

- *Subsection a.(1) - Pedestrian*

The current definition of pedestrian as set forth in subsection a. includes four groups of people. These people include persons: in a wheelchair; who are employed by a public utility company; property maintenance workers; and any other person who is permitted to be on the roadway for work or recreation.

An examination of subsections a. and b of N.J.S. 39:4-92.2 confirm that the operator of a motor vehicle who approaches an enumerated vehicle must exercise due caution. The statute does not specifically provide for the protection of the operator or passengers once they exit the vehicle and move on to the roadway. The proposed language of subsections a.(1)(A) and (B) seeks to address this.

The current statutory definition of pedestrian as it pertains to persons employed by any public utility in the State, a property maintenance worker, or any other person permitted to be upon the roadway for work or recreation is reproduced in subsections a.(1)(C), (D) and (E), respectively.

- *Subsection a.(2) – Persons Operating Mobility Devices on a Roadway*

- *Subsection a.(2)(A)-(C) – Bicycle, Low Speed Electric Bicycle and Low-Speed Electric Scooter*

The proposed language in subsection a.(2) sets forth a list of mobility devices that is not exhaustive. The references to bicycle, low-speed electric bicycle, and low-speed electric scooter have been moved to proposed section a.(2)(A) – (C).

- *Subsection a.(2)(D)-(E) – Wheelchair and Motorized Wheelchairs*

The term wheelchair is not defined in the New Jersey statutes. Consistent with the intent of the Legislature to protect “vulnerable roadway users,” the existing language pertaining to individuals using wheelchairs has been moved to subsections a.(2)(d) and (3) to protect persons with physical disabilities or impaired ambulatory mobility who travel on New Jersey roadways using manual or motorized wheelchairs.

- *Subsection a.(2)(F)-(H) – Skateboards, Roller Skates, and Electric Personal Assistive Mobility Devices*

The proposed language in subsections (F)-(H) provides protection for vulnerable roadway users whose modes of transportation are referenced elsewhere in the New Jersey Motor Vehicle statutes.

- *Subsection a.(2)(I) – Farm Tractor or Implement of Husbandry*

Proposed protection of persons who operate farm tractors has been included in subsection (I).

- *Subsection b.*

The term pedestrian and personal conveyance have been removed from each subsection in which they appear and replaced with the proposed term “vulnerable roadway user.” Each subsection has been renumbered or re-lettered,

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<sup>54</sup> See notes 37 and 38 for the definitions of roadway and highway respectively.

as appropriate.

- *Subsections c. and d.*

No modifications have been proposed to either subsection c. or d.

## For Reference

N.J.S. 39:4-92.2. Duties of motor vehicle operator when approaching certain stationary vehicles displaying flashing, blinking or alternating lights; penalties

a. The operator of a motor vehicle approaching a stationary authorized emergency vehicle as defined in R.S.39:1-1 that is displaying a flashing, blinking, or alternating red or blue light, or any configuration of lights containing one of these colors, shall approach the authorized emergency vehicle with due caution and shall, absent any other direction by a law enforcement officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change pursuant to paragraph (1) of subsection a. of this section would be impossible, prohibited by law or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

b. The operator of a motor vehicle approaching a stationary tow truck as defined in section 1 of P.L.1999, c. 396 (C.39:3-84.6) that is displaying a flashing amber light, a stationary highway maintenance or emergency service vehicle that is operated by the State, an authority, or a county or municipality and displaying flashing yellow, amber, or red lights, or a stationary sanitation vehicle displaying a flashing amber warning light pursuant to section 1 of P.L.2011, c. 3 (C.39:3-54.27) shall approach the vehicle with due caution and shall, absent any other direction by a law enforcement officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the tow truck, highway maintenance or emergency service vehicle, or sanitation vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of subsection b. of this section would be impossible, prohibited by law or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

c. A person who violates this section shall be fined not less than \$100 and not more than \$500. In addition to the fine imposed pursuant to this subsection, a person convicted of three or more offenses under this section that occur within a 12-month period shall be assessed two motor vehicle penalty points pursuant to section 1 of P.L.1982, c. 43 (C.39:5-30.5).

A motor vehicle operator shall not be assessed motor vehicle penalty points unless the stationary vehicle is displaying flashing, blinking, or alternating lights in accordance with this section at the time of the third or subsequent violation.

Credits: L.2009, c. 5, § 1, eff. Jan. 27, 2009. Amended by L.2017, c. 43, § 2, eff. May 1, 2017; L.2019, c. 370, § 1, eff. Sept. 1, 2020.

**Utah:** § 41-6a-706.5. Definitions--Operation of motor vehicle near a vulnerable user of a highway prohibited--Endangering a vulnerable user of a highway prohibited (Effective: May 12, 2020)

(1) As used in this section, “vulnerable user of a highway” means:

(a) a pedestrian, including a person engaged in work upon a highway or upon utilities facilities along a highway or providing emergency services within the right-of-way of a highway;

(b) a person riding an animal; or

(c) a person operating any of the following on a highway:

(i) a farm tractor or implement of husbandry, without an enclosed shell;

(ii) a skateboard;

(iii) roller skates;

(iv) in-line skates;

(v) a bicycle;

(vi) an electric-assisted bicycle;

(vii) an electric personal assistive mobility device;

(viii) a moped;

(ix) a motor assisted scooter;

(x) a motor-driven cycle;

(xi) a motorcycle;

(xii) a manual wheelchair; or

(xiii) a golf cart.

(2) An operator of a motor vehicle may not knowingly, intentionally, or recklessly:

(a) operate a motor vehicle within three feet of a vulnerable user of a highway;

(b) distract or attempt to distract a vulnerable user of a highway for the purpose of causing violence or injury to the vulnerable user of a highway;

(c) force or attempt to force a vulnerable user of a highway off of the roadway for a purpose unrelated to public safety; or

(d) cause a motor vehicle to emit an excessive amount of exhaust in a manner that distracts or endangers a vulnerable user of a highway.

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is an infraction.

(b) A violation of Subsection (2) that results in bodily injury to the vulnerable user of a highway is a class C misdemeanor.

Credits: Laws 2005, c. 216, § 1, eff. May 2, 2005; Laws 2013, c. 431, § 1, eff. May 14, 2013; Laws 2015, c. 412, § 50, eff. May 12, 2015; Laws 2019, c. 428, § 4, eff. May 14, 2019; Laws 2019, c. 461, § 2, eff. May 14, 2019; Laws 2020, c. 84, § 3, eff. May 12, 2020.