

A 2513 Simotas Same as **S 889** AMEDORE
 Vehicle and Traffic Law
 TITLE....Relates to driving a motor vehicle
 while under the influence of drugs or combined
 use of drugs and alcohol
 01/20/17referred to transportation
 01/03/18referred to transportation

S889 AMEDORE Same as **A 2513** Simotas
 ON FILE: 01/03/18 Vehicle and Traffic Law
 TITLE....Relates to driving a motor vehicle while
 under the influence of drugs or combined use of drugs
 and alcohol
 01/05/17 REFERRED TO TRANSPORTATION
 05/02/17 1ST REPORT CAL.692
 05/03/17 2ND REPORT CAL.
 05/08/17 ADVANCED TO THIRD READING
 05/22/17 PASSED SENATE
 05/22/17 DELIVERED TO ASSEMBLY
 05/22/17 referred to transportation
 01/03/18 died in assembly
 01/03/18 returned to senate
 01/03/18 REFERRED TO TRANSPORTATION
 05/15/18 1ST REPORT CAL.1207
 05/16/18 2ND REPORT CAL.
 05/22/18 ADVANCED TO THIRD READING
 06/04/18 PASSED SENATE
 06/04/18 DELIVERED TO ASSEMBLY
 06/04/18 referred to transportation

STATE OF NEW YORK

2513

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

Introduced by M. of A. SIMOTAS, McDONOUGH, MURRAY -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the public health law, in relation to driving a motor vehicle under the influence of drugs or combined use of drugs and alcohol

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

1 Section 1. The vehicle and traffic law is amended by adding a new
2 section 119-c to read as follows:

3 § 119-c. Inhalant. The term "inhalant" when used in this chapter shall
4 refer to the smelling or inhaling of any substance set forth in subdivi-
5 sion one of section thirty-three hundred eighty of the public health law
6 or the prohibited use of nitrous oxide as set forth in subdivision five
7 of such section, except for the inhalation of any such substance for
8 medical or dental purposes.

9 § 2. Subdivisions 4 and 4-a of section 1192 of the vehicle and traffic
10 law, subdivision 4 as added by chapter 47 of the laws of 1988 and subdivi-
11 sion 4-a as added by chapter 732 of the laws of 2006, are amended to
12 read as follows:

13 4. Driving while ability impaired by drugs. No person shall operate a
14 motor vehicle while the person's ability to operate such a motor vehicle
15 is impaired by the use of a drug or inhalant as defined in this chapter,
16 or impaired by the voluntary ingestion of any other chemical, inhalant,
17 pharmaceutical or other impairing substance or combination of substances
18 to the extent the driver is incapable of employing the physical and
19 mental abilities which he or she is expected to possess in order to
20 operate a vehicle in a reasonable and prudent manner.

21 4-a. Driving while ability impaired by the combined influence of drugs
22 or of alcohol and any drug or drugs. No person shall operate a motor
23 vehicle while the person's ability to operate such motor vehicle is
24 impaired by the combined influence of drugs and/or inhalants or of alco-

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

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1 hol and any drug or drugs and/or inhalants or by the combined influence
2 of alcohol or any drug or drugs and/or inhalants with any chemical,
3 pharmaceutical, inhalant or other impairing substance or combination of
4 substances to the extent the driver is incapable of employing the phys-
5 ical and mental abilities which he or she is expected to possess in
6 order to operate a vehicle in a reasonable and prudent manner.

7 § 3. Paragraph (b) of subdivision 1 of section 3380 of the public
8 health law, as amended by chapter 234 of the laws of 1985, is amended to
9 read as follows:

10 (b) As used in this section hazardous inhalants shall mean and include
11 the hydrocarbon difluoroethane and any of the preparations of compounds
12 containing one or more of the chemical compounds~~[+]~~: amyl nitrite, isoa-
13 myl nitrite, butyl nitrite, isobutyl nitrite, pentyl nitrite or any
14 other ~~[alkyl]~~ alkyl nitrite compound that is either designed to be used,
15 or commonly used, as an inhalant.

16 § 4. Section 1192 of the vehicle and traffic law is amended by adding
17 a new subdivision 13 to read as follows:

18 13. It shall be an affirmative defense to a charge under subdivisions
19 four and four-a of this section that the operator suffered an allergic
20 reaction or medical emergency rather than being impaired by the
21 substance or combination of substances, provided, however, that no
22 defense shall be available if any such ingested substance is contained
23 in section three thousand three hundred six or section three thousand
24 three hundred eighty of the public health law.

25 § 5. This act shall take effect on the first of November next succeed-
26 ing the date on which it shall have become a law.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A2513

SPONSOR: Simotas

TITLE OF BILL:

An act to amend the vehicle and traffic law and the public health law, in relation to driving a motor vehicle under the influence of drugs or combined use of drugs and alcohol

PURPOSE OF THE BILL:

To codify the language of a Court of Appeals ruling that will allow law enforcement to keep up with the proliferation of designer and synthetic and other chemical substances that, when consumed, result in significant levels of impairment.

SUMMARY OF SPECIFIC PROVISIONS:

Amends subdivisions 4 and 4-A of § 1192 of the Vehicle and Traffic Law (VTL) relating to operating a vehicle while impaired by drugs, to codify language from People v. Cruz (48 N.Y. 2d 419 (1979) to include pharmaceutical and chemical substances that create such a degree of impairment as to render a motor vehicle incapable of employing the physical and mental abilities which he or she is expected to possess in order to operate a vehicle in a reasonable and prudent manner.

JUSTIFICATION:

Under existing law, it is illegal to operate a motor vehicle while under the influence of a drug or drugs, or under the combined influence of alcohol and drugs. "Drugs" is defined as any substance included in the list set forth in § 3306 of the Public Health Law. Unfortunately, the proliferation of synthetic and boutique drugs, such as "bath salts", "synthetic marijuana", and diflouroethane (among many others) are not included in the Public Health Law - and as such allow people to consume these substances, operate a motor vehicle and kill and maim innocent victims across this State.

In 2004, Vincent Litto was driving in Brooklyn on a four-lane road with three occupants in his car. Litto picked up a can of "Dust-Off" from the dashboard and sprayed it into his mouth. Dust-Off contains a hydrocarbon, diflouroethane, which assists as a propellant and gives the "buffer" an almost immediate high. Inhalation acts as stimulant of the central nervous system, and within seconds, makes it difficult to perceive and react to the environment. About 45 seconds after huffing the Dust-Off, Litto veered into oncoming traffic. One of the passengers in the oncoming car was killed, and the driver of that car and two of

Litto's passengers were seriously injured. Nevertheless, because diflouroethane is not included on the list set forth in PHL § 3306, Litto's abhorrent disregard for human life could not be prosecuted as vehicular manslaughter and vehicular assault. (See People v. Litto, B NY 3rd 692 (2007)).

Disturbingly, as new mind and reaction-altering substances are produced and consumed, it is not conceivably possible that the Legislature can expect to keep up with today's creative chemistry through the existing, antiquated process of adding substances through statutory changes to the Public Health Law. Accordingly, this legislation turns to a long-accepted definition of "intoxicated condition" established by the Court of Appeals in Cruz, Id., where the Court of Appeals, established a clear and concise definition for that term that is equally applicable to impairment by drugs.

It is imperative that the Legislature face up to the fact that, under the current scheme, it will never be able to keep up with the "chemists" who are working to provide new ways to get high and circumvent existing drug laws. For example, the use of so-called "synthetic marijuana" that has swept college campuses in recent years, not only causes a marijuana-type high - but this substance can also generate manic and psychotic episodes. Combine this with driving and every other car on the road represents a body bag waiting to happen. Yet, while organic marijuana is considered a drug - this more potent substance is not.

While the burden on the prosecution will be significant, the use of this expanded definition will provide prosecutors with a fighting chance to persuade a court that the chemical substance consumed by a motor vehicle operator had just as great a level of impairment on the operator as alcohol and/or the drugs listed in PHL § 3306.

PRIOR LEGISLATIVE HISTORY:

2015-2016: A4719-B/S4769-A

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect on November 1st