

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Dep. Dir.
Re: Definition of Personal Conveyance as used in N.J.S. 39:4-92.4
Date: January 10, 2022

MEMORANDUM

Project Summary

In August of 2021, Governor Phil Murphy signed into law a bill to protect pedestrians and “vulnerable road users” from the possibility of being injured by motor vehicles.¹ Pursuant to 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.”²

While N.J.S. 39:4-92.4 provides a definition for bicycle, low-speed electric bicycle, low-speed electric scooter, and pedestrian, it does not define “personal conveyance.”³ That section becomes effective on March 1, 2022. Although Commission consideration of a statute that has not taken effect is unusual, it appears that the statutory language could cause confusion without clarification. The issue raised for Commission consideration is what constitutes a “lawful personal conveyance.”⁴

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

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 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). See also 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>.

² 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.

³ N.J. STAT. ANN. § 39:4-92.4a. (West 2021).

⁴ 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.

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

* * *

Background

During 2020 and 2021, there was an increase in road use in New Jersey by people “walking, bicycling, and using scooters.”⁵ The increase in road use by vulnerable road users was accompanied by a 9% pedestrian fatality rate.⁶ People of color, the elderly, and people who do not have cars accounted for 34% of those deaths.⁷ In 2020, New Jersey had the eighth highest number of pedestrian deaths in the United States.⁸

In just over a decade, cities nationwide have experienced a proliferation of micromobility transportation technology.⁹ 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.”¹⁰ 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.¹¹

⁵ 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>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *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 (last visited Dec. 07, 2021).

¹⁰ *Id.*

¹¹ *Id.* at *2.

To proactively prevent accidents between motor vehicles and vulnerable road users, the Governor enacted N.J.S. 39:4-92.4, commonly known as the “safe passing” law.¹² Concern about the absence of a definition of “lawful personal conveyance” was brought to the attention of the Commission by a member of the public.¹³

Analysis

The newly-enacted safe passing statute, N.J.S. 39:4-92.4, requires the operator of a motor vehicle to take certain actions when they encounter a pedestrian, or three other enumerated and statutorily defined road users – bicycles, low-speed electric bicycles, and low-speed electric scooters. In addition, 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.”¹⁴

An examination of the New Jersey statutes and the New Jersey Administrative Code for the term “personal conveyance” did not reveal a definition of the term. “Personal conveyance” appears six times in three New Jersey statutes and once in the New Jersey Administrative Code.¹⁵ Although it appears in two statutes and one code section that are identified as definition sections, it is not defined in any New Jersey statute or Administrative Code provision.¹⁶ A search of the term “personal conveyance” in Title 23 of the Code of Federal Regulations also did not yield a definition for this term.¹⁷

Outside of its use in N.J.S. 39:4-92.4, the term “personal conveyance” is used exclusively in the definition of “recreational vehicle[s].”¹⁸ The term “recreational vehicle” means “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.**”¹⁹ In this context, the term “personal conveyance” does not refer to the mode of transportation.

The term 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 (CMV) for personal use while off-duty.”²⁰ In this context, the term indicates the capacity – professional or personal – in which an individual is operating a motor vehicle.

¹² See Higgins *supra* note 5.

¹³ See Yarzab *supra* note 4.

¹⁴ N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2021).

¹⁵ N.J. STAT. ANN. § 39:1-1 (West 2021); N.J. STAT. ANN. § 39:3-10.11 (West 2021); N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2021); and N.J. ADMIN. CODE § 19:9-1.1 (West 2021).

¹⁶ N.J. STAT. ANN. § 39:1-1 (West 2021) (entitled “Definitions”); N.J. STAT. ANN. § 39:3-10.11 (West 2021) (entitled “Definitions”); and N.J. ADMIN. CODE § 19:9-1.1 (West 2021) (entitled “Definitions”).

¹⁷ 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).

¹⁸ *Id.*

¹⁹ *Id.* The definition of “recreational vehicle” is identical in each statute and in the administrative code.

²⁰ 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).

The absence of a statutory definition of personal conveyance means that the term may be subject to competing interpretations of what constitutes a “lawful personal conveyance” for purposes of violating the statute.

Pending Legislation

There is no pending legislation in New Jersey that concerns the issue raised in this Memorandum.

Conclusion

Staff requests authorization to conduct additional research and outreach to determine whether modifying N.J.S. § 39:4-92.4 to define the term “personal conveyance” would help clarify its use in this statute.