

## Draft Supplemental Appendix

The proposed modifications to the following statute are shown with underlining for inserted language and ~~strikethrough~~ for deletions. In addition, the use of *italics* indicates text that has been modified since the dissemination of the Commission’s Tentative Report.<sup>1</sup> In this Appendix, the legislative drafting signals are used independently and in combination with one another where appropriate.

### **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>2</sup> [highway]<sup>3”</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>4</sup> including a person who is lawfully on a roadway:

(A) a person who operates or is a passenger in *after exiting*<sup>5</sup> an authorized emergency vehicle<sup>6</sup> as set forth in N.J.S. 39:4-92.2, subsection a.:<sup>7</sup>

---

<sup>1</sup> The proposed modifications in this Draft Supplemental Appendix are based upon the recommendations of Comm’r Bernard Bell. E-mail from Comm’r Bernard Bell, to Laura C. Tharney, Exe. Dir., N.J. Law Rev. Comm’n (Feb. 13, 2022, 3:33 PM EST) (on file with the NJLRC).

<sup>2</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>3</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>4</sup> N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “pedestrian” as a person afoot).

<sup>5</sup> *Cf.* N.J. STAT. ANN. § 27:5F-41 (West 2022) (requiring the Director of the Division of Highway Traffic Safety in the Department to develop a curriculum for teacher of drivers education courses that includes topics such as “exiting a vehicle without endangering pedestrians....”) and N.J. STAT. ANN. § 39:1-1 (West 2022) (requiring the driver’s license examination to test the driver’s knowledge of “exiting a vehicle without endangering pedestrians”).

<sup>6</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>7</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.”

(B) a person who operates or is a passenger in after exiting one of the vehicles set forth in N.J.S. 39:4-92.2, subsection b.;<sup>8</sup>

(C) while working on utilities along a roadway because the person is employed by, or contracts with, any public utility company of this State;

(D) while performing a property maintenance worker along a roadway;<sup>9</sup> or

(E) any other person who is permitted by law to be upon the roadway for either work or recreation.<sup>10</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>11</sup>

(B) a low-speed bicycle as defined in N.J.S. 39:1-1;<sup>12</sup>

(C) a low-speed electric scooter as defined in N.J.S. 39:1-1;<sup>13</sup>

(D) a manual wheelchair;<sup>14</sup>

(E) a motorized wheelchair as defined in N.J.S. 39:1-1;<sup>15</sup>

(F) a skateboard as described in N.J.S. 39:4-10.5;<sup>16</sup>

---

<sup>8</sup> *Id.*

<sup>9</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>10</sup> This clause originally appeared in the in the definition of pedestrian in N.J. STAT. ANN. § 39:4-92.4 (West 2022).

<sup>11</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>12</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>13</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>14</sup> The term “wheelchair” is not defined in the New Jersey Motor Vehicle statutes.

<sup>15</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>16</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).

(G) roller skates as defined in N.J.S. 39:4-10.5;<sup>17</sup>

(H) an electric personal assistive mobility device as defined in N.J.S. 39:4-14.10;<sup>18</sup> or

(I) a farm tractor or implement of husbandry as defined in N.J.S. 39:1-1.<sup>19</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)~~ (2) absent any other direction by a law enforcement officer, proceed as follows:

~~(1)~~ (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)~~ (2) ~~(B)~~ if a lane change cannot be made pursuant to paragraph ~~(1)~~ (1) 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)~~ (3) ~~(C)~~ if it is not possible, is prohibited by law, or is unsafe to make a lane change pursuant to paragraph ~~(1)~~ (1) of this subsection or to leave a reasonable and safe distance of not less than four feet pursuant to paragraph ~~(2)~~ (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~~ 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.

---

<sup>17</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>18</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 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>19</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).

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 the Revised Statutes.

### Comments

#### • *Subsection a.*

The proposed modification to subsection a. includes the incorporation of the term “vulnerable user of a roadway.”<sup>20</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; persons 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.

The phrase “lawfully on a roadway” was utilized rather than the term “afoot” or “on foot” to provide coverage for individuals who may not be “walking” -- for example, a person lying on the roadway fixing the underside of a vehicle; or a child in a stroller; and to eliminate any possible confusion that might arise from the use of term “afoot” the same statute that includes references to traditional units of measure.

An examination of subsections a. and b of N.J.S. 39:4-92.2 confirmed 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 about 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 users of a roadway,” the existing language pertaining to persons using wheelchairs has been moved to subsections a.(2)(D) and (E) to protect persons with physical disabilities or impaired ambulatory mobility who travel on New Jersey roadways using manual or motorized wheelchairs.

---

<sup>20</sup> See notes 2 and 3 for the definitions of roadway and highway respectively.

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

The proposed language in subsection a.(2)(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 user of a roadway.” Each subsection has been renumbered or re-lettered, 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.