



Thrown Under the Bus

How Lax State Laws for Double-Decker Tour Buses are
Endangering the Lives of New Yorkers



**New York State Senator Brad Hoylman
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Executive Summary

Double-decker sightseeing buses have become an increasingly ubiquitous presence in Manhattan over the past several years, their numbers more than tripling since 2004. As their numbers have grown, so too have concerns over the safety of these vehicles and their drivers. High profile collisions involving double-decker sightseeing buses have periodically captured the attention of the media and New York City residents, but with few resulting measures to ensure these vehicles are operated safely by qualified, capable drivers.

After hearing complaints and concerns about double-decker sightseeing buses from constituents, including an incident where a constituent nearly lost a limb when hit by a sightseeing bus while crossing the street in Greenwich Village, we conducted a comprehensive review of New York State's laws and regulations applying to buses and other passenger motor carriers. What we found was alarming, and confirmed the suspicions of many that these vehicles are operating in an environment of legal loopholes, ambiguous jurisdiction and lax enforcement.

Our major findings include the following:

- An exemption for New York City double-decker sightseeing buses in the New York State Transportation Law gives the state little to no enforcement power over these buses for violations of safety laws and regulations;
- A loophole in the New York State Vehicle and Traffic Law means that drivers of double-decker sightseeing buses operating in New York City are not required by state law to be thoroughly vetted, undergo regular medical exams, or periodically retake driver's tests, as other bus drivers must;
- The same loophole means that sightseeing bus operators are under no obligation to notify New York State of the identities of their drivers, or to report data about crashes to the New York State Department of Motor Vehicles;
- New York City double-decker sightseeing bus drivers are exempt from provisions of state law that ban or restrict convicted sex offenders and drunk drivers from piloting other types of buses.

Each of these findings, as well as others, are discussed in greater detail in this report, along with policy recommendations to ensure that the New York State agencies with jurisdiction over motor carriers of passengers have the tools they need to properly and effectively regulate the safety, qualifications, and accountability of double-decker sightseeing bus operators and their drivers.

Tale of the Tape

NYC Double-Decker Sightseeing Buses		Other Buses ¹
No	Can be ordered to cease operations by NYS Department of Transportation?	Yes
No	Required by state law to establish, observe and enforce reasonable rates and fares?	Yes
No	Required by state law to carry at least \$500,000 of insurance to cover personal injury or death?	Yes
No	Bus companies required by state law to perform background check on drivers?	Yes
No	Sex offenders prohibited by state law from driving buses?	Yes
No	Bus companies required to submit annual reports about driver collisions or convictions to NYS Department of Motor Vehicles?	Yes
No	Drivers prohibited by state law from operating a bus if they've consumed any drug, controlled substance, or alcoholic beverage in previous six hours?	Yes
No	Drivers required by state law to undergo physical examination every two years?	Yes
No	Drivers required by state law to undergo driving test every two years?	Yes
No	Bus companies required to report list of drivers to NYS Department of Motor Vehicles?	Yes

¹ Buses subject to Article 7 of the New York State Transportation Law and Article 19-A of the New York State Vehicle and Traffic Law.

Introduction

On any given morning, a person walking along one of the streets in the Senate district I represent might see a dozen or more double-decker sightseeing buses, many nearly empty, winding their way through traffic. It wasn't always this way. According to NYC Open Data, there are currently nine companies licensed to operate double-decker sightseeing buses in New York City, with a combined fleet of 194 buses.ⁱ This number has ballooned in recent years – in 2004, there were only 60 such buses licensed to provide sightseeing tours.ⁱⁱ

With the skyrocketing increase in double-decker sightseeing buses on the streets of New York City has come valid concerns and complaints from residents of the 27th Senate district, in the heart of the borough of Manhattan.

My constituents have reported witnessing sightseeing bus drivers texting while driving, threatening the safety of passengers and pedestrians alike. Many report seeing buses running close to empty, suggesting there is an excessive number of licensed buses operating at any given time. Others have contacted 311 or my Senate office to report brightly illuminated buses, loud music or amplified narration emanating from the buses, disrupting them in their homes. One resident emailed our office a video recording of a double-decker sightseeing bus blaring music, noting that “dozens of these buses pass through SoHo each day, clogging our streets, taking up space from our public buses, and generally turning our historic district mixed-use neighborhood into a ... circus.”

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More critically, my constituents have raised serious concerns about the safety of double-decker sightseeing buses, with some reporting that they are afraid to cross the street when double-deckers are close by. Their concerns are not without merit, as several high-profile crashes involving double-decker sightseeing buses demonstrate.

November 29, 2017: A double-decker Top View Sightseeing bus slammed into a delivery truck, injuring three people, outside of the Richard Rodgers Theater before a matinee production of the musical “Hamilton” on West 46th Street near 8th Avenue. Onlookers describe seeing sparks flying and witnessing the bus coming up on the sidewalk.ⁱⁱⁱ

July 21, 2016: A double-decker Go New York Tours sightseeing bus slammed into a tree near Central Park at East 63rd Street and 5th Avenue, injuring 13 passengers. Eyewitnesses suggest the driver swerved to avoid hitting a taxi. Some passengers sustained serious head injuries and were transported to local hospitals.^{iv}

*"I was here working, all of a sudden I hear BOOM! People were screaming, people were yelling. One girl had blood running down her face, it looked so bad. ... I'm just glad nobody died." -Danny Palletto, eyewitness to the Central Park crash, as quoted in the *New York Post*¹*

July 3, 2015: A man was crossing Sixth Avenue with the light at West 4th Street when he was struck by a turning CitySightseeing New York bus. The bus dragged him several feet and pinned him underneath, mangling one of his legs.^v The victim remained in the ICU for 78 days following the collision.^{vi}

August 5, 2014: A double-decker Gray Line sightseeing bus sideswiped another double-decker bus operated by CitySights NY before jumping the curb at the corner of 47th Street and 7th Avenue. The crash leveled a traffic light and injured at least 15 people, mostly pedestrians.^{vii} While the Manhattan DA ultimately concluded that mechanical failure played a role in the crash and declined to pursue criminal charges, the driver of the Gray Line bus had a long history of license suspensions and driving infractions.^{viii}

June 18, 2014: A CitySights NY bus slammed into a 74-year old woman on 7th Avenue near 14th Street, pinning her under the bus. Witnesses say the bus did not see the pedestrian. The woman was rushed to the emergency room and sustained life-threatening injuries.^{ix}

Regulation of New York City Sightseeing Buses

The regulation of New York City sightseeing buses falls into a morass of federal, state, and local jurisdictions, often spread across multiple agencies at each level of government. Our review of the relevant laws and regulations pertaining to New York City sightseeing buses found a multi-jurisdictional web riddled with loopholes, contradictions, and lower standards that combine to allow sightseeing bus companies to operate in an environment with limited oversight and lax enforcement.

In a September 2013 interview, C. Thomas Schmidt, the owner of New York Party Shuttle LLC, claimed that his sightseeing bus businesses "fall outside of federal, state or local rules," and that his company "can no longer be federally regulated because it doesn't operate over state lines," and "[i]t isn't subject to state regulations because New York City sightseeing tours are exempt."^x

While Mr. Schmidt is not entirely accurate in his assertion that sightseeing bus companies like his completely evade regulation, his statements highlight the "loopholes and murky jurisdiction" that exist for New York City sightseeing buses. Indeed, the truth is "[r]egulators to date have agreed [with Mr. Schmidt] or found no evidence to contradict him."^{xi}

Riding the Bus: A Passenger Experience

A member of my staff recently rode a GO New York hop-on hop-off sightseeing bus around Midtown and Lower Manhattan. She writes:

This experience really solidified the idea that these buses are not designed for Manhattan streets. I spent most of my time sitting in traffic while pedestrians darted in front of and around the bus. When the bus was moving, I was terrified about the clearance between our heads and many street signs and traffic lights – if I stood up I would have likely been hit. People audibly said “whoa” and reminded fellow passengers to sit down and be careful. Meanwhile there was no one upstairs policing the “please remain seated at all times” sign, so of course throughout the ride tourists were standing up to take pictures and move around.

The ride was relatively smooth, with the exception of a few times when the driver swerved around some MTA buses. However, when I sat downstairs to surreptitiously observe the driver, I was surprised to see him chatting extensively with a friend who was standing next to him (possibly a driver-in-training) – gesturing one hand expressively and even cursing as he drove. Overall, I departed feeling like I had just left a long MTA bus ride but much less safe, with the audio guide’s music of Taylor Swift’s “Welcome to New York” stuck in my head the rest of the day.



New York State Department of Transportation

The New York State Legislature has recognized in the recent past that consideration of New York City sightseeing buses in state law was lacking. In 1997, at the request of the New York City Mayor, the Legislature passed a law to give the Commissioner of the New York State Department of Transportation (DOT) the explicit authority to conduct safety inspections of double-decker sightseeing buses operating in New York City.^{xii}

The Senator sponsoring the bill explained on the floor of the Senate that the bill came about after an inquiry by the Senate Investigations Committee prompted by an incident in which a wheel fell off a moving double-decker sightseeing bus. The Senator wryly noted that “the wheel apparently was not properly attached with a lug nut in a fashion which is customary to keep wheels attached to vehicles.”^{xiii}

As a result, New York City sightseeing buses, like other motor carriers who carry passengers for hire, are now subject to certain safety regulations written and enforced by DOT.^{xiv} New York City sightseeing buses are largely treated the same as other types of buses – other than school buses, which often have additional requirements – for the purposes of DOT safety regulations. They are required to be inspected at

least once every six months,^{xv} subject to random roadside inspections,^{xvi} and must meet uniform standards for a variety of features including but not limited to brakes, emergency exits, and signal lights.^{xvii}

While the 1997 law provided important clarity about the role DOT plays in regulating the safe operation of New York City sightseeing buses, it also enshrined a major loophole into state law with significant ramifications.

The 1997 law explicitly exempted New York City sightseeing buses from the requirements of Article 7 of the New York State Transportation Law.^{xviii} The primary effect of Article 7 exemption is that operators of New York City sightseeing buses, unlike many other commercial motor vehicle operators, are not required to obtain a “certificate of public convenience and necessity” from DOT to legally operate in New York State.

While a review of the contemporaneous legislative record of Chapter 202 of the Laws of 1997 does not explain the sponsors’ justification for granting the Article 7 exemption to New York City double-decker sightseeing buses, DOT has indicated that the fact that such vehicles require a license from the New York City Department of Consumer Affairs (DCA) is the reason why they are not required to obtain an operating certificate from DOT. Indeed, similar exemptions from Article 7 are granted to other types of vehicles that fall under another agency’s jurisdiction (e.g., ambulances regulated by the New York State Department of Health) or that operate on such a limited or ad hoc basis as to not merit regulation (e.g. non-profit car pools).^{xix}

The exemption of New York City double-decker sightseeing buses from Article 7 of the New York State Transportation Law has several important ramifications:

- New York City double-decker sightseeing bus operators do not need to comply with the insurance requirements that DOT mandates of other motor carriers.^{xx} For example, other passenger vehicles having a capacity to carry more than 12 passengers must carry at least a \$100,000 policy to cover the personal injury or death to one person, at least a \$500,000 policy to cover personal injury or death to all persons in an accident, and at least a \$50,000 policy to cover property damage.^{xxi}
- Because New York City double-decker sightseeing buses do not require an operating certificate from DOT, the agency cannot use its statutory power under Section 145 of the Transportation Law to directly order a New York City double-decker sightseeing bus operator to cease operations for violating provisions of the Transportation Law or DOT regulations.
- DOT has the ability to levy fines of up to \$5,000 for failure to comply with applicable laws or regulations, including against New York City double-decker sightseeing bus operators.^{xxii} However, their power to enforce payment of these

finer by New York City double-decker sightseeing buses is impaired. The agency's enforcement mechanism to punish non-paying scofflaws is to revoke or suspend their operating certificates – an option they lack against New York City double-decker sightseeing buses due to their exemption from Article 7.

- New York City double-decker sightseeing buses are exempt from consumer protection provisions found in Article 7 that require common carriers of passengers to establish, observe and enforce just and reasonable rates, fares and charges, and gives the DOT Commissioner the ability to intervene and set reasonable rates.^{xxiii} New York City double-decker sightseeing buses are also not subject to the provision of the Transportation Law prohibiting “any undue or unreasonable preference or advantage to any particularly person or to subject any particularly person to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”^{xxiv}

New York State Department of Motor Vehicles

What is perhaps the most significant effect of the Article 7 exemption for New York City double-decker sightseeing buses is found under the purview of the New York State Department of Motor Vehicles (DMV). The DMV generally administers and enforces the New York State Vehicle and Traffic Law, which, among other things, establishes that bus drivers are subject to special licensing requirements above and beyond the licensing of passenger vehicles like cars, SUVs, and pick-up trucks.

The definition of “bus” for the purposes of the special licensing requirements for bus drivers, found in Article 19-A of the Vehicle and Traffic Law, is drafted in such a way that it does not apply to New York City double-decker sightseeing buses, due to their exemption from Article 7 of the Transportation Law.^{xxv} Therefore, the Article 19-A requirements do not apply to sightseeing bus operators or their drivers, resulting in a host of troubling implications.

- Prior to the hiring of a bus driver, Article 19-A requires operators to obtain a driving record from every state in which the prospective driver has resided or worked in the recent past, investigate the prospective driver's employment record, and require prospective drivers to pass a medical exam. New York City double-decker sightseeing bus drivers are not subject to these requirements.^{xxvi}
- After they have been hired, bus drivers covered under Article 19-A must undergo a biennial medical examination, including a vision test; undergo an annual check of the driver's past driving record, including a personal interview; receive regular observation of the driver's defensive driving performance while operating the vehicle with passengers by the driver's supervisor or outside supervisory personnel; receive a biennial, behind-the-wheel driving test conducted by competent supervisory personnel or outside supervisory personnel; and receive a

biennial written or oral examination testing the driver's knowledge of the rules of the road, defensive driving practices, and the laws regulating driving a bus in New York State. New York City double-decker sightseeing bus drivers are not required under state law to abide by any of these driver safety and screening provisions.

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- Bus operators in New York are required to retain three years worth of certain records about drivers they employ, or to notify the DMV within 10 days of any newly hired, departing, or disqualified bus drivers. New York City double-decker sightseeing operators are not required to retain these records, meaning the state has no way of knowing who is driving these vehicles or what their qualifications are.^{xxviii}
- Motor carriers subject to Article 19-A are required to prepare and submit to the DMV an annual report detailing the number of miles travelled by buses operated by the motor carrier in the previous 12 months as well as the number of convictions and collisions involving any driver employed by the motor carrier over the same time period.^{xxix} New York City double-decker sightseeing bus operators are exempt from these reporting requirements.
- Bus drivers covered under Article 19-A are prohibited from consuming a drug, controlled substance, or alcoholic beverages – regardless of their alcoholic content – within six hours before going on duty, operating, or having physical control of a bus.^{xxx} They are also prohibited from operating a bus while their ability or alertness is impaired through fatigue, illness, or any cause.^{xxxi} These prohibitions under state law do not apply to New York City double-decker sightseeing bus drivers.
- Under Article 19-A, individuals who have been convicted as sex offenders are permanently disqualified from driving a bus. Temporary disqualifications are provided for individuals convicted of driving under the influence of drugs or alcohol, leaving the scene of an accident, aggravated vehicular assault, or other specified crimes.^{xxxii} Individuals who want to drive New York City double-decker sightseeing buses do not face similar disqualification under state law.

New York City Regulation of Sightseeing Buses

It is clear through conversations with DOT and DMV that the state agencies tasked under state law with regulating double-decker sightseeing buses operating in New York City see their role as limited due to the fact that these vehicles operate wholly within the City, and their services are conducted pursuant to the jurisdiction or regulatory control of the City – specifically, the New York City Department of Consumer Affairs (DCA) and the New York City Department of Transportation (NYC DOT).

DCA – a consumer protection agency – is charged with issuing business licenses to operators of double-decker buses that want to offer sightseeing services in New York City, and inspects all licensed buses at least once every four months to ensure that they are complying with local laws and regulations. The laws and regulations they are charged with enforcing have little to do with safe operation and driver qualifications. Rather, DCA ensures that license plates are visible and up-to-date, that signs be posted near the entrance of the bus showing a schedule of rates and departure times, that the bus be clean and sanitary with functioning lights, signaling devices, and windshield wipers, that open-air buses be equipped with headphone-limited sound systems, and that customers receive printed receipts upon payment.

NYC DOT also plays a role in the regulation of double-decker sightseeing buses, most notably authorizing the bus stops that may be used for passenger pickup and drop-off by double-decker sightseeing buses that have been issued licenses by DCA.

While DCA and NYC DOT clearly have a hand in the regulation of double-decker sightseeing buses, the scope of their jurisdiction is limited by the New York City Administrative Code. It is the disconnect between the state agencies' assumptions about local regulation and the actual regulatory powers of DCA and NYC DOT that allows New York City double-decker sightseeing buses to operate under lower standards and with less oversight than other motor carriers.

Policy Recommendations

The exemptions carved out in state law for New York City double-decker sightseeing buses, combined with the limited regulatory powers held by the Department of Consumer Affairs, create an environment in which these buses increasingly operate on the streets of New York City without proper state oversight or enforcement. The recommendations listed below would ensure that the relevant state and city agencies have the appropriate powers they need to regulate these buses consistent with other motor carriers, and coordinate enforcement to ensure that bad actors are dealt with swiftly and appropriately.

Recommendation #1: *Empower DOT to order New York City double-decker sightseeing bus operators to cease operation for repeated violations of the New York State Transportation Law or DOT regulations.* The State should have the ability to step in and shut down operators who repeatedly flout safety laws.

Recommendation #2: *Close the loophole that allows New York City double-decker sightseeing bus operators to avoid the requirements of Article 19-A of the New York State Vehicle and Traffic Law.* This would require operators to screen prospective drivers thoroughly, require drivers to undergo a series of annual and biennial tests to ensure their proficiency and safety, and mandate that bus companies report information about

their drivers' safety record to the NYS DMV – including crash data that can shed a light on the scope of the safety of these vehicles. Closing the Article 19-A loophole would also apply state laws against impaired driving to drivers of New York City double-decker sightseeing buses, and prohibit sex offenders and individuals with a history of criminal convictions for impaired driving from being sightseeing bus drivers.

Recommendation #3: *Mandate additional safety features specific to New York City double-decker sightseeing buses, such as collision avoidance technology, side under-ride guards, left-and-right front view convex mirrors to provide drivers with a clear and full view of the front and sides of the bus, and additional employees to monitor safety compliance on the upper level of the buses.* Large double-decker buses operating in New York City face very different traffic conditions than buses operating elsewhere in the state, and should be equipped with common-sense measures to avoid collisions with pedestrians, cyclists, and other vehicles.

Recommendation #4: *Increase the minimum amount of insurance that New York City double-decker sightseeing bus operators must carry, to be commensurate at least with the insurance requirements of other motor carriers subject to DOT jurisdiction.* Doing so will ensure that sightseeing bus companies are properly insured to cover claims and judgments for damages or injuries caused by the buses in a manner consistent with other contract carriers of passengers in New York State.

Recommendation #5: *Create an interagency state-local task force to ensure coordination of enforcement and communication between all relevant government agencies.* The task force should be charged with making recommendations for future changes to state and local laws and regulations. Such changes could include, but not be limited to a cap on the number of double-decker sightseeing bus licenses issued by DCA, requiring pre-approval of bus stops by NYC DOT before DCA issues a business license, limiting the times and places that double-decker sightseeing buses can operate in the borough of Manhattan, and empowering DCA to withhold a license from a company with a poor safety record.

Recommendation #6: *Require all double-decker sightseeing buses be low- or zero-emission vehicles.* If these buses are clogging our streets and causing a disturbance to local residents, it is reasonable to expect they take measures to reduce greenhouse gas emissions and mitigate their negative impact on local air quality. Any new buses purchased by these companies should be required to include low- or zero-emission technologies, such as compressed natural gas, hybrid, electric, or bio-fuel, and existing buses should be retrofitted to reduce their carbon impact. In 2005, Mayor Michael Bloomberg signed Local Law 41 to require the installation of emission control technologies on older, dirty sightseeing buses in New York City.^{xxxiii} Now, ten years after the law went into effect, there are new, cleaner technologies that these buses should employ to reduce harmful greenhouse gas emissions. As an example, the City of York,

England in 2014 completed the world's first retrofit of a double-decker sightseeing bus to fully electric, which is expected to save more than 20,000 British pounds and eliminate 33 tons of CO2 emissions each year.^{xxxiv}

Recommendation #7: *Improve disability access.* Currently, about half of the nine bus companies operating in New York City list on their websites that for Americans with Disabilities Act (ADA) accessible accommodations, passengers must contact the company in advance to make arrangements, while the others mention nothing about accessibility, with one outright stating that their buses are not ADA accessible. If these bus companies want to operate in New York City - a place that thrives on diversity - they should implement more inclusive policies for their mobility-impaired riders, similarly to upgrades made to public transit and taxicabs in recent years.

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End Notes & Citations

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- ^{xi} Id.
- ^{xii} Chapter 202 of the Laws of 1997.
- ^{xiii} New York State Senate Transcript, June 25, 1997, Pg. 6404.
- ^{xiv} N.Y.S. Trans. L. § 140(1). While Chapter 202 of the Laws of 1997 explicitly clarified that New York City double-decker sightseeing buses were exempt from the requirements of Article 7 of the Transportation Law, according to the Department of Transportation the agency had always considered such vehicles to be exempt.
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- ^{xvi} N.Y.S. Trans. L. § 140(2)(b).
- ^{xvii} N.Y.C.R.R. Title 17, Part 720.4.
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