

STATE OF NEW YORK

4419

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. KOLB, McKEVITT -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the general municipal law, in relation to reimbursement of municipal cost and expense incurred by motor vehicle drivers under the influence of alcohol and/or controlled substances

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

1 Section 1. The general municipal law is amended by adding a new article 17-B to read as follows:

ARTICLE 17-B

REIMBURSEMENT OF MUNICIPAL EXPENSE BY DRIVERS OF MOTOR VEHICLES UNDER THE INFLUENCE OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE

7 Section 796. Short title; purpose of article.

8 796-a. Definitions.

9 796-b. Local laws and ordinances.

10 796-c. Standard of impairment; testing methods.

11 796-d. Presumption with respect to causal connection.

12 796-e. Additional presumption of impairment.

13 796-f. Damages.

14 796-g. Attorney's fees, court costs and expenses; recovery.

15 796-h. Severability.

16 § 796. Short title; purpose of article. This article shall be known
17 and may be cited as the "alcohol and controlled substance expense recov-
18 ery act". The legislature hereby declares that a high percentage of
19 automobile accidents are related to the use of alcohol and controlled
20 substances and, in addition to the terrible losses suffered by the fami-
21 lies and loved ones of injured parties, the community itself suffers
22 serious financial burdens by being obliged to respond to the scenes of
23 such accidents. Since there would appear to be no reason why those caus-
24 ing or contributing to such accidents when using alcoholic beverages or

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

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1 controlled substances should not suffer the economic burden created by
2 any such accident and the additional economic burden of recovering the
3 costs and expenses incident thereto, it is the determination of this
4 legislature that the passage of this article is required in order to
5 allow the more equitable distribution of the cost and expense imposed by
6 such antisocial conduct.

7 § 796-a. Definitions. The following terms shall have the meanings
8 hereinafter set forth, respectively:

9 1. "Controlled substances" shall mean and include any substance named
10 or described as such in title one of article thirty-three of the public
11 health law.

12 2. "Costs and expenses of emergency responses" shall mean and include,
13 but not be limited to, all costs of labor, medical materials, medical
14 equipment, police equipment, fire equipment, and administrative expenses
15 associated therewith, which shall be expended, used, associated with,
16 occasioned by or connected with any emergency medical, fire or police
17 response and, for the purposes hereof, the costs of emergency medical,
18 fire and police manpower services shall be as set forth on such sched-
19 ules as a municipality may adopt, from time to time, by resolution
20 pursuant to this article.

21 § 796-b. Local laws and ordinances. Notwithstanding any other
22 provision of law to the contrary and subject to the provisions of this
23 article, any city, county, town or village in this state, acting through
24 its local legislative body, is hereby authorized and empowered to adopt
25 and amend either a local law or an ordinance providing for the recovery
26 by such municipality of any cost or expense incurred or expended by it
27 as the result of the operation of a motor vehicle within such munici-
28 pality by an individual while under the influence of alcoholic beverages
29 or controlled substances or a combination of alcoholic beverages and
30 controlled substances to the extent that his or her normal faculties are
31 impaired or to the extent that he or she is deprived of full possession
32 of his or her normal faculties and, if such person shall proximately
33 cause an accident or is a substantial causative factor of an accident
34 resulting in the need for such municipality to provide emergency
35 medical, fire or police responses or services, such person shall be
36 liable to such municipality for all costs and expenses of such emergency
37 responses and services.

38 § 796-c. Standard of impairment; testing methods. 1. In any trial of
39 any civil action or proceeding with respect to the enforcement of any
40 local law or ordinance passed pursuant hereto alleging that any person
41 is liable to such municipality because such person was the cause of or
42 was a substantial causative factor of an accident requiring emergency
43 medical, fire or police responses while such person was driving or in
44 actual physical control of a vehicle while under the influence of alco-
45 holic beverages or controlled substances, or a combination of alcoholic
46 beverages and controlled substances, to the extent that his or her
47 normal faculties were impaired, or to the extent that he or she was
48 deprived of full possession of his or her normal faculties, the results
49 of any test administered in accordance with article thirty-one of the
50 vehicle and traffic law shall be admissible into evidence when otherwise
51 admissible, and the amount of alcohol or controlled substance in the
52 person's blood at the time alleged, as shown by chemical analysis of the
53 person's blood or breath or urine, shall give rise to the following
54 presumptions:

55 a. If there was, at the time, 0.05 percent or less by weight of alco-
56 hol in the person's blood, and if there was no evidence of a controlled

1 substance in such person's blood, it shall be presumed that the person
2 was not under the influence of alcoholic beverages or controlled
3 substances or any combination thereof to the extent that his or her
4 normal faculties were impaired.

5 b. If there was, at the time, in excess of 0.05 percent but less than
6 0.08 percent by weight of alcohol in the person's blood such facts shall
7 not give rise to any presumption that the person was or was not under
8 the influence of alcoholic beverages or controlled substances or a
9 combination thereof to the extent that his or her normal faculties were
10 impaired, but such fact may be considered with other competent evidence
11 in determining whether the person was under the influence of alcoholic
12 beverages or controlled substances or any combination thereof to the
13 extent that his or her normal faculties were impaired.

14 c. If there was, at the time, 0.08 percent or more by weight of alco-
15 hol in the person's blood, even if there was no evidence of a controlled
16 substance in such person's blood, such fact shall be prima facie
17 evidence that the person was under the influence of alcoholic beverages
18 to the extent that his or her normal faculties were impaired.

19 d. If there was, at the time, in excess of 0.05 percent by weight of
20 alcohol in the person's blood and evidence of a controlled substance in
21 the person's blood, such facts shall be prima facie evidence that the
22 person was under the influence of a combination of alcoholic beverages
23 and controlled substances to the extent that his or her normal faculties
24 were impaired.

25 2. The percent by weight of alcohol in the blood shall be based upon
26 grams of alcohol per 100 milliliters of blood.

27 3. The foregoing provisions of this section shall not be construed as
28 limiting the introduction of other competent evidence bearing upon the
29 question of whether the person was under the influence of alcoholic
30 beverages or controlled substances, or a combination of alcoholic bever-
31 ages and controlled substances, either to the extent that his or her
32 normal faculties were impaired or to the extent that he or she was
33 deprived of full possession of his or her normal faculties, or that such
34 impairment was the proximate cause or substantially causative of the
35 accident giving rise to the need for emergency medical, police or fire
36 services.

37 4. A chemical analysis of a person's blood to determine alcoholic
38 content, a chemical analysis of a person's breath or a chemical analysis
39 of a person's urine, in order to be considered valid under the
40 provisions of this section, must have been performed substantially in
41 accordance with the method set forth in article thirty-one of the vehi-
42 cle and traffic law. Any insubstantial differences between approved
43 techniques and actual testing procedures in any individual case shall
44 not render the test or test results invalid. Any technique or method
45 approved by the department of health with respect to such analysis shall
46 be deemed acceptable. Any person who shall be deemed qualified and
47 competent to conduct such analysis by the department of health shall be
48 deemed competent to conduct such analysis.

49 § 796-d. Presumption with respect to causal connection. In any trial
50 of any civil action or proceeding with respect to the enforcement hereof
51 alleging that any person is liable hereunder because such person was the
52 cause of or was a substantial causative factor of an accident requiring
53 emergency medical, fire or police responses while such person was driv-
54 ing or in actual physical control of a vehicle while under the influence
55 of alcoholic beverages or controlled substances, or a combination of
56 alcoholic beverages and controlled substances, to the extent that his or

1 her normal faculties were impaired or that he or she was deprived of
2 full possession of his or her normal faculties, it shall be presumed
3 that a person under the influence of alcoholic beverages and/or
4 controlled substances to the extent that his or her normal faculties
5 were impaired, or to the extent that he or she was deprived of full
6 possession of his or her normal faculties, was the proximate cause or
7 was a substantial causative factor of the accident giving rise to the
8 need for emergency medical, police and fire services.

9 § 796-e. Additional presumption of impairment. In any trial of any
10 civil action or proceeding with respect to the enforcement of any local
11 law or ordinance passed pursuant hereto alleging that any person is
12 liable to such municipality because such person was the cause of or was
13 a substantial causative factor of an accident requiring emergency
14 medical, fire or police responses while such person was driving or in
15 actual physical control of a vehicle while under the influence of alco-
16 holic beverages or controlled substances, or a combination of alcoholic
17 beverages and controlled substances, to the extent that his or her
18 normal faculties were impaired or that he or she was deprived of full
19 possession of his or her normal faculties, it shall be presumed that
20 such person's normal faculties were impaired or that such person was
21 deprived of full possession of his or her normal faculties if such
22 person shall plead guilty to or shall have been found guilty after trial
23 of a violation of section eleven hundred ninety-two of the vehicle and
24 traffic law or if such person refuses an officer's request to submit to
25 any breath, blood or urine test provided in section eleven hundred nine-
26 ty-four of the vehicle and traffic law and such officer shall have
27 submitted a sworn statement that he had reasonable cause to believe the
28 person had been driving or had been in actual physical control of a
29 motor vehicle within such municipality while under the influence of
30 alcoholic beverages or controlled substances, or a combination of alco-
31 holic beverages and controlled substances, and that such person had
32 refused to submit to the test or tests after being requested to do so by
33 the officer.

34 § 796-f. Damages. Every municipality adopting a local law or ordinance
35 pursuant to this article shall develop and keep current a schedule of
36 such emergency costs and expenses likely to be incurred or expended as a
37 result of such an alcohol or controlled substance related accident
38 setting forth the cost and value of time and services, as well as mate-
39 rials, provided in emergency situations as contemplated by this article.

40 § 796-g. Attorney's fees, court costs and expenses; recovery. In any
41 trial or any civil action or proceeding arising in the enforcement of
42 any local law or ordinance passed pursuant hereto, the municipality
43 involved shall be entitled to recover all court costs, expenses and
44 attorney's fees incurred by such municipality in such dispute and such
45 right shall include all of such costs, expenses and attorney's fees
46 through all appeals or other actions.

47 § 796-h. Severability. If any section, subdivision, paragraph,
48 sentence, clause, phrase or portion of this article is for any reason
49 held invalid or unconstitutional by any court of competent jurisdiction,
50 such portion shall be deemed a separate, distinct and independent
51 provision and such holding shall not affect the validity of the remain-
52 ing portions of this article.

53 § 2. This act shall take effect immediately.