

STATE OF NEW YORK

9224

IN SENATE

May 12, 2022

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the navigation law, in relation to implementing oral fluid tests

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

Section 1. Subdivision 1 of section 1194 of the vehicle and traffic law is amended by adding a new paragraph (c) to read as follows:

(c) Oral fluid test. (1) Definition. For the purposes of this article, "oral fluid test" means a standardized preliminary saliva analysis test validated by the National Highway Traffic Safety Administration for the detection of cannabis. A field sobriety test is considered an oral fluid test if it is administered in substantial compliance with the standards prescribed by the National Highway Traffic Safety Administration.

(2) Oral fluid test. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to an oral fluid test to be administered by the police officer. If such test indicates the presence of cannabis in the person's saliva, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this section.

§ 2. Subparagraph 2 of paragraph (a) of subdivision 2 of section 1194 of the vehicle and traffic law, as amended by chapter 196 of the laws of 1996, is amended to read as follows:

(2) within two hours after a breath test, as provided in paragraph (b) of subdivision one of this section, and/or an oral fluid test, as provided in paragraph (c) of subdivision one of this section, indicates that alcohol and/or cannabis has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member;

§ 3. Subparagraph 1 of paragraph (b) of subdivision 2 of section 1194 of the vehicle and traffic law, as amended by chapter 489 of the laws of

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

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2017 and clause (A) as amended by chapter 27 of the laws of 2018, is amended to read as follows:

(1) If: (A) such person having been placed under arrest; or (B) after a breath test indicates the presence of alcohol in the person's system; or (C) after an oral fluid test indicates the presence of cannabis in the person's saliva; or (D) with regard to a person under the age of twenty-one, there are reasonable grounds to believe that such person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article; and having thereafter been requested to submit to such chemical test and having been informed that the person's license or permit to drive and any non-resident operating privilege shall be immediately suspended and subsequently revoked, or, for operators under the age of twenty-one for whom there are reasonable grounds to believe that such operator has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, shall be revoked for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested or detained, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision three of this section, the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report.

§ 4. Subparagraph 2 of paragraph (b) of subdivision 3 of section 1194 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, is amended to read as follows:

(2) a. either such person operated the vehicle in violation of any subdivision of section eleven hundred ninety-two of this article, or

b. a breath test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol has been consumed by such person, or

c. an oral fluid test administered by a police officer in accordance with paragraph (c) of subdivision one of this section indicates the presence of cannabis in the person's saliva; and

§ 5. The vehicle and traffic law is amended by adding a new section 1195-a to read as follows:

§ 1195-a. Oral fluid test evidence. 1. Admissibility. Upon the trial of any action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any subdivision of section eleven hundred ninety-two of this article, the court shall admit the results of an oral fluid test pursuant to the provisions of section eleven hundred ninety-four of this article.

2. Probative value. The following effect shall be given to evidence of cannabis consumption, as determined by such tests, of a person arrested for violation of section eleven hundred ninety-two of this article:

(a) To assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(b) As evidence of the presence or nonpresence of a cannabis in the defendant's saliva if offered by the defendant to rebut testimony elic-

1 ited on cross-examination of a defense witness that an oral fluid test
2 of the defendant's saliva showed the presence of cannabis that was not
3 found to be present when a chemical test of the defendant's blood or
4 urine was administered under section eleven hundred ninety-four of this
5 article.

6 (c) As evidence of the presence or nonpresence of a cannabis in the
7 defendant's saliva if offered by the prosecution to rebut testimony
8 elicited on cross-examination of a prosecution witness that an oral
9 fluid test of the defendant's saliva showed no presence of cannabis that
10 was found to be present when a chemical test of the defendant's blood or
11 urine was administered under section eleven hundred ninety-four of this
12 article.

13 3. Suppression. A defendant who has been compelled to submit to an
14 oral fluid test pursuant to the provisions of paragraph (c) of subdivi-
15 sion one of section eleven hundred ninety-four of this article may move
16 for the suppression of such evidence in accordance with article seven
17 hundred ten of the criminal procedure law on the grounds that the order
18 was obtained and the test administered in violation of the provisions of
19 such subdivision or any other applicable law.

20 § 6. Subdivision 6 of section 49-a of the navigation law is amended by
21 adding a new paragraph (c) to read as follows:

22 (c) Oral fluid test. (1) Definition. For the purposes of this article,
23 "oral fluid test" means a standardized preliminary saliva analysis test
24 validated by the National Highway Traffic Safety Administration for the
25 detection of cannabis. A field sobriety test is considered an oral fluid
26 test if it is administered in substantial compliance with the standards
27 prescribed by the National Highway Traffic Safety Administration.

28 (2) Oral fluid test. Every person operating a vessel on the waters of
29 the state which has been involved in an accident or which is operated in
30 violation of any of the provisions of this section shall, at the request
31 of a police officer, submit to an oral fluid test to be administered by
32 the police officer. If such test indicates the presence of cannabis in
33 the person's saliva, the police officer may request such operator to
34 submit to a chemical test in the manner set forth in subdivision seven
35 of this section.

36 § 7. Paragraphs (a) and (b) of subdivision 7 of section 49-a of the
37 navigation law, as added by chapter 805 of the laws of 1992, are amended
38 to read as follows:

39 (a) Any person who operates a vessel on the waters of the state shall
40 be requested to consent to a chemical test of one or more of the follow-
41 ing: breath, blood, urine, or saliva for the purpose of determining the
42 alcoholic or drug content of his blood, provided that such test is
43 administered at the direction of a police officer: (1) having reasonable
44 cause to believe such person to have been operating in violation of this
45 subdivision or paragraph (a), (b), (c), (d) or (e) of subdivision two of
46 this section and within two hours after such person has been placed
47 under arrest for any such violation or (2) within two hours after a
48 breath test as provided in paragraph (b) of subdivision six of this
49 section indicates that alcohol has been consumed by such person or (3)
50 within two hours after an oral fluid test as provided in paragraph (c)
51 of subdivision six of this section indicates the presence of cannabis in
52 the person's saliva and in accordance with the rules and regulations
53 established by the police force of which the officer is a member.

54 (b) If such person having been placed under arrest or after a breath
55 test indicates the presence of alcohol in the person's system or after
56 an oral fluid test indicates the presence of cannabis in the person's

1 saliva and having thereafter been requested to submit to such chemical
2 test and having been informed that the person's privilege to operate a
3 vessel shall be immediately suspended for refusal to submit to such
4 chemical test or any portion thereof, whether or not the person is found
5 guilty of the charge for which such person is arrested, refuses to
6 submit to such chemical test or any portion thereof, unless a court
7 order has been granted pursuant to subdivision eight of this section,
8 the test shall not be given and a written report of such refusal shall
9 be immediately made by the police officer before whom such refusal was
10 made. Such report may be verified by having the report sworn to, or by
11 affixing to such report a form notice that false statements made therein
12 are punishable as a class A misdemeanor pursuant to section 210.45 of
13 the penal law and such form notice together with the subscription of the
14 deponent shall constitute a verification of the report. The report of
15 the police officer shall set forth reasonable grounds to believe such
16 arrested person to have been operating a vessel in violation of any
17 paragraph of subdivision two of this section, that said person had
18 refused to submit to such chemical test, and that no chemical test was
19 administered pursuant to the requirements of subdivision eight of this
20 section. The report shall be presented to the court upon the arraignment
21 of the arrested person. The privilege to operate a vessel shall, upon
22 the basis of such written report, be temporarily suspended by the court
23 without notice pending the determination of a hearing as provided here-
24 in. Copies of such report must be transmitted by the court to the
25 commissioner of parks, recreation and historic preservation and the
26 commissioner of motor vehicles and such transmittal may not be waived
27 even with the consent of all the parties. Such report shall be forwarded
28 to each commissioner within forty-eight hours of such arraignment. The
29 court shall provide such person with a hearing date schedule, a waiver
30 form, and such other information as may be required by the commissioner
31 of motor vehicles. If a hearing, as provided for in paragraph (c) of
32 this subdivision, is waived by such person, the commissioner of motor
33 vehicles shall immediately suspend the privilege to operate a vessel, as
34 of the date of receipt of such waiver in accordance with the provisions
35 of paragraph (d) of this subdivision.

36 § 8. Subparagraph 2 of paragraph (b) of subdivision 8 of section 49-a
37 of the navigation law, as added by chapter 805 of the laws of 1992, is
38 amended to read as follows:

39 (2) (i) either such person operated the vessel in violation of any
40 paragraph of subdivision two of this section, or

41 (ii) a breath test administered by a police officer in accordance with
42 subdivision six of this section indicates that alcohol has been consumed
43 by such person, or

44 (iii) an oral fluid test administered by a police officer in accord-
45 ance with subdivision six of this section indicates the presence of
46 cannabis in the person's saliva; and

47 § 9. This act shall take effect on the ninetieth day after it shall
48 have become a law. Effective immediately, the addition, amendment and/or
49 repeal of any rule or regulation necessary for the implementation of
50 this act on its effective date are authorized to be made and completed
51 on or before such effective date.