STATE OF NEW YORK

3981--C

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. MAGNARELLI, STERN, WOERNER, BUTTENSCHON, BURDICK, STIRPE, McMAHON, JACOBSON, DINOWITZ, SHIMSKY, DE LOS SANTOS, SIMON, LEVENBERG, BERGER, PHEFFER AMATO, CONRAD, McDONOUGH, FALL, LUNSFORD, DAVILA, JONES, TAPIA, GRIFFIN, McDONALD, YEGER, COLTON, STECK, KASSAY, SEAWRIGHT, SCHIAVONI, O'PHARROW, ANDERSON, LUPARDO, KAY, BRONSON, CLARK, FORREST, OTIS, WIEDER, P. CARROLL, BARRETT, EACHUS, PAULIN, LASHER, LAVINE, TORRES, R. CARROLL, ALVAREZ, RAGA, ROZIC, SANTABARBARA, TAYLOR, SAYEGH, WEPRIN, CUNNINGHAM, ZACCARO, WILLIAMS, SIMONE, JACKSON -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to procedures relating to driving while ability impaired by drugs; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Section 119-b of the vehicle and traffic law is renumbered 119-c and a new section 119-b is added to read as follows:

§ 119-b. Impaired. Impairment is reached when a driver has voluntarily consumed or ingested alcohol or a drug as defined in section one hundred fourteen-a of this article to the extent that the driver has impaired, to any extent, the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

§ 2. The vehicle and traffic law is amended by adding a new section 120-a to read as follows:

§ 120-a. Intoxication. Intoxication is a greater degree of impairment which is reached when a driver has voluntarily consumed or ingested

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

LBD00438-15-5

alcohol or a substance or combination of substances to the extent that the driver is incapable, to a substantial extent, of employing the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

§ 3. Subdivision 1, the opening paragraph of paragraph (a) and subparagraph 1 of paragraph (b) of subdivision 2 and paragraphs (a), (b), (c), subparagraph 4 of paragraph (d), and paragraph (e) of subdivision 3 of section 1194 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, the opening paragraph of paragraph (a) of subdivision 2 as amended by chapter 196 of the laws of 1996, subparagraph 1 of paragraph (b) of subdivision 2 as amended by chapter 489 of the laws of 2017 and clause (A) of subparagraph 1 as amended by chapter 27 of the laws of 2018, are amended to read as follows:

1. Arrest and field testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of subdivision one of section eleven hundred ninety-two of this article, if such violation is coupled with an accident or collision in which such person is involved, which in fact has been committed, though not in the police officer's presence, when the officer has reasonable cause to believe that the violation was committed by such person.

(b) Field testing. 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 a breath test **and/or oral/bodily fluid test** to be administered by the police officer. If such test indicates that such operator has consumed alcohol **or a drug or drugs**, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this section.

(c) Refusal to submit to a breath test and/or oral/bodily fluid test pursuant to paragraph (b) of this subdivision shall be a traffic infraction.

Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or [~~saliva~~] **oral/bodily fluid**, for the purpose of determining the alcoholic and/or drug content [~~of the blood~~] provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or [~~saliva~~] **oral/bodily fluid** or, with respect to a chemical test of blood, at the direction of a police officer:

(1) If: (A) such person having been placed under arrest; or (B) after a breath **and/or oral/bodily fluid** test indicates the presence of alcohol **and/or a drug or drugs** in the person's system; or (C) 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.

(a) Court ordered chemical tests. Notwithstanding the provisions of subdivision two of this section, no person who operates a motor vehicle in this state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or [~~saliva~~] **oral/bodily fluids**, for the purpose of determining the alcoholic and/or drug content of the blood **or oral/bodily fluids** when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

(b) When authorized. Upon refusal by any person to submit to a chemical test or any portion thereof as described above, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic [~~or~~] **and/or** drug content of the person's blood **or oral/bodily fluids** upon a finding of reasonable cause to believe that:

(1) such person was the operator of a motor vehicle and in the course of such operation a person other than the operator was killed or suffered serious physical injury as defined in section 10.00 of the penal law; and

(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 and/or oral/bodily fluid** test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol **and/or a drug or drugs** has been consumed by such person; and

(3) such person has been placed under lawful arrest; and

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of paragraph (a) of subdivision two of this section or is unable to give consent to such a test.

(c) Reasonable cause; definition. For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of section eleven hundred ninety-two of this article. Such circumstances may include, but are not limited to: evidence that the operator was operating a motor vehicle in violation of any provision of this article or any other moving violation at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; the existence of an open container containing an alcoholic beverage **and/or a drug or drugs** in or around the vehicle driven by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle while impaired by the consumption of alcohol or drugs or intoxicated at the time of the incident.

(4) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this

subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of [~~his~~] **such accused's** blood [~~and~~] **and/or oral/bodily fluids and** ordering the withdrawal of a blood **and/or oral/bodily fluid** sample in accordance with the provisions of paragraph (a) of subdivision four of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

(e) Administration of compulsory chemical test. An order issued pursuant to the provisions of this subdivision shall require that a chemical test to determine the alcoholic and/or drug content of the operator's blood **and/or oral/bodily fluid** must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision four of this section shall be applicable to any chemical test administered pursuant to this section.

§ 4. The subparagraph heading and clauses a and b of subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law, the subparagraph heading as added by chapter 312 of the laws of 1994, clause a as amended by chapter 732 of the laws of 2006, and clause b as separately amended by chapters 3 and 571 of the laws of 2002, are amended to read as follows:

Suspension pending prosecution; excessive blood alcohol content**, intoxication or impairment by a drug or drugs**. a. Except as provided in clause a-1 of this subparagraph, a court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two, two-a, three**, four** or four-a of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had .08 of one percent or more by weight of alcohol in such driver's blood **or is alleged to have been impaired by the ingestion of a drug or drugs** as shown **or supported** by chemical analysis of blood, breath, urine or [~~saliva~~] **oral/bodily fluid**, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article**, or by an evaluation conducted by a certified drug recognition expert, or any portion thereof, or if the driver made a statement admitting to driving while intoxicated by alcohol or by any substance or combination of substances, or while impaired by a drug or drugs**.

b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and

there exists reasonable cause to believe either that (a) the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol in [~~his or her~~] **such holder's** blood as was shown by chemical analysis of such person's blood, breath, urine or [~~saliva~~] **oral/bodily fluid**, **or was impaired by the ingestion of a drug or drugs as supported by such chemical test analysis** made pursuant to the provisions of section eleven hundred ninety-four of this article or **by an evaluation conducted by a certified drug recognition expert, or any portion thereof, or the driver made a statement admitting to driving while intoxicated by alcohol or by a substance or combination of substances, or while impaired by a drug or drugs; or** (b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

§ 5. Section 1192 of the vehicle and traffic law is amended by adding two new subdivisions 13 and 14 to read as follows:

13. It shall be an affirmative defense to a charge under subdivision three of this section that the operator suffered an allergic reaction or medical emergency rather than being impaired by a substance or combination of substances. The operator must provide written notice of the intent to assert the affirmative defense and shall be subject to the rules of reciprocal discovery under article two hundred forty-five of the criminal procedure law for any medical records or documentation related to the affirmative defense.

14. The commissioner and the commissioner of the division of criminal justice services shall collect data on the number of traffic stops, arrests and convictions for driving while intoxicated by a substance or combination of substances under subdivision three of this section, or while impaired by a drug or a combination of drugs or a combination of drugs and alcohol under subdivision four or four-a of this section. It shall report the number of traffic stops, arrests and convictions by race, sex, age and national origin and provide an annual report to the governor, the speaker of the assembly and the temporary president of the senate.

§ 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall expire and be deemed repealed 5 years after such effective date.