S T A T E O F N E W Y O R K

9473

I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. PRETLOW, WRIGHT, AUBRY, BARRON, BENJAMIN, BOYLAND, BRODSKY, CAMARA, DenDEKKER, GALEF, KOON, MAISEL, PAULIN, PEOPLES-STOKES, SCARBOROUGH, TOWNS, BALL, CROUCH, CASTRO, FIELDS, MAYERSOHN, TOWNSEND, LANCMAN, ROSENTHAL -- Multi-Sponsored by -- M. of A. CALHOUN, COOK, CRESPO, DESTITO, ESPAILLAT, HEASTIE, KAVANAGH, O'DONNELL, ORTIZ, PERALTA, THIELE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing a statewide toll-free office of court administration hotline for use by police officers seeking court orders to compel persons to submit to a blood test

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as "Vionique Valnord's law".

S 2. Paragraph (d) 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:

(d) Court order; procedure. (1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was

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

LBD15008-04-9

the operator of a motor vehicle and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a motor vehicle in violation of any subdivision of section eleven hundred ninety-two of this article and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.

(3) Upon being advised that an oral application for a court order to compel a person to submit to a chemical test OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, is being made, a judge or justice shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within seventy-two hours of the issuance of the court order. If the longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of the order.

(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 OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, to determine the alcoholic and/or drug content of his blood and ordering the withdrawal of a blood 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.

(5) UPON REFUSAL BY A PERSON, WHO A POLICE OFFICER HAS REASONABLE CAUSE TO BELIEVE IS IN VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, TO SUBMIT TO A CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, REQUESTED BY SUCH POLICE OFFICER AT THE TIME OF SUCH TRAFFIC STOP, SUCH POLICE OFFICER, IF A SIGNED COURT ORDER TO COMPEL SUCH PERSON TO SUBMIT TO SUCH TEST CANNOT BE PRODUCED, SHALL CALL THE STATEWIDE TOLL-FREE OFFICE OF COURT ADMINISTRATION HOTLINE WITHIN FIFTEEN MINUTES OF SUCH REFUSAL, AS DESCRIBED IN SECTION ELEVEN HUNDRED NINETY-FOUR-B OF THIS ARTICLE, TO REQUEST OR OBTAIN, BY ORAL APPLICATION AS DESCRIBED IN SUBPARAGRAPHS THREE AND FOUR OF THIS PARAGRAPH, A COURT ORDER TO COMPEL SUCH PERSON TO SUBMIT TO A CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA.

(6) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the

offenses for perjury set forth in article two hundred ten of the penal law.

[(6)] (7) The chief administrator of the courts shall establish a schedule to provide that a sufficient number of judges or justices will be available in each judicial district to hear oral applications for court orders as permitted by this section.

S 3. The vehicle and traffic law is amended by adding a new section 1194-b to read as follows:

S 1194-B. STATEWIDE TOLL-FREE OFFICE OF COURT ADMINISTRATION HOTLINE; COURT ORDER TO COMPEL CHEMICAL TEST. 1. THE DEPARTMENT, IN CONJUNCTION WITH THE OFFICE OF COURT ADMINISTRATION AND THE DIVISION OF STATE POLICE, SHALL ESTABLISH, MAINTAIN AND OPERATE A STATEWIDE TOLL-FREE OFFICE OF COURT ADMINISTRATION HOTLINE FOR THE USE OF POLICE OFFICERS SEEKING COURT ORDERS TO COMPEL PERSONS TO SUBMIT TO A CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, AS DESCRIBED IN PARAGRAPH (D) OF SUBDIVISION THREE OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE.

2. UPON REFUSAL BY A PERSON, WHO A LAW ENFORCEMENT OFFICER HAS REASONABLE CAUSE TO BELIEVE IS IN VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, TO SUBMIT TO A CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, REQUESTED BY SUCH POLICE OFFICER AT THE TIME OF THE TRAFFIC STOP, SUCH POLICE OFFICER, IF A SIGNED COURT ORDER TO COMPEL SUCH PERSON TO SUBMIT TO A CHEMICAL TEST CANNOT BE PRODUCED, SHALL CALL THE STATEWIDE TOLL-FREE OFFICE OF COURT ADMINISTRATION HOTLINE WITHIN FIFTEEN MINUTES OF SUCH REFUSAL, TO REQUEST OR OBTAIN, BY ORAL APPLICATION AS DESCRIBED IN SUBPARAGRAPHS THREE AND FOUR OF PARAGRAPH (D) OF SUBDIVISION THREE OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE, A COURT ORDER TO COMPEL SUCH PERSON TO SUBMIT TO SUCH TEST.

3. TELEPHONE CALLS MADE TO SUCH HOTLINE SHALL BE IMMEDIATELY ROUTED TO A SUPREME COURT JUSTICE, COUNTY COURT JUDGE OR DISTRICT COURT JUDGE IN THE JUDICIAL DISTRICT IN WHICH THE INCIDENT OCCURRED, OR IF THE INCIDENT OCCURRED IN THE CITY OF NEW YORK, TO ANY SUPREME COURT JUSTICE OR JUDGE OF THE CRIMINAL COURT OF THE CITY OF NEW YORK.

4. IF THE JUDGE OR JUSTICE IS SATISFIED THAT THE REQUIREMENTS FOR THE ISSUANCE OF A COURT ORDER PURSUANT TO THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE HAVE BEEN MET, HE OR SHE SHALL GRANT THE APPLICATION AND SHALL ISSUE AN ORDER REQUIRING THE ACCUSED TO SUBMIT TO A CHEMICAL TEST IMMEDIATELY, PURSUANT TO SUBDIVISION THREE OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE.

5. A DETERMINATION GRANTING OR DENYING SUCH APPLICATION SHALL BE ISSUED WITHIN ONE HOUR OF SUCH PHONE CALL.

6. A POLICE OFFICER SHALL BE GUILTY OF A CLASS E FELONY IF HE OR SHE FAILS TO COMPLY WITH THE PROVISIONS SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law, except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.