

3810

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. GABRYSZAK, ALFANO, BENEDETTO, DINOWITZ, ERRIGO, FIELDS, FINCH, GALEF, JAFFEE, KAVANAGH, KOLB, MAYERSOHN, MILLMAN, QUINN, SPANO, WRIGHT -- Multi-Sponsored by -- M. of A. AUBRY, BACALLES, BALL, BARRA, BOYLAND, CLARK, CROUCH, DelMONTE, DUPREY, GREENE, JOHN, LANCMAN, LUPARDO, MAISEL, PHEFFER, SALADINO, TOWNS, WEISENBERG -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to mandatory testing in the event of a motor vehicle collision resulting in injury or death

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

1 Section 1. Subparagraphs 1 and 2 of paragraph (a) of subdivision 2 of
2 section 1194 of the vehicle and traffic law, as amended by chapter 196
3 of the laws of 1996, are amended and a new subparagraph 2-a is added to
4 read as follows:
5 (1) having reasonable grounds to believe such person to have been
6 operating in violation of any subdivision of section eleven hundred
7 ninety-two of this article and within two hours after such person has
8 been placed under arrest for any such violation; or having reasonable
9 grounds to believe such person to have been operating in violation of
10 section eleven hundred ninety-two-a of this article and within two hours
11 after the stop of such person for any such violation, OR
12 (2) within two hours after a breath test, as provided in paragraph (b)
13 of subdivision one of this section, indicates that alcohol has been
14 consumed by such person and in accordance with the rules and regulations
15 established by the police force of which the officer is a member[;], OR
16 (2-A) HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON TO HAVE BEEN
17 OPERATING A MOTOR VEHICLE IN A MANNER THAT CAUSES SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 10.00 OF THE PENAL LAW TO, OR THE DEATH OF,

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

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1 ANOTHER PERSON AND WITHIN TWO HOURS AFTER SUCH OPERATION WHICH RESULTED
2 IN SUCH SERIOUS PHYSICAL INJURY OR DEATH, OR

3 S 2. Subdivision 3 of section 1194 of the vehicle and traffic law, as
4 added by chapter 47 of the laws of 1988, is amended to read as follows:

5 3. Compulsory chemical tests. (a) [Court] MANDATORY AND COURT ordered
6 chemical tests. Notwithstanding the provisions of subdivision two of
7 this section, no person who operates a motor vehicle in this state may
8 refuse to submit to a chemical test of one or more of the following:
9 breath, blood, urine or saliva, for the purpose of determining the alco-
10 holic and/or drug content of the blood when (I) a court order for such
11 chemical test has been issued in accordance with the provisions of this
12 subdivision OR (II) SUCH PERSON OPERATED A MOTOR VEHICLE IN A MANNER
13 THAT CAUSES THE DEATH OF ANOTHER PERSON.

14 (b) [When] COURT ORDERED CHEMICAL TESTS, WHEN authorized. Upon (I)
15 refusal by any person to submit to a chemical test or any portion there-
16 of [as described above] REQUESTED BY A POLICE OFFICER, PURSUANT TO THE
17 PROVISIONS OF SUBPARAGRAPH TWO-A OF PARAGRAPH (A) OF SUBDIVISION TWO OF
18 THIS SECTION, HAVING REASONABLE CAUSE TO BELIEVE SUCH PERSON TO HAVE
19 BEEN OPERATING A MOTOR VEHICLE IN A MANNER THAT CAUSED SERIOUS PHYSICAL
20 INJURY TO ANOTHER PERSON, OR (II) THE INABILITY OF ANY PERSON TO GIVE
21 CONSENT TO A CHEMICAL TEST OR ANY PORTION THEREOF REQUESTED BY A POLICE
22 OFFICER, PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH TWO-A OF PARAGRAPH
23 (A) OF SUBDIVISION TWO OF THIS SECTION, HAVING REASONABLE CAUSE TO
24 BELIEVE SUCH PERSON TO HAVE BEEN OPERATING A MOTOR VEHICLE IN A MANNER
25 THAT CAUSED SERIOUS PHYSICAL INJURY TO, OR THE DEATH OF, ANOTHER PERSON,
26 the test shall not be given unless a police officer or a district attor-
27 ney, as defined in subdivision thirty-two of section 1.20 of the crimi-
28 nal procedure law, requests and obtains a court order to compel a person
29 to submit to a chemical test to determine the alcoholic or drug content
30 of the person's blood upon a finding of reasonable cause to believe
31 that:

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

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

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

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

42 (4)] (B) such person has refused to submit to a chemical test or any
43 portion thereof, requested in accordance with the provisions of SUBPARA-
44 GRAPH TWO-A OF paragraph (a) of subdivision two of this section or [is
45 unable to give consent to such a test]

46 (2) (A) SUCH PERSON WAS THE OPERATOR OF A MOTOR VEHICLE AND IN THE
47 COURSE OF SUCH OPERATION A PERSON OTHER THAN THE OPERATOR WAS KILLED OR
48 SUFFERED SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 10.00 OF THE
49 PENAL LAW; AND

50 (B) SUCH PERSON WAS UNABLE TO GIVE CONSENT TO SUCH A TEST.

51 (c) Reasonable cause; definition. For the purpose of this subdivision
52 "reasonable cause" shall be determined by viewing the totality of
53 circumstances surrounding the incident which, when taken together, indi-
54 cate that the operator was [driving in violation of section eleven
55 hundred ninety-two of this article. Such circumstances may include, but
56 are not limited to: evidence that the operator was operating a motor

1 vehicle in violation of any provision of this article or any other
2 moving violation at the time of the incident; any visible indication of
3 alcohol or drug consumption or impairment by the operator; the existence
4 of an open container containing an alcoholic beverage in or around the
5 vehicle driven by the operator; any other evidence surrounding the
6 circumstances of the incident which indicates that the operator has been
7 operating a motor vehicle while impaired by the consumption of alcohol
8 or drugs or intoxicated at the time of the incident] OPERATING A MOTOR
9 VEHICLE AND IN THE COURSE OF SUCH OPERATION A PERSON OTHER THAN THE
10 OPERATOR WAS KILLED OR SUFFERED SERIOUS PHYSICAL INJURY AS DEFINED IN
11 SECTION 10.00 OF THE PENAL LAW.

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

20 (2) The applicant must provide identification by name and title and
21 must state the purpose of the communication. Upon being advised that an
22 application for a court order to compel submission to a chemical test is
23 being made, the court shall place under oath the applicant and any other
24 person providing information in support of the application as provided
25 in subparagraph three of this paragraph. After being sworn the applicant
26 must state that the person from whom the chemical test was requested was
27 the operator of a motor vehicle and in the course of such operation a
28 person, other than the operator, has been [killed or] seriously injured
29 [and, based upon the totality of circumstances, there is reasonable
30 cause to believe that such person was operating a motor vehicle in
31 violation of any subdivision of section eleven hundred ninety-two of
32 this article] and, after being placed under lawful arrest such person
33 refused to submit to a chemical test or any portion thereof[,] in
34 accordance with the provisions of this section or is unable to give
35 consent to such a test or any portion thereof. The applicant must make
36 specific allegations of fact to support such statement. Any other person
37 properly identified, may present sworn allegations of fact in support of
38 the applicant's statement.

39 (3) Upon being advised that an oral application for a court order to
40 compel a person to submit to a chemical test is being made, a judge or
41 justice shall place under oath the applicant and any other person
42 providing information in support of the application. Such oath or oaths
43 and all of the remaining communication must be recorded, either by means
44 of a voice recording device or verbatim stenographic or verbatim long-
45 hand notes. If a voice recording device is used or a stenographic record
46 made, the judge must have the record transcribed, certify to the accura-
47 cy of the transcription and file the original record and transcription
48 with the court within seventy-two hours of the issuance of the court
49 order. If the longhand notes are taken, the judge shall subscribe a copy
50 and file it with the court within twenty-four hours of the issuance of
51 the order.

52 (4) If the court is satisfied that the requirements for the issuance
53 of a court order pursuant to the provisions of paragraph (b) of this
54 subdivision have been met, it may grant the application and issue an
55 order requiring the accused to submit to a chemical test to determine
56 the alcoholic and/or drug content of his blood and ordering the with-

drawal 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) 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) 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.

(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 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.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, and shall apply to violations committed on and after such date.