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

5623

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. MOLINARO, McKEVITT, WALKER, ALFANO, KOLB, BARCLAY, TOBACCO, GIGLIO, CORWIN, FINCH -- Multi-Sponsored by -- M. of A. BALL, BARRA, BURLING, CALHOUN, CROUCH, DUPREY, ERRIGO, OAKS, TOWNSEND -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the civil practice law and rules, in relation to the admissibility of evidence of alcohol or drug content of blood obtained by medical personnel

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

Section 1. Section 1195 of the vehicle and traffic law is amended by adding a new subdivision 1-a to read as follows:

1-A. EVIDENCE. UPON TRIAL OF ANY ACTION OR PROCEEDING ARISING OUT OF ACTIONS ALLEGED TO HAVE BEEN COMMITTED BY ANY PERSON ARRESTED FOR A VIOLATION OF ANY PROVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, THE COURT SHALL ADMIT EVIDENCE OF THE AMOUNT OF ALCOHOL OR DRUGS IN THE DEFENDANT'S BLOOD AS SHOWN BY A TEST OF SUCH DEFENDANT'S BREATH, BLOOD, URINE OR SALIVA ADMINISTERED BY ANY PERSON AUTHORIZED TO WITHDRAW BLOOD IN THE COURSE OF MEDICAL TREATMENT, IF SUCH PERSON ADMINISTERED SUCH TEST IN THE COURSE OF PROVIDING TREATMENT OF INJURIES SUSTAINED BY THE DEFENDANT, IRRESPECTIVE OF WHETHER THE DEFENDANT HAD BEEN ARRESTED FOR A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AT THE TIME THE TEST WAS ADMINISTERED AND IRRESPECTIVE OF WHETHER SUCH TEST WAS PERFORMED AT THE REQUEST OF A POLICE OFFICER.

S 2. The civil practice law and rules is amended by adding a new rule 4535 to read as follows:

RULE 4535. CHEMICAL TEST EVIDENCE OF ALCOHOL OR DRUG CONSUMPTION IN CIVIL DAMAGE ACTIONS. (A) IN ANY ACTION TO RECOVER DAMAGES FOR PERSONAL INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH, WHEREIN THE ISSUE OF INTOXICATION OR IMPAIRMENT OF A MOTOR VEHICLE OPERATOR SHALL HAVE BEEN RAISED, THE COURT SHALL ADMIT EVIDENCE OF THE AMOUNT OF ALCOHOL OR DRUGS IN THE MOTOR VEHICLE OPERATOR'S BLOOD AS ESTABLISHED BY A CHEMICAL TEST

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

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WHICH IS ADMISSIBLE PURSUANT TO THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-FIVE OF THE VEHICLE AND TRAFFIC LAW OR ADMINISTERED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION SIX HUNDRED SEVENTY-FOUR OF THE COUNTY LAW.

(B) THE FOLLOWING EFFECT SHALL BE GIVEN TO EVIDENCE OF BLOOD-ALCOHOL CONTENT, AS DETERMINED BY SUCH TESTS:

(1) EVIDENCE THAT THERE WAS MORE THAN .05 OF ONE PER CENTUM BUT LESS THAN .08 OF ONE PER CENTUM BY WEIGHT OF ALCOHOL IN A MOTOR VEHICLE OPERATOR'S BLOOD SHALL CONSTITUTE PRIMA FACIE EVIDENCE THAT SUCH OPERATOR WAS IMPAIRED AND SHALL, IF UNREBUTTED, CONSTITUTE A COMPLETE BAR TO ANY RECOVERY ON BEHALF OF SUCH OPERATOR WHERE THE PROOF SHALL SHOW (I) THAT THE IMPAIRMENT OF THE MOTOR VEHICLE OPERATOR WAS A PROXIMATE CAUSE OF THE OCCURRENCE, AND (II) THAT THE CULPABLE CONDUCT OF SUCH OPERATOR CONTRIBUTED FIFTY PERCENT OR MORE TO THE CAUSATION OF THE OCCURRENCE.

(2) EVIDENCE THAT A MOTOR VEHICLE OPERATOR'S BLOOD CONTAINED .08 OF ONE PER CENTUM OR MORE, BY WEIGHT OF ALCOHOL, SHALL CONSTITUTE PRIMA FACIE EVIDENCE ON THE ISSUE OF SUCH OPERATOR'S INTOXICATION AND SHALL, IF UNREBUTTED, CONSTITUTE A COMPLETE BAR TO ANY RECOVERY ON BEHALF OF THAT OPERATOR WHEN SUCH INTOXICATION WAS A PROXIMATE CAUSE OF THE OCCURRENCE.

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 all causes of action accruing on or after such effective date.