

2645

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 19, 2011

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Introduced by M. of A. GABRYSZAK, BENEDETTO, DINOWITZ, FINCH, GALEF, JAFFEE, KAVANAGH, KOLB, MAYERSOHN, MILLMAN, SPANO, WRIGHT, CASTRO, BOYLAND, ROSENTHAL, SCHIMEL -- Multi-Sponsored by -- M. of A. AUBRY, CALHOUN, CLARK, CROUCH, DUPREY, LANCMAN, LUPARDO, MAISEL, McDONOUGH, MENG, MOLINARO, PHEFFER, SALADINO, THIELE, 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 INJU-  
18    RY AS DEFINED IN SECTION 10.00 OF THE PENAL LAW TO, OR THE DEATH OF,  
19    ANOTHER PERSON AND WITHIN TWO HOURS AFTER SUCH OPERATION WHICH RESULTED  
20    IN SUCH SERIOUS PHYSICAL INJURY OR DEATH, OR

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

LBD07546-01-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 mines to issue an order to compel submission to a chemical test based on  
2 an oral application, the applicant therefor shall prepare the order in  
3 accordance with the instructions of the judge or justice. In all cases  
4 the order shall include the name of the issuing judge or justice, the  
5 name of the applicant, and the date and time it was issued. It must be  
6 signed by the judge or justice if issued in person, or by the applicant  
7 if issued orally.

8 (5) Any false statement by an applicant or any other person in support  
9 of an application for a court order shall subject such person to the  
10 offenses for perjury set forth in article two hundred ten of the penal  
11 law.

12 (6) The chief administrator of the courts shall establish a schedule  
13 to provide that a sufficient number of judges or justices will be avail-  
14 able in each judicial district to hear oral applications for court  
15 orders as permitted by this section.

16 (e) Administration of compulsory chemical test. An order issued pursu-  
17 ant to the provisions of this subdivision shall require that a chemical  
18 test to determine the alcoholic and/or drug content of the operator's  
19 blood must be administered. The provisions of paragraphs (a), (b) and  
20 (c) of subdivision four of this section shall be applicable to any chem-  
21 ical test administered pursuant to this section.

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