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

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I N A S S E M B L Y

January 19, 2011

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:

Section 1. Subparagraphs 1 and 2 of paragraph (a) of subdivision 2 of section 1194 of the vehicle and traffic law, as amended by chapter 196 of the laws of 1996, are amended and a new subparagraph 2-a is added to read as follows:

(1) having reasonable grounds to believe such person to have been operating in violation of any subdivision of section eleven hundred ninety-two of this article and within two hours after such person has been placed under arrest for any such violation; or having reasonable grounds to believe such person to have been operating in violation of section eleven hundred ninety-two-a of this article and within two hours after the stop of such person for any such violation, OR

(2) within two hours after a breath test, as provided in paragraph (b) of subdivision one of this section, indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member[;], OR

(2-A) HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON TO HAVE BEEN 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, ANOTHER PERSON AND WITHIN TWO HOURS AFTER SUCH OPERATION WHICH RESULTED IN SUCH SERIOUS PHYSICAL INJURY OR DEATH, OR

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

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S 2. 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:

3. Compulsory chemical tests. (a) [Court] MANDATORY AND 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, for the purpose of determining the alcoholic and/or drug content of the blood when (I) a court order for such chemical test has been issued in accordance with the provisions of this subdivision OR (II) SUCH PERSON OPERATED A MOTOR VEHICLE IN A MANNER THAT CAUSES THE DEATH OF ANOTHER PERSON.

(b) [When] COURT ORDERED CHEMICAL TESTS, WHEN authorized. Upon (I) refusal by any person to submit to a chemical test or any portion thereof [as described above] REQUESTED BY A POLICE OFFICER, PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH TWO-A OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, HAVING REASONABLE CAUSE TO BELIEVE SUCH PERSON TO HAVE BEEN OPERATING A MOTOR VEHICLE IN A MANNER THAT CAUSED SERIOUS PHYSICAL INJURY TO ANOTHER PERSON, OR (II) THE INABILITY OF ANY PERSON TO GIVE CONSENT TO A CHEMICAL TEST OR ANY PORTION THEREOF REQUESTED BY A POLICE OFFICER, PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH TWO-A OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, HAVING REASONABLE CAUSE TO BELIEVE SUCH PERSON TO HAVE BEEN OPERATING A MOTOR VEHICLE IN A MANNER THAT CAUSED SERIOUS PHYSICAL INJURY TO, OR THE DEATH OF, ANOTHER PERSON, 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 drug content of the person's blood upon a finding of reasonable cause to believe that:

(1) (A) 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 administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol has been consumed by such person; and

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

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

(2) (A) 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

(B) SUCH PERSON WAS 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 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] OPERATING 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.

(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 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 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 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 deter-

mines 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.