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

1100

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KOLB, McKEVITT -- Multi-Sponsored by -- M. of A. CORWIN, JORDAN -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the general municipal law, in relation to reimbursement of municipal cost and expense incurred by motor vehicle drivers under the influence of alcohol and/or controlled substances

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

Section 1. The general municipal law is amended by adding a new article 17-B to read as follows:

ARTICLE 17-B

REIMBURSEMENT OF MUNICIPAL EXPENSE BY DRIVERS OF MOTOR VEHICLES UNDER THE INFLUENCE OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE

SECTION 796. SHORT TITLE; PURPOSE OF ARTICLE.
796-A. DEFINITIONS.
796-B. LOCAL LAWS AND ORDINANCES.
796-C. STANDARD OF IMPAIRMENT; TESTING METHODS.
796-D. PRESUMPTION WITH RESPECT TO CAUSAL CONNECTION.
796-E. ADDITIONAL PRESUMPTION OF IMPAIRMENT.
796-F. DAMAGES.
796-G. ATTORNEY'S FEES, COURT COSTS AND EXPENSES; RECOVERY.
796-H. SEVERABILITY.

S 796. SHORT TITLE; PURPOSE OF ARTICLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "ALCOHOL AND CONTROLLED SUBSTANCE EXPENSE RECOVERY ACT". THE LEGISLATURE HEREBY DECLARES THAT A HIGH PERCENTAGE OF AUTOMOBILE ACCIDENTS ARE RELATED TO THE USE OF ALCOHOL AND CONTROLLED SUBSTANCES AND, IN ADDITION TO THE TERRIBLE LOSSES SUFFERED BY THE FAMILIES AND LOVED ONES OF INJURED PARTIES, THE COMMUNITY ITSELF SUFFERS SERIOUS FINANCIAL BURDENS BY BEING OBLIGED TO RESPOND TO THE SCENES OF

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

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SUCH ACCIDENTS. SINCE THERE WOULD APPEAR TO BE NO REASON WHY THOSE CAUSING OR CONTRIBUTING TO SUCH ACCIDENTS WHEN USING ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES SHOULD NOT SUFFER THE ECONOMIC BURDEN CREATED BY ANY SUCH ACCIDENT AND THE ADDITIONAL ECONOMIC BURDEN OF RECOVERING THE COSTS AND EXPENSES INCIDENT THERETO, IT IS THE DETERMINATION OF THIS LEGISLATURE THAT THE PASSAGE OF THIS ARTICLE IS REQUIRED IN ORDER TO ALLOW THE MORE EQUITABLE DISTRIBUTION OF THE COST AND EXPENSE IMPOSED BY SUCH ANTISOCIAL CONDUCT.

S 796-A. DEFINITIONS. THE FOLLOWING TERMS SHALL HAVE THE MEANINGS HEREINAFTER SET FORTH, RESPECTIVELY:

1. "CONTROLLED SUBSTANCES" SHALL MEAN AND INCLUDE ANY SUBSTANCE NAMED OR DESCRIBED AS SUCH IN TITLE ONE OF ARTICLE THIRTY-THREE OF THE PUBLIC HEALTH LAW.

2. "COSTS AND EXPENSES OF EMERGENCY RESPONSES" SHALL MEAN AND INCLUDE, BUT NOT BE LIMITED TO, ALL COSTS OF LABOR, MEDICAL MATERIALS, MEDICAL EQUIPMENT, POLICE EQUIPMENT, FIRE EQUIPMENT, AND ADMINISTRATIVE EXPENSES ASSOCIATED THEREWITH, WHICH SHALL BE EXPENDED, USED, ASSOCIATED WITH, OCCASIONED BY OR CONNECTED WITH ANY EMERGENCY MEDICAL, FIRE OR POLICE RESPONSE AND, FOR THE PURPOSES HEREOF, THE COSTS OF EMERGENCY MEDICAL, FIRE AND POLICE MANPOWER SERVICES SHALL BE AS SET FORTH ON SUCH SCHEDULES AS A MUNICIPALITY MAY ADOPT, FROM TIME TO TIME, BY RESOLUTION PURSUANT TO THIS ARTICLE.

S 796-B. LOCAL LAWS AND ORDINANCES. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AND SUBJECT TO THE PROVISIONS OF THIS ARTICLE, ANY CITY, COUNTY, TOWN OR VILLAGE IN THIS STATE, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND EITHER A LOCAL LAW OR AN ORDINANCE PROVIDING FOR THE RECOVERY BY SUCH MUNICIPALITY OF ANY COST OR EXPENSE INCURRED OR EXPENDED BY IT AS THE RESULT OF THE OPERATION OF A MOTOR VEHICLE WITHIN SUCH MUNICIPALITY BY AN INDIVIDUAL WHILE UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES OR A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES ARE IMPAIRED OR TO THE EXTENT THAT HE OR SHE IS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES AND, IF SUCH PERSON SHALL PROXIMATELY CAUSE AN ACCIDENT OR IS A SUBSTANTIAL CAUSATIVE FACTOR OF AN ACCIDENT RESULTING IN THE NEED FOR SUCH MUNICIPALITY TO PROVIDE EMERGENCY MEDICAL, FIRE OR POLICE RESPONSES OR SERVICES, SUCH PERSON SHALL BE LIABLE TO SUCH MUNICIPALITY FOR ALL COSTS AND EXPENSES OF SUCH EMERGENCY RESPONSES AND SERVICES.

S 796-C. STANDARD OF IMPAIRMENT; TESTING METHODS. 1. IN ANY TRIAL OF ANY CIVIL ACTION OR PROCEEDING WITH RESPECT TO THE ENFORCEMENT OF ANY LOCAL LAW OR ORDINANCE PASSED PURSUANT HERETO ALLEGING THAT ANY PERSON IS LIABLE TO SUCH MUNICIPALITY BECAUSE SUCH PERSON WAS THE CAUSE OF OR WAS A SUBSTANTIAL CAUSATIVE FACTOR OF AN ACCIDENT REQUIRING EMERGENCY MEDICAL, FIRE OR POLICE RESPONSES WHILE SUCH PERSON WAS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES, OR A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES, TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED, OR TO THE EXTENT THAT HE OR SHE WAS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES, THE RESULTS OF ANY TEST ADMINISTERED IN ACCORDANCE WITH ARTICLE THIRTY-ONE OF THE VEHICLE AND TRAFFIC LAW SHALL BE ADMISSIBLE INTO EVIDENCE WHEN OTHERWISE ADMISSIBLE, AND THE AMOUNT OF ALCOHOL OR CONTROLLED SUBSTANCE IN THE PERSON'S BLOOD AT THE TIME ALLEGED, AS SHOWN BY CHEMICAL ANALYSIS OF THE PERSON'S BLOOD OR BREATH OR URINE, SHALL GIVE RISE TO THE FOLLOWING PRESUMPTIONS:

A. IF THERE WAS, AT THE TIME, 0.05 PERCENT OR LESS BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD, AND IF THERE WAS NO EVIDENCE OF A CONTROLLED SUBSTANCE IN SUCH PERSON'S BLOOD, IT SHALL BE PRESUMED THAT THE PERSON WAS NOT UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES OR ANY COMBINATION THEREOF TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED.

B. IF THERE WAS, AT THE TIME, IN EXCESS OF 0.05 PERCENT BUT LESS THAN 0.08 PERCENT BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD SUCH FACTS SHALL NOT GIVE RISE TO ANY PRESUMPTION THAT THE PERSON WAS OR WAS NOT UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES OR A COMBINATION THEREOF TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED, BUT SUCH FACT MAY BE CONSIDERED WITH OTHER COMPETENT EVIDENCE IN DETERMINING WHETHER THE PERSON WAS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES OR ANY COMBINATION THEREOF TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED.

C. IF THERE WAS, AT THE TIME, 0.08 PERCENT OR MORE BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD, EVEN IF THERE WAS NO EVIDENCE OF A CONTROLLED SUBSTANCE IN SUCH PERSON'S BLOOD, SUCH FACT SHALL BE PRIMA FACIE EVIDENCE THAT THE PERSON WAS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED.

D. IF THERE WAS, AT THE TIME, IN EXCESS OF 0.05 PERCENT BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD AND EVIDENCE OF A CONTROLLED SUBSTANCE IN THE PERSON'S BLOOD, SUCH FACTS SHALL BE PRIMA FACIE EVIDENCE THAT THE PERSON WAS UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED.

2. THE PERCENT BY WEIGHT OF ALCOHOL IN THE BLOOD SHALL BE BASED UPON GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD.

3. THE FOREGOING PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED AS LIMITING THE INTRODUCTION OF OTHER COMPETENT EVIDENCE BEARING UPON THE QUESTION OF WHETHER THE PERSON WAS UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES, OR A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES, EITHER TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED OR TO THE EXTENT THAT HE OR SHE WAS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES, OR THAT SUCH IMPAIRMENT WAS THE PROXIMATE CAUSE OR SUBSTANTIALLY CAUSATIVE OF THE ACCIDENT GIVING RISE TO THE NEED FOR EMERGENCY MEDICAL, POLICE OR FIRE SERVICES.

4. A CHEMICAL ANALYSIS OF A PERSON'S BLOOD TO DETERMINE ALCOHOLIC CONTENT, A CHEMICAL ANALYSIS OF A PERSON'S BREATH OR A CHEMICAL ANALYSIS OF A PERSON'S URINE, IN ORDER TO BE CONSIDERED VALID UNDER THE PROVISIONS OF THIS SECTION, MUST HAVE BEEN PERFORMED SUBSTANTIALLY IN ACCORDANCE WITH THE METHOD SET FORTH IN ARTICLE THIRTY-ONE OF THE VEHICLE AND TRAFFIC LAW. ANY INSUBSTANTIAL DIFFERENCES BETWEEN APPROVED TECHNIQUES AND ACTUAL TESTING PROCEDURES IN ANY INDIVIDUAL CASE SHALL NOT RENDER THE TEST OR TEST RESULTS INVALID. ANY TECHNIQUE OR METHOD APPROVED BY THE DEPARTMENT OF HEALTH WITH RESPECT TO SUCH ANALYSIS SHALL BE DEEMED ACCEPTABLE. ANY PERSON WHO SHALL BE DEEMED QUALIFIED AND COMPETENT TO CONDUCT SUCH ANALYSIS BY THE DEPARTMENT OF HEALTH SHALL BE DEEMED COMPETENT TO CONDUCT SUCH ANALYSIS.

S 796-D. PRESUMPTION WITH RESPECT TO CAUSAL CONNECTION. IN ANY TRIAL OF ANY CIVIL ACTION OR PROCEEDING WITH RESPECT TO THE ENFORCEMENT HEREOF ALLEGING THAT ANY PERSON IS LIABLE HEREUNDER BECAUSE SUCH PERSON WAS THE CAUSE OF OR WAS A SUBSTANTIAL CAUSATIVE FACTOR OF AN ACCIDENT REQUIRING EMERGENCY MEDICAL, FIRE OR POLICE RESPONSES WHILE SUCH PERSON WAS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE

OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES, OR A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES, TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED OR THAT HE OR SHE WAS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES, IT SHALL BE PRESUMED THAT A PERSON UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES AND/OR CONTROLLED SUBSTANCES TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED, OR TO THE EXTENT THAT HE OR SHE WAS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES, WAS THE PROXIMATE CAUSE OR WAS A SUBSTANTIAL CAUSATIVE FACTOR OF THE ACCIDENT GIVING RISE TO THE NEED FOR EMERGENCY MEDICAL, POLICE AND FIRE SERVICES.

S 796-E. ADDITIONAL PRESUMPTION OF IMPAIRMENT. IN ANY TRIAL OF ANY CIVIL ACTION OR PROCEEDING WITH RESPECT TO THE ENFORCEMENT OF ANY LOCAL LAW OR ORDINANCE PASSED PURSUANT HERETO ALLEGING THAT ANY PERSON IS LIABLE TO SUCH MUNICIPALITY BECAUSE SUCH PERSON WAS THE CAUSE OF OR WAS A SUBSTANTIAL CAUSATIVE FACTOR OF AN ACCIDENT REQUIRING EMERGENCY MEDICAL, FIRE OR POLICE RESPONSES WHILE SUCH PERSON WAS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES, OR A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES, TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED OR THAT HE OR SHE WAS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES, IT SHALL BE PRESUMED THAT SUCH PERSON'S NORMAL FACULTIES WERE IMPAIRED OR THAT SUCH PERSON WAS DEPRIVED OF FULL POSSESSION OF HIS OR HER NORMAL FACULTIES IF SUCH PERSON SHALL PLEAD GUILTY TO OR SHALL HAVE BEEN FOUND GUILTY AFTER TRIAL OF A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW OR IF SUCH PERSON REFUSES AN OFFICER'S REQUEST TO SUBMIT TO ANY BREATH, BLOOD OR URINE TEST PROVIDED IN SECTION ELEVEN HUNDRED NINETY-FOUR OF THE VEHICLE AND TRAFFIC LAW AND SUCH OFFICER SHALL HAVE SUBMITTED A SWORN STATEMENT THAT HE HAD REASONABLE CAUSE TO BELIEVE THE PERSON HAD BEEN DRIVING OR HAD BEEN IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WITHIN SUCH MUNICIPALITY WHILE UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES, OR A COMBINATION OF ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES, AND THAT SUCH PERSON HAD REFUSED TO SUBMIT TO THE TEST OR TESTS AFTER BEING REQUESTED TO DO SO BY THE OFFICER.

S 796-F. DAMAGES. EVERY MUNICIPALITY ADOPTING A LOCAL LAW OR ORDINANCE PURSUANT TO THIS ARTICLE SHALL DEVELOP AND KEEP CURRENT A SCHEDULE OF SUCH EMERGENCY COSTS AND EXPENSES LIKELY TO BE INCURRED OR EXPENDED AS A RESULT OF SUCH AN ALCOHOL OR CONTROLLED SUBSTANCE RELATED ACCIDENT SETTING FORTH THE COST AND VALUE OF TIME AND SERVICES, AS WELL AS MATERIALS, PROVIDED IN EMERGENCY SITUATIONS AS CONTEMPLATED BY THIS ARTICLE.

S 796-G. ATTORNEY'S FEES, COURT COSTS AND EXPENSES; RECOVERY. IN ANY TRIAL OR ANY CIVIL ACTION OR PROCEEDING ARISING IN THE ENFORCEMENT OF ANY LOCAL LAW OR ORDINANCE PASSED PURSUANT HERETO, THE MUNICIPALITY INVOLVED SHALL BE ENTITLED TO RECOVER ALL COURT COSTS, EXPENSES AND ATTORNEY'S FEES INCURRED BY SUCH MUNICIPALITY IN SUCH DISPUTE AND SUCH RIGHT SHALL INCLUDE ALL OF SUCH COSTS, EXPENSES AND ATTORNEY'S FEES THROUGH ALL APPEALS OR OTHER ACTIONS.

S 796-H. SEVERABILITY. IF ANY SECTION, SUBDIVISION, PARAGRAPH, SENTENCE, CLAUSE, PHRASE OR PORTION OF THIS ARTICLE IS FOR ANY REASON HELD INVALID OR UNCONSTITUTIONAL BY ANY COURT OF COMPETENT JURISDICTION, SUCH PORTION SHALL BE DEEMED A SEPARATE, DISTINCT AND INDEPENDENT PROVISION AND SUCH HOLDING SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS ARTICLE.

S 2. This act shall take effect immediately.