

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

3768--A

2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sens. FUSCHILLO, HANNON, KLEIN, LARKIN, LAVALLE, OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to compulsory chemical tests

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

1 Section 1. The paragraph heading and the opening paragraph of para-
2 graph (b) of subdivision 3 of section 1194 of the vehicle and traffic
3 law, as added by chapter 47 of the laws of 1988, are amended and a new
4 paragraph (b-1) is added to read as follows:
5 When [authorized] REQUIRED. Upon refusal by any person to submit to a
6 chemical test or any portion thereof as described above, [the test shall
7 not be given unless] a police officer or a district attorney, as defined
8 in subdivision thirty-two of section 1.20 of the criminal procedure law,
9 [requests and obtains] SHALL REQUEST a court order to compel a person to
10 submit to a chemical test to determine the alcoholic or drug content of
11 the person's blood upon a finding of reasonable cause to believe that:
12 (B-1) WHEN AUTHORIZED. UPON REFUSAL BY ANY PERSON TO SUBMIT TO A CHEM-
13 ICAL TEST OR ANY PORTION THEREOF AS DESCRIBED ABOVE, THE TEST SHALL NOT
14 BE GIVEN UNLESS A POLICE OFFICER OR A DISTRICT ATTORNEY, AS DEFINED IN
15 SUBDIVISION THIRTY-TWO OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW,
16 REQUESTS AND OBTAINS A COURT ORDER TO COMPEL A PERSON TO SUBMIT TO A
17 CHEMICAL TEST TO DETERMINE THE ALCOHOLIC OR DRUG CONTENT OF THE PERSON'S
18 BLOOD UPON A FINDING OF REASONABLE CAUSE TO BELIEVE THAT:
19 (1) A. EITHER SUCH PERSON OPERATED THE VEHICLE IN VIOLATION OF ANY
20 SUBDIVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR

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

LBD09143-03-1

1 B. A BREATH TEST ADMINISTERED BY A POLICE OFFICER IN ACCORDANCE WITH
2 PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION INDICATES THAT ALCOHOL
3 HAS BEEN CONSUMED BY SUCH PERSON; AND

4 (2) SUCH PERSON HAS BEEN PLACED UNDER LAWFUL ARREST; AND

5 (3) SUCH PERSON HAS REFUSED TO SUBMIT TO A CHEMICAL TEST OR ANY
6 PORTION THEREOF, REQUESTED IN ACCORDANCE WITH THE PROVISIONS OF PARA-
7 GRAPH (A) OF SUBDIVISION TWO OF THIS SECTION OR IS UNABLE TO GIVE
8 CONSENT TO SUCH A TEST.

9 S 2. Subparagraphs 1 and 2 of paragraph (b) of subdivision 2 of
10 section 1194 of the vehicle and traffic law, as amended by chapter 196
11 of the laws of 1996, are amended to read as follows:

12 (1) If: (A) such person having been placed under arrest; or (B) after
13 a breath test indicates the presence of alcohol in the person's system;
14 or (C) with regard to a person under the age of twenty-one, there are
15 reasonable grounds to believe that such person has been operating a
16 motor vehicle after having consumed alcohol in violation of section
17 eleven hundred ninety-two-a of this article; and having thereafter been
18 requested to submit to such chemical test and having been informed that
19 the person's license or permit to drive and any non-resident operating
20 privilege shall be immediately suspended and subsequently revoked, or,
21 for operators under the age of twenty-one for whom there are reasonable
22 grounds to believe that such operator has been operating a motor vehicle
23 after having consumed alcohol in violation of section eleven hundred
24 ninety-two-a of this article, shall be revoked for refusal to submit to
25 such chemical test or any portion thereof, whether or not the person is
26 found guilty of the charge for which such person is arrested or
27 detained, refuses to submit to such chemical test or any portion there-
28 of, [unless a court order has been granted pursuant to subdivision three
29 of this section, the test shall not be given and] a written report of
30 such refusal shall be immediately made by the police officer before whom
31 such refusal was made. Such report may be verified by having the report
32 sworn to, or by affixing to such report a form notice that false state-
33 ments made therein are punishable as a class A misdemeanor pursuant to
34 section 210.45 of the penal law and such form notice together with the
35 subscription of the deponent shall constitute a verification of the
36 report.

37 (2) The report of the police officer shall set forth reasonable
38 grounds to believe such arrested person or such detained person under
39 the age of twenty-one had been driving in violation of any subdivision
40 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
41 this article, that said person had refused to submit to such chemical
42 test, and [that no] WHETHER A chemical test was administered pursuant to
43 the requirements of subdivision three of this section. The report shall
44 be presented to the court upon arraignment of an arrested person,
45 provided, however, in the case of a person under the age of twenty-one,
46 for whom a test was authorized pursuant to the provisions of subpara-
47 graph two or three of paragraph (a) of this subdivision, and who has not
48 been placed under arrest for a violation of any of the provisions of
49 section eleven hundred ninety-two of this article, such report shall be
50 forwarded to the commissioner within forty-eight hours in a manner to be
51 prescribed by the commissioner, and all subsequent proceedings with
52 regard to refusal to submit to such chemical test by such person shall
53 be as set forth in subdivision three of section eleven hundred ninety-
54 four-a of this article.

55 S 3. This act shall take effect immediately.