

1 ING OR CONTRIBUTING TO SUCH ACCIDENTS WHEN USING ALCOHOLIC BEVERAGES OR
2 CONTROLLED SUBSTANCES SHOULD NOT SUFFER THE ECONOMIC BURDEN CREATED BY
3 ANY SUCH ACCIDENT AND THE ADDITIONAL ECONOMIC BURDEN OF RECOVERING THE
4 COSTS AND EXPENSES INCIDENT THERETO, IT IS THE DETERMINATION OF THIS
5 LEGISLATURE THAT THE PASSAGE OF THIS ARTICLE IS REQUIRED IN ORDER TO
6 ALLOW THE MORE EQUITABLE DISTRIBUTION OF THE COST AND EXPENSE IMPOSED BY
7 SUCH ANTISOCIAL CONDUCT.

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

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

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

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

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

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

7 B. IF THERE WAS, AT THE TIME, IN EXCESS OF 0.05 PERCENT BUT LESS THAN
8 0.08 PERCENT BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD SUCH FACTS SHALL
9 NOT GIVE RISE TO ANY PRESUMPTION THAT THE PERSON WAS OR WAS NOT UNDER
10 THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES OR A
11 COMBINATION THEREOF TO THE EXTENT THAT HIS OR HER NORMAL FACULTIES WERE
12 IMPAIRED, BUT SUCH FACT MAY BE CONSIDERED WITH OTHER COMPETENT EVIDENCE
13 IN DETERMINING WHETHER THE PERSON WAS UNDER THE INFLUENCE OF ALCOHOLIC
14 BEVERAGES OR CONTROLLED SUBSTANCES OR ANY COMBINATION THEREOF TO THE
15 EXTENT THAT HIS OR HER NORMAL FACULTIES WERE IMPAIRED.

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

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

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

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

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

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

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

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

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

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

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

55 S 2. This act shall take effect immediately.