

7890

2015-2016 Regular Sessions

I N   A S S E M B L Y

May 29, 2015

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Introduced by M. of A. BENEDETTO -- 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. This act shall be known and may be cited as "Ruby's Law".  
2     S 2. Subdivision 1 of section 603-a of the vehicle and traffic law, as  
3     added by chapter 408 of the laws of 2001, is amended to read as follows:  
4     1. In addition to the requirements of section six hundred three of  
5     this article, whenever a motor vehicle accident results in serious phys-  
6     ical injury or death to a person, and such accident either is discovered  
7     by a police officer, or reported to a police officer within five days  
8     after such accident occurred, the police shall conduct an investigation  
9     of such accident.  
10    (A) Such investigation shall be conducted for the purposes of making a  
11    determination of the following: the facts and circumstances of the acci-  
12    dent; the type or types of vehicles involved, including passenger motor  
13    vehicles, commercial motor vehicles, motorcycles, limited use motorcy-  
14    cles, off-highway motorcycles, and/or bicycles; whether pedestrians were  
15    involved; the contributing factor or factors; whether it can be deter-  
16    mined if a violation or violations of this chapter occurred, and if so,  
17    the specific provisions of this chapter which were violated and by whom;  
18    and, the cause of such accident, where such cause can be determined.  
19    (B) WHEN PRESENT AT THE SCENE OF SUCH ACCIDENT, THE INVESTIGATING  
20    OFFICER SHALL ALSO REQUEST THAT ALL OPERATORS OF MOTOR VEHICLES INVOLVED  
21    IN SUCH ACCIDENT SUBMIT TO A FIELD SOBRIETY TEST AS DEFINED IN SECTION  
22    ELEVEN HUNDRED NINETY-FOUR OF THIS CHAPTER PROVIDED THERE ARE REASONABLE  
23    GROUNDS TO BELIEVE SUCH MOTOR VEHICLE OPERATOR COMMITTED A SERIOUS TRAF-  
24    FIC VIOLATION IN THE SAME ACCIDENT. UPON REFUSAL TO SUBMIT TO SUCH TEST-

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

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1 ING, SUCH PERSON SHALL BE SUBJECT TO THE PROVISIONS OF SECTION ELEVEN  
2 HUNDRED NINETY-FOUR OF THIS CHAPTER. THE RESULTS OF SUCH FIELD SOBRIETY  
3 AND CHEMICAL TESTS OR REFUSALS OF SUCH TESTS SHALL BE INCLUDED IN THE  
4 POLICE INVESTIGATION REPORT. FOR THE PURPOSES OF THIS SECTION, "SERIOUS  
5 TRAFFIC VIOLATION" SHALL MEAN OPERATING A MOTOR VEHICLE IN VIOLATION OF  
6 ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: ARTICLES TWENTY-THREE,  
7 TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX, TWENTY-EIGHT, TWENTY-NINE AND  
8 THIRTY AND SECTIONS FIVE HUNDRED ELEVEN, SIX HUNDRED AND TWELVE HUNDRED  
9 TWELVE.

10 (C) The police shall forward a copy of the investigation report to the  
11 commissioner within five business days of the completion of such report.

12 S 3. Paragraphs (b) and (c) of subdivision 2 of section 1194 of the  
13 vehicle and traffic law, paragraph (b) as amended by chapter 196 of the  
14 laws of 1996 and paragraph (c) as added by chapter 47 of the laws of  
15 1988, are amended to read as follows:

16 (b) Report of refusal. (1) If: (A) such person having been placed  
17 under arrest OR HAVING DRIVEN A VEHICLE INVOLVED IN AN ACCIDENT RESULT-  
18 ING IN SERIOUS PHYSICAL INJURY TO, OR THE DEATH OF, ANOTHER PERSON AND,  
19 PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION SIX HUNDRED  
20 THREE-A OF THIS CHAPTER, THERE ARE REASONABLE GROUNDS TO BELIEVE SUCH  
21 PERSON HAS COMMITTED A SERIOUS TRAFFIC VIOLATION AS DEFINED BY SUCH  
22 PARAGRAPH; or (B) after a breath test indicates the presence of alcohol  
23 in the person's system; or (C) with regard to a person under the age of  
24 twenty-one, there are reasonable grounds to believe that such person has  
25 been operating a motor vehicle after having consumed alcohol in  
26 violation of section eleven hundred ninety-two-a of this article; and  
27 having thereafter been requested to submit to such chemical test and  
28 having been informed that the person's license or permit to drive and  
29 any non-resident operating privilege shall be immediately suspended and  
30 subsequently revoked, or, for operators under the age of twenty-one for  
31 whom there are reasonable grounds to believe that such operator has been  
32 operating a motor vehicle after having consumed alcohol in violation of  
33 section eleven hundred ninety-two-a of this article, shall be revoked  
34 for refusal to submit to such chemical test or any portion thereof,  
35 whether or not the person is found guilty of the charge for which such  
36 person is arrested or detained, refuses to submit to such chemical test  
37 or any portion thereof, unless a court order has been granted pursuant  
38 to subdivision three of this section, the test shall not be given and a  
39 written report of such refusal shall be immediately made by the police  
40 officer before whom such refusal was made. Such report may be verified  
41 by having the report sworn to, or by affixing to such report a form  
42 notice that false statements made therein are punishable as a class A  
43 misdemeanor pursuant to section 210.45 of the penal law and such form  
44 notice together with the subscription of the deponent shall constitute a  
45 verification of the report.

46 (2) The report of the police officer shall set forth reasonable  
47 grounds to believe such arrested person or such detained person under  
48 the age of twenty-one had been driving in violation of any subdivision  
49 of section eleven hundred ninety-two or eleven hundred ninety-two-a of  
50 this article, that said person had refused to submit to such chemical  
51 test, and that no chemical test was administered pursuant to the  
52 requirements of subdivision three of this section. The report shall be  
53 presented to the court upon arraignment of an arrested person OR A  
54 PERSON ARRESTED OR ISSUED AN APPEARANCE TICKET FOR A SERIOUS TRAFFIC  
55 VIOLATION COMMITTED IN THE SAME ACCIDENT BEING INVESTIGATED PURSUANT TO  
56 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION SIX HUNDRED THREE-A OF THIS

1 CHAPTER, provided, however, in the case of a person under the age of  
2 twenty-one, for whom a test was authorized pursuant to the provisions of  
3 subparagraph two or three of paragraph (a) of this subdivision, and who  
4 has not been placed under arrest for a violation of any of the  
5 provisions of section eleven hundred ninety-two of this article, such  
6 report shall be forwarded to the commissioner within forty-eight hours  
7 in a manner to be prescribed by the commissioner, and all subsequent  
8 proceedings with regard to refusal to submit to such chemical test by  
9 such person shall be as set forth in subdivision three of section eleven  
10 hundred ninety-four-a of this article.

11 (3) For persons placed under arrest for a violation of any subdivision  
12 of section eleven hundred ninety-two of this article OR PLACED UNDER  
13 ARREST OR ISSUED AN APPEARANCE TICKET FOR A SERIOUS TRAFFIC VIOLATION  
14 COMMITTED IN THE SAME ACCIDENT BEING INVESTIGATED PURSUANT TO PARAGRAPH  
15 (B) OF SUBDIVISION ONE OF SECTION SIX HUNDRED THREE-A OF THIS CHAPTER,  
16 the license or permit to drive and any non-resident operating privilege  
17 shall, upon the basis of such written report, be temporarily suspended  
18 by the court without notice pending the determination of a hearing as  
19 provided in paragraph (c) of this subdivision. Copies of such report  
20 must be transmitted by the court to the commissioner and such transmit-  
21 tal may not be waived even with the consent of all the parties. Such  
22 report shall be forwarded to the commissioner within forty-eight hours  
23 of such arraignment.

24 (4) The court or the police officer, in the case of a person under the  
25 age of twenty-one alleged to be driving after having consumed alcohol,  
26 shall provide such person with a scheduled hearing date, a waiver form,  
27 and such other information as may be required by the commissioner. If a  
28 hearing, as provided for in paragraph (c) of this subdivision, or subdi-  
29 vision three of section eleven hundred ninety-four-a of this article, is  
30 waived by such person, the commissioner shall immediately revoke the  
31 license, permit, or non-resident operating privilege, as of the date of  
32 receipt of such waiver in accordance with the provisions of paragraph  
33 (d) of this subdivision.

34 (c) Hearings. Any person whose license or permit to drive or any non-  
35 resident driving privilege has been suspended pursuant to paragraph (b)  
36 of this subdivision is entitled to a hearing in accordance with a hear-  
37 ing schedule to be promulgated by the commissioner. If the department  
38 fails to provide for such hearing fifteen days after the date of the  
39 arraignment of the arrested person, the license, permit to drive or  
40 non-resident operating privilege of such person shall be reinstated  
41 pending a hearing pursuant to this section. The hearing shall be limited  
42 to the following issues: (1) did the police officer have reasonable  
43 grounds to believe that such person had been driving in violation of any  
44 subdivision of section eleven hundred ninety-two of this article OR WAS  
45 DRIVING A VEHICLE INVOLVED IN AN ACCIDENT BEING INVESTIGATED PURSUANT TO  
46 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION SIX HUNDRED THREE-A OF THIS  
47 CHAPTER; (2) did the police officer make a lawful arrest of such person  
48 OR ISSUE A LAWFUL APPEARANCE TICKET TO, OR MAKE A LAWFUL ARREST OF, SUCH  
49 PERSON FOR A SERIOUS TRAFFIC VIOLATION COMMITTED IN THE SAME ACCIDENT  
50 BEING INVESTIGATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF  
51 SECTION SIX HUNDRED THREE-A OF THIS CHAPTER; (3) was such person given  
52 sufficient warning, in clear or unequivocal language, prior to such  
53 refusal that such refusal to submit to such chemical test or any portion  
54 thereof, would result in the immediate suspension and subsequent revoca-  
55 tion of such person's license or operating privilege whether or not such  
56 person is found guilty of the charge for which the arrest was made OR

1 THE APPEARANCE TICKET WAS ISSUED; and (4) did such person refuse to  
2 submit to such chemical test or any portion thereof. If, after such  
3 hearing, the hearing officer, acting on behalf of the commissioner,  
4 finds on any one of said issues in the negative, the hearing officer  
5 shall immediately terminate any suspension arising from such refusal.  
6 If, after such hearing, the hearing officer, acting on behalf of the  
7 commissioner finds all of the issues in the affirmative, such officer  
8 shall immediately revoke the license or permit to drive or any non-resi-  
9 dent operating privilege in accordance with the provisions of paragraph  
10 (d) of this subdivision. A person who has had a license or permit to  
11 drive or non-resident operating privilege suspended or revoked pursuant  
12 to this subdivision may appeal the findings of the hearing officer in  
13 accordance with the provisions of article three-A of this chapter. Any  
14 person may waive the right to a hearing under this section. Failure by  
15 such person to appear for the scheduled hearing shall constitute a waiv-  
16 er of such hearing, provided, however, that such person may petition the  
17 commissioner for a new hearing which shall be held as soon as practica-  
18 ble.

19 S 4. This act shall take effect on the thirtieth day after it shall  
20 have become a law.