STATE OF NEW YORK

7572

2017-2018 Regular Sessions

IN ASSEMBLY

May 2, 2017

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 Assembly, do enact as follows:

Section 1. Subdivision 1 of section 603-a of the vehicle and traffic law, as added by chapter 408 of the laws of 2001, is amended to read as follows:

1. In addition to the requirements of section six hundred three of this article, whenever a motor vehicle accident results in serious physical injury or death to a person, and such accident either is discovered by a police officer, or reported to a police officer within five days after such accident occurred, the police shall conduct an investigation of such accident.

(a) Such investigation shall be conducted for the purposes of making a determination of the following: the facts and circumstances of the accident; the type or types of vehicles involved, including passenger motor vehicles, commercial motor vehicles, motorcycles, limited use motorcycles, off-highway motorcycles, and/or bicycles; whether pedestrians were involved; the contributing factor or factors; whether it can be determined if a violation or violations of this chapter occurred, and if so, the specific provisions of this chapter which were violated and by whom; and, the cause of such accident, where such cause can be determined.

(b) When present at the scene of such accident, the investigating officer shall also request that all operators of motor vehicles involved in such accident submit to a field sobriety test as defined in section eleven hundred ninety-four of this chapter provided there are reasonable grounds to believe such motor vehicle operator committed a serious traffic 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.

LBD00154-03-7

ing, such person shall be subject to the provisions of section eleven hundred ninety-four of this chapter. The results of such field sobriety and chemical tests or refusals of such tests shall be included in the police investigation report. For the purposes of this section, "serious traffic violation" shall mean operating a motor vehicle in violation of any of the following provisions of this chapter: articles twenty-three, twenty-four, twenty-five, twenty-six, twenty-eight, twenty-nine and thirty and sections five hundred eleven, six hundred and twelve hundred twelve.

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

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

(b) Report of refusal. (1) If: (A) such person having been placed under arrest or having driven a vehicle involved in an accident resulting in serious physical injury to, or the death of, another person and, pursuant to paragraph (b) of subdivision one of section six hundred three-a of this chapter, there are reasonable grounds to believe such person has committed a serious traffic violation as defined by such paragraph; or (B) after a breath test indicates the presence of alcohol in the person's system; or (C) with regard to a person under the age of twenty-one, there are reasonable grounds to believe that such person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article; and having thereafter been requested to submit to such chemical test and having been informed that the person's license or permit to drive and any non-resident operating privilege shall be immediately suspended and subsequently revoked, or, for operators under the age of twenty-one for whom there are reasonable grounds to believe that such operator has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, shall be revoked for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested or detained, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision three of this section, the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report.

(2) The report of the police officer shall set forth reasonable grounds to believe such arrested person or such detained person under the age of twenty-one had been driving in violation of any subdivision of section eleven hundred ninety-two or eleven hundred ninety-two-a of this article, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision three of this section. The report shall be presented to the court upon arraignment of an arrested person or a person arrested or issued an appearance ticket for a serious traffic violation committed in the same accident being investigated pursuant to paragraph (b) of subdivision one of section six hundred three-a of this

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

(3) For persons placed under arrest for a violation of any subdivision of section eleven hundred ninety-two of this article or placed under arrest or issued an appearance ticket for a serious traffic violation committed in the same accident being investigated pursuant to paragraph (b) of subdivision one of section six hundred three-a of this chapter, the license or permit to drive and any non-resident operating privilege shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided in paragraph (c) of this subdivision. Copies of such report must be transmitted by the court to the commissioner and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to the commissioner within forty-eight hours of such arraignment.

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

(c) Hearings. Any person whose license or permit to drive or any non-resident driving privilege has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner. If the department fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the license, permit to drive or non-resident operating privilege of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues: (1) did the police officer have reasonable grounds to believe that such person had been driving in violation of any subdivision of section eleven hundred ninety-two of this article or was driving a vehicle involved in an accident being investigated pursuant to paragraph (b) of subdivision one of section six hundred three-a of this chapter; (2) did the police officer make a lawful arrest of such person or issue a lawful appearance ticket to, or make a lawful arrest of, such person for a serious traffic violation committed in the same accident being investigated pursuant to paragraph (b) of subdivision one of section six hundred three-a of this chapter; (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension and subsequent revocation of such person's license or operating privilege whether or not such person is found guilty of the charge for which the arrest was made or

the appearance ticket was issued; and (4) did such person refuse to submit to such chemical test or any portion thereof. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner finds all of the issues in the affirmative, such officer shall immediately revoke the license or permit to drive or any non-resident operating privilege in accordance with the provisions of paragraph (d) of this subdivision. A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to this subdivision may appeal the findings of the hearing officer in accordance with the provisions of article three-A of this chapter. Any person may waive the right to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner for a new hearing which shall be held as soon as practicable.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.