

STATE OF NEW YORK

5562--A

2017-2018 Regular Sessions

IN SENATE

April 12, 2017

Introduced by Sen. HELMING -- 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 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:

1 Section 1. Subdivision 1 of section 603-a of the vehicle and traffic
2 law, as added by chapter 408 of the laws of 2001, is amended to read as
3 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

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

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grounds to believe such motor vehicle operator committed a serious traffic violation in the same accident. Upon refusal to submit to such testing, 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

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

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

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

36 (c) Hearings. Any person whose license or permit to drive or any non-
37 resident driving privilege has been suspended pursuant to paragraph (b)
38 of this subdivision is entitled to a hearing in accordance with a hear-
39 ing schedule to be promulgated by the commissioner. If the department
40 fails to provide for such hearing fifteen days after the date of the
41 arraignment of the arrested person, the license, permit to drive or
42 non-resident operating privilege of such person shall be reinstated
43 pending a hearing pursuant to this section. The hearing shall be limited
44 to the following issues: (1) did the police officer have reasonable
45 grounds to believe that such person had been driving in violation of any
46 subdivision of section eleven hundred ninety-two of this article or was
47 driving a vehicle involved in an accident being investigated pursuant to
48 paragraph (b) of subdivision one of section six hundred three-a of this
49 chapter; (2) did the police officer make a lawful arrest of such person
50 or issue a lawful appearance ticket to, or make a lawful arrest of, such
51 person for a serious traffic violation committed in the same accident
52 being investigated pursuant to paragraph (b) of subdivision one of
53 section six hundred three-a of this chapter; (3) was such person given
54 sufficient warning, in clear or unequivocal language, prior to such
55 refusal that such refusal to submit to such chemical test or any portion
56 thereof, would result in the immediate suspension and subsequent revoca-

tion 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.