STATE OF NEW YORK

9224

IN SENATE

May 12, 2022

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the navigation law, in relation to implementing oral fluid tests

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 1194 of the vehicle and traffic law is amended by adding a new paragraph (c) to read as follows:

(c) Oral fluid test. (1) Definition. For the purposes of this article, "oral fluid test" means a standardized preliminary saliva analysis test validated by the National Highway Traffic Safety Administration for the detection of cannabis. A field sobriety test is considered an oral fluid test if it is administered in substantial compliance with the standards prescribed by the National Highway Traffic Safety Administration.

(2) Oral fluid test. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to an oral fluid test to be administered by the police officer. If such test indicates the presence of cannabis in the person's saliva, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this section.

§ 2. Subparagraph 2 of paragraph (a) of subdivision 2 of section 1194 of the vehicle and traffic law, as amended by chapter 196 of the laws of 1996, is amended to read as follows:

(2) within two hours after a breath test, as provided in paragraph (b) of subdivision one of this section, **and/or an oral fluid test, as provided in paragraph (c) of subdivision one of this section,** indicates that alcohol **and/or cannabis** has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member;

§ 3. Subparagraph 1 of paragraph (b) of subdivision 2 of section 1194 of the vehicle and traffic law, as amended by chapter 489 of the laws of

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

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2017 and clause (A) as amended by chapter 27 of the laws of 2018, is amended to read as follows:

(1) If: (A) such person having been placed under arrest; or (B) after a breath test indicates the presence of alcohol in the person's system; or (C) **after an oral fluid test indicates the presence of cannabis in the person's saliva; or (D)** 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.

§ 4. Subparagraph 2 of paragraph (b) of subdivision 3 of section 1194 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, is amended to read as follows:

(2) a. either such person operated the vehicle in violation of any subdivision of section eleven hundred ninety-two of this article, or

b. a breath test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol has been consumed by such person**, or**

c. an oral fluid test administered by a police officer in accordance with paragraph (c) of subdivision one of this section indicates the presence of cannabis in the person's saliva; and

§ 5. The vehicle and traffic law is amended by adding a new section 1195-a to read as follows:

§ 1195-a. Oral fluid test evidence. 1. Admissibility. Upon the trial of any action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any subdivision of section eleven hundred ninety-two of this article, the court shall admit the results of an oral fluid test pursuant to the provisions of section eleven hundred ninety-four of this article.

2. Probative value. The following effect shall be given to evidence of cannabis consumption, as determined by such tests, of a person arrested for violation of section eleven hundred ninety-two of this article:

(a) To assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(b) As evidence of the presence or nonpresence of a cannabis in the defendant's saliva if offered by the defendant to rebut testimony elic-

ited on cross-examination of a defense witness that an oral fluid test of the defendant's saliva showed the presence of cannabis that was not found to be present when a chemical test of the defendant's blood or urine was administered under section eleven hundred ninety-four of this article.

(c) As evidence of the presence or nonpresence of a cannabis in the defendant's saliva if offered by the prosecution to rebut testimony elicited on cross-examination of a prosecution witness that an oral fluid test of the defendant's saliva showed no presence of cannabis that was found to be present when a chemical test of the defendant's blood or urine was administered under section eleven hundred ninety-four of this article.

3. Suppression. A defendant who has been compelled to submit to an oral fluid test pursuant to the provisions of paragraph (c) of subdivision one of section eleven hundred ninety-four of this article may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the order was obtained and the test administered in violation of the provisions of such subdivision or any other applicable law.

§ 6. Subdivision 6 of section 49-a of the navigation law is amended by adding a new paragraph (c) to read as follows:

(c) Oral fluid test. (1) Definition. For the purposes of this article, "oral fluid test" means a standardized preliminary saliva analysis test validated by the National Highway Traffic Safety Administration for the detection of cannabis. A field sobriety test is considered an oral fluid test if it is administered in substantial compliance with the standards prescribed by the National Highway Traffic Safety Administration.

(2) Oral fluid test. Every person operating a vessel on the waters of the state which has been involved in an accident or which is operated in violation of any of the provisions of this section shall, at the request of a police officer, submit to an oral fluid test to be administered by the police officer. If such test indicates the presence of cannabis in the person's saliva, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision seven of this section.

§ 7. Paragraphs (a) and (b) of subdivision 7 of section 49-a of the navigation law, as added by chapter 805 of the laws of 1992, are amended to read as follows:

(a) Any person who operates a vessel on the waters of the state shall be requested to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva for the purpose of determining the alcoholic or drug content of his blood, provided that such test is administered at the direction of a police officer: (1) having reasonable cause to believe such person to have been operating in violation of this subdivision or paragraph (a), (b), (c), (d) or (e) of subdivision two of this section and within two hours after such person has been placed under arrest for any such violation or (2) within two hours after a breath test as provided in paragraph (b) of subdivision six of this section indicates that alcohol has been consumed by such person or (3) within two hours after an oral fluid test as provided in paragraph (c) of subdivision six of this section indicates the presence of cannabis in the person's saliva and in accordance with the rules and regulations established by the police force of which the officer is a member.

(b) If such person having been placed under arrest or after a breath test indicates the presence of alcohol in the person's system or after an oral fluid test indicates the presence of cannabis in the person's

saliva and having thereafter been requested to submit to such chemical test and having been informed that the person's privilege to operate a vessel shall be immediately suspended 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, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision eight 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. The report of the police officer shall set forth reasonable grounds to believe such arrested person to have been operating a vessel in violation of any paragraph of subdivision two of this section, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision eight of this section. The report shall be presented to the court upon the arraignment of the arrested person. The privilege to operate a vessel shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided herein. Copies of such report must be transmitted by the court to the commissioner of parks, recreation and historic preservation and the commissioner of motor vehicles and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to each commissioner within forty-eight hours of such arraignment. The court shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles. If a hearing, as provided for in paragraph (c) of this subdivision, is waived by such person, the commissioner of motor vehicles shall immediately suspend the privilege to operate a vessel, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

§ 8. Subparagraph 2 of paragraph (b) of subdivision 8 of section 49-a of the navigation law, as added by chapter 805 of the laws of 1992, is amended to read as follows:

(2) (i) either such person operated the vessel in violation of any paragraph of subdivision two of this section, or

(ii) a breath test administered by a police officer in accordance with subdivision six of this section indicates that alcohol has been consumed by such person**, or**

(iii) an oral fluid test administered by a police officer in accordance with subdivision six of this section indicates the presence of cannabis in the person's saliva; and

§ 9. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.