

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 53
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with the first “a” in line 4 down through “corrections;” in line 9 and substitute “the Motor Vehicle Administration to require a person to participate in the Ignition Interlock System Program for a certain period of time if the person refused to take a certain test or if a certain test result indicates a certain alcohol concentration; requiring a police officer to advise a person of certain facts concerning a certain alcohol concentration under certain circumstances; requiring a police officer to include certain facts in a certain sworn statement; providing that certain facts concerning a certain alcohol concentration may be issues at a certain administrative hearing under certain circumstances; establishing that the sworn statement of a police officer regarding a certain alcohol concentration is prima facie evidence for a certain purpose; authorizing the Administration to summarily require participation in the Ignition Interlock System Program under certain circumstances; authorizing a person who has been required to participate in the Ignition Interlock System Program to appeal in a certain manner; making a clarifying change;”; and in line 13, strike “Section 27-107” and substitute “Section 16-205.1(b), (f)(4), (7), and (8), and (j)”.

AMENDMENT NO. 2

On pages 1 through 3, strike in their entirety the lines beginning with line 19 on page 1 through line 23 on page 3, inclusive, and substitute:

“16-205.1.

(b) (1) Except as provided in subsection (c) of this section, a person may not be compelled to take a test. However, the detaining officer shall advise the person that, on receipt of a sworn statement from the officer that the person was so charged and refused to take a test, or was tested and the result indicated an alcohol concentration of 0.08 or more, the Administration shall:

(i) In the case of a person licensed under this title:

(Over)

more at the time of testing:

1. For a test result indicating an alcohol concentration of 0.08 or

- A. For a first offense, suspend the driver's license for 45 days; or
- B. For a second or subsequent offense, suspend the driver's
license for 90 days; or

2. For a test refusal:
 - A. For a first offense, suspend the driver's license for 120 days; or
 - B. For a second or subsequent offense, suspend the driver's
license for 1 year;

(ii) In the case of a nonresident or unlicensed person:

1. For a test result indicating an alcohol concentration of 0.08 or
more at the time of testing:

- A. For a first offense, suspend the person's driving privilege for 45
days; or

- B. For a second or subsequent offense, suspend the person's
driving privilege for 90 days; or

2. For a test refusal:
 - A. For a first offense, suspend the person's driving privilege for
120 days; or

- B. For a second or subsequent offense, suspend the person's
driving privilege for 1 year; [and]

(iii) In addition to any applicable driver's license suspensions authorized
under this section, in the case of a person operating a commercial motor vehicle or who holds a
commercial driver's license who refuses to take a test:

1. Disqualify the person's commercial driver's license for a period of 1 year for a first offense, 3 years for a first offense which occurs while transporting hazardous materials required to be placarded, and disqualify for life for a second or subsequent offense which occurs while operating any commercial motor vehicle; or

2. If the person holds a commercial driver's license issued by another state, disqualify the person's privilege to operate a commercial motor vehicle and report the refusal and disqualification to the person's resident state which may result in further penalties imposed by the person's resident state; AND

(IV) IN ADDITION TO ANY APPLICABLE DRIVER'S LICENSE SUSPENSIONS AUTHORIZED UNDER THIS SECTION, IN THE CASE OF A PERSON WHO REFUSED TO TAKE A TEST OR WAS TESTED AND THE RESULT INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE, REQUIRE THE PERSON TO PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16-404.1 OF THIS TITLE FOR A PERIOD OF 1 YEAR FROM THE DATE OF THE HEARING BY THE ADMINISTRATION REGARDING THE VIOLATION.

(2) Except as provided in subsection (c) of this section, if a police officer stops or detains any person who the police officer has reasonable grounds to believe is or has been driving or attempting to drive a motor vehicle while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title, and who is not unconscious or otherwise incapable of refusing to take a test, the police officer shall:

(i) Detain the person;

(ii) Request that the person permit a test to be taken;

(iii) Advise the person of the administrative sanctions that shall be imposed for refusal to take the test, including ineligibility for modification of a suspension or issuance of a

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restrictive license under subsection (n)(1) or (2) of this section, [and] for test results indicating an alcohol concentration of 0.08 or more at the time of testing, AND FOR TEST RESULTS INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING; and

(iv) Advise the person of the additional criminal penalties that may be imposed under § 27-101(x) of this article on conviction of a violation of § 21-902 of this article if the person knowingly refused to take a test arising out of the same circumstances as the violation.

(3) If the person refuses to take the test or takes a test which results in an alcohol concentration of 0.08 or more at the time of testing, the police officer shall:

(i) Confiscate the person's driver's license issued by this State;

(ii) Acting on behalf of the Administration, personally serve an order of suspension on the person;

(iii) Issue a temporary license to drive;

(iv) Inform the person that the temporary license allows the person to continue driving for 45 days if the person is licensed under this title;

(v) Inform the person that:

1. The person has a right to request, at that time or within 10 days, a hearing to show cause why the driver's license should not be suspended concerning the refusal to take the test or for test results indicating an alcohol concentration of 0.08 or more at the time of testing, OR WHY PARTICIPATION IN THE IGNITION INTERLOCK SYSTEM PROGRAM SHOULD NOT BE IMPOSED FOR THE REFUSAL TO TAKE THE TEST OR FOR TEST RESULTS INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING, and the hearing will be scheduled within 45 days; and

2. If a hearing request is not made at that time or within 10 days, but within 30 days the person requests a hearing, a hearing to show cause why the driver's license should not be suspended concerning the refusal to take the test or for test results indicating an alcohol concentration of 0.08 or more at the time of testing, OR WHY PARTICIPATION IN THE

IGNITION INTERLOCK SYSTEM PROGRAM SHOULD NOT BE IMPOSED FOR THE REFUSAL TO TAKE THE TEST OR FOR TEST RESULTS INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING, will be scheduled, but a request made after 10 days does not extend a temporary license issued by the police officer that allows the person to continue driving for 45 days;

(vi) Advise the person of the administrative sanctions that shall be imposed in the event of failure to request a hearing, failure to attend a requested hearing, or upon an adverse finding by the hearing officer; and

(vii) Within 72 hours after the issuance of the order of suspension, send any confiscated driver's license, copy of the suspension order, and a sworn statement to the Administration, that states:

1. The officer had reasonable grounds to believe that the person had been driving or attempting to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

2. The person refused to take a test when requested by the police officer [or], the person submitted to the test which indicated an alcohol concentration of 0.08 or more at the time of testing, OR THE PERSON SUBMITTED TO THE TEST AND THE RESULTS INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING; and

3. The person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test is ineligible for modification of a suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this section.

(Over)

(f) (4) If a hearing request is not made at the time of or within 10 days after the issuance of the order of suspension, the Administration shall:

(i) Make the suspension order effective suspending the license:

1. For a test result indicating an alcohol concentration of 0.08 or more at the time of testing:

A. For a first offense, for 45 days; or

B. For a second or subsequent offense, for 90 days; or

2. For a test refusal:

A. For a first offense, for 120 days; or

B. For a second offense or subsequent offense, for 1 year; [and]

(ii) 1. In the case of a person operating a commercial motor vehicle or who holds a commercial driver's license who refuses to take a test, disqualify the person from operating a commercial motor vehicle for a period of 1 year for a first offense, 3 years for a first offense which occurs while transporting hazardous materials required to be placarded, and for life for a second or subsequent offense which occurs while operating any commercial vehicle; or

2. In the case of a person operating a commercial motor vehicle who refuses to take a test, and who holds a commercial driver's license issued by another state, disqualify the person's privilege to operate a commercial motor vehicle in this State and report the refusal and disqualification to the person's resident state which may result in further penalties imposed by the person's resident state; AND

(III) IN ADDITION TO ANY APPLICABLE DRIVER'S LICENSE SUSPENSIONS AUTHORIZED UNDER THIS SECTION, IN THE CASE OF A PERSON WHO REFUSED TO TAKE A TEST OR WAS TESTED AND THE RESULTS INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE, REQUIRE THE PERSON TO PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16-404.1 OF

THIS TITLE FOR A PERIOD OF 1 YEAR FROM THE DATE OF THE HEARING BY THE ADMINISTRATION REGARDING THE VIOLATION.

(7) (i) At a hearing under this section, the person has the rights described in § 12-206 of this article, but at the hearing the only issues shall be:

1. Whether the police officer who stops or detains a person had reasonable grounds to believe the person was driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

2. Whether there was evidence of the use by the person of alcohol, any drug, any combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance;

3. Whether the police officer requested a test after the person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test is ineligible for modification of a suspension or issuance of a restrictive license under subsection (n)(1) and (2) of this section;

4. Whether the person refused to take the test;

5. Whether the person drove or attempted to drive a motor vehicle while having an alcohol concentration of 0.08 or more at the time of testing; [or]

6. WHETHER THE PERSON DROVE OR ATTEMPTED TO DRIVE A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING; OR

[6.] 7. If the hearing involves disqualification of a commercial driver's license, whether the person was operating a commercial motor vehicle or held a commercial

(Over)

driver's license.

(ii) The sworn statement of the police officer and of the test technician or analyst shall be prima facie evidence of a test refusal [or], a test [resulting in] RESULT INDICATING an alcohol concentration of 0.08 or more at the time of testing, OR A TEST RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING.

(8) (i) After a hearing, the Administration shall suspend the driver's license or privilege to drive of the person charged under subsection (b) or (c) of this section if:

1. The police officer who stopped or detained the person had reasonable grounds to believe the person was driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

2. There was evidence of the use by the person of alcohol, any drug, any combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance;

3. The police officer requested a test after the person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test is ineligible for modification of a suspension or issuance of a restrictive license under subsection (n)(1) and (2) of this section; and

4. A. The person refused to take the test; or

B. A test to determine alcohol concentration was taken and the test result indicated an alcohol concentration of 0.08 or more at the time of testing.

(ii) After a hearing, the Administration shall disqualify the person from driving a commercial motor vehicle if:

1. The person was detained while operating a commercial motor

vehicle or while holding a commercial driver's license;

2. The police officer who stopped or detained the person had reasonable grounds to believe that the person was driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

3. There was evidence of the use by the person of alcohol, any drug, any combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance;

4. The police officer requested a test after the person was fully advised of the administrative sanctions that shall be imposed; and

5. The person refused to take the test.

(iii) If the person is licensed to drive a commercial motor vehicle, the Administration shall disqualify the person in accordance with subparagraph (ii) of this paragraph, but may not impose a suspension under subparagraph (i) of this paragraph, if:

1. The person was detained while operating a commercial motor vehicle or while holding a commercial driver's license;

2. The police officer had reasonable grounds to believe the person was in violation of an alcohol restriction or in violation of § 16-813 of this title;

3. The police officer did not have reasonable grounds to believe the driver was driving while under the influence of alcohol, driving while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, or while impaired by a controlled dangerous substance; and

(Over)

4. The driver refused to take a test.

(iv) In the absence of a compelling reason for failure to attend a hearing, failure of a person to attend a hearing is prima facie evidence of the person's inability to answer the sworn statement of the police officer or the test technician or analyst, and the Administration summarily shall:

1. Suspend the driver's license or privilege to drive; [and]

2. If the driver is detained in a commercial motor vehicle or holds a commercial driver's license, disqualify the person from operating a commercial motor vehicle; AND

3. IF THE DRIVER REFUSED TO TAKE A TEST OR SUBMITTED TO THE TEST AND THE RESULTS INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING, REQUIRE THE PERSON TO PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM FOR A PERIOD OF 1 YEAR FROM THE DATE OF THE HEARING BY THE ADMINISTRATION REGARDING THE VIOLATION.

(v) The suspension imposed shall be:

1. For a test result indicating an alcohol concentration of 0.08 or more at the time of testing:

A. For a first offense, a suspension for 45 days; or

B. For a second or subsequent offense, a suspension for 90 days;

or

2. For a test refusal:

A. For a first offense, a suspension for 120 days; or

B. For a second or subsequent offense, a suspension for 1 year.

(vi) A disqualification imposed under subparagraph (ii) or (iii) of this paragraph shall be for a period of 1 year for a first offense, 3 years for a first offense which occurs while transporting hazardous material required to be placarded, and life for a second or subsequent offense which occurs while operating or attempting to operate any commercial motor vehicle.

(vii) A disqualification of a commercial driver's license is not subject to any modifications, nor may a restricted commercial driver's license be issued in lieu of a disqualification.

(viii) A disqualification for life may be reduced if permitted by § 16-812(d) of this title.

(IX) IN ADDITION TO THE SUSPENSIONS IMPOSED BY THE ADMINISTRATION UNDER THIS PARAGRAPH, AFTER A HEARING THE ADMINISTRATION SHALL REQUIRE THE PERSON TO PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM FOR A PERIOD OF 1 YEAR IF:

1. THE CONDITIONS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH ARE MET; AND

2. A. THE PERSON REFUSED TO TAKE THE TEST; OR

B. THE PERSON TOOK A TEST TO DETERMINE ALCOHOL OR BLOOD CONCENTRATION AND THE RESULTS INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING.

(j) If the Administration imposes a suspension or disqualification after a hearing, the person whose license or privilege to drive has been suspended or disqualified, OR WHO HAS BEEN REQUIRED TO PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM, may appeal the final order of suspension as provided in Title 12, Subtitle 2 of this article.”.