

BY: House Judiciary Committee

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

AMENDMENT NO. 1

On page 1, in line 2, strike “Drunk Driving Penalties” and substitute “Administrative Per Se Offenses”; in the same line, after “Concentration“ insert “or Test Refusal”; in line 3, after “System” insert “- Suspension Modifications and Restrictive Licenses”; and strike beginning with “requiring” in line 4 down through “driving” in line 24 and substitute “increasing the period of a suspension of a driver’s license required for certain administrative per se offenses if the driver took a certain test that indicates a certain alcohol concentration; requiring participation in the Ignition Interlock System Program if a person refused to take a certain test or if a certain test indicates a certain alcohol concentration under certain circumstances; requiring a police officer to advise a person of certain facts and include certain facts in a certain sworn statement under certain circumstances; providing that a person has the right to elect to participate in the Ignition Interlock System Program under certain circumstances; providing that a certain alcohol concentration may be an issue 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 modify a license suspension or issue a restrictive license for a licensee who has committed certain alcohol-related driving offenses under certain circumstances; providing that if a licensee refused to take a certain test or took a test indicating a certain alcohol concentration the Administration may not modify a license suspension or issue a restrictive license unless the licensee participates in the Ignition Interlock System Program for a certain period; providing that if a licensee does not successfully complete the Ignition Interlock Program under certain circumstances that the Administration shall suspend the driver’s license or driving privilege for a certain period under certain circumstances; requiring the Administration to adopt certain regulations; making clarifying and technical changes; and generally relating to certain administrative per se offenses involving refusing to take a certain test or certain test results indicating certain alcohol concentrations”.

On page 2, strike in its entirety line 1 and substitute “Section 16-205.1(b)(1)(i) and (ii), (2),

(Over)

and (3), (f)(4)(i), (7), and (8)(i) and (iv), and (n) and 16-404.1(b)(3)(iv)”; and after line 3, insert:
“BY repealing and reenacting, without amendments,

Article - Transportation

Section 16-205.1(f)(1)

Annotated Code of Maryland

(2002 Replacement Volume and 2005 Supplement)”.

AMENDMENT NO. 2

On pages 4 through 11, strike in their entirety the lines beginning with line 2 on page 4 through line 20 on page 11, inclusive, and substitute:

“(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:

1. [For] EXCEPT AS PROVIDED IN ITEM 2 OF THIS ITEM, 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 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 RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING:

A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER’S LICENSE FOR 90 DAYS; OR

B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE DRIVER’S LICENSE FOR 180 DAYS; OR

[2.] 3. 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] EXCEPT AS PROVIDED IN ITEM 2 OF THIS ITEM, 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 RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING:

A. FOR A FIRST OFFENSE, SUSPEND THE PERSON'S DRIVING PRIVILEGE FOR 90 DAYS; OR

B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE PERSON'S DRIVING PRIVILEGE FOR 180 DAYS; OR

[2.] 3. 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

(2) Except as provided in subsection (c) of this section, if a police officer stops or

(Over)

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 TEST RESULTS INDICATING AN ALCOHOL CONCENTRATION OF AT LEAST 0.08 BUT LESS THAN 0.15 AT THE TIME OF TESTING;

[(iii)] (IV) Advise the person of the administrative sanctions, INCLUDING INELIGIBILITY FOR MODIFICATION OF A SUSPENSION OR ISSUANCE OF A RESTRICTIVE LICENSE UNLESS THE PERSON PARTICIPATES IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16-404.1 OF THIS TITLE, that shall be imposed for refusal to take the test[, including ineligibility for modification of a suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this section,] and for test results indicating an alcohol concentration of [0.08] 0.15 or more at the time of testing; and

[(iv)] (V) 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, 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 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) INFORM THE PERSON THAT, SUBJECT TO THE SAME TIME LIMITS SET FORTH IN ITEM (V) OF THIS PARAGRAPH, THE PERSON HAS THE RIGHT TO ELECT TO PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16-404.1 OF THIS TITLE FOR 1 YEAR INSTEAD OF REQUESTING A HEARING UNDER THIS PARAGRAPH, IF THE PERSON REFUSED A TEST OR TAKES A TEST THAT INDICATES AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING; AND

[(vii)] (VIII) 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:

(Over)

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 WHICH 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 OR TAKES A TEST THAT INDICATES AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING is ineligible for modification of a suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this section.

(f) (1) Subject to the provisions of this subsection, at the time of, or within 30 days from the date of, the issuance of an order of suspension, a person may submit a written request for a hearing before an officer of the Administration if:

(i) The person is arrested for 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

(ii) 1. There is an alcohol concentration of 0.08 or more at the time of testing; or

2. The person refused to take a test.

(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] EXCEPT AS PROVIDED IN ITEM 2 OF THIS ITEM, 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 RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING:

A. FOR A FIRST OFFENSE, FOR 90 DAYS; OR

B. FOR A SECOND OR SUBSEQUENT OFFENSE, FOR 180 DAYS; OR

[2.] 3. 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

(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;

(Over)

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] AS REQUIRED UNDER SUBSECTION (B)(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 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] AS REQUIRED UNDER SUBSECTION (B)(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.

(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.

(v) The suspension imposed shall be:

1. [For] EXCEPT AS PROVIDED IN ITEM 2 OF THIS SUBPARAGRAPH, 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 RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING:

- A. FOR A FIRST OFFENSE, A SUSPENSION OF 90 DAYS;

OR

B. FOR A SECOND OR SUBSEQUENT OFFENSE, A SUSPENSION OF 180 DAYS; OR

- [2.] 3. 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.

(n) (1) The Administration may modify a suspension under this section or issue a restrictive license if:

- (i) The licensee did not refuse to take a test;

(ii) The licensee has not had a license suspended under this section during the past 5 years;

(iii) The licensee has not been convicted under § 21-902 of this article during the past 5 years; [and]

(IV) THE LICENSEE HAS A TEST RESULT INDICATING AN ALCOHOL CONCENTRATION OF LESS THAN 0.15; AND

[(iv)] (V) 1. The licensee is required to drive a motor vehicle in the course of employment;

2. The license is required for the purpose of attending an alcoholic prevention or treatment program; [or]

3. [It] THE ADMINISTRATION finds that the licensee has no alternative means of transportation available to or from the licensee's place of employment and, without the license, the licensee's ability to earn a living would be severely impaired; OR

4. THE ADMINISTRATION FINDS THAT THE LICENSE IS REQUIRED FOR THE PURPOSE OF OBTAINING HEALTH CARE TREATMENT, INCLUDING A PRESCRIPTION, THAT IS NECESSARY FOR THE LICENSEE OR A MEMBER OF THE LICENSEE'S IMMEDIATE FAMILY AND THE LICENSEE AND THE LICENSEE'S IMMEDIATE FAMILY HAVE NO ALTERNATIVE MEANS OF TRANSPORTATION AVAILABLE TO OBTAIN THE HEALTH CARE TREATMENT.

(2) In addition to the authority to modify a suspension or issue a restrictive license under paragraph (1) or (4) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license, including a restriction that prohibits the licensee from driving or attempting to drive a motor vehicle unless the licensee is a participant in the Ignition Interlock System Program established under § 16-404.1 of this title, if:

(i) The licensee did not refuse to take a test;

(ii) The licensee has not been convicted under § 21-902 of this article;

[and]

(III) THE LICENSEE HAS A TEST RESULT INDICATING AN ALCOHOL CONCENTRATION OF LESS THAN 0.15; AND

[(iii)] (IV) The license is required for the purpose of attending;

(Over)

1. A noncollegiate educational institution as defined in § 2-206(a) of the Education Article; or

2. A regular program at an institution of postsecondary education.

(3) If the licensee refused to take a test OR TOOK A TEST THAT INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING, the Administration may not modify a suspension under this section or issue a restrictive license except as provided under paragraph (4) of this subsection.

(4) (I) In addition to the authority to modify a suspension or issue a restrictive license under paragraph (1) or (2) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license to a licensee AS PROVIDED IN THIS PARAGRAPH [who participates in the Ignition Interlock System Program established under § 16-404.1 of this title for at least 1 year].

(II) IF THE LICENSEE REFUSED TO TAKE A TEST OR TOOK A TEST THAT INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE, THE ADMINISTRATION MAY MODIFY A SUSPENSION UNDER THIS SECTION OR ISSUE A RESTRICTIVE LICENSE IF THE LICENSEE PARTICIPATES IN THE IGNITION INTERLOCK SYSTEM PROGRAM FOR 1 YEAR.

(5) (I) IF THE ADMINISTRATION MODIFIES A SUSPENSION OR ISSUES A RESTRICTIVE LICENSE UNDER PARAGRAPH (4) OF THIS SUBSECTION AND THE LICENSEE DOES NOT SUCCESSFULLY COMPLETE THE LICENSEE'S REQUIRED PARTICIPATION IN THE IGNITION INTERLOCK SYSTEM PROGRAM, THE ADMINISTRATION SHALL SUSPEND THE LICENSEE'S DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR THE FULL PERIOD OF SUSPENSION SPECIFIED IN THIS SECTION FOR THE APPLICABLE OFFENSE.

(II) THE ADMINISTRATION SHALL NOTIFY A LICENSEE OF A PROPOSED SUSPENSION UNDER THIS PARAGRAPH.

(III) A LICENSEE MAY REQUEST AN ADMINISTRATIVE HEARING

ON A PROPOSED SUSPENSION UNDER THIS PARAGRAPH.”.

AMENDMENT NO. 3

On page 11, after line 20, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Motor Vehicle Administration shall adopt regulations to implement the provisions of this Act.”;

and in line 21, strike “2.” and substitute “3.”.