



House of Representatives

General Assembly

File No. 817

January Session, 2001

Substitute House Bill No. 6732

House of Representatives, May 24, 2001

The Committee on Appropriations reported through REP. DYSON of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 14-227a of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) No person shall operate a motor vehicle while under the
4 influence of intoxicating liquor or any drug or both. A person commits
5 the offense of operating a motor vehicle while under the influence of
6 intoxicating liquor or any drug or both if such person operates a motor
7 vehicle on a public highway of this state or on any road of a district
8 organized under the provisions of chapter 105, a purpose of which is
9 the construction and maintenance of roads and sidewalks, or on any
10 private road on which a speed limit has been established in accordance
11 with the provisions of section 14-218a, or in any parking area for ten or
12 more cars or on any school property (1) while under the influence of
13 intoxicating liquor or any drug or both, or (2) while such person has an

14 elevated blood alcohol content. For the purposes of this section,
15 "elevated blood alcohol content" means (A) a ratio of alcohol in the
16 blood of such person that is [ten-hundredths] eight-hundredths of one
17 per cent or more of alcohol, by weight, or (B) if such person has been
18 convicted of a violation of this subsection, a ratio of alcohol in the
19 blood of such person that is seven-hundredths of one per cent or more
20 of alcohol, by weight.

21 (b) No person shall operate a motor vehicle on a public highway of
22 this state or on any road of a district organized under the provisions of
23 chapter 105, a purpose of which is the construction and maintenance of
24 roads and sidewalks, or on any private road on which a speed limit
25 has been established in accordance with the provisions of section
26 14-218a, or in any parking area for ten or more cars or on any school
27 property while such person's ability to operate such motor vehicle is
28 impaired by the consumption of intoxicating liquor. A person shall be
29 deemed impaired when at the time of the alleged offense the ratio of
30 alcohol in the blood of such person was more than seven-hundredths
31 of one per cent of alcohol, by weight, but less than [ten-hundredths]
32 eight-hundredths of one per cent of alcohol, by weight.

33 (c) Except as provided in subsection (d) of this section, in any
34 criminal prosecution for violation of subsection (a) or (b) of this
35 section, evidence respecting the amount of alcohol or drug in the
36 defendant's blood or urine at the time of the alleged offense, as shown
37 by a chemical analysis of the defendant's breath, blood or urine shall
38 be admissible and competent provided: (1) The defendant was
39 afforded a reasonable opportunity to telephone an attorney prior to the
40 performance of the test and consented to the taking of the test upon
41 which such analysis is made; (2) a true copy of the report of the test
42 result was mailed to or personally delivered to the defendant within
43 twenty-four hours or by the end of the next regular business day, after
44 such result was known, whichever is later; (3) the test was performed
45 by or at the direction of a police officer according to methods and with

46 equipment approved by the Department of Public Safety and was
47 performed in accordance with the regulations adopted under
48 subsection (e) of this section; (4) the device used for such test was
49 checked for accuracy in accordance with the regulations adopted
50 under subsection (e) of this section; (5) an additional chemical test of
51 the same type was performed at least thirty minutes after the initial
52 test was performed or, if requested by the police officer for reasonable
53 cause, an additional chemical test of a different type was performed to
54 detect the presence of a drug or drugs other than or in addition to
55 alcohol, provided the results of the initial test shall not be inadmissible
56 under this subsection if reasonable efforts were made to have such
57 additional test performed in accordance with the conditions set forth in
58 this subsection and such additional test was not performed or was not
59 performed within a reasonable time, or the results of such additional
60 test are not admissible for failure to meet a condition set forth in this
61 subsection; and (6) evidence is presented that the test was commenced
62 within two hours of operation. In any prosecution under this section it
63 shall be a rebuttable presumption that the results of such chemical
64 analysis establish the ratio of alcohol in the blood of the defendant at
65 the time of the alleged offense, except that if the results of the
66 additional test indicate that the ratio of alcohol in the blood of such
67 defendant is twelve-hundredths of one per cent or less of alcohol, by
68 weight, and is higher than the results of the first test, evidence shall be
69 presented that demonstrates that the test results and the analysis
70 thereof accurately indicate the blood alcohol content at the time of the
71 alleged offense.

72 (d) In any prosecution for a violation of subdivision (1) of
73 subsection (a) of this section, reliable evidence respecting the amount
74 of alcohol in the defendant's blood or urine at the time of the alleged
75 offense, as shown by a chemical analysis of the defendant's blood,
76 breath or urine, otherwise admissible under subsection (c) of this
77 section, shall be admissible only at the request of the defendant.

78 (e) The Commissioner of Public Safety shall ascertain the reliability
79 of each method and type of device offered for chemical testing and
80 analysis purposes of blood, of breath and of urine and certify those
81 methods and types which said commissioner finds suitable for use in
82 testing and analysis of blood, breath and urine, respectively, in this
83 state. The Commissioner of Public Safety, in consultation with the
84 Commissioner of Public Health shall adopt regulations, in accordance
85 with chapter 54, governing the conduct of chemical tests, the operation
86 and use of chemical test devices, the training and certification of
87 operators of such devices and the drawing or obtaining of blood,
88 breath or urine samples as said commissioner finds necessary to
89 protect the health and safety of persons who submit to chemical tests
90 and to insure reasonable accuracy in testing results. Such regulations
91 shall not require recertification of a police officer solely because such
92 officer terminates such officer's employment with the law enforcement
93 agency for which certification was originally issued and commences
94 employment with another such agency.

95 (f) In any criminal prosecution for a violation of subsection (a) or (b)
96 of this section, evidence that the defendant refused to submit to a
97 blood, breath or urine test requested in accordance with section
98 14-227b, as amended by this act, shall be admissible provided the
99 requirements of subsection (b) of said section have been satisfied. If a
100 case involving a violation of subsection (a) of this section is tried to a
101 jury, the court shall instruct the jury as to any inference that may or
102 may not be drawn from the defendant's refusal to submit to a blood,
103 breath or urine test.

104 (g) If a person is charged with a violation of the provisions of
105 subsection (a) of this section, the charge may not be reduced, nolle or
106 dismissed unless the prosecuting authority states in open court such
107 prosecutor's reasons for the reduction, nolle or dismissal.

108 (h) Any person who violates any provision of subsection (a) of this

109 section shall: (1) For conviction of a first violation, (A) be fined not less
110 than five hundred dollars nor more than one thousand dollars and (B)
111 be (i) imprisoned not more than six months, forty-eight consecutive
112 hours of which may not be suspended or reduced in any manner or (ii)
113 imprisoned not more than six months, with the execution of such
114 sentence of imprisonment suspended entirely and a period of
115 probation imposed requiring as a condition of such probation that
116 such person perform one hundred hours of community service, as
117 defined in section 14-227e, and (C) have such person's motor vehicle
118 operator's license or nonresident operating privilege suspended for
119 one year; (2) for conviction of a second violation within ten years after
120 a prior conviction for the same offense, (A) be fined not less than one
121 thousand dollars nor more than four thousand dollars, (B) be
122 imprisoned not more than two years, one hundred twenty consecutive
123 days of which may not be suspended or reduced in any manner, and
124 sentenced to a period of probation requiring as a condition of such
125 probation that such person perform one hundred hours of community
126 service, as defined in section 14-227e, and (C) have such person's
127 motor vehicle operator's license or nonresident operating privilege
128 suspended for three years or until the date of such person's twenty-
129 first birthday, whichever is longer; and (3) for conviction of a third and
130 subsequent violation within ten years after a prior conviction for the
131 same offense, (A) be fined not less than two thousand dollars nor more
132 than eight thousand dollars, (B) be imprisoned not more than three
133 years, one year of which may not be suspended or reduced in any
134 manner, and sentenced to a period of probation requiring as a
135 condition of such probation that such person perform one hundred
136 hours of community service, as defined in section 14-227e, and (C)
137 have such person's motor vehicle operator's license or nonresident
138 operating privilege permanently revoked upon such third offense. For
139 purposes of the imposition of penalties for a second or third and
140 subsequent offense pursuant to this subsection, a conviction under the
141 provisions of subsection (a) of section 14-227a in effect on October 1,

142 1981, or as amended thereafter, a conviction under the provisions of
143 either subdivision (1) or (2) of subsection (a) of this section, a
144 conviction under the provisions of section 53a-56b or 53a-60d or a
145 conviction in any other state of any offense the essential elements of
146 which are determined by the court to be substantially the same as
147 subdivision (1) or (2) of subsection (a) of this section or section 53a-56b
148 or 53a-60d, shall constitute a prior conviction for the same offense.

149 (i) Any person who violates subsection (b) of this section shall be
150 fined not more than two hundred dollars.

151 (j) (1) Each court shall report each conviction under subsection (a) of
152 this section to the Commissioner of Motor Vehicles, in accordance with
153 the provisions of section 14-141. The commissioner shall suspend the
154 motor vehicle operator's license or nonresident operating privilege of
155 the person reported as convicted for the period of time required by
156 subsection (h) of this section, except that, if the person submitted to a
157 blood, breath or urine test and the commissioner suspended such
158 person's operator's license or nonresident operating privilege pursuant
159 to subsection (i) of section 14-227b, as amended by this act, the
160 commissioner shall credit the period of such suspension against the
161 period of suspension required by subsection (h) of this section. (2) The
162 motor vehicle operator's license or nonresident operating privilege of a
163 person found guilty under subsection (a) of this section who is under
164 eighteen years of age shall be suspended by the commissioner for the
165 period of time set forth in subsection (h) of this section, or until such
166 person attains the age of eighteen years, whichever period is longer. (3)
167 The motor vehicle operator's license or nonresident operating privilege
168 of a person found guilty under subsection (a) of this section who, at the
169 time of the offense, was operating a motor vehicle in accordance with a
170 special operator's permit issued pursuant to section 14-37a shall be
171 suspended by the commissioner for twice the period of time set forth
172 in subsection (h) of this section. [(4) Whenever the motor vehicle
173 operator's license of a person is suspended under subsection (h) of this

174 section for conviction of a violation of subsection (a) of this section, the
175 operator's license that is returned or reissued to such person by the
176 Commissioner of Motor Vehicles upon completion of the period of
177 suspension shall indicate on its reverse side that such person is an at-
178 risk operator. For purposes of this subdivision, an "at-risk operator" is
179 a person who has been convicted of a violation of subsection (a) of this
180 section. (5)] (4) If an appeal of any conviction under subsection (a) of
181 this section is taken, the suspension of the motor vehicle operator's
182 license or nonresident operating privilege by the commissioner, in
183 accordance with this subsection, shall be stayed during the pendency
184 of such appeal.

185 (k) In addition to any fine or sentence imposed pursuant to the
186 provisions of subsection (h) of this section, the court may order such
187 person to participate in an alcohol education and treatment program.

188 (l) Notwithstanding the provisions of subsection (c) of this section,
189 evidence respecting the amount of alcohol or drug in the blood or
190 urine of an operator of a motor vehicle involved in an accident who
191 has suffered or allegedly suffered physical injury in such accident,
192 which evidence is derived from a chemical analysis of a blood sample
193 taken from or a urine sample provided by such person after such
194 accident at the scene of the accident, while en route to a hospital or at a
195 hospital, shall be competent evidence to establish probable cause for
196 the arrest by warrant of such person for a violation of subsection (a) of
197 this section and shall be admissible and competent in any subsequent
198 prosecution thereof if: (1) The blood sample was taken or the urine
199 sample was provided for the diagnosis and treatment of such injury;
200 (2) if a blood sample was taken, the blood sample was taken [in
201 accordance with the regulations adopted under subsection (e) of this
202 section] by a person licensed to practice medicine in the state where
203 the blood sample was taken, a resident physician or intern in a hospital
204 in the state where the blood sample was taken or a phlebotomist,
205 qualified laboratory technician, emergency medical technician or

206 registered nurse licensed or certified in the state where the blood
207 sample was taken; (3) a police officer has demonstrated to the
208 satisfaction of a judge of the Superior Court that such officer has
209 reason to believe that such person was operating a motor vehicle while
210 under the influence of intoxicating liquor or drug or both and that the
211 chemical analysis of such blood or urine sample constitutes evidence
212 of the commission of the offense of operating a motor vehicle while
213 under the influence of intoxicating liquor or drug or both in violation
214 of subsection (a) of this section; and (4) such judge has issued a search
215 warrant in accordance with section 54-33a authorizing the seizure of
216 the chemical analysis of such blood or urine sample. Such search
217 warrant may also authorize the seizure of the medical records
218 prepared by the hospital in connection with the diagnosis or treatment
219 of such injury.

220 Sec. 2. Section 14-227b of the general statutes is repealed and the
221 following is substituted in lieu thereof:

222 (a) Any person who operates a motor vehicle in this state shall be
223 deemed to have given such person's consent to a chemical analysis of
224 such person's blood, breath or urine and, if such person is a minor,
225 such person's parent or parents or guardian shall also be deemed to
226 have given their consent.

227 (b) If any such person, having been placed under arrest for
228 operating a motor vehicle while under the influence of intoxicating
229 liquor or any drug or both or while such person's ability to operate
230 such motor vehicle is impaired by the consumption of intoxicating
231 liquor, and thereafter, after being apprised of such person's
232 constitutional rights, having been requested to submit to a blood,
233 breath or urine test at the option of the police officer, having been
234 afforded a reasonable opportunity to telephone an attorney prior to the
235 performance of such test and having been informed that such person's
236 license or nonresident operating privilege may be suspended in

237 accordance with the provisions of this section if such person refuses to
238 submit to such test or if such person submits to such test and the
239 results of such test indicate that such person has an elevated blood
240 alcohol content, and that evidence of any such refusal shall be
241 admissible in accordance with subsection (f) of section 14-227a, as
242 amended by this act, and may be used against such person in any
243 criminal prosecution, refuses to submit to the designated test, the test
244 shall not be given; provided, if the person refuses or is unable to
245 submit to a blood test, the police officer shall designate the breath or
246 urine test as the test to be taken. The police officer shall make a
247 notation upon the records of the police department that such officer
248 informed the person that such person's license or nonresident
249 operating privilege may be suspended if such person refused to submit
250 to such test or if such person submitted to such test and the results of
251 such test indicated that such person had an elevated blood alcohol
252 content.

253 (c) If the person arrested refuses to submit to such test or analysis or
254 submits to such test or analysis, commenced within two hours of the
255 time of operation, and the results of such test or analysis indicate that
256 such person has an elevated blood alcohol content, the police officer,
257 acting on behalf of the Commissioner of Motor Vehicles, shall
258 immediately revoke and take possession of the motor vehicle
259 operator's license or, if such person is a nonresident, suspend the
260 nonresident operating privilege of such person, for a twenty-four-hour
261 period and shall issue a temporary operator's license or nonresident
262 operating privilege to such person valid for the period commencing
263 twenty-four hours after issuance and ending thirty days after the date
264 such person received notice of such person's arrest by the police
265 officer. The police officer shall prepare a written report of the incident
266 and shall mail the report together with a copy of the completed
267 temporary license form, any operator's license taken into possession
268 and a copy of the results of any chemical test or analysis to the
269 Department of Motor Vehicles within three business days. The report

270 shall be made on a form approved by the Commissioner of Motor
271 Vehicles and shall be subscribed and sworn to under penalty of false
272 statement as provided in section 53a-157b by the arresting officer. If
273 the person arrested refused to submit to such test or analysis, the
274 report shall be endorsed by a third person who witnessed such refusal.
275 The report shall set forth the grounds for the officer's belief that there
276 was probable cause to arrest such person for operating a motor vehicle
277 while under the influence of intoxicating liquor or any drug or both or
278 while such person's ability to operate such motor vehicle is impaired
279 by the consumption of intoxicating liquor, and shall state that such
280 person had refused to submit to such test or analysis when requested
281 by such police officer to do so or that such person submitted to such
282 test or analysis, commenced within two hours of the time of operation,
283 and the results of such test or analysis indicated that such person had
284 an elevated blood alcohol content.

285 (d) If the person arrested submits to a blood or urine test at the
286 request of the police officer, and the specimen requires laboratory
287 analysis in order to obtain the test results, the police officer shall not
288 take possession of the motor vehicle operator's license of such person
289 or, except as provided in this subsection, follow the procedures
290 subsequent to taking possession of the operator's license as set forth in
291 subsection (c) of this section. If the test results indicate that such
292 person has an elevated blood alcohol content, the police officer,
293 immediately upon receipt of the test results, shall notify the
294 Commissioner of Motor Vehicles and submit to the commissioner the
295 written report required pursuant to subsection (c) of this section.

296 (e) Upon receipt of such report, the Commissioner of Motor Vehicles
297 may suspend any license or nonresident operating privilege of such
298 person effective as of a date certain, which date shall be not later than
299 thirty days after the date such person received notice of such person's
300 arrest by the police officer. Any person whose license or operating
301 privilege has been suspended in accordance with this subsection shall

302 automatically be entitled to a hearing before the commissioner to be
303 held prior to the effective date of the suspension. The commissioner
304 shall send a suspension notice to such person informing such person
305 that such person's operator's license or nonresident operating privilege
306 is suspended as of a date certain and that such person is entitled to a
307 hearing prior to the effective date of the suspension and may schedule
308 such hearing by contacting the Department of Motor Vehicles not later
309 than seven days after the date of mailing of such suspension notice.

310 (f) If such person does not contact the department to schedule a
311 hearing, the commissioner shall affirm the suspension contained in the
312 suspension notice for the appropriate period specified in subsection (i)
313 of this section.

314 (g) If such person contacts the department to schedule a hearing, the
315 department shall assign a date, time and place for the hearing, which
316 date shall be prior to the effective date of the suspension. At the
317 request of such person or the hearing officer and upon a showing of
318 good cause, the commissioner may grant one continuance for a period
319 not to exceed fifteen days. If a continuance is granted, the
320 commissioner shall extend the validity of the temporary operator's
321 license or nonresident operating privilege issued pursuant to
322 subsection (c) of this section. [for a period not to exceed the period of
323 such continuance.] The hearing shall be limited to a determination of
324 the following issues: (1) Did the police officer have probable cause to
325 arrest the person for operating a motor vehicle while under the
326 influence of intoxicating liquor or drug or both or while such person's
327 ability to operate such motor vehicle was impaired by the
328 consumption of intoxicating liquor; (2) was such person placed under
329 arrest; (3) did such person refuse to submit to such test or analysis or
330 did such person submit to such test or analysis, commenced within
331 two hours of the time of operation, and the results of such test or
332 analysis indicated that such person had an elevated blood alcohol
333 content; and (4) was such person operating the motor vehicle. In the

334 hearing, the results of the test or analysis shall be sufficient to indicate
335 the ratio of alcohol in the blood of such person at the time of operation,
336 except that if the results of the additional test indicate that the ratio of
337 alcohol in the blood of such person is twelve-hundredths of one per
338 cent or less of alcohol, by weight, and is higher than the results of the
339 first test, evidence shall be presented that demonstrates that the test
340 results and analysis thereof accurately indicate the blood alcohol
341 content at the time of operation. The fees of any witness summoned to
342 appear at the hearing shall be the same as provided by the general
343 statutes for witnesses in criminal cases.

344 (h) If, after such hearing, the commissioner finds on any one of the
345 said issues in the negative, the commissioner shall reinstate such
346 license or operating privilege. If, after such hearing, the commissioner
347 does not find on any one of the said issues in the negative or if such
348 person fails to appear at such hearing, the commissioner shall affirm
349 the suspension contained in the suspension notice for the appropriate
350 period specified in subsection (i) of this section. The commissioner
351 shall render a decision at the conclusion of such hearing or send a
352 notice of the decision by bulk certified mail to such person not later
353 than thirty days or, if a continuance is granted, not later than forty-five
354 days from the date such person received notice of such person's arrest
355 by the police officer. The notice of such decision sent by bulk certified
356 mail to the address of such person as shown by the records of the
357 commissioner shall be sufficient notice to such person that such
358 person's operator's license or nonresident operating privilege is
359 reinstated or suspended, as the case may be. Unless a continuance of
360 the hearing is granted pursuant to subsection (g) of this section, if the
361 commissioner fails to render a decision within thirty days from the
362 date such person received notice of such person's arrest by the police
363 officer, the commissioner shall reinstate such person's operator's
364 license or nonresident operating privilege, provided notwithstanding
365 such reinstatement the commissioner may render a decision not later
366 than two days thereafter suspending such operator's license or

367 nonresident operating privilege.

368 (i) The commissioner shall suspend the operator's license or
369 nonresident operating privilege, and revoke the temporary operator's
370 license or nonresident operating privilege issued pursuant to
371 subsection (c) of this section, of a person who did not contact the
372 department to schedule a hearing, who failed to appear at a hearing or
373 against whom, after a hearing, the commissioner held pursuant to
374 subsection (h) of this section, as of the effective date contained in the
375 suspension notice or the date the commissioner renders a decision,
376 whichever is later, for a period of: (1) (A) Except as provided in
377 subparagraph (B) of this subdivision, ninety days, if such person
378 submitted to a test or analysis and the results of such test or analysis
379 indicated that such person had an elevated blood alcohol content, (B)
380 one hundred twenty days, if such person submitted to a test or
381 analysis and the results of such test or analysis indicated that the ratio
382 of alcohol in the blood of such person was sixteen-hundredths of one
383 per cent or more of alcohol, by weight, or (C) six months if such person
384 refused to submit to such test or analysis, (2) if such person has
385 previously had such person's operator's license or nonresident
386 operating privilege suspended under this section, (A) except as
387 provided in subparagraph (B) of this subdivision, nine months if such
388 person submitted to a test or analysis and the results of such test or
389 analysis indicated that such person had an elevated blood alcohol
390 content, (B) ten months if such person submitted to a test or analysis
391 and the results of such test or analysis indicated that the ratio of
392 alcohol in the blood of such person was sixteen-hundredths of one per
393 cent or more of alcohol, by weight, and (C) one year if such person
394 refused to submit to such test or analysis, and (3) if such person has
395 two or more times previously had such person's operator's license or
396 nonresident operating privilege suspended under this section, (A)
397 except as provided in subparagraph (B) of this subdivision, two years
398 if such person submitted to a test or analysis and the results of such
399 test or analysis indicated that such person had an elevated blood

400 alcohol content, (B) two and one-half years if such person submitted to
401 a test or analysis and the results of such test or analysis indicated that
402 the ratio of alcohol in the blood of such person was sixteen-hundredths
403 of one per cent or more of alcohol, by weight, and (C) [three years]
404 permanent revocation if such person refused to submit to such test or
405 analysis.

406 (j) Notwithstanding the provisions of subsections (b) to (i),
407 inclusive, of this section, any police officer who obtains the results of a
408 chemical analysis of a blood sample taken from an operator of a motor
409 vehicle involved in an accident who suffered or allegedly suffered
410 physical injury in such accident shall notify the Commissioner of
411 Motor Vehicles and submit to the commissioner a written report if
412 such results indicate that such person had an elevated blood alcohol
413 content, and if such person was arrested for violation of section
414 14-227a, as amended by this act, in connection with such accident. The
415 report shall be made on a form approved by the commissioner
416 containing such information as the commissioner prescribes, and shall
417 be subscribed and sworn to under penalty of false statement, as
418 provided in section 53a-157b, by the police officer. The commissioner
419 may, after notice and an opportunity for hearing, which shall be
420 conducted in accordance with chapter 54, suspend the motor vehicle
421 operator's license or nonresident operating privilege of such person for
422 a period of up to ninety days, or, if such person has previously had
423 such person's operator's license or nonresident operating privilege
424 suspended under this section for a period of up to one year. Each
425 hearing conducted under this subsection shall be limited to a
426 determination of the following issues: (1) Whether the police officer
427 had probable cause to arrest the person for operating a motor vehicle
428 while under the influence of intoxicating liquor or drug or both or
429 while the person's ability to operate the motor vehicle was impaired by
430 the consumption of intoxicating liquor; (2) whether such person was
431 placed under arrest; (3) whether such person was operating the motor
432 vehicle; (4) whether the results of the analysis of the blood of such

433 person indicate that such person had an elevated blood alcohol
434 content; and (5) whether the blood sample was obtained in accordance
435 with conditions for admissibility and competence as evidence as set
436 forth in subsection (l) of section 14-227a, as amended by this act. If,
437 after such hearing, the commissioner finds on any one of the said
438 issues in the negative, the commissioner shall not impose a suspension.
439 The fees of any witness summoned to appear at the hearing shall be
440 the same as provided by the general statutes for witnesses in criminal
441 cases, as provided in section 52-260.

442 (k) The provisions of this section shall apply with the same effect to
443 the refusal by any person to submit to an additional chemical test as
444 provided in subdivision (5) of subsection (c) of section 14-227a, as
445 amended by this act.

446 (l) The provisions of this section shall not apply to any person
447 whose physical condition is such that, according to competent medical
448 advice, such test would be inadvisable.

449 (m) The state shall pay the reasonable charges of any physician who,
450 at the request of a municipal police department, takes a blood sample
451 for purposes of a test under the provisions of this section.

452 (n) For the purposes of this section, "elevated blood alcohol content"
453 means (1) a ratio of alcohol in the blood of such person that is [ten-
454 hundredths] eight-hundredths of one per cent or more of alcohol, by
455 weight, (2) if such person has been convicted of a violation of
456 subsection (a) of section 14-227a, a ratio of alcohol in the blood of such
457 person that is seven-hundredths of one per cent or more of alcohol, by
458 weight, or (3) if such person is under twenty-one years of age, a ratio
459 of alcohol in the blood of such person that is two-hundredths of one
460 per cent or more of alcohol, by weight.

461 (o) The Commissioner of Motor Vehicles shall adopt regulations in
462 accordance with chapter 54 to implement the provisions of this section.

463 Sec. 3. Subsection (a) of section 54-56g of the general statutes is
464 repealed and the following is substituted in lieu thereof:

465 (a) There shall be a pretrial alcohol education system for persons
466 charged with a violation of section 14-227a or 14-227g. Upon
467 application by any such person for participation in such system and
468 payment to the court of an application fee of fifty dollars, the court
469 shall, but only as to the public, order the court file sealed, provided
470 such person states under oath, in open court or before any person
471 designated by the clerk and duly authorized to administer oaths,
472 under penalties of perjury that: (1) If such person is charged with a
473 violation of section 14-227a, such person has never had such system
474 invoked in such person's behalf [and that] for a violation of section 14-
475 227a, (2) if such person is charged with a violation of section 14-227g,
476 such person has never had such system invoked in such person's
477 behalf for a violation of section 14-227a or 14-227g, (3) such person has
478 not been convicted of a violation of section 53a-56b or 53a-60d, a
479 violation of subsection (a) of section 14-227a before or after October 1,
480 1981, or a violation of subdivision (1) or (2) of subsection (a) of section
481 14-227a on or after October 1, 1985, and [that] (4) such person has not
482 been convicted in any other state at any time of an offense the essential
483 elements of which are substantially the same as section 53a-56b or
484 53a-60d or subdivision (1) or (2) of subsection (a) of section 14-227a.
485 Unless good cause is shown, a person shall be ineligible for
486 participation in such pretrial alcohol education system if such person's
487 alleged violation of section 14-227a or 14-227g caused the serious
488 physical injury, as defined in section 53a-3, of another person. The fee
489 imposed by this subsection shall be credited to the Criminal Injuries
490 Compensation Fund established by section 54-215.

491 Sec. 4. (NEW) (a) For the purposes of this section, "ignition interlock
492 device" means a device installed in a motor vehicle which measures
493 the blood alcohol content of the operator and disallows the mechanical
494 operation of such motor vehicle unless the blood alcohol content of

495 such operator is less than five-hundredths of one per cent of alcohol,
496 by weight.

497 (b) In addition to any fine or sentence imposed pursuant to the
498 provisions of subsection (h) of section 14-227a of the general statutes,
499 as amended by this act, the court shall impose a period of probation of
500 not more than two years upon a person convicted of a second or third
501 violation of subsection (a) of this section requiring as a condition of
502 such probation that such person not operate any motor vehicle unless
503 such motor vehicle is equipped with an ignition interlock device. The
504 court may order such terms and conditions as to duration, use, proof
505 of installation or any other matter concerning the ignition interlock
506 device as it determines to be appropriate.

507 (c) All costs of installing and maintaining an ignition interlock
508 device shall be borne by the person who is the subject of an order
509 made pursuant to this section.

510 (d) The Commissioner of Public Health shall adopt regulations, in
511 accordance with the provisions of chapter 54 of the general statutes, for
512 the approval of ignition interlock devices, and for the proper
513 calibration and maintenance of such devices. No ignition interlock
514 device shall be installed pursuant to an order of the court under this
515 section unless such device has been approved under such regulations.

516 (e) No provision of this section shall be construed to authorize the
517 operation of a motor vehicle by any person whose motor vehicle
518 operator's license has been refused, suspended or revoked, or who
519 does not hold a valid license. A court shall inform the Commissioner of
520 Motor Vehicles of each order made by it pursuant to this subsection. If
521 any person who has been ordered to install an ignition interlock device
522 is the holder of a special permit to operate a motor vehicle for
523 employment purposes, issued by said commissioner under the
524 provisions of section 14-37a of the general statutes, strict compliance
525 with the terms of the order shall be deemed a condition to hold such

526 permit, and any failure to comply with such order shall be sufficient
527 cause for immediate revocation of the permit by the commissioner.

528 Sec. 5. This act shall take effect July 1, 2001.

APP *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Revenue Gain, Potential Significant Cost (General Fund); Revenue Gain (State and Federal), Minimal Cost Savings, Significant Costs, Avoids Significant (Federal) Revenue Loss (Transportation Fund)

Affected Agencies: Departments of Motor Vehicles, Transportation, Mental Health and Addiction Services and Various Criminal Justice Agencies

Municipal Impact: None

Explanation

State Impact:

The bill lowers the blood-alcohol content (BAC) standard for defining a first offense of the crime of driving while under the influence of alcohol from .10% to .08%. This could result in an estimated additional 255 drunken driving offense convictions.¹ Associated with these convictions would be an estimated net revenue gain of \$55,000 from an increased level of fine in each case (\$210 on

¹ In the year 2000, there were 935 offenses for driving with a BAC of .07% - .10% which is punishable by a fine of \$240. This fiscal note analysis assumes 2/3rds of these involved a BAC of .08%-10% and that the current rate of conviction for drunken driving offenses (about 41%) would apply to these additional cases.

average). There would also be additional costs for incarceration and probation that could be significant.²

The bill makes other changes in the criminal penalties for drunken driving that result in an impact that is absorbable to the criminal justice agencies involved. No additional workload or costs are anticipated for law enforcement agencies.

It is not known how many of the 255 additional potential convictions noted above would be referred to the PAES (Pretrial Alcohol Education System) program. If 255 offenders were referred to the program, the total additional cost to Department of Mental Health and Addiction Services (DMHAS) would be about \$60,000 and the total additional General Fund revenue would be about \$108,000. It is likely, however, that the cost and revenue would be lower than these estimates.

The bill also requires the court to require anyone convicted of driving under the influence (DUI) for a second or third violation to have an ignition interlock device installed in his or her vehicle as a requirement of probation. The bill requires that the offender pay for the installation and operation of the interlock device. However, if the offender cannot pay for the device, it is uncertain what the outcome would be given that the bill requires the installation of an interlock device. Ignition interlock devices cost about \$75 to install and about \$75 per month to maintain and monitor.

Lowering the BAC standard from .10% to .08% could generate an additional 400 Administrative Per Se cases a year, 200 of which could request hearings. The additional number of Administrative Per Se hearings can be accommodated by the Department of Motor Vehicles

² OFA defines significant as exceeding \$100,000. There were 254 people incarcerated for drunken driving at any point in the year 2000. The average annual cost of incarcerating this number of individuals in a low-level security correctional facility is about \$5 million.

(DMV) within existing resources. The revenue gain to the Transportation Fund from the \$100 license restoration fee could be approximately \$40,000 per year. The DMV will incur minimal savings from the elimination of the "at-risk" label. The labels were purchased at a cost of under \$1,000.

However, the DMV can be significantly impacted by the computer changes necessary to credit drivers that have served a Per Se suspension when the courts also order a driver's license suspension. The DMV will need the following resources to modify the computer system: three to four durational consultant programmers (\$211,500 to \$282,000), one DMV Driver Analyst (\$60,000), plus \$25,000 to \$35,000 ongoing costs for information technology services from the State Data Center (CATER) in the Department of Information Technology. Thus, total cost to modify the system could range between \$296,000 to \$397,000.

Moreover, in accordance with federal fiscal year (FFY) 2001 Transportation Appropriations Act, if the State of Connecticut enacts a .08% BAC standard by July 1, 2001 (which can become effective September 30, 2001), the state would be eligible to receive incentive grants of approximately \$2 million for both FFY 2002 and 2003. If, however, the state does not adopt the .08% BAC standard by FFY 2004, 2% of highway construction funds would be withheld. (Specifically, the Surface Transportation program, National Highway System and Interstate Maintenance would be affected.) The penalty increases by 2% each federal fiscal year to 8% in FFY 2007. The first year penalty could be approximately \$3.7 million. Although the Transportation Equity Act for the 21st Century lasts through FFY 03, projecting sanctions through FFY 07, based on similar authorizations of \$193 million annually for the three programs mentioned above, could approximate a total of \$35 million.

OLR Bill Analysis

sHB 6732

AN ACT CONCERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL.

SUMMARY:

This bill:

1. lowers the blood-alcohol content (BAC) standard for defining a first offense of the crime of driving under the influence of alcohol (DWI) from .10% to .08%;
2. requires repeat DWI offenders, in addition to the other penalties already imposed, to be sentenced to up to two years probation that must include the condition that the offender only drive a motor vehicle equipped with an ignition interlock device;
3. allows drivers under age 21 charged with the DWI offense of driving with a BAC of .02% or more to qualify for the pretrial alcohol education program on a first offense;
4. requires that any administrative suspension period served as a result of a person submitting to a BAC test to be credited against the suspension period imposed as a result of a conviction of the criminal charge;
5. increases the administrative license sanction for a third-time DWI offender who refuses to take a BAC test from a three-year suspension to a permanent revocation;
6. eliminates the special "at-risk" designation that must be put on the driver's license of anyone convicted of DWI when his license is restored;
7. when the motor vehicle commissioner grants a continuance for someone who has requested a hearing for an impending

administrative suspension, requires the commissioner to extend the person's temporary license or operating privilege for a period he determines rather than for not more than the period of the continuance; and

8. changes one of the conditions of admissibility of BAC results from an injured or allegedly injured person and a blood or urine sample is taken at the accident scene, enroute to the hospital, or at the hospital.

EFFECTIVE DATE: July 1, 2001

BAC THRESHOLD FOR DWI

It is against the law to drive a motor vehicle (1) while under the influence of alcohol, drugs, or both or (2) with an "elevated blood alcohol content." In the first instance, the offense may be prosecuted with or without any direct evidence of a person's BAC. In the second, someone is currently considered to be driving with an elevated BAC if he is found to have a .10% BAC for a first offense, .07% BAC if he has a previous conviction for drunk driving, or .02% BAC if he is under age 21.

The bill lowers the standard for a first offense from .10% to .08% BAC. It also makes a conforming change to the infraction of driving while impaired by alcohol by defining it as driving with a BAC of .07-.079% rather than .07-.099%.

IGNITION INTERLOCK DEVICES

Repeat drunk driving offenders are subject to a mandatory fine, term of imprisonment, community service, and a driver's license suspension. The bill requires, in addition to these sanctions, that someone convicted for a second or third violation also be sentenced to probation for up to two years. The probation must include the condition that the person not operate a motor vehicle unless it is equipped with an ignition interlock device. The device must prevent vehicle operation when the operator's BAC is .05% or more. The court may set any terms or conditions it deems appropriate.

The offender must pay all costs associated with installing and maintaining the device.

The public health commissioner must adopt regulations for the approval, calibration, and maintenance of ignition interlock devices and all such devices ordered by a court must meet the requirements.

The bill specifies that these provisions must not be construed to authorize vehicle operation by anyone whose license has been refused, suspended, or revoked, or who does not hold a license. The court must inform the motor vehicle commissioner of any ignition interlock order it makes. If an interlock is ordered for anyone who holds a special "employment-only" driving permit, strict compliance with the court order must be a condition for continuing to hold the permit. Failure to comply is grounds for immediate permit revocation.

PRETRIAL ALCOHOL EDUCATION PROGRAM FOR DRIVERS UNDER AGE 21

Currently, anyone arrested for the first time under the general DWI law (including anyone under age 21) can apply to the court for participation in the pretrial alcohol education program. If the court grants it and the person successfully completes the program, the court may dismiss the charges.

Drivers under age 21 may also be charged under another law if they are found with BACs of .02% or more. All of the DWI penalties apply to such a violation, but the driver is not allowed to apply for the program. The bill eliminates this distinction so drivers under age 21 may qualify for the program if charged with an offense under either law.

PER SE SUSPENSION PERIOD CREDITS

By law, any driver, after being placed under arrest for DWI, may be asked to take a BAC test. The driver may agree to take the test or may refuse. If he refuses, or if he takes the test and it indicates an elevated BAC, he is subject to an administrative suspension imposed by the motor vehicle commissioner. The suspension for a test refusal is longer than for having the elevated BAC.

The bill requires the commissioner to credit any administrative suspension period he imposes on someone who consents to the BAC test against the suspension the law requires following conviction on the criminal charge. It also increases the administrative sanction for a third offender who refuses the test from a three-year suspension to a permanent revocation. This is the same period the law imposes for a third DWI conviction.

ADMINISTRATIVE SUSPENSION HEARING CONTINUANCES

By law, someone may request a hearing at the Department of Motor Vehicles for an impending administrative suspension for driving with an elevated BAC or refusing to take the BAC test. Until the matter is finally disposed of by the department, the person drives under a temporary license or nonresident operating privilege. Either the person or the hearing officer may request a continuance of the proceedings for good cause and the commissioner may grant one continuance on this basis for up to 15 days. If he grants the continuance, current law requires him to extend the validity of the person's temporary license or privilege for up to the period of the continuance. The bill removes this limit, thus allowing the commissioner to determine the length of the extension.

ADMISSIBILITY REQUIREMENTS FOR CERTAIN BAC TEST RESULTS

By law, evidence regarding the amount of alcohol or drugs in the blood or urine of a driver who is injured or allegedly injured in an accident and which is derived from a sample provided by the driver at the accident scene, enroute to the hospital, or at the hospital is admissible in a subsequent prosecution under certain circumstances. Currently, one circumstance is if a blood sample was taken in accordance with the applicable regulations of the Department of Public Safety. Instead, the bill requires that it be taken (1) by a person licensed to practice medicine in the state where the sample was taken; (2) a resident physician or intern in a hospital in the state where the sample was taken; or (3) a phlebotomist, qualified laboratory technician, or registered nurse licensed or certified in the state where the sample was taken.

BACKGROUND***Criminal and Administrative Sanctions for Drunk Driving Offenses***

The following are the criminal and administrative penalties applicable to drunk driving violations. All sanctions are mandatory.

Drunk Driving-Related Sanctions and Penalties			
Administrative License Sanctions			
	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>
<i>Test Refusal</i>	6 months	1 year	3 years
<i>.02% BAC or higher-under age 21</i>	90 days	9 months	2 years
<i>.07% BAC or higher with prior conviction</i>	90 days	9 months	2 years
<i>.10% BAC or higher</i>	90 days	9 months	2 years
<i>.16% BAC or higher</i>	120 days	10 months	2 years, Six months
Criminal Sanctions			
<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>	
<u><i>Fine:</i></u> \$500-\$1,000 <u><i>Imprisonment:</i></u> Six months – 48 hours minimum mandatory OR Suspended sentence with 100 hours of community service <u><i>License Action:</i></u> One year suspension	<u><i>Fine:</i></u> \$1,000-\$4,000 <u><i>Imprisonment:</i></u> Two years – 120 days minimum mandatory AND 100 hours of community service <u><i>License Action:</i></u> Three year suspension (or until age 21 if longer)	<u><i>Fine:</i></u> \$2,000-\$8,000 <u><i>Imprisonment:</i></u> Three years – one year minimum mandatory AND 100 hours of community service <u><i>License Action:</i></u> Permanent revocation	

BACKGROUND***Legislative History***

The House referred the original bill (File 596) to the Public Health Committee on May 8 and the committee reported it favorably without changes on May 9. The House referred it to the Appropriations Committee on May 11 and the committee reported out a substitute bill on May 17. The substitute deletes a provision in the interlock requirements that would have allowed someone subject to an interlock probation order who claims to be unable to pay its installation and maintenance costs to file an affidavit of indigency or inability to pay with the court. After verification by the Office of Adult Probation, it would have allowed the court to order the Department of Mental Health and Addition Services to pay the costs.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute Change of Reference

Yea 24 Nay 4

Judiciary Committee

Joint favorable Substitute

Yea 35 Nay 3

Public Health Committee

Joint Favorable Report

Yea 22 Nay 1

Appropriations Committee

Joint Favorable Substitute

Yea 43 Nay 3