



Senate

General Assembly

File No. 668

January Session, 2007

Substitute Senate Bill No. 1348

Senate, May 1, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT STRENGTHENING DRUNK DRIVING ENFORCEMENT.

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 Section 14-227a of the general statutes is repealed and the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 (*Effective October 1, 2007*):

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 (1) while under the influence of intoxicating liquor or any drug
8 or both, or (2) while such person has an elevated blood alcohol content.
9 For the purposes of this section, "elevated blood alcohol content"
10 means (A) a ratio of alcohol in the blood of such person that is eight-
11 hundredths of one per cent or more of alcohol, by weight, or (B) if such
12 person is operating a commercial motor vehicle, a ratio of alcohol in
13 the blood of such person that is four-hundredths of one per cent or
14 more of alcohol, by weight, and "motor vehicle" includes a snowmobile
15 and all-terrain vehicle, as those terms are defined in section 14-379.

16 (b) [Except as provided in subsection (c) of this section, in] In any
17 criminal prosecution for violation of subsection (a) of this section,
18 evidence respecting the amount of alcohol or drug in the defendant's
19 blood or urine at the time of the alleged offense, as shown by a
20 chemical analysis of the defendant's breath, blood or urine shall be
21 admissible and competent provided: (1) The defendant was afforded a
22 reasonable opportunity to telephone an attorney prior to the
23 performance of the test and consented to the taking of the test upon
24 which such analysis is made; (2) a true copy of the report of the test
25 result was mailed to or personally delivered to the defendant [within
26 twenty-four hours or by the end of the next regular business day,] not
27 later than three business days after such result was known; [,
28 whichever is later;] (3) the test was performed by or at the direction of
29 a police officer according to methods and with equipment approved
30 by the Department of Public Safety and was performed in accordance
31 with the regulations adopted under subsection (d) of this section; (4)
32 the device used for such test was checked for accuracy in accordance
33 with the regulations adopted under subsection (d) of this section; (5)
34 an additional chemical test of the same type was performed at least
35 [thirty] ten minutes after the initial test was performed or, if requested
36 by the police officer for reasonable cause, an additional chemical test of
37 a different type was performed to detect the presence of a drug or
38 drugs other than or in addition to alcohol, provided the results of the
39 initial test shall not be inadmissible under this subsection if reasonable
40 efforts were made to have such additional test performed in
41 accordance with the conditions set forth in this subsection and such
42 additional test was not performed or was not performed within a
43 reasonable time, or the results of such additional test are not
44 admissible for failure to meet a condition set forth in this subsection;
45 and (6) evidence is presented that the test was commenced within two
46 hours of operation. In any prosecution under this section it shall be a
47 rebuttable presumption that the results of such chemical analysis
48 establish the ratio of alcohol in the blood of the defendant at the time
49 of the alleged offense, except that if the results of the additional test
50 indicate that the ratio of alcohol in the blood of such defendant is

51 twelve-hundredths of one per cent or less of alcohol, by weight, and is
52 higher than the results of the first test, evidence shall be presented that
53 demonstrates that the test results and the analysis thereof accurately
54 indicate the blood alcohol content at the time of the alleged offense.

55 [(c) In any prosecution for a violation of subdivision (1) of
56 subsection (a) of this section, reliable evidence respecting the amount
57 of alcohol in the defendant's blood or urine at the time of the alleged
58 offense, as shown by a chemical analysis of the defendant's blood,
59 breath or urine, otherwise admissible under subsection (b) of this
60 section, shall be admissible only at the request of the defendant.]

61 [(d)] (c) The Commissioner of Public Safety shall ascertain the
62 reliability of each method and type of device offered for chemical
63 testing and analysis purposes of blood, of breath and of urine and
64 certify those methods and types which said commissioner finds
65 suitable for use in testing and analysis of blood, breath and urine,
66 respectively, in this state.

67 (d) The Commissioner of Public Safety shall adopt regulations, in
68 accordance with chapter 54, governing the conduct of chemical tests,
69 the operation and use of chemical test devices, the training and
70 certification of operators of such devices and the drawing or obtaining
71 of blood, breath or urine samples as said commissioner finds necessary
72 to protect the health and safety of persons who submit to chemical
73 tests and to insure reasonable accuracy in testing results. Such
74 regulations shall not require recertification of a police officer solely
75 because such officer terminates such officer's employment with the law
76 enforcement agency for which certification was originally issued and
77 commences employment with another such agency.

78 (e) In any criminal prosecution for a violation of subsection (a) of
79 this section, evidence that the defendant refused to submit to a blood,
80 breath or urine test requested in accordance with section 14-227b, as
81 amended by this act, shall be admissible provided the requirements of
82 subsection (b) of said section have been satisfied. If a case involving a
83 violation of subsection (a) of this section is tried to a jury, the court

84 shall instruct the jury as to any inference that may or may not be
85 drawn from the defendant's refusal to submit to a blood, breath or
86 urine test.

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

91 (g) Any person who violates any provision of subsection (a) of this
92 section shall: (1) For conviction of a first violation, (A) be fined not less
93 than [~~five hundred~~] one thousand dollars or more than [~~one~~] two
94 thousand five hundred dollars, and (B) be (i) imprisoned not more
95 than six months, forty-eight consecutive hours of which may not be
96 suspended or reduced in any manner, or (ii) imprisoned not more than
97 [~~six~~] nine months, with the execution of such sentence of imprisonment
98 suspended entirely and a period of probation imposed requiring as a
99 condition of such probation that such person perform one hundred
100 hours of community service, as defined in section 14-227e, and (C)
101 have such person's motor vehicle operator's license or nonresident
102 operating privilege suspended for one year; (2) for conviction of a
103 second violation, [within ten years after a prior conviction for the same
104 offense,] (A) be fined not less than [~~one~~] two thousand dollars or more
105 than [~~four~~] five thousand dollars, (B) be imprisoned not more than
106 [~~two~~] three years, one hundred [~~twenty~~] eighty consecutive days of
107 which may not be suspended or reduced in any manner, and
108 sentenced to a period of probation requiring as a condition of such
109 probation that such person perform [~~one~~] two hundred hours of
110 community service, as defined in section 14-227e, and (C) [(i) have
111 such person's motor vehicle operator's license or nonresident operating
112 privilege suspended for three years or until the date of such person's
113 twenty-first birthday, whichever is longer, or (ii) if such person has
114 been convicted of a violation of subdivision (1) of subsection (a) of this
115 section on account of being under the influence of intoxicating liquor
116 or of subdivision (2) of subsection (a) of this section,] have such
117 person's motor vehicle operator's license or nonresident operating

118 privilege suspended for one year and be prohibited for the two-year
119 period following completion of such period of suspension from
120 operating [a] any motor vehicle unless such motor vehicle is equipped
121 with a functioning, approved ignition interlock device, as defined in
122 section 14-227j, as amended by this act; and (3) for conviction of a third
123 and subsequent violation, [within ten years after a prior conviction for
124 the same offense,] (A) be fined not less than [two] five thousand
125 dollars or more than [eight] ten thousand dollars, (B) be imprisoned
126 not more than [three] five years, [one year] two years of which may not
127 be suspended or reduced in any manner, and sentenced to a period of
128 probation requiring as a condition of such probation that such person
129 perform [one] three hundred hours of community service, as defined
130 in section 14-227e, [and] (C) have such person's motor vehicle
131 operator's license or nonresident operating privilege permanently
132 revoked upon such third offense, and (D) forfeit to the state the motor
133 vehicle such person was operating at the time of the offense, provided
134 such person held legal title to such motor vehicle at such time. For
135 purposes of the imposition of penalties for a second or third and
136 subsequent offense pursuant to this subsection, a conviction under the
137 provisions of subsection (a) of this section in effect on October 1, 1981,
138 or as amended thereafter, a conviction under the provisions of either
139 subdivision (1) or (2) of subsection (a) of this section, a conviction
140 under the provisions of section 53a-56b or 53a-60d, as amended by this
141 act, or a conviction in any other state of any offense the essential
142 elements of which are determined by the court to be substantially the
143 same as subdivision (1) or (2) of subsection (a) of this section or section
144 53a-56b or 53a-60d, as amended by this act, shall constitute a prior
145 conviction for the same offense. The state shall sell any motor vehicle
146 forfeited to the state pursuant to subparagraph (D) of subdivision (3)
147 of this subsection at public auction and deposit the proceeds from such
148 sale in the Criminal Injuries Compensation Fund established pursuant
149 to section 54-215.

150 (h) (1) Each court shall report each conviction under subsection (a)
151 of this section to the Commissioner of Motor Vehicles, in accordance
152 with the provisions of section 14-141. The commissioner shall

153 immediately suspend the motor vehicle operator's license or
154 nonresident operating privilege of the person reported as convicted for
155 the period of time required by subsection (g) of this section. The
156 commissioner shall determine the period of time required by said
157 subsection (g) based on the number of convictions such person has had
158 within the specified time period according to such person's driving
159 history record, notwithstanding the sentence imposed by the court for
160 such conviction. The period of suspension shall commence on the date
161 of conviction, except that if such person is sentenced to a term of
162 imprisonment, the execution of which is not suspended entirely, the
163 period of suspension shall commence on the date such person is
164 released from incarceration. (2) The motor vehicle operator's license or
165 nonresident operating privilege of a person found guilty under
166 subsection (a) of this section who is under eighteen years of age shall
167 be suspended by the commissioner for the period of time set forth in
168 subsection (g) of this section, or until such person attains the age of
169 eighteen years, whichever period is longer. (3) The motor vehicle
170 operator's license or nonresident operating privilege of a person found
171 guilty under subsection (a) of this section who, at the time of the
172 offense, was operating a motor vehicle in accordance with a special
173 operator's permit issued pursuant to section 14-37a shall be suspended
174 by the commissioner for twice the period of time set forth in subsection
175 (g) of this section. (4) If an appeal of any conviction under subsection
176 (a) of this section is taken, the suspension of the motor vehicle
177 operator's license or nonresident operating privilege by the
178 commissioner, in accordance with this subsection, shall be stayed
179 during the pendency of such appeal.

180 (i) (1) The Commissioner of Motor Vehicles shall permit a person
181 whose license has been suspended in accordance with the provisions
182 of subparagraph (C) [(ii)] of subdivision (2) of subsection (g) of this
183 section to operate a motor vehicle if (A) such person has [served]
184 completed not less than one year of such suspension, [and] (B) such
185 person has installed an approved ignition interlock device in each
186 motor vehicle owned or to be operated by such person, and (C) such
187 person has agreed to operate such motor vehicle only by personally

188 using the installed approved ignition interlock device. No person
189 whose license is suspended by the commissioner for any other reason
190 shall be eligible to operate a motor vehicle equipped with an approved
191 ignition interlock device. (2) All costs of installing and maintaining an
192 ignition interlock device shall be borne by the person required to
193 install such device. (3) The commissioner shall adopt regulations, in
194 accordance with the provisions of chapter 54, to implement the
195 provisions of this subsection. The regulations shall establish
196 procedures for the approval of ignition interlock devices, for the
197 proper calibration and maintenance of such devices and for the
198 installation of such devices by any firm approved and authorized by
199 the commissioner. (4) The provisions of this subsection shall not be
200 construed to authorize the continued operation of a motor vehicle
201 equipped with an ignition interlock device by any person whose
202 operator's license or nonresident operating privilege is withdrawn,
203 suspended or revoked for any other reason. (5) The provisions of this
204 subsection shall apply to any person whose license has been
205 suspended in accordance with the provisions of subparagraph (C) [(ii)]
206 of subdivision (2) of subsection (g) of this section on or after September
207 1, 2003.

208 (j) In addition to any fine or sentence imposed pursuant to the
209 provisions of subsection (g) of this section, the court, for a first
210 conviction, may order such person to participate in and complete an
211 appropriate alcohol education and substance abuse treatment program
212 and, for a second and subsequent conviction, shall order such person
213 to participate in and complete an appropriate alcohol education and
214 substance abuse treatment program.

215 (k) Notwithstanding the provisions of subsection (b) of this section,
216 evidence respecting the amount of alcohol or drug in the blood or
217 urine of an operator of a motor vehicle involved in an accident who
218 has suffered or allegedly suffered physical injury in such accident or is
219 otherwise determined to require treatment or observation at a hospital,
220 which evidence is derived from a chemical analysis of a blood sample
221 taken from or a urine sample provided by such person [after such

222 accident] at the scene of the accident, while en route to a hospital or at
223 a hospital, shall be competent evidence to establish probable cause for
224 the arrest by warrant of such person for a violation of subsection (a) of
225 this section and shall be admissible and competent in any subsequent
226 prosecution thereof if: (1) The blood sample was taken or the urine
227 sample was provided for the purpose of diagnosis and treatment; [of
228 such injury;] (2) if a blood sample was taken, the blood sample was
229 taken in accordance with the regulations adopted under subsection (d)
230 of this section; (3) a police officer has demonstrated to the satisfaction
231 of a judge of the Superior Court that such officer has reason to believe
232 that such person was operating a motor vehicle while under the
233 influence of intoxicating liquor or drug, or both, and that the chemical
234 analysis of such blood or urine sample constitutes evidence of the
235 commission of the offense of operating a motor vehicle while under
236 the influence of intoxicating liquor or drug, or both, in violation of
237 subsection (a) of this section; and (4) such judge has issued a search
238 warrant in accordance with section 54-33a authorizing the seizure of
239 the chemical analysis of such blood or urine sample. Such search
240 warrant may also authorize the seizure of the medical records
241 prepared by the hospital in connection with [the] such diagnosis or
242 treatment. [of such injury.]

243 (l) If the court sentences a person convicted of a violation of
244 subsection (a) of this section to a period of probation, the court may
245 require as a condition of such probation that such person participate in
246 a victim impact panel program approved by the Court Support
247 Services Division of the Judicial Department. Such victim impact panel
248 program shall provide a nonconfrontational forum for the victims of
249 alcohol-related or drug-related offenses and offenders to share
250 experiences on the impact of alcohol-related or drug-related incidents
251 in their lives. Such victim impact panel program shall be conducted by
252 a nonprofit organization that advocates on behalf of victims of
253 accidents caused by persons who operated a motor vehicle while
254 under the influence of intoxicating liquor or any drug, or both. Such
255 organization may assess a participation fee of not more than [twenty-
256 five] one hundred dollars on any person required by the court to

257 participate in such program.

258 Sec. 2. Section 14-227b of the general statutes is repealed and the
259 following is substituted in lieu thereof (*Effective October 1, 2007*):

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

265 (b) If any such person, having been placed under arrest for
266 operating a motor vehicle while under the influence of intoxicating
267 liquor or any drug or both, and thereafter, after being apprised of such
268 person's constitutional rights, having been requested to submit to a
269 blood, breath or urine test at the option of the police officer, having
270 been afforded a reasonable opportunity to telephone an attorney prior
271 to the performance of such test and having been informed that such
272 person's license or nonresident operating privilege may be suspended
273 in accordance with the provisions of this section if such person refuses
274 to submit to such test or if such person submits to such test and the
275 results of such test indicate that such person has an elevated blood
276 alcohol content, and that evidence of any such refusal shall be
277 admissible in accordance with subsection (e) of section 14-227a, as
278 amended by this act, and may be used against such person in any
279 criminal prosecution, refuses to submit to the designated test, the test
280 shall not be given; provided, if the person refuses or is unable to
281 submit to a blood test, the police officer shall designate the breath or
282 urine test as the test to be taken. The police officer shall make a
283 notation upon the records of the police department that such officer
284 informed the person that such person's license or nonresident
285 operating privilege may be suspended if such person refused to submit
286 to such test or if such person submitted to such test and the results of
287 such test indicated that such person had an elevated blood alcohol
288 content.

289 (c) If the person arrested refuses to submit to such test or analysis or

290 submits to such test or analysis, commenced within two hours of the
291 time of operation, and the results of such test or analysis indicate that
292 such person has an elevated blood alcohol content, the police officer,
293 acting on behalf of the Commissioner of Motor Vehicles, shall
294 immediately revoke and take possession of the motor vehicle
295 operator's license or, if such person is a nonresident, suspend the
296 nonresident operating privilege of such person, for a twenty-four-hour
297 period. The police officer shall prepare a [written] report of the
298 incident and shall mail or otherwise transmit in accordance with this
299 subsection the report and a copy of the results of any chemical test or
300 analysis to the Department of Motor Vehicles within [three] five
301 business days. The report shall [be made on a form approved] provide
302 such information as prescribed by the Commissioner of Motor Vehicles
303 and shall be subscribed and sworn to under penalty of false statement
304 as provided in section 53a-157b by the arresting officer. If the person
305 arrested refused to submit to such test or analysis, the report shall be
306 endorsed by a third person who witnessed such refusal. The report
307 shall set forth the grounds for the officer's belief that there was
308 probable cause to arrest such person for operating a motor vehicle
309 while under the influence of intoxicating liquor or any drug or both
310 and shall state that such person had refused to submit to such test or
311 analysis when requested by such police officer to do so or that such
312 person submitted to such test or analysis, commenced within two
313 hours of the time of operation, and the results of such test or analysis
314 indicated that such person had an elevated blood alcohol content. The
315 Commissioner of Motor Vehicles shall, not later than ten business days
316 after receipt of such report, notify the police officer submitting the
317 report of any error in form or required documentation. The
318 Commissioner of Motor Vehicles may accept a police report under this
319 subsection that is prepared and transmitted as an electronic record,
320 including electronic signature or signatures, subject to such security
321 procedures as the commissioner may specify and in accordance with
322 the provisions of sections 1-266 to 1-286, inclusive.

323 (d) If the person arrested submits to a blood or urine test at the
324 request of the police officer, and the specimen requires laboratory

325 analysis in order to obtain the test results, the police officer shall not
326 take possession of the motor vehicle operator's license of such person
327 or, except as provided in this subsection, follow the procedures
328 subsequent to taking possession of the operator's license as set forth in
329 subsection (c) of this section. If the test results indicate that such
330 person has an elevated blood alcohol content, the police officer,
331 immediately upon receipt of the test results, shall notify the
332 Commissioner of Motor Vehicles and submit to the commissioner the
333 [written] report required pursuant to subsection (c) of this section.

334 (e) (1) Except as provided in subdivision (2) of this subsection, upon
335 receipt of such report, the Commissioner of Motor Vehicles may
336 suspend any operator's license or nonresident operating privilege of
337 such person effective as of a date certain, which date shall be not later
338 than thirty days after the date such person received notice of such
339 person's arrest by the police officer. Any person whose operator's
340 license or nonresident operating privilege has been suspended in
341 accordance with this subdivision shall automatically be entitled to a
342 hearing before the commissioner to be held in accordance with the
343 provisions of chapter 54 and prior to the effective date of the
344 suspension. The commissioner shall send a suspension notice to such
345 person informing such person that such person's operator's license or
346 nonresident operating privilege is suspended as of a date certain and
347 that such person is entitled to a hearing prior to the effective date of
348 the suspension and may schedule such hearing by contacting the
349 Department of Motor Vehicles not later than [seven] five days after the
350 date of mailing of such suspension notice.

351 (2) If the person arrested (A) is involved in an accident resulting in a
352 fatality, or (B) has previously had such person's operator's license or
353 nonresident operating privilege suspended under the provisions of
354 section 14-227a, as amended by this act, [during the ten-year period
355 preceding the present arrest,] upon receipt of such report, the
356 Commissioner of Motor Vehicles may suspend any operator's license
357 or nonresident operating privilege of such person effective as of the
358 date specified in a notice of such suspension to such person. Any

359 person whose operator's license or nonresident operating privilege has
360 been suspended in accordance with this subdivision shall
361 automatically be entitled to a hearing before the commissioner to be
362 held in accordance with the provisions of chapter 54. The
363 commissioner shall send a suspension notice to such person informing
364 such person that such person's operator's license or nonresident
365 operating privilege is suspended as of the date specified in such
366 suspension notice, and that such person is entitled to a hearing and
367 may schedule such hearing by contacting the Department of Motor
368 Vehicles not later than [seven] five days after the date of mailing of
369 such suspension notice. Any suspension issued under this subdivision
370 shall remain in effect until such suspension is affirmed or such
371 operator's license or nonresident operating privilege is reinstated in
372 accordance with subsections (f) and (h) of this section.

373 (f) If such person does not contact the department to schedule a
374 hearing, the commissioner shall affirm the suspension contained in the
375 suspension notice for the appropriate period specified in subsection (i)
376 or (j) of this section.

377 (g) If such person contacts the department to schedule a hearing, the
378 department shall assign a date, time and place for the hearing, which
379 date shall be prior to the effective date of the suspension, except that,
380 with respect to a person whose operator's license or nonresident
381 operating privilege is suspended in accordance with subdivision (2) of
382 subsection (e) of this section, such hearing shall be scheduled not later
383 than thirty days after such person contacts the department. [At the
384 request of such person or the hearing officer and upon] The hearing
385 shall be conducted by a hearing officer on behalf of the commissioner.
386 Upon a showing of good cause, the [commissioner] hearing officer
387 may grant one continuance for a period not to exceed [fifteen] ten
388 days. The hearing shall be limited to a determination of the following
389 issues: (1) Did the police officer have probable cause to arrest the
390 person for operating a motor vehicle while under the influence of
391 intoxicating liquor or any drug, or both; (2) was such person placed
392 under arrest; (3) did such person refuse to submit to such test or

393 analysis or did such person submit to such test or analysis,
394 commenced within two hours of the time of operation, and the results
395 of such test or analysis indicated that such person had an elevated
396 blood alcohol content; and (4) was such person operating the motor
397 vehicle. In the hearing, the results of the test or analysis shall be
398 sufficient to indicate the ratio of alcohol in the blood of such person at
399 the time of operation, except that if the results of the additional test
400 indicate that the ratio of alcohol in the blood of such person is
401 twelve-hundredths of one per cent or less of alcohol, by weight, and is
402 higher than the results of the first test, evidence shall be presented that
403 demonstrates that the test results and analysis thereof accurately
404 indicate the blood alcohol content at the time of operation. The fees of
405 any witness summoned to appear at the hearing shall be [the same as
406 provided by the general statutes for witnesses in criminal cases] paid
407 by the party requesting that the witness be summoned. The person
408 whose operator's license or nonresident operating privilege has been
409 suspended shall have the burden of showing why such license or
410 operating privilege should be reinstated. The hearing officer shall
411 strictly limit the scope of the hearing in conformance with the
412 provisions of this subsection and chapter 54.

413 (h) If, after such hearing, the commissioner finds on any one of the
414 said issues in the negative, the commissioner shall reinstate such
415 license or operating privilege. If, after such hearing, the commissioner
416 does not find on any one of the said issues in the negative or if such
417 person fails to appear at such hearing, the commissioner shall affirm
418 the suspension contained in the suspension notice for the appropriate
419 period specified in subsection (i) or (j) of this section. The
420 commissioner shall render a decision at the conclusion of such hearing
421 or send a notice of the decision by bulk certified mail to such person
422 not later than thirty days or, if a continuance is granted, not later than
423 [forty-five] forty days from the date such person received notice of
424 such person's arrest by the police officer. The notice of such decision
425 sent by certified mail to the address of such person as shown by the
426 records of the commissioner shall be sufficient notice to such person
427 that such person's operator's license or nonresident operating privilege

428 is reinstated or suspended, as the case may be. Unless a continuance of
429 the hearing is granted pursuant to subsection (g) of this section, if the
430 commissioner fails to render a decision within thirty days from the
431 date such person received notice of such person's arrest by the police
432 officer, the commissioner shall reinstate such person's operator's
433 license or nonresident operating privilege, provided notwithstanding
434 such reinstatement the commissioner may render a decision not later
435 than [two] seven business days thereafter suspending such operator's
436 license or nonresident operating privilege.

437 (i) Except as provided in subsection (j) of this section, the
438 commissioner shall suspend the operator's license or nonresident
439 operating privilege of a person who did not contact the department to
440 schedule a hearing, who failed to appear at a hearing or against whom,
441 after a hearing, the commissioner held pursuant to subsection (h) of
442 this section, as of the effective date contained in the suspension notice,
443 or the date the commissioner renders a decision, whichever is later, for
444 a period of: (1) (A) Except as provided in subparagraph (B) of this
445 subdivision, ninety days, if such person submitted to a test or analysis
446 and the results of such test or analysis indicated that such person had
447 an elevated blood alcohol content, (B) one hundred twenty days, if
448 such person submitted to a test or analysis and the results of such test
449 or analysis indicated that the ratio of alcohol in the blood of such
450 person was sixteen-hundredths of one per cent or more of alcohol, by
451 weight, or (C) six months if such person refused to submit to such test
452 or analysis, (2) if such person has previously had such person's
453 operator's license or nonresident operating privilege suspended under
454 this section, (A) except as provided in subparagraph (B) of this
455 subdivision, nine months if such person submitted to a test or analysis
456 and the results of such test or analysis indicated that such person had
457 an elevated blood alcohol content, (B) ten months if such person
458 submitted to a test or analysis and the results of such test or analysis
459 indicated that the ratio of alcohol in the blood of such person was
460 sixteen-hundredths of one per cent or more of alcohol, by weight, and
461 (C) one year if such person refused to submit to such test or analysis,
462 and (3) if such person has two or more times previously had such

463 person's operator's license or nonresident operating privilege
464 suspended under this section, (A) except as provided in subparagraph
465 (B) of this subdivision, two years if such person submitted to a test or
466 analysis and the results of such test or analysis indicated that such
467 person had an elevated blood alcohol content, (B) two and one-half
468 years if such person submitted to a test or analysis and the results of
469 such test or analysis indicated that the ratio of alcohol in the blood of
470 such person was sixteen-hundredths of one per cent or more of
471 alcohol, by weight, and (C) three years if such person refused to
472 submit to such test or analysis.

473 (j) The commissioner shall suspend the operator's license or
474 nonresident operating privilege of a person under twenty-one years of
475 age who did not contact the department to schedule a hearing, who
476 failed to appear at a hearing or against whom, after a hearing, the
477 commissioner held pursuant to subsection (h) of this section, as of the
478 effective date contained in the suspension notice or the date the
479 commissioner renders a decision, whichever is later, for twice the
480 appropriate period of time specified in subsection (i) of this section.

481 (k) Notwithstanding the provisions of subsections (b) to (j),
482 inclusive, of this section, any police officer who obtains the results of a
483 chemical analysis of a blood sample taken from an operator of a motor
484 vehicle involved in an accident who suffered or allegedly suffered
485 physical injury in such accident or is otherwise determined to require
486 treatment or observation at a hospital shall notify the Commissioner of
487 Motor Vehicles and submit to the commissioner a written report if
488 such results indicate that such person had an elevated blood alcohol
489 content, and if such person was arrested for violation of section
490 14-227a, as amended by this act, in connection with such accident. The
491 report shall be made on a form approved by the commissioner
492 containing such information as the commissioner prescribes, and shall
493 be subscribed and sworn to under penalty of false statement, as
494 provided in section 53a-157b, by the police officer. The commissioner
495 may, after notice and an opportunity for hearing, which shall be
496 conducted by a hearing officer on behalf of the commissioner in

497 accordance with chapter 54, suspend the motor vehicle operator's
498 license or nonresident operating privilege of such person for [a period
499 of up to ninety days, or, if such person has previously had such
500 person's operator's license or nonresident operating privilege
501 suspended under this section for a period of up to one year] the
502 appropriate period specified in subsection (i) of this section. Each
503 hearing conducted under this subsection shall be limited to a
504 determination of the following issues: (1) Whether the police officer
505 had probable cause to arrest the person for operating a motor vehicle
506 while under the influence of intoxicating liquor or drug or both; (2)
507 whether such person was placed under arrest; (3) whether such person
508 was operating the motor vehicle; (4) whether the results of the analysis
509 of the blood of such person indicate that such person had an elevated
510 blood alcohol content; and (5) whether the blood sample was obtained
511 in accordance with conditions for admissibility and competence as
512 evidence as set forth in subsection [(j)] (k) of section 14-227a, as
513 amended by this act. If, after such hearing, the commissioner finds on
514 any one of the said issues in the negative, the commissioner shall not
515 impose a suspension. The fees of any witness summoned to appear at
516 the hearing shall be [the same as provided by the general statutes for
517 witnesses in criminal cases, as provided in section 52-260] paid by the
518 party requesting that the witness be summoned. The hearing officer
519 shall strictly limit the scope of the hearing in conformance with the
520 provisions of this subsection and chapter 54.

521 (l) The provisions of this section shall apply with the same effect to
522 the refusal by any person to submit to an additional chemical test as
523 provided in subdivision (5) of subsection (b) of section 14-227a, as
524 amended by this act.

525 (m) The provisions of this section shall not apply to any person
526 whose physical condition is such that, according to competent medical
527 advice, such test would be inadvisable.

528 (n) The state shall pay the reasonable charges of any physician who,
529 at the request of a municipal police department, takes a blood sample

530 for purposes of a test under the provisions of this section.

531 (o) For the purposes of this section, "elevated blood alcohol content"
532 means (1) a ratio of alcohol in the blood of such person that is eight-
533 hundredths of one per cent or more of alcohol, by weight, (2) if such
534 person is operating a commercial motor vehicle, a ratio of alcohol in
535 the blood of such person that is four-hundredths of one per cent or
536 more of alcohol, by weight, or [(2)] (3) if such person is under twenty-
537 one years of age, a ratio of alcohol in the blood of such person that is
538 two-hundredths of one per cent or more of alcohol, by weight.

539 (p) The Commissioner of Motor Vehicles shall adopt regulations, in
540 accordance with chapter 54, to implement the provisions of this
541 section.

542 Sec. 3. Section 14-227f of the general statutes is repealed and the
543 following is substituted in lieu thereof (*Effective October 1, 2007*):

544 (a) Any person whose motor vehicle operator's license or
545 nonresident operating privilege is suspended under subsection (g) of
546 section 14-227a, as amended by this act, for a conviction of a violation
547 of subsection (a) of said section or under section 14-227b, as amended
548 by this act, for a second or subsequent time shall participate in a
549 treatment program which includes an assessment of the degree of
550 alcohol abuse and treatment, as appropriate, approved by the
551 Commissioner of Motor Vehicles. The commissioner shall not reinstate
552 the operator's license or nonresident operating privilege of any such
553 person until such person submits evidence to the commissioner that
554 such person has satisfactorily completed the treatment program. Any
555 person whose certificate is suspended or revoked pursuant to section
556 15-133, 15-140l or 15-140n shall participate in such treatment program.

557 (b) The treatment program shall be [designed] determined by the
558 commissioner, in consultation with the Commissioner of Mental
559 Health and Addiction Services and with the advice and assistance of
560 the Motor Vehicle Operator's License Medical Advisory Board
561 established pursuant to section 14-46b [, any state agency] or any other

562 public or private entity engaged in the [provision of responsible
563 services for the] treatment of alcohol and drug addiction. [as the
564 commissioner may request.] The program shall consist of intensive
565 treatment by a qualified mental health care professional and a phase of
566 continuing aftercare supervision and monitoring on an individual
567 basis. The program may be provided by one or more private
568 organizations approved by the [commissioner] Commissioner of
569 Motor Vehicles which meet qualifications established by [him] said
570 commissioner in consultation with the Commissioner of Mental Health
571 and Addiction Services, provided the entire costs of the program shall
572 be paid from fees charged to the participants, the amounts of which
573 shall be subject to the approval of the commissioner.

574 (c) Upon receipt of notification from the commissioner of the
575 requirement to participate in the program, such person may, within
576 thirty days, petition the commissioner in writing for a waiver of such
577 requirement on the following grounds: (1) The petitioner is presently
578 undergoing a substantial treatment program for alcohol or drug
579 addiction, or has completed such a program subsequent to his most
580 recent arrest, either as a result of an order of the Superior Court or on a
581 voluntary basis, and (2) the petitioner does not, in the opinion of a
582 [licensed physician] a qualified mental health care professional based
583 upon a personal examination, have a current addiction problem which
584 affects his ability to operate a motor vehicle in a safe manner or pose a
585 significant risk of having such a problem in the foreseeable future. In
586 reviewing and determining whether to grant any such petition, the
587 commissioner shall request and give due consideration to the advice of
588 the Motor Vehicle Operator's License Medical Advisory Board. Any
589 person aggrieved by the decision of the commissioner may appeal
590 such decision in accordance with the provisions of chapter 54.

591 (d) The commissioner shall adopt regulations in accordance with
592 chapter 54 to implement the provisions of this section.

593 Sec. 4. Section 14-227g of the general statutes is repealed and the
594 following is substituted in lieu thereof (*Effective October 1, 2007*):

595 (a) No person under twenty-one years of age shall operate a motor
596 vehicle [on a public highway of this state or on any road of a district
597 organized under the provisions of chapter 105, a purpose of which is
598 the construction and maintenance of roads and sidewalks, or on any
599 private road on which a speed limit has been established in accordance
600 with the provisions of section 14-218a, or in any parking area for ten or
601 more cars or on any school property] while the ratio of alcohol in the
602 blood of such person is two-hundredths of one per cent or more of
603 alcohol, by weight.

604 (b) The fact that the operator of a motor vehicle appears to be
605 sixteen years of age or over but under twenty-one years of age shall
606 not constitute a reasonable and articulable suspicion that an offense
607 has been or is being committed so as to justify an investigatory stop of
608 such motor vehicle by a police officer.

609 (c) The provisions of subsections (b), ~~(c)~~, (d), (f), (g), (h), (i), (j) [] and
610 (k) of section 14-227a, as amended by this act, adapted accordingly,
611 shall be applicable to a violation of subsection (a) of this section.

612 Sec. 5. Section 14-227j of the general statutes is repealed and the
613 following is substituted in lieu thereof (*Effective October 1, 2007*):

614 (a) For the purposes of this section and section 14-227k: "Ignition
615 interlock device" means a device installed in a motor vehicle that
616 measures the blood alcohol content of the operator and disallows the
617 mechanical operation of such motor vehicle until the blood alcohol
618 content of such operator is less than twenty-five thousandths of one
619 per cent.

620 (b) Any person who has been arrested for a violation of subsection
621 (a) of section 14-227a, section 53a-56b [] or section 53a-60d, as
622 amended by this act, may be ordered by the court not to operate any
623 motor vehicle unless (1) such motor vehicle is equipped with an
624 ignition interlock device, and (2) such person uses such device to
625 operate such motor vehicle. Any such order may be made as a
626 condition of such person's release on bail, as a condition of probation

627 or as a condition of granting such person's application for participation
628 in the pretrial alcohol education system under section 54-56g, as
629 amended by this act, and may include any other terms and conditions
630 as to duration, use, proof of installation or any other matter that the
631 court determines to be appropriate or necessary.

632 (c) All costs of installing and maintaining an ignition interlock
633 device shall be borne by the person who is the subject of an order
634 made pursuant to subsection (b) of this section.

635 (d) No ignition interlock device shall be installed pursuant to an
636 order of the court under subsection (b) of this section unless such
637 device has been approved under the regulations adopted by the
638 Commissioner of Motor Vehicles. [pursuant to subsection (i) of section
639 14-227a.]

640 (e) No provision of this section shall be construed to authorize the
641 operation of a motor vehicle by any person whose motor vehicle
642 operator's license has been refused, suspended or revoked, or who
643 does not hold a valid motor vehicle operator's license. A court shall
644 inform the Commissioner of Motor Vehicles of each order made by it
645 pursuant to subsection (b) of this section. If any person who has been
646 ordered not to operate a motor vehicle unless such motor vehicle is
647 equipped with an ignition interlock device is the holder of a special
648 permit to operate a motor vehicle for employment purposes, issued by
649 the commissioner under the provisions of section 14-37a, strict
650 compliance with the terms of the order shall be deemed a condition to
651 hold such permit, and any failure to comply with such order shall be
652 sufficient cause for immediate revocation of the permit by the
653 commissioner.

654 Sec. 6. Section 54-56g of the general statutes is repealed and the
655 following is substituted in lieu thereof (*Effective October 1, 2007*):

656 (a) There shall be a pretrial alcohol education system for persons
657 charged with a violation of section 14-227a, as amended by this act, 14-
658 227g, as amended by this act, 15-133, 15-140l or 15-140n. Upon

659 application by any such person for participation in such system and
660 payment to the court of an application fee of fifty dollars and a
661 nonrefundable evaluation fee of one hundred dollars, the court shall,
662 but only as to the public, order the court file sealed, provided such
663 person states under oath, in open court or before any person
664 designated by the clerk and duly authorized to administer oaths,
665 under penalties of perjury that: (1) If such person is charged with a
666 violation of section 14-227a, as amended by this act, such person has
667 not had such system invoked in such person's behalf within the
668 preceding ten years for a violation of section 14-227a, as amended by
669 this act, (2) if such person is charged with a violation of section 14-
670 227g, as amended by this act, such person has never had such system
671 invoked in such person's behalf for a violation of section 14-227a or 14-
672 227g, as amended by this act, (3) such person has not been convicted of
673 a violation of section 53a-56b or 53a-60d, as amended by this act, a
674 violation of subsection (a) of section 14-227a, as amended by this act,
675 [before or after October 1, 1981,] or a violation of subdivision (1) or (2)
676 of subsection (a) of section 14-227a, as amended by this act, on or after
677 October 1, 1985, and (4) such person has not been convicted in any
678 other state at any time of an offense the essential elements of which are
679 substantially the same as section 53a-56b or 53a-60d, as amended by
680 this act, or subdivision (1) or (2) of subsection (a) of section 14-227a, as
681 amended by this act. Unless good cause is shown, a person shall be
682 ineligible for participation in such pretrial alcohol education system if
683 such person's alleged violation of section 14-227a or 14-227g, as
684 amended by this act, caused the serious physical injury, as defined in
685 section 53a-3, of another person. The application fee imposed by this
686 subsection shall be credited to the Criminal Injuries Compensation
687 Fund established by section 54-215.

688 (b) The court, after consideration of the recommendation of the
689 state's attorney, assistant state's attorney or deputy assistant state's
690 attorney in charge of the case, may, in its discretion, grant such
691 application. If the court grants such application, it shall refer such
692 person to the Court Support Services Division for assessment and
693 confirmation of the eligibility of the applicant and to the Department

694 of Mental Health and Addiction Services for evaluation. The Court
695 Support Services Division, in making its assessment and confirmation,
696 may rely on the representations made by the applicant under oath in
697 open court with respect to convictions in other states of offenses
698 specified in subsection (a) of this section. Upon confirmation of
699 eligibility and receipt of the evaluation report, the defendant shall be
700 referred to the Department of Mental Health and Addiction Services
701 by the Court Support Services Division for placement in an
702 appropriate alcohol intervention program for one year, or be placed in
703 a state-licensed substance abuse treatment program. Any person who
704 enters the system shall agree: (1) To the tolling of the statute of
705 limitations with respect to such crime, (2) to a waiver of such person's
706 right to a speedy trial, (3) to complete ten or fifteen counseling sessions
707 in an alcohol intervention program or successfully complete a
708 substance abuse treatment program of not less than twelve sessions
709 pursuant to this section dependent upon the evaluation report and the
710 court order, (4) upon completion of participation in the alcohol
711 intervention program, to accept placement in a treatment program
712 upon recommendation of a provider under contract with the
713 Department of Mental Health and Addiction Services pursuant to
714 subsection (d) of this section or placement in a state-licensed treatment
715 program which meets standards established by the Department of
716 Mental Health and Addiction Services, if the Court Support Services
717 Division deems it appropriate, and (5) if ordered by the court, to
718 participate in at least one victim impact panel. The suspension of the
719 motor vehicle operator's license of any such person pursuant to section
720 14-227b, as amended by this act, shall be effective during the period
721 such person is participating in such program, provided such person
722 shall have the option of not commencing the participation in such
723 program until the period of such suspension is completed. If the Court
724 Support Services Division informs the court that the defendant is
725 ineligible for the system and the court makes a determination of
726 ineligibility or if the program provider certifies to the court that the
727 defendant did not successfully complete the assigned program or is no
728 longer amenable to treatment, the court shall order the court file to be

729 unsealed, enter a plea of not guilty for such defendant and
730 immediately place the case on the trial list. If such defendant
731 satisfactorily completes the assigned program, such defendant may
732 apply for dismissal of the charges against such defendant and the
733 court, on reviewing the record of the defendant's participation in such
734 program submitted by the Court Support Services Division and on
735 finding such satisfactory completion, shall dismiss the charges. If the
736 defendant does not apply for dismissal of the charges against such
737 defendant after satisfactorily completing the assigned program the
738 court, upon receipt of the record of the defendant's participation in
739 such program submitted by the Court Support Services Division, may
740 on its own motion make a finding of such satisfactory completion and
741 dismiss the charges. Upon motion of the defendant and a showing of
742 good cause, the court may extend the one-year placement period for a
743 reasonable period for the defendant to complete the assigned program.
744 A record of participation in such program shall be retained by the
745 Court Support Services Division for a period of at least seven years
746 from the date of application. The Court Support Services Division shall
747 transmit to the Department of Motor Vehicles a record of participation
748 in such program for each person who satisfactorily completes such
749 program. The Department of Motor Vehicles shall maintain for a
750 period of at least seven years the record of a person's participation in
751 such program as part of such person's driving record. The Court
752 Support Services Division shall transmit to the Department of
753 Environmental Protection the record of participation of any person
754 who satisfactorily completes such program who has been charged with
755 a violation of the provisions of section 15-133, 15-140l or 15-140n. The
756 Department of Environmental Protection shall maintain for a period of
757 at least seven years the record of a person's participation in such
758 program as a part of such person's boater certification record.

759 (c) At the time the court grants the application for participation in
760 the alcohol intervention program, such person shall also pay to the
761 court a nonrefundable program fee of three hundred twenty-five
762 dollars if such person is ordered to participate in the ten-session
763 program and a nonrefundable program fee of five hundred dollars if

764 such person is ordered to participate in the fifteen-session program. If
765 the court grants participation in a treatment program, such person
766 shall be responsible for the costs associated with participation in such
767 program. No person may be excluded from either program for
768 inability to pay such fee or cost, provided (1) such person files with the
769 court an affidavit of indigency or inability to pay, (2) such indigency or
770 inability to pay is confirmed by the Court Support Services Division,
771 and (3) the court enters a finding thereof. If the court finds that a
772 person is indigent or unable to pay for a treatment program, the costs
773 of such program shall be paid for from the pretrial account established
774 under section 54-56k. If the court denies the application, such person
775 shall not be required to pay the program fee. If the court grants the
776 application, and such person is later determined to be ineligible for
777 participation in such pretrial alcohol education system or fails to
778 complete the assigned program, the program fee shall not be refunded.
779 All such evaluation and program fees shall be credited to the pretrial
780 account established under section 54-56k.

781 (d) The Department of Mental Health and Addiction Services shall
782 contract with service providers, develop standards and oversee
783 appropriate alcohol programs to meet the requirements of this section.
784 Said department shall adopt regulations in accordance with chapter 54
785 to establish standards for such alcohol programs. Any person ordered
786 to participate in a treatment program shall do so at a state-licensed
787 treatment program which meets the standards established by said
788 department. Any defendant whose employment or residence makes it
789 unreasonable to attend an alcohol intervention program or a treatment
790 program in this state may attend a program in another state which has
791 standards substantially similar to, or higher than, those of this state,
792 subject to the approval of the court and payment of the application,
793 evaluation and program fees, as appropriate, as provided in this
794 section.

795 (e) The court may, as a condition of granting such application,
796 require that such person participate in a victim impact panel program
797 approved by the Court Support Services Division of the Judicial

798 Department. Such victim impact panel program shall provide a
799 nonconfrontational forum for the victims of alcohol-related or drug-
800 related offenses and offenders to share experiences on the impact of
801 alcohol-related or drug-related incidents in their lives. Such victim
802 impact panel program shall be conducted by a nonprofit organization
803 that advocates on behalf of victims of accidents caused by persons who
804 operated a motor vehicle while under the influence of intoxicating
805 liquor or any drug, or both. Such organization may assess a
806 participation fee of not more than [twenty-five] one hundred dollars
807 on any person required by the court to participate in such program.

808 (f) The provisions of this section shall not be applicable in the case of
809 any person charged with a violation of section 14-227a, as amended by
810 this act, while operating a commercial motor vehicle, as defined in
811 section 14-1, as amended by this act, or who is the holder of a
812 commercial driver's license, as defined in section 14-1, as amended by
813 this act.

814 Sec. 7. Section 53a-40f of the general statutes is repealed and the
815 following is substituted in lieu thereof (*Effective October 1, 2007*):

816 (a) A persistent operating while under the influence felony offender
817 is a person who (1) stands convicted of a violation of section 53a-56b or
818 53a-60d, as amended by this act, and (2) has, prior to the commission
819 of the present crime and within the preceding ten years, been
820 convicted of a violation of section 53a-56b or 53a-60d or subsection (a)
821 of section 14-227a, as amended by this act, or been convicted in any
822 other state of an offense the essential elements of which are
823 substantially the same as section 53a-56b or 53a-60d or subsection (a)
824 of section 14-227a, as amended by this act.

825 (b) When any person has been found to be a persistent operating
826 while under the influence felony offender, and the court is of the
827 opinion that his history and character and the nature and
828 circumstances of his criminal conduct indicate that extended
829 incarceration will best serve the public interest, the court, in lieu of
830 imposing the sentence authorized by section 53a-35a for the crime of

831 which such person presently stands convicted, may impose the
832 sentence of imprisonment authorized by said section for the next more
833 serious degree of felony and may order the forfeiture to the state of the
834 motor vehicle being operated by such person at the time of the offense,
835 provided such person held legal title to such motor vehicle at such
836 time. The state shall sell any motor vehicle forfeited to the state
837 pursuant to this section at public auction and deposit the proceeds
838 from such sale in the Criminal Injuries Compensation Fund established
839 pursuant to section 54-215.

840 Sec. 8. Section 53a-56b of the general statutes is repealed and the
841 following is substituted in lieu thereof (*Effective October 1, 2007*):

842 (a) A person is guilty of manslaughter in the second degree with a
843 motor vehicle when, while operating a motor vehicle under the
844 influence of intoxicating liquor or any drug or both, he causes the
845 death of another person as a consequence of the effect of such liquor or
846 drug.

847 (b) Manslaughter in the second degree with a motor vehicle is a
848 class [C] B felony and the court shall suspend the motor vehicle
849 operator's license or nonresident operating privilege of any person
850 found guilty under this section for [one year] not more than five years
851 and shall order the forfeiture to the state of the motor vehicle being
852 operated by such person at the time of the offense, provided such
853 person held legal title to such motor vehicle at such time.

854 (c) The state shall sell any motor vehicle forfeited to the state
855 pursuant to this section at public auction and deposit the proceeds
856 from such sale in the Criminal Injuries Compensation Fund established
857 pursuant to section 54-215.

858 Sec. 9. Section 53a-60d of the general statutes is repealed and the
859 following is substituted in lieu thereof (*Effective October 1, 2007*):

860 (a) A person is guilty of assault in the second degree with a motor
861 vehicle when, while operating a motor vehicle under the influence of

862 intoxicating liquor or any drug or both, he causes serious physical
863 injury to another person as a consequence of the effect of such liquor or
864 drug.

865 (b) Assault in the second degree with a motor vehicle is a class [D] C
866 felony and the court shall suspend the motor vehicle operator's license
867 or nonresident operating privilege of any person found guilty under
868 this section for one year and may order the forfeiture to the state of the
869 motor vehicle being operated by such person at the time of the offense,
870 provided such person held legal title to such motor vehicle at such
871 time.

872 (c) The state shall sell any motor vehicle forfeited to the state
873 pursuant to this section at public auction and deposit the proceeds
874 from such sale in the Criminal Injuries Compensation Fund established
875 pursuant to section 54-215.

876 Sec. 10. Section 53a-213 of the general statutes is repealed and the
877 following is substituted in lieu thereof (*Effective October 1, 2007*):

878 (a) A person is guilty of drinking while operating a motor vehicle
879 when he drinks any alcoholic liquor while operating a motor vehicle,
880 [upon a public highway of this state or upon any road of any specially
881 chartered municipal association or of any district organized under the
882 provisions of chapter 105, a purpose of which is the construction and
883 maintenance of roads and sidewalks, or in any parking area for ten
884 cars or more, or upon any private road on which a speed limit has
885 been established in accordance with the provisions of section 14-218a
886 or upon any school property.] As used in this section, "alcoholic liquor"
887 shall have the same meaning as in section 30-1.

888 (b) Drinking while operating a motor vehicle is a class [C] B
889 misdemeanor.

890 Sec. 11. (NEW) (*Effective October 1, 2007*) (a) For the purposes of this
891 section:

892 (1) "Alcoholic beverage" has the same meaning as provided in

893 section 30-1 of the general statutes;

894 (2) "Highway" has the same meaning as provided in section 14-1 of
895 the general statutes, as amended by this act;

896 (3) "Open alcoholic beverage container" means a bottle, can, jar or
897 other receptacle (A) that contains any amount of an alcoholic beverage,
898 and (B) (i) that is open or has a broken seal, or (ii) the contents of which
899 are partially removed, except that "open alcoholic beverage container"
900 does not include a partially consumed bottle of wine that is securely
901 sealed, placed in a bag and removed by a patron from the premises of
902 a hotel, restaurant or cafe pursuant to section 30-21, 30-22 or 30-22a of
903 the general statutes, respectively;

904 (4) "Passenger" means any occupant of a motor vehicle other than
905 the operator; and

906 (5) "Passenger area" means (A) the area designed to seat the
907 operator of and any passenger in a motor vehicle while such vehicle is
908 being operated on a highway, and (B) any area that is readily
909 accessible to such operator or passenger while such person is in a
910 seated position; except that, in a motor vehicle that is not equipped
911 with a trunk, "passenger area" does not include a locked glove
912 compartment, the area behind the last upright seat or an area not
913 normally occupied by the operator of or passengers in such motor
914 vehicle.

915 (b) (1) No person shall possess an open alcoholic beverage container
916 within the passenger area of a motor vehicle while such motor vehicle
917 is on a highway in the state.

918 (2) No operator of a motor vehicle shall allow any passenger to
919 possess an open alcoholic beverage container within the passenger
920 area of such motor vehicle while such motor vehicle is on a highway in
921 the state.

922 (c) The provisions of subsection (b) of this section shall not apply to:
923 (1) A passenger in a motor vehicle designed, maintained and primarily

924 used for the transportation of persons for hire, and (2) a passenger in
925 the living quarters of a recreational vehicle, as defined in section 14-1
926 of the general statutes, as amended by this act.

927 (d) Violation of the provisions of subdivision (1) or (2) of subsection
928 (b) of this section shall be an infraction.

929 Sec. 12. Subsection (d) of section 14-111n of the general statutes is
930 repealed and the following is substituted in lieu thereof (*Effective*
931 *October 1, 2007*):

932 (d) If the commissioner is notified by a member jurisdiction that a
933 person who is the holder of a motor vehicle operator's license has been
934 convicted of driving under the influence of alcohol or drugs, in
935 accordance with subdivision (2) of subsection (b) of this section, the
936 commissioner may consider the conviction as a second or subsequent
937 violation of section 14-227a, as amended by this act, if such person has
938 been convicted previously of a violation of section 14-227a, as
939 amended by this act, or has been convicted previously of a
940 substantially similar offense in a member jurisdiction, as shown by
941 such person's driver control record, [within the past ten years,] and the
942 commissioner may impose the suspension for the period of time
943 required for a second or subsequent offense by the provisions of
944 subsection (h) of section 14-227a, as amended by this act. It shall not be
945 a defense to a suspension imposed pursuant to this subsection, or
946 subdivision (2) of subsection (b) of this section, that the blood alcohol
947 concentration of the person convicted in a member jurisdiction, or the
948 blood alcohol concentration required for conviction of a per se offense
949 in the member jurisdiction in which the person was convicted, is less
950 than the blood alcohol concentration required for conviction of a per se
951 offense in this state.

952 Sec. 13. Subsection (d) of section 14-37a of the general statutes is
953 repealed and the following is substituted in lieu thereof (*Effective*
954 *October 1, 2007*):

955 (d) Any person issued a special operator's permit pursuant to this

956 section who operates a motor vehicle during the period of the permit
 957 for a purpose not authorized by the conditions of the permit shall,
 958 upon receipt of written report of a police officer, in such form as the
 959 commissioner may prescribe, of such unauthorized operation, be
 960 subject to the immediate revocation of the permit by the commissioner
 961 and a civil penalty of not more than five hundred dollars. Any person
 962 who makes improper use of a special operator's permit issued
 963 pursuant to this section or in any manner alters any such permit or
 964 who loans or sells such permit for use by another person shall be
 965 subject to the penalties provided by section 14-147.

966 Sec. 14. Subdivision (74) of subsection (a) of section 14-1 of the
 967 general statutes is repealed and the following is substituted in lieu
 968 thereof (*Effective October 1, 2007*):

969 (74) "Second" violation or "subsequent" violation means an offense
 970 committed not more than three years after the date of an arrest which
 971 resulted in a previous conviction for a violation of the same statutory
 972 provision, except in the case of a violation of section 14-215 or 14-224,
 973 [or subsection (a) of section 14-227a,] "second" violation or
 974 "subsequent" violation means an offense committed not more than ten
 975 years after the date of an arrest which resulted in a previous conviction
 976 for a violation of the same statutory provision and in the case of a
 977 violation of subsection (a) of section 14-227a, as amended by this act,
 978 "second" violation or "subsequent" violation means an offense
 979 committed at any time after the date of an arrest which resulted in a
 980 previous conviction for a violation of the same statutory provision.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	14-227a
Sec. 2	<i>October 1, 2007</i>	14-227b
Sec. 3	<i>October 1, 2007</i>	14-227f
Sec. 4	<i>October 1, 2007</i>	14-227g
Sec. 5	<i>October 1, 2007</i>	14-227j
Sec. 6	<i>October 1, 2007</i>	54-56g
Sec. 7	<i>October 1, 2007</i>	53a-40f

Sec. 8	<i>October 1, 2007</i>	53a-56b
Sec. 9	<i>October 1, 2007</i>	53a-60d
Sec. 10	<i>October 1, 2007</i>	53a-213
Sec. 11	<i>October 1, 2007</i>	New section
Sec. 12	<i>October 1, 2007</i>	14-111n(d)
Sec. 13	<i>October 1, 2007</i>	14-37a(d)
Sec. 14	<i>October 1, 2007</i>	14-1(a)(74)

JUD *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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Correction, Dept.	GF - Cost	Significant	Significant
Public Safety, Dept.; Department of Mental Health and Addiction Services - Pretrial Alcohol Education	GF - None	None	None
Police Officer Std. & Training Council; Dept. of Administrative Services; Criminal Justice, Div.	GF - Cost	Minimal	Minimal
Judicial Dept.	General Fund & Criminal Injuries Comp. Fund - Revenue Gain	Less than 100,000	Less than 100,000
Department of Transportation	TF - See Below	See Below	See Below
Department of Motor Vehicles	TF - Cost	1,686,000	860,000

Note: GF=General Fund; TF=Transportation Fund

Municipal Impact: None

Explanation

Criminal Justice

The bill will result in a significant cost of up to \$650,000 in FY 08, \$2.2 million in FY 09, and \$4.4 million in FY 10 to the Department of Correction (DOC), associated with increasing the maximum length of sentence and mandatory minimums, which results in additional bed days.

Additionally, the changes in the bill will require the Police Officer Standards and Training Council (POST) to revise their training curriculum of officers on the topic of drunken driving enforcement. POST will be responsible for training over 8,000 municipal officers, and could incur a minimal cost associated with additional training resources and the re-writing and dissemination of various training

materials.

The bill would generate revenues, anticipated to be less than \$100,000 annually in total, from an increase in criminal fines imposed, fees and forfeitures. Provisions in the bill would increase the number of application fees paid to participate in the Pretrial Alcohol Education Program, and provide for the forfeiture of motor vehicles involved in certain criminal offenses of drunk driving. The Division of Criminal Justice and Department of Administrative Services would be able to perform their respective functions related to the forfeiture of motor vehicles under the bill at minimal cost to the agencies.

DMHAS – Pretrial Alcohol Education Program

The increased instances for which one can be arrested for DUI may result in increased participation in the Pretrial Alcohol Education System program. This program provides alcohol education counseling to certain individuals charged with drunk driving, and is supported by participant fees. These additional clients will result in additional program expenses as well as offsetting revenue from fees for the restricted, non-General Fund Pretrial Account, operated by the Department of Mental Health and Addiction Services. Therefore, there is no net fiscal impact from the potential increased caseload.

Open Container Law and Federal Funds

Currently, the state of Connecticut does not enforce an "Open Container" law. Therefore, federal funds are being transferred from construction projects (Interstate Maintenance, National Highway System and Surface Transportation) into the 402 Highway Safety program. States that have not enacted such laws by October 1, 2005, and every year thereafter, will have 3% of National Highway System and Interstate Maintenance Funds transferred into the 402 Highway Safety Program and/or Hazard Elimination Program. Prior to October 1, 2003 the rate was 1.5%. Should this section of the bill comply with the "Open Container" federal guidelines, then the funds will become available for highway construction projects, and will no longer be

transferred for highway safety purposes. The table below presents the breakdown of \$5.1 million transferred to the 402 Highway Safety program for the latest fiscal year.

402 Highway Safety Program Funding, FY 06 Expenditures		
	State Police	Municipal PD
<u>Enforcement</u>		
Expanded DUI Enforcement	\$54,333.31	\$1,956,574.41
Thanksgiving/Xmas/NY's Eve	30,457.60	720,906.74
<u>Equipment</u>		
DUI In-Car Digital Processing	699,669.00	
Command Vehicle (Quin. Reg.)		120,000.00
Subtotal	\$784,459.91	\$2,797,481.15
	15%	55%
<u>Other - State</u>		
Media--DOT	\$1,238,532.38	
CIDRIS ¹ --OPM	128,167.50	
Statewide DUI Prosecutor--DCJ	149,470.42	
Subtotal	\$1,516,170.30	
	30%	
	=====	
Grand Total	\$5,098,111.36	
	100%	

As of October 1, 2006, a total of \$27.2 million was transferred from non-compliance under this program. The first transfer for Connecticut was \$2.1 million for Federal FY 01, \$2.5 million for FFY 02, \$2.5 million for FFY 03, \$5.6 million for FFY 04, \$5.8 million for FFY 04 and \$5.1 million for FFY 05. There is about a one year lag between the transfers and actual expenditures.

Should the "Open Container" be enacted and meet federal guidelines such funds will no longer be available to state and local police departments for use on Highway Safety program for drunk driving patrols and enforcement or for the purchase of related equipment.

¹ Connecticut Impaired Driving Records Information System (CIDRIS)

Department of Motor Vehicles

The bill makes three important changes that result in significant cost impact to the Department of Motor Vehicle. They are as follows:

1. Repeal of the ten year “look back period” on driving history records;
2. Requiring any suspension for DUI and, other offenses, not to start until the person is released from jail; and
3. Requiring any suspension for DUI and, other offenses, to start ‘immediately’; and
4. Requiring the department to review all A-44 arrest reports and return the defective reports back to the Police for correction.

Item 1 will require three additional staff at a cost of \$240,000, including fringe benefits, and computer programming for an automated system at a cost estimated to be \$350,000 to develop and \$8,000 for equipment in addition to an ongoing cost of \$30,000 per year for information technology charges including increase demand for storage.

Items 2 and 3 will require computer programming for an automated system at a cost estimate to be \$450,000 to develop in addition to an ongoing cost of \$40,000 per year for information technology charges to the DMV.

Item 4 will require five additional staff at a cost of \$430,000, including fringe benefits, plus two additional part-time hearing officers at a cost of \$100,000, including fringe benefits, in order to review, within the reduced timeframe provisions of the bill, reports submitted by the Police and to inform them of any error in for or required documentation. There will also be a one time cost of \$18,000 for equipment and an ongoing cost of \$20,000 per year for information technology charges.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1348*****AN ACT STRENGTHENING DRUNK DRIVING ENFORCEMENT.*****SUMMARY:**

The law makes it illegal to operate a motor vehicle, snowmobile, or all-terrain vehicle under the influence of alcohol or drugs or both, or to operate with an elevated blood alcohol level as defined by law (DUI).

This bill lowers the blood alcohol content (BAC) threshold from .08 to .04 for commercial motor vehicle operators both under the criminal law and under the administrative per se license suspension law.

This bill increases the criminal penalties for DUI and certain DUI related offenses, including increasing the mandatory minimum sentences for second and subsequent convictions, and adds forfeiture to the state of the operator's vehicle under certain circumstances. The forfeited vehicles must be sold at public auction and the proceeds deposited in the Criminal Injuries Compensation Fund. It makes several other changes to the criminal DUI law involving such things as the admissibility of evidence and license suspension periods.

The bill eliminates the 10-year look-back period to determine if someone is a subsequent offender. Thus, for example, it treats someone as a second offender to determine what criminal sanctions to impose even if the offender's prior conviction occurred more than 10 years ago.

The bill makes it illegal to drink alcohol while operating a motor vehicle anywhere instead of just on a highway, road, or other specified places. Thus, for example, it would make it illegal to drink and operate a motor vehicle in the operator's driveway or yard. It increases the

penalty from a class C to a class B misdemeanor (§ 10). The bill also expands the offense of operating a motor vehicle with a BAC of .02 or more for operators under age 21 by making it illegal to operate a motor anywhere instead of just on a highway, road, or other specified places.

The bill also makes it illegal for (1) anyone to possess an open alcoholic beverage container in the passenger area of most motor vehicles while on a highway in the state and (2) a motor vehicle operator to allow any passenger to do this. It makes the violation an infraction.

The law requires an administrative license suspension process for drivers who refuse to submit to a blood alcohol test or whose test results indicate an elevated BAC (.08% or more or .02% or more if he is under age 21). By law, penalties for an administrative license suspension are in addition to any suspension penalties imposed for any criminal DUI conviction.

The bill makes numerous changes to the administrative per se procedures including:

1. requiring DMV to inform the police agency within 10 days after receiving the report of any error in form or required documentation,
2. reducing from seven days to five days from the date DMV sends its suspension notice in which a driver must contact DMV to request a Per Se hearing,
3. putting the burden of proof on the operator in a Per Se hearing, and
4. reducing from 45 days to 40 days the time in which the hearing officer must render a decision if a hearing continuance has been granted.

Also, the bill eliminates the different administrative per se license suspension period for a person who fails a blood test based on results

that are obtained from a hospital after an accident. This results in a slightly shorter suspension for operators who have previously been suspended once under the administrative per se process but longer suspensions for those who have been suspended previously under this process twice or more.

The bill makes several changes to the DMV Substance Abuse Treatment Program law. Specifically, it requires (1) DMV to consult with the Department of Mental Health and Addiction Services (DMHAS) commissioner to determine the program and the qualifications for organizations providing it, (2) the intensive treatment phase of the program to be provided by a "qualified mental health care professional," and (3) the program waiver sign-off be from a "qualified mental health care professional" instead of a physician.

The bill requires state agencies to keep records of program participation in the Alcohol Education Program for at least seven years instead of for seven years.

EFFECTIVE DATE: October 1, 2007

§ 1 — CRIMINAL PENALTIES FOR DUI

First Conviction

For a first offense, the bill increases the fine from a range of \$500 to \$1,000 to a range of \$1,000 to \$2,500. Under current law, the court has two options for the prison portion of the penalty:

1. it can sentence the offender to up to six months in prison, with a 48 hour mandatory minimum prison term that must be served or
2. it can sentence him up to six months suspended entirely and a period of probation that requires 100 hours of community service.

The bill increases the maximum prison term from six to nine months for the second option. By law, an offender who violates a probation condition can be imprisoned for the amount of the initial sentence. The

law, unaffected by the bill, also requires the criminal penalty to include a one-year license suspension.

Second Conviction

For a second offense, it increases the fine from a range of \$1,000 to \$4,000 to a range of \$2,000 to \$5,000 and increases the maximum prison term from two to three years. Also it increases the mandatory minimum time the offender must spend in prison from 120 to 180 consecutive days.

The bill eliminates one of two license suspension options the sentencing court has for someone convicted for the second time. Under current law, the court can either:

1. have the offender's license or operating privilege suspended for three years or until his or her twenty-first birthday, whichever is longer or
2. if the offender has been convicted of DUI involving alcohol or operating with an elevated BAC, have his or her license or operating privileges suspended for one year followed by a two-year period during which an offender can only operate a motor vehicle equipped with a functioning, approved ignition interlock device, as defined by law. (The law defines an "ignition interlock device" as a device installed in a motor vehicle that measures the operator's blood alcohol content of the operator and disallows the vehicle's mechanical operation unless the operator's blood alcohol content is less than .025%.)

The bill eliminates the first option and applies the second option also to someone who was convicted of DUI involving drugs and to offenders under age 21. Thus, the court must order a one-year license suspension and a two-year interlock requirement for a second conviction of the DUI law whether or not it involved alcohol. The bill also requires that the operator must agree to operate the motor vehicle only by personally using the installed approved interlock device.

Third or Subsequent Conviction

For a third or subsequent conviction, the bill increases the \$2,000 to \$8,000 fine range to a range of \$5,000 to \$10,000. It increases the mandatory possible prison sentence from three to five years, the mandatory minimum time the offender must spend in prison from one to two years, and the required community service from 100 to 300 hours. The law already requires that the license or operating privilege be permanently revoked. (By law, the offender has the right to ask the DMV commissioner to reinstate it after 10 years.)

The bill also requires that the offender's motor vehicle be forfeited to the state if the offender held legal title at the time of the offense. The forfeited vehicles must be sold at public auction and the proceeds deposited in the Criminal Injuries Compensation Fund. (The bill does not establish or refer to any notice or hearing requirements for co-owners, or for lenders and other lien holders. See COMMENT.)

When License Suspension Begins

By law, the criminal court must notify the DMV commissioner within five days after each DUI conviction, and the commissioner must suspend the offender's license for the time specified in the criminal DUI law. The bill requires that the commissioner "immediately" suspend the license when he receives the notice (see COMMENT).

The bill requires that the license suspension period imposed as part of the criminal sentence for DUI begin on the date of conviction, except that if the person is sentenced to a prison term that is not suspended entirely, the period of suspension begins on the date the offender is released from incarceration.

Alcohol Education and Treatment Programs

Current law allows the criminal court, in addition to any fine or sentence imposed by law, to order an offender to participate in an alcohol education and treatment program. The bill instead allows the court to order this for a first conviction and require it for a second and subsequent conviction.

The law already requires successful completion of a substance abuse treatment program before the DMV commissioner can reinstate a license following any DUI conviction (CGS § 14-227f).

Victim Impact Panels

By law, if the court sentences a person convicted of DUI to a period of probation, it may require as a probation condition that the offender participate in a victim impact panel program approved by the Court Support Services Division of the Judicial Department. The bill increases the maximum participation fee from \$25 to \$100. The law requires the fee to go to the organization that runs the program.

Admissibility of Blood Alcohol Content and Drug Presence Evidence

By law, in any criminal prosecution for DUI evidence indicating the amount of alcohol or drug in the defendant's blood or urine at the time of the alleged offense, as shown by a chemical analysis of the defendant's breath, blood, or urine, is admissible and competent if certain conditions are satisfied.

Under current law, one condition is that a true copy of the test result report was mailed to or personally delivered to the defendant within 24 hours or by the end of the next regular business day, whichever is later. The bill increases the deadline until three business days after the result was known.

Another condition is that an additional chemical test of the same type was performed at least 30 minutes after the initial test was performed. The bill reduces this period to 10 minutes.

CRIMINAL PENALTIES –DUI RELATED OFFENSES

§ 8 — Manslaughter in the Second Degree with a Motor Vehicle

By law, a person is guilty of manslaughter in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, he or she causes another person's death as a consequence of the effect of the liquor or drug. The bill increases the penalty for this offense from a class C to a

class B felony. A class C Felony is punishable by a prison term of up to 10 years, a fine of up to \$10,000 or both. A class B felony is punishable by a prison term of up to 20 years, or a fine of up to \$15,000, or both. The bill also increases the license suspension period from one year to up to five years. Finally, it requires the forfeiture of the motor vehicle if the operator held legal title to it at the time of the offense (see COMMENT).

§ 9 — Assault in the Second Degree with a Motor Vehicle

By law, a person is guilty of assault in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, he or she causes serious physical injury to another person as a consequence of the effect of the liquor or drug's effect.

The bill increases the penalty from a class D to a class C felony. A class D felony is punishable by a prison term of up to five years and a fine of up to \$5,000, or both. A class C felony is punishable by a prison term of up to 10 years, a fine of up to \$10,000, or both. It also allows the court to order the forfeiture to the state of the motor vehicle if the offender held legal title to it at the time of the offense (see COMMENT).

§ 7 — Persistent Operating While Under the Influence Felony Offender

The bill adds vehicle forfeiture to the penalties that a court may impose on a persistent operating while under the influence felony offender (see COMMENT).

By law, this is a someone who (1) is convicted of manslaughter or assault in the second degree with a motor vehicle violation and (2) has, before committing the present crime and within the preceding 10 years, been convicted of either of these offenses or DUI, or been convicted in any other state of an offense the essential elements of which are substantially the same as these offenses.

By law, the court may impose the prison sentence authorized for the

next more serious degree of felony when any person has been found to be a persistent operating while under the influence felony offender, and the court believes his or her history and character and the nature and circumstances of the criminal conduct indicate that extended incarceration will best serve the public interest

The bill authorizes the court to order the forfeiture to the state of the motor vehicle if the offender held legal title at the time.

§ 10 — DRINKING WHILE DRIVING

The bill expands the scope of the law that makes it illegal to drink alcohol while operating a motor vehicle by applying it to operating anywhere instead of just on a public highway or road, any private road on which the state traffic commission has established a speed limit, any parking area for 10 or more cars, or on any school property. Thus, for example it would apply to the operator's driveway, garage, yard, or other private property and to private roadways through a condominium development. The bill increases the penalty from a class C to a class B misdemeanor. A class C misdemeanor is punishable by a fine of up to \$500, a prison sentence of up to three months, or both. A class B misdemeanor is punishable by a fine of up to \$1,000, a prison term of up to six months, or both.

§ 4 — DUI FOR OPERATORS UNDER AGE 21

The bill also expands the scope of the law that makes it illegal for someone under age 21 to operate a motor vehicle with a BAC of .02% or more by applying it to operating anywhere instead of just on a public highway or road, any private road on which the state traffic commission has established a speed limit, any parking area for 10 or more cars, or on any school property. The same criminal penalties apply to operators under age 21 who violate this law as apply to those convicted of operating anywhere with a BAC of .08% or more (see above). But the administrative per se license suspension periods are twice as long as for operators age 21 or older who violate the .08% standard.

§ 11 — OPEN ALCOHOL CONTAINER PROHIBITION

The bill makes it illegal for (1) anyone to possess an open alcoholic beverage container in the passenger area of a motor vehicle while it is on a highway in the state and (2) a motor vehicle operator to allow any passenger to do this. It makes the violation an infraction.

The bill does not apply to (1) motor vehicles designed, maintained, and primarily used for the transportation of persons for hire, and (2) the living quarters of a recreational vehicle. (Recreational vehicles include campers, camp trailers, and motor home classes of vehicles.).

Alcoholic Beverage

Under the bill an “alcoholic beverage” includes the four varieties of liquor defined in law (alcohol, beer, spirits, and wine) and every liquid or solid, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being for beverage purposes. It does not include any liquid or solid containing less than 0.5% of alcohol by volume.

Highway

A “highway” includes any state or other public highway, road, street, avenue, alley, driveway, parkway, or place under the control of the state or any political subdivision of the state, dedicated, appropriated, or opened to public travel or other use.

Open Alcoholic Beverage Container

The bill defines an “open alcoholic beverage container” as a bottle, can, jar, or other receptacle (1) that contains any amount of an alcoholic beverage and (2) that is open or has a broken seal, or the contents of which are partially removed. The bill specifies that “open alcoholic beverage container” does not include a partially consumed bottle of wine that is securely sealed; placed in a bag; and removed by a patron from the premises of a hotel, restaurant, or cafe pursuant to state law.

Passenger Area

The bill defines a vehicle’s “passenger area” as (1) the area designed

to seat the operator of and any passenger in a motor vehicle while it is being operated on a highway and (2) any area that is readily accessible to the operator or passenger while he or she is in a seated position. But the bill specifies that in a motor vehicle that is not equipped with a trunk, "passenger area" does not include a locked glove compartment, the area behind the last upright seat, or an area not normally occupied by the operator or passengers in such motor vehicle.

§ 2 — ADMINISTRATIVE PER SE CHANGES

By law the DMV is authorized to suspend the license or nonresident operating privileges of drivers who after being arrested for DUI either refuse to submit to a breath, urine, or blood test to determine their blood alcohol content (BAC), or who take the test, which indicates their BAC is above the legal limit. This system is known as "administrative per se." These suspension periods and procedures are separate from and in addition to any penalties, including license suspension, imposed by the court following a conviction for DUI (see BACKGROUND). The bill makes several changes to the administrative per se procedures.

Report by Police to DMV of BAC Test Failure or Refusal

By law, if the person arrested refuses to take a BAC test or submits to it and the test results indicate that he or she has an elevated BAC, the police officer must immediately revoke and take possession of the license for a 24-hour period. Under current law, the police officer must prepare a written report of the incident and mail the license and a copy of the test results to the DMV within three business days on a DMV approved form. The bill gives the police five instead of three days, eliminates the requirement that the report be written, and allows the police to submit the report and test results electronically, including electronic signatures. But it subjects the preparation and transmittal to any security procedures the DMV commissioner specifies and requires them to comply with existing state law relating to electronic transmittal and signatures.

This law defines an "electronic record" as a record created,

generated, sent, communicated, received, or stored by electronic means, including, but not limited to, facsimiles, electronic mail, telexes, and Internet messaging. It defines an "electronic signature" as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. It defines "security procedure" as a procedure used to (1) verify that an electronic signature, record, or performance is that of a specific person or (2) detect changes or errors in the information in an electronic record, including a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

Request for an Administrative Hearing

By law, upon receiving the report, the DMV commissioner may suspend the operator's license or operating privilege as of a date certain, which may not be more than 30 days after the date the commissioner received notice of the arrest. The operator is automatically entitled to an administrative hearing before the commissioner.

The bill gives the driver five instead of seven days from the date the DMV mails the suspension notice to contact the DMV to request a hearing. If the driver fails to do so, he or she is not entitled to a hearing. The bill specifies that the hearing be held in accordance with the UAPA.

Suspension Before a Hearing for Prior Offenders-10 Year Look Back Period

Under current law, if the person arrested (1) is involved in an accident resulting in a fatality or (2) has previously had his or her operator's license or operating privilege suspended for DUI during the 10 year-period preceding the present arrest, the commissioner may suspend the license effective as of the date the commissioner specifies in a suspension notice sent to the operator. Thus, the suspension can occur before rather than after a hearing. By law, any person whose license or has been suspended in this way is automatically entitled to a

hearing before the commissioner.

The bill eliminates the 10-year-look back period for determining a prior offense, thus applying this pre-hearing suspension process to anyone who has previously had his or her license suspended for DUI conviction not just those who have done so during the 10 years before the current arrest. The bill specifies that this hearing is also subject to the UAPA.

Continuance

Under current law, at the operator's or the hearing officer's request upon a showing of good cause, the DMV commissioner may grant one continuance of the administrative hearing for up to 15 days. The bill reduces the maximum length of a continuance to 10 days. Also, it removes the limitation on who can request one.

Burden of Proof, Scope of Hearing, and Witness Fees

By law, the administrative per se hearing is limited to a determination of the following issues:

1. did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug, or both;
2. was the person placed under arrest;
3. did the person refuse to submit to a test or analysis or did he or she submit to the test, begun within two hours of the time of operation, whose results indicated that he or she had an elevated blood alcohol content; and
4. was he or she operating the motor vehicle?

Also by law, the test results are sufficient to indicate the ratio of alcohol in the blood of such person at the time of operation. But if results of a second test indicate that the driver's BAC was .12% or less of alcohol, by weight, and is higher than the results of the first test, evidence must be presented that demonstrates that the test results and

analysis accurately indicate the BAC at the time of operation.

The bill puts the burden of proof on the operator to show why his license or operating privilege should be reinstated. Existing law does not specify who has the burden of proof.

Current law requires that the fees for any witnesses summoned to appear at the hearing must be the same as the statutes require for witnesses in criminal cases. The bill eliminates this requirement and instead requires that witness fees be paid by the party requesting the witness.

The bill specifies that the hearing officer must strictly limit the scope of the hearing in conformance with the above specified issues and the UAPA.

Deadline for Decision

By law, unless a continuance of the hearing is granted, if the commissioner does not render a decision within 30 days from the date DMV received notice of the operator's arrest, the commissioner must reinstate the license or operating privilege. Under current law, despite such reinstatement the commissioner may render a decision within two business days thereafter suspending the license or operating privilege. The bill gives the commissioner seven instead of two days to do so.

§ 2(k) — Administrative Suspensions Where Operator Taken to Hospital

Current law imposes different license suspension periods for operators where the chemical analysis of a blood sample was taken from an operator who was involved in an accident and suffered or allegedly suffered physical injury shows an illegal BAC. The law has a separate provision for such a situation concerning the submission of the test results by the police. Apparently this provision is for situations where the blood sample is taken at the accident scene, on the way to the hospital, or at the hospital. (There is a similar separate provision under the criminal DUI law governing the admissibility of evidence

obtained this way in the prosecution.).

The bill allows the commissioner also to consider the test results if it was determined that the operator required treatment or observation at the hospital, but was not physically injured. (It does not specify who must make this determination or on what basis.) The bill specifies that a hearing officer conducts the hearing for the commissioner in compliance with the UAPA and that the officer limit the scope of the hearing to the issues established by law. These are the same issues as are required to be considered at other administrative per se hearings except the hearing officer must also consider whether the blood sample was obtained in accordance with conditions for admissibility and competence as evidence in a criminal DUI prosecution.

The bill makes the same changes regarding the payment of witnesses in this case as it does for the other administrative per se hearings. But unlike the other hearings it does not specify that the operator has the burden of proof at the hearing.

Under existing law the commissioner must suspend the license or operating privileges of an operator who is not successful at the hearing for up to 90 days, or, if the operator has previously had his or her license suspended under the administrative per se process, for up to one year. The bill instead requires that the suspension period be the same for other administrative per se proceedings. These suspension periods are as follows.

Administrative Per Se License Suspension Sanctions

<i>Blood Alcohol Content (BAC)</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>
Refusal to submit to blood, breath, or urine test	6 months	1 year	3 years
Refusal to submit to test if driver is under age 21	1 year	2 years	6 years

Test results of .02% or higher up to, but not including .16%	90 days	9 months	2 years
Test results of .02% or higher up to, but not including .16% for drivers under age 21	180 days	18 months	4 years
Test results of .16% or higher	120 days	10 months	2.5 years
Test results of .16% or higher for driver under age 21	240 days	20 months	5 years

Thus, the bill imposes a slightly shorter suspension for operators with an elevated blood alcohol level who have previously been suspended once under the administrative per se process but longer suspensions for those who have been suspended previously under this process two or more times and for those who are under age 21. The bill imposes these penalties at the .04% level for commercial vehicle operators.

§ 3 — DMV SUBSTANCE ABUSE TREATMENT PROGRAM

The law requires that anyone whose license is suspended for a criminal violation of the DUI law or under the administrative per se law for a second or subsequent time must participate in a treatment program approved by the DMV commissioner that includes an assessment of the degree of alcohol abuse and treatment, as appropriate. The commissioner may not reinstate a license until the individual submits evidence to the commissioner that the individual has satisfactorily completed the treatment program.

Under current law, the program must be designed by the commissioner, with the advice and assistance of the License Medical Advisory Board, any state agency, or any other public or private entity engaged in providing responsible services for the treatment of alcohol and drug addiction as the commissioner may request. The bill requires the DMV commissioner to consult with the DMHAS commissioner for

determining both the program services and the qualifications of the organization providing the program.

The law requires that the program shall consist of intensive treatment. The bill requires that this treatment be by a qualified mental health care professional. (Neither current law nor the bill define this term.)

The law allows a person required to participate in the program to petition the commissioner for a waiver and specifies the grounds for such a petition. The bill modifies one of the grounds that must be satisfied. Specifically, it requires that a “qualified mental health care professional,” instead of a licensed physician conclude, based upon a personal examination, that the petitioner does not (1) have a current addiction problem that affects his or her ability to operate a motor vehicle in a safe manner or (2) pose a significant risk of having such a problem in the foreseeable future. (The bill does not define this term.)

§ 6 — ALCOHOL EDUCATION PROGRAM (AEP).

By law people charged with DUI, operating a vessel under the influence of alcohol or drugs, or reckless operation of a vessel in the first or second degree while under the influence may apply for the Pretrial Alcohol Education Program (AEP). Eligible offenders who successfully complete the program may have their criminal charges dismissed. The court has the discretion whether to allow eligible applicants into the program. Applicants are ineligible if they (1) have a prior DUI conviction or (2) have been in the program within the preceding 10 years.

The bill requires the

1. Judicial Department’s Court Support Services Division to keep an application for participation in the AEP program at least seven years instead of for seven years from the date of application and
2. DMV and the Department of Environmental Protection to

maintain for at least seven years instead of for seven years the record of a person's participation in such program as part of his or her driving or boating certification record.

The law authorizes a court, as a condition of granting such an application, to require the applicant to participate in a victim impact panel program approved by the Court Support Services Division. The bill raises from a maximum of \$25 to a maximum of \$100 the participation fee the program can assess.

BACKGROUND

DUI Criminal Offense

The law prohibits driving (1) while under the influence of alcohol or drugs or (2) with an "elevated blood alcohol content." A person is "under the influence" if his ability to drive is affected to an appreciable degree (*Infield v. Sullivan*, 151 Conn. 506 (1964)). This may be prosecuted with or without any direct evidence of his BAC. A person has an "elevated blood alcohol content" if his BAC is .08% alcohol by weight or above. The law also makes it illegal for someone under age 21 to drive with a BAC of .02% or more. While this is defined under a different statute (CGS § 14-227g), most of the criminal drunk driving provisions apply by reference to anyone under age 21 violating the prohibition.

Commercial Drivers' License (CDL) Holders

CGS § 14-44a et seq., imposes a .04% BAC limit for drivers operating buses, large trucks, and vehicles carrying hazardous material under a commercial driver's license. If someone holding a CDL is found to have either refused to submit to a BAC test or has taken a test that resulted in a BAC of .04% or more, he or she is disqualified from driving a commercial motor vehicle for one year, or for three years if the offense involves driving a vehicle transporting hazardous materials requiring placards under federal law. The disqualification applies whether the test refusal or BAC result of .04% or more occurs while driving either a commercial motor vehicle or any other motor vehicle. Thus, if a CDL holder is found to have a BAC of .04% or more

while driving something other than a commercial motor vehicle, he would be disqualified from driving a commercial motor vehicle, but would not be charged with the criminal offense of driving while under the influence of alcohol unless the BAC was .08% or more.

Commercial Motor Vehicle

The law defines a “commercial motor vehicle” as a vehicle designed or used to transport passengers or property, except a vehicle used for farming purposes as defined by federal law, fire fighting apparatus or an emergency vehicle, or a recreational vehicle in private use, which (1) has a gross vehicle weight rating of 26,001 pounds or more, or gross combination weight rating of 26,001 pounds or more, inclusive of a towed unit or units with a gross vehicle weight rating of more than 10,000 pounds; (2) is designed to transport 16 or more passengers, including the driver, or is designed to transport more than 10 passengers, including the driver, and is used to transport students under the age of 21 years to and from school; or (3) is transporting hazardous materials and is required to be placarded in accordance with federal law, or any quantity of a material listed as a select agent or toxin in federal law (CGS § 14-1(13)).

Administrative Per Se Law

CGS § 14-227b establishes administrative license suspension procedures for drivers who refuse to submit to a test or whose test results indicate an elevated BAC. (These provisions are called implied consent and administrative per se, respectively.) An elevated BAC can be .08% or more or .02% or more if the driver is under age 21. A different procedure that allows for a more immediate suspension applies if the driver has a prior license suspension for a DWI conviction or has been involved in a fatal accident. The law provides for longer administrative suspension periods for someone whose BAC is .16% or more.

These administrative license suspension penalties are in addition to any suspension penalties imposed for conviction of any criminal DWI charge.

Federal Open Container Law Requirements

In 1998 Congress enacted legislation intended to increase the likelihood that states would adopt laws prohibiting open containers of alcohol in motor vehicles (23 USC § 154). Under the federal law, states must have adopted laws meeting certain criteria by October 1, 2000 or else undergo a diversion of a small percentage of federal highway construction grant funds to their highway safety grant programs. The states do not lose the funds; they are redirected from the construction programs to the safety grant program.

To comply with the federal mandate and thus avoid the penalty transfer, a state's open container law must:

1. prohibit both possession of any open alcoholic beverage container and consumption of any alcoholic beverage;
2. cover the passenger area of any motor vehicle, including unlocked glove compartments and any other areas of the vehicle that are readily accessible to the driver or passengers while in their seats;
3. apply to containers with any measurable amount of alcoholic beverage in them;
4. apply to all open alcoholic beverage containers and all alcoholic beverages, including beer, wine, and spirits that contain 0.5% or more of alcohol by volume (thus including 3.2% beer);
5. apply to all vehicle occupants except passengers of vehicles designed, maintained, or used primarily for transporting people for compensation (i.e., buses, taxicabs, and limousines) or the living quarters of motor homes;
6. apply to vehicles on a public highway or the right-of-way (limited to the road shoulder) of a public highway; and
7. require primary enforcement, rather than requiring probable cause that another violation had been committed before

allowing enforcement of the open container law (i.e., secondary enforcement).

Federal regulations define a vehicle's passenger area as the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while seated, including the glove compartment. An open container is defined as any bottle, can, or other receptacle that (1) contains any amount of alcoholic beverage and (2) is open or has a broken seal or the contents of which are partially removed. Alcoholic beverages include (1) beer, ale, and other similarly fermented beverages containing 0.5% or more alcohol by volume brewed or produced in whole or part from malt or any malt substitute; (2) wine of not less than 0.5% alcohol by volume; or (3) distilled spirits known as ethyl alcohol, ethanol, or spirits of wine in any form including any dilutions or mixtures (23 CFR § 1270).

The federal regulations specify that a qualifying open container law may contain an exception allowing an open alcohol container to be placed behind the last upright seat or in an area not normally occupied by the driver or passengers in a vehicle that is not equipped with a trunk.

COMMENT

Forfeiture

The bill does not provide for notice or an opportunity for a hearing to a co-owner, a lender, or other lien holder. The due process clause of the state and federal constitutions require notice and an opportunity for a hearing before someone can be deprived of his or her property. Co-owners, lenders, and other lienors of a forfeited vehicle have a property interest in the vehicle but do not receive notice or an opportunity for a hearing to protect their property interest in the forfeited vehicle.

Immediate Suspension

It is not clear what "immediately" means. Under current practice

the DMV commissioner notifies the person of the suspension before it takes effect. This language suggests that the suspension occurs before the driver is notified, which may create problems regarding the crime of driving with a suspended license and with insurance coverage in the event of an accident.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (04/12/2007)