



Senate

General Assembly

File No. 385

January Session, 2009

Substitute Senate Bill No. 153

Senate, April 1, 2009

The Committee on Transportation reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ADMINISTRATIVE PER SE VIOLATIONS AND PROCEDURES.

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

1 Section 1. Subsections (a) and (b) of section 14-227a of the general
2 statutes are repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2009*):

4 (a) No person shall operate a motor vehicle while under the
5 influence of intoxicating liquor or any drug or both. A person commits
6 the offense of operating a motor vehicle while under the influence of
7 intoxicating liquor or any drug or both if such person operates a motor
8 vehicle (1) while under the influence of intoxicating liquor or any drug
9 or both, or (2) while such person has an elevated blood alcohol content.
10 For the purposes of this section, "elevated blood alcohol content"
11 means a ratio of alcohol in the blood of such person that is eight-
12 hundredths of one per cent or more of alcohol, by weight, except that if
13 such person is operating a commercial motor vehicle, "elevated blood
14 alcohol content" means a ratio of alcohol in the blood of such person

15 that is four-hundredths of one per cent or more of alcohol, by weight,
16 and "motor vehicle" includes a snowmobile and all-terrain vehicle, as
17 those terms are defined in section 14-379.

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

50 defendant at the time of the alleged offense, except that if the results of
51 the additional test indicate that the ratio of alcohol in the blood of such
52 defendant is [twelve-hundredths] ten-hundredths of one per cent or
53 less of alcohol, by weight, and is higher than the results of the first test,
54 evidence shall be presented that demonstrates that the test results and
55 the analysis thereof accurately indicate the blood alcohol content at the
56 time of the alleged offense.

57 Sec. 2. Section 14-227b of the general statutes is repealed and the
58 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

64 (b) If any such person, having been placed under arrest for
65 operating a motor vehicle while under the influence of intoxicating
66 liquor or any drug or both, and thereafter, after being apprised of such
67 person's constitutional rights, having been requested to submit to a
68 blood, breath or urine test at the option of the police officer, having
69 been afforded a reasonable opportunity to telephone an attorney prior
70 to the performance of such test and having been informed that such
71 person's license or nonresident operating privilege may be suspended
72 in accordance with the provisions of this section if such person refuses
73 to submit to such test or if such person submits to such test and the
74 results of such test indicate that such person has an elevated blood
75 alcohol content, and that evidence of any such refusal shall be
76 admissible in accordance with subsection (e) of section 14-227a and
77 may be used against such person in any criminal prosecution, refuses
78 to submit to the designated test, the test shall not be given; provided, if
79 the person refuses or is unable to submit to a blood test, the police
80 officer shall designate the breath or urine test as the test to be taken.
81 The police officer shall make a notation upon the records of the police
82 department that such officer informed the person that such person's

83 license or nonresident operating privilege may be suspended if such
84 person refused to submit to such test or if such person submitted to
85 such test and the results of such test indicated that such person had an
86 elevated blood alcohol content.

87 (c) If the person arrested refuses to submit to such test or analysis or
88 submits to such test or analysis, commenced within two hours of the
89 time of operation, and the results of such test or analysis indicate that
90 such person has an elevated blood alcohol content, the police officer,
91 acting on behalf of the Commissioner of Motor Vehicles, shall
92 immediately revoke and take possession of the motor vehicle
93 operator's license or, if such person is a nonresident, suspend the
94 nonresident operating privilege of such person, for a twenty-four-hour
95 period. The police officer shall prepare a written report of the incident
96 and shall mail the report and a copy of the results of any chemical test
97 or analysis to the Department of Motor Vehicles within three business
98 days. The report shall be made on a form approved by the
99 Commissioner of Motor Vehicles and shall be subscribed and sworn to
100 under penalty of false statement as provided in section 53a-157b by the
101 arresting officer. If the person arrested refused to submit to such test or
102 analysis, the report shall be endorsed by a third person who witnessed
103 such refusal. The report shall set forth the grounds for the officer's
104 belief that there was probable cause to arrest such person for operating
105 a motor vehicle while under the influence of intoxicating liquor or any
106 drug or both and shall state that such person had refused to submit to
107 such test or analysis when requested by such police officer to do so or
108 that such person submitted to such test or analysis, commenced within
109 two hours of the time of operation, and the results of such test or
110 analysis indicated that such person had an elevated blood alcohol
111 content.

112 (d) If the person arrested submits to a blood or urine test at the
113 request of the police officer, and the specimen requires laboratory
114 analysis in order to obtain the test results, the police officer shall not
115 take possession of the motor vehicle operator's license of such person
116 or, except as provided in this subsection, follow the procedures

117 subsequent to taking possession of the operator's license as set forth in
118 subsection (c) of this section. If the test results indicate that such
119 person has an elevated blood alcohol content, the police officer,
120 immediately upon receipt of the test results, shall notify the
121 Commissioner of Motor Vehicles and submit to the commissioner the
122 written report required pursuant to subsection (c) of this section.

123 (e) (1) Except as provided in subdivision (2) of this subsection, upon
124 receipt of such report, the Commissioner of Motor Vehicles may
125 suspend any license or nonresident operating privilege of such person
126 effective as of a date certain, which date shall be not later than thirty
127 days after the date such person received notice of such person's arrest
128 by the police officer. Any person whose license or operating privilege
129 has been suspended in accordance with this subdivision shall
130 automatically be entitled to a hearing before the commissioner to be
131 held prior to the effective date of the suspension. The commissioner
132 shall send a suspension notice to such person informing such person
133 that such person's operator's license or nonresident operating privilege
134 is suspended as of a date certain and that such person is entitled to a
135 hearing prior to the effective date of the suspension and may schedule
136 such hearing by contacting the Department of Motor Vehicles not later
137 than seven days after the date of mailing of such suspension notice.

138 (2) If the person arrested (A) is involved in an accident resulting in a
139 fatality, or (B) has previously had such person's operator's license or
140 nonresident operating privilege suspended under the provisions of
141 section 14-227a, as amended by this act, during the ten-year period
142 preceding the present arrest, upon receipt of such report, the
143 Commissioner of Motor Vehicles may suspend any license or
144 nonresident operating privilege of such person effective as of the date
145 specified in a notice of such suspension to such person. Any person
146 whose license or operating privilege has been suspended in accordance
147 with this subdivision shall automatically be entitled to a hearing before
148 the commissioner. The commissioner shall send a suspension notice to
149 such person informing such person that such person's operator's
150 license or nonresident operating privilege is suspended as of the date

151 specified in such suspension notice, and that such person is entitled to
152 a hearing and may schedule such hearing by contacting the
153 Department of Motor Vehicles not later than seven days after the date
154 of mailing of such suspension notice. Any suspension issued under
155 this subdivision shall remain in effect until such suspension is affirmed
156 or such license or operating privilege is reinstated in accordance with
157 subsections (f) and (h) of this section.

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

162 (g) If such person contacts the department to schedule a hearing, the
163 department shall assign a date, time and place for the hearing, which
164 date shall be prior to the effective date of the suspension, except that,
165 with respect to a person whose license or nonresident operating
166 privilege is suspended in accordance with subdivision (2) of subsection
167 (e) of this section, such hearing shall be scheduled not later than thirty
168 days after such person contacts the department. At the request of such
169 person or the hearing officer and upon a showing of good cause, the
170 commissioner may grant one continuance for a period not to exceed
171 fifteen days. The hearing shall be limited to a determination of the
172 following issues: (1) Did the police officer have probable cause to
173 arrest the person for operating a motor vehicle while under the
174 influence of intoxicating liquor or any drug or both; (2) was such
175 person placed under arrest; (3) did such person refuse to submit to
176 such test or analysis or did such person submit to such test or analysis,
177 commenced within two hours of the time of operation, and the results
178 of such test or analysis indicated that such person had an elevated
179 blood alcohol content; and (4) was such person operating the motor
180 vehicle. In the hearing, the results of the test or analysis shall be
181 sufficient to indicate the ratio of alcohol in the blood of such person at
182 the time of operation, except that if the results of the additional test
183 indicate that the ratio of alcohol in the blood of such person is [twelve-
184 hundredths] ten-hundredths of one per cent or less of alcohol, by

185 weight, and is higher than the results of the first test, evidence shall be
186 presented that demonstrates that the test results and analysis thereof
187 accurately indicate the blood alcohol content at the time of operation.
188 The fees of any witness summoned to appear at the hearing shall be
189 the same as provided by the general statutes for witnesses in criminal
190 cases. Notwithstanding the provisions of subsection (a) of section 52-
191 143, any subpoena summoning a police officer as a witness shall be
192 served not less than seventy-two hours prior to the designated time of
193 the hearing.

194 (h) If, after such hearing, the commissioner finds on any one of the
195 said issues in the negative, the commissioner shall reinstate such
196 license or operating privilege. If, after such hearing, the commissioner
197 does not find on any one of the said issues in the negative or if such
198 person fails to appear at such hearing, the commissioner shall affirm
199 the suspension contained in the suspension notice for the appropriate
200 period specified in subsection (i) or (j) of this section. The
201 commissioner shall render a decision at the conclusion of such hearing
202 or send a notice of the decision by bulk certified mail to such person
203 not later than thirty days or, if a continuance is granted, not later than
204 forty-five days from the date such person received notice of such
205 person's arrest by the police officer. The notice of such decision sent by
206 certified mail to the address of such person as shown by the records of
207 the commissioner shall be sufficient notice to such person that such
208 person's operator's license or nonresident operating privilege is
209 reinstated or suspended, as the case may be. Unless a continuance of
210 the hearing is granted pursuant to subsection (g) of this section, if the
211 commissioner fails to render a decision within thirty days from the
212 date such person received notice of such person's arrest by the police
213 officer, the commissioner shall reinstate such person's operator's
214 license or nonresident operating privilege, provided notwithstanding
215 such reinstatement the commissioner may render a decision not later
216 than two days thereafter suspending such operator's license or
217 nonresident operating privilege.

218 (i) Except as provided in subsection (j) of this section, the

219 commissioner shall suspend the operator's license or nonresident
220 operating privilege of a person who did not contact the department to
221 schedule a hearing, who failed to appear at a hearing or against whom,
222 after a hearing, the commissioner held pursuant to subsection (h) of
223 this section, as of the effective date contained in the suspension notice
224 or the date the commissioner renders a decision, whichever is later, for
225 a period of: (1) (A) Except as provided in subparagraph (B) of this
226 subdivision, ninety days, if such person submitted to a test or analysis
227 and the results of such test or analysis indicated that such person had
228 an elevated blood alcohol content, (B) one hundred twenty days, if
229 such person submitted to a test or analysis and the results of such test
230 or analysis indicated that the ratio of alcohol in the blood of such
231 person was sixteen-hundredths of one per cent or more of alcohol, by
232 weight, or (C) six months if such person refused to submit to such test
233 or analysis, (2) if such person has previously had such person's
234 operator's license or nonresident operating privilege suspended under
235 this section, (A) except as provided in subparagraph (B) of this
236 subdivision, nine months if such person submitted to a test or analysis
237 and the results of such test or analysis indicated that such person had
238 an elevated blood alcohol content, (B) ten months if such person
239 submitted to a test or analysis and the results of such test or analysis
240 indicated that the ratio of alcohol in the blood of such person was
241 sixteen-hundredths of one per cent or more of alcohol, by weight, and
242 (C) one year if such person refused to submit to such test or analysis,
243 and (3) if such person has two or more times previously had such
244 person's operator's license or nonresident operating privilege
245 suspended under this section, (A) except as provided in subparagraph
246 (B) of this subdivision, two years if such person submitted to a test or
247 analysis and the results of such test or analysis indicated that such
248 person had an elevated blood alcohol content, (B) two and one-half
249 years if such person submitted to a test or analysis and the results of
250 such test or analysis indicated that the ratio of alcohol in the blood of
251 such person was sixteen-hundredths of one per cent or more of
252 alcohol, by weight, and (C) three years if such person refused to
253 submit to such test or analysis.

254 (j) The commissioner shall suspend the operator's license or
255 nonresident operating privilege of a person under twenty-one years of
256 age who did not contact the department to schedule a hearing, who
257 failed to appear at a hearing or against whom, after a hearing the
258 commissioner held pursuant to subsection (h) of this section, as of the
259 effective date contained in the suspension notice or the date the
260 commissioner renders a decision whichever is later, for twice the
261 appropriate period of time specified in subsection (i) of this section,
262 except that, in the case of a person who is sixteen or seventeen years of
263 age at the time of the alleged offense, the period of suspension for a
264 first offense shall be one year if such person submitted to a test or
265 analysis and the results of such test or analysis indicated that such
266 person had an elevated blood alcohol content or eighteen months if
267 such person refused to submit to such test or analysis.

268 (k) Notwithstanding the provisions of subsections (b) to (j),
269 inclusive, of this section, any police officer who obtains the results of a
270 chemical analysis of a blood sample taken from an operator of a motor
271 vehicle involved in an accident who suffered or allegedly suffered
272 physical injury in such accident shall notify the Commissioner of
273 Motor Vehicles and submit to the commissioner a written report if
274 such results indicate that such person had an elevated blood alcohol
275 content, and if such person was arrested for violation of section
276 14-227a, as amended by this act, in connection with such accident. The
277 report shall be made on a form approved by the commissioner
278 containing such information as the commissioner prescribes, and shall
279 be subscribed and sworn to under penalty of false statement, as
280 provided in section 53a-157b, by the police officer. The commissioner
281 may, after notice and an opportunity for hearing, which shall be
282 conducted in accordance with chapter 54, suspend the motor vehicle
283 operator's license or nonresident operating privilege of such person for
284 the appropriate period specified in subsection (i) or (j) of this section.
285 Each hearing conducted under this subsection shall be limited to a
286 determination of the following issues: (1) Whether the police officer
287 had probable cause to arrest the person for operating a motor vehicle
288 while under the influence of intoxicating liquor or drug or both; (2)

289 whether such person was placed under arrest; (3) whether such person
290 was operating the motor vehicle; (4) whether the results of the analysis
291 of the blood of such person indicate that such person had an elevated
292 blood alcohol content; and (5) whether the blood sample was obtained
293 in accordance with conditions for admissibility and competence as
294 evidence as set forth in subsection (j) of section 14-227a. If, after such
295 hearing, the commissioner finds on any one of the said issues in the
296 negative, the commissioner shall not impose a suspension. The fees of
297 any witness summoned to appear at the hearing shall be the same as
298 provided by the general statutes for witnesses in criminal cases, as
299 provided in section 52-260.

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

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

307 (n) The state shall pay the reasonable charges of any physician who,
308 at the request of a municipal police department, takes a blood sample
309 for purposes of a test under the provisions of this section.

310 (o) For the purposes of this section, "elevated blood alcohol content"
311 means (1) a ratio of alcohol in the blood of such person that is eight-
312 hundredths of one per cent or more of alcohol, by weight, (2) if such
313 person is operating a commercial motor vehicle, a ratio of alcohol in
314 the blood of such person that is four-hundredths of one per cent or
315 more of alcohol, by weight, or [(2)] (3) if such person is under twenty-
316 one years of age, a ratio of alcohol in the blood of such person that is
317 two-hundredths of one per cent or more of alcohol, by weight.

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

| | | |
|---|-----------------|--------------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2009 | 14-227a(a) and (b) |
| Sec. 2 | October 1, 2009 | 14-227b |

Statement of Legislative Commissioners:

In section 1(a), the new language defining blood alcohol content for a person operating a commercial motor vehicle was placed after the definition of blood alcohol content for a person operating a motor vehicle, for clarity.

TRA *Joint Favorable Subst.-LCO*

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

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 10 \$ | FY 11 \$ |
|--|----------------------|-----------|-----------|
| Judicial Dept. | GF - Revenue Gain | Potential | Potential |
| Judicial Dpt (Probation); Correction, Dept. | GF - Cost | Potential | Potential |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill lowers, from .08% to .04%, the blood alcohol content level necessary to convict someone of operating a commercial motor vehicle under the influence of intoxicating liquor. This could increase the number of convictions under CGS 14-227a(a), which carry the penalties described in the "Background" section below.

To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

Background

| Conviction | Jail Sentence | Fine |
|---------------------------------|--|-------------------|
| First | Either (a) up to six months with a mandatory minimum of two days or (b) up to six months suspended with probation requiring 100 hours of community service | \$ 500-\$ 1,000 |
| Second (w/in 10 years of first) | Up to two years, with a mandatory minimum of 120 consecutive days and probation with 100 hours community service | \$ 1,000-\$ 4,000 |
| Third | Up to three years, with mandatory minimum of | \$ 2,000-\$ 8,000 |

| | | |
|--|--|--|
| | one year and probation with 100 hours community service | |
|--|--|--|

The Out Years

The annualized ongoing costs of probation and incarceration identified above would continue into the future subject to inflation; the annualized ongoing revenue impact would remain constant into the future since fine amounts are set by statute.

OLR Bill Analysis**SB 153*****AN ACT CONCERNING ADMINISTRATIVE PER SE VIOLATIONS AND PROCEDURES.*****SUMMARY:**

This bill makes several changes in both the criminal and administrative per se laws. Specifically it:

1. decreases the presumptive level for determining if a driver of a commercial motor vehicle is operating with an elevated blood alcohol level from .08% to .04%;
2. decreases the minimum time police must wait before administering the required second blood-alcohol test from 30 to 10 minutes and narrows the range of test results that require a reverse extrapolation or "relation back" of the test results to establish the driver's blood-alcohol level at the actual time of operation of the vehicle; and
3. notwithstanding the statutory requirement for service of subpoenas at least 18 hours before appearance is required, requires any subpoena summoning a police officer as a witness in a per se hearing to be served on the officer at least 72 hours before the designated time of the hearing.

EFFECTIVE DATE: October 1, 2009

ELEVATED BLOOD ALCOHOL CONTENT

The bill expands the definition of "elevated blood alcohol content" to include operating a commercial motor vehicle with a blood-alcohol level of .04% or more. This applies to both the criminal violation and the administrative per se license suspension process. Thus, under the

bill the presumptive level for determining if someone is driving a commercial motor vehicle while under the influence of alcohol is reduced from .08% to .04%. The law already requires someone found to have been driving a commercial motor vehicle with a blood-alcohol level of .04% or more to be disqualified from driving commercial vehicles for one year.

A commercial motor vehicle is one for which the driver must hold a commercial driver's license. By law these include vehicles designed and used to transport people or property, except for farming vehicles, fire apparatus, or emergency vehicles, and recreational vehicles in private use, that:

1. have a gross vehicle weight rating over 26,000 pounds or a gross combination weight rating of more than 26,000 pounds inclusive of one or more towed units with gross weight ratings over 10,000 pounds;
2. are designed to transport 16 or more passengers, including the driver, or more than 10 passengers, including the driver, when the passengers are students under age 21 being transported to and from school; or
3. are transporting hazardous materials in quantities that required placards under federal law or that are listed as a select agent or toxin under federal regulations.

ADMISSIBILITY OF CHEMICAL TEST RESULTS AND ADMINISTRATION OF SECOND CHEMICAL TEST

Currently, in order for the results of a chemical test to be admissible in a criminal prosecution, the law requires a second test of the same type to be given to the accused person at least 30 minutes after the first test. The law also requires a true copy of the report to be mailed or personally delivered to the defendant within 24 hours or by the end of the next regular business day after the result is known. If the results of the additional test show the person's blood-alcohol level to be .12% or less and the result is higher than the result of the first test, evidence

must be presented that shows that the test results accurately indicate the blood alcohol content at the time of the alleged offense. This is known as “relation back.”

The bill (1) decreases the minimum time between the first and second tests from 30 minutes to 10 minutes and (2) lowers the blood-alcohol test result that triggers the relation back determination from .12% to .10%. It makes the same change from .12% to .10% in the relation back provisions of the administrative per se law.

BACKGROUND

DUI - Criminal

By law, it is a criminal violation to operate a motor vehicle, on the highway or elsewhere, (1) while under the influence of alcohol, drugs, or both or (2) with an “elevated blood alcohol content.” Someone is considered to have an elevated blood alcohol content when the ratio of alcohol in the blood is .08% or more, by weight, or, if under age 21, the ratio of alcohol in the blood is .02% or more. Anyone who receives a driver’s license in Connecticut is deemed by law to have given his “implied consent” to a chemical test of his blood, breath, or urine to determine the presence of alcohol or drugs.

DUI - Administrative Per Se

A police officer who has arrested someone for driving under the influence of alcohol or drugs and advised him of his constitutional rights can request the person to submit to a blood, breath, or urine test. If the person either (1) refuses to take the test or (2) takes the test and the results show an elevated blood alcohol content, the police officer sends the arrest report and test results to the Department of Motor Vehicles (DMV) and the person is subject to an administrative license suspension. This is called an “administrative per se” license suspension. This administrative license suspension operates entirely independently of the procedures for prosecuting the accused person on the criminal charge.

COMMITTEE ACTION

Transportation Committee

Joint Favorable

Yea 36 Nay 0 (03/09/2009)