



General Assembly

January Session, 2009

Raised Bill No. 6601

LCO No. 3549

03549_____TRA

Referred to Committee on Transportation

Introduced by:
(TRA)

AN ACT CONCERNING THE ADMINISTRATIVE PER SE PROGRAM.

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

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 Section 14-227b of the general statutes is repealed and the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

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

8 (b) If any such person, having been placed under arrest for
9 operating a motor vehicle while under the influence of intoxicating
10 liquor or any drug or both, and thereafter, after being apprised of such
11 person's constitutional rights, having been requested to submit to a
12 blood, breath or urine test at the option of the police officer, having
13 been afforded a reasonable opportunity to telephone an attorney prior
14 to the performance of such test and having been informed that such
15 person's license or nonresident operating privilege may be suspended
16 in accordance with the provisions of this section if such person refuses

17 to submit to such test, or if such person submits to such test and the
18 results of such test indicate that such person has an elevated blood
19 alcohol content, and that evidence of any such refusal shall be
20 admissible in accordance with subsection (e) of section 14-227a and
21 may be used against such person in any criminal prosecution, refuses
22 to submit to the designated test, the test shall not be given; provided, if
23 the person refuses or is unable to submit to a blood test, the police
24 officer shall designate the breath or urine test as the test to be taken.
25 The police officer shall make a notation upon the records of the police
26 department that such officer informed the person that such person's
27 license or nonresident operating privilege may be suspended if such
28 person refused to submit to such test or if such person submitted to
29 such test and the results of such test indicated that such person had an
30 elevated blood alcohol content.

31 (c) If the person arrested refuses to submit to such test or analysis or
32 submits to such test or analysis, commenced within two hours of the
33 time of operation, and the results of such test or analysis indicate that
34 such person has an elevated blood alcohol content, the police officer,
35 acting on behalf of the Commissioner of Motor Vehicles, shall
36 immediately revoke and take possession of the motor vehicle
37 operator's license or, if such person is a nonresident, suspend the
38 nonresident operating privilege of such person, for a twenty-four-hour
39 period. The police officer shall prepare a [written] report of the
40 incident and shall mail or otherwise transmit in accordance with this
41 subsection the report and a copy of the results of any chemical test or
42 analysis to the Department of Motor Vehicles within three business
43 days. The report shall [be made on a form approved] contain such
44 information as prescribed by the Commissioner of Motor Vehicles and
45 shall be subscribed and sworn to under penalty of false statement as
46 provided in section 53a-157b by the arresting officer. The report shall
47 contain the certification of the arresting officer that such officer had
48 probable cause to arrest such person for a violation of subsection (a) of
49 section 14-227a. If the person arrested refused to submit to such test or
50 analysis, the report shall be endorsed by a third person who witnessed

51 such refusal. The report shall set forth the grounds for the officer's
52 [belief that there was] certification of probable cause to arrest such
53 person for [operating a motor vehicle while under the influence of
54 intoxicating liquor or any drug or both] a violation of subsection (a) of
55 section 14-227a and shall state that such person had refused to submit
56 to such test or analysis when requested by such police officer to do so
57 or that such person submitted to such test or analysis, commenced
58 within two hours of the time of operation, and the results of such test
59 or analysis indicated that such person had an elevated blood alcohol
60 content. The Commissioner of Motor Vehicles may accept a police
61 report under this subsection that is prepared and transmitted as an
62 electronic record, including electronic signature or signatures, subject
63 to such security procedures as the commissioner may specify and in
64 accordance with the provisions of sections 1-266 to 1-286, inclusive. In
65 any hearing conducted pursuant to the provisions of subsection (g) of
66 this section, it shall not be a ground for objection to the admissibility of
67 a police report that it is an electronic record prepared by electronic
68 means.

69 (d) If the person arrested submits to a blood or urine test at the
70 request of the police officer, and the specimen requires laboratory
71 analysis in order to obtain the test results, the police officer shall not
72 take possession of the motor vehicle operator's license of such person
73 or, except as provided in this subsection, follow the procedures
74 subsequent to taking possession of the operator's license as set forth in
75 subsection (c) of this section. If the test results indicate that such
76 person has an elevated blood alcohol content, the police officer,
77 immediately upon receipt of the test results, shall notify the
78 Commissioner of Motor Vehicles and submit to the commissioner the
79 written report required pursuant to subsection (c) of this section.

80 (e) (1) Except as provided in subdivision (2) of this subsection, upon
81 receipt of such report, the Commissioner of Motor Vehicles may
82 suspend any operator's license or nonresident operating privilege of
83 such person effective as of a date certain, which date shall be not later

84 than thirty days after the date such person received notice of such
85 person's arrest by the police officer. Any person whose operator's
86 license or nonresident operating privilege has been suspended in
87 accordance with this subdivision shall automatically be entitled to a
88 hearing before the commissioner to be held in accordance with the
89 provisions of chapter 54 and prior to the effective date of the
90 suspension. The commissioner shall send a suspension notice to such
91 person informing such person that such person's operator's license or
92 nonresident operating privilege is suspended as of a date certain and
93 that such person is entitled to a hearing prior to the effective date of
94 the suspension and may schedule such hearing by contacting the
95 Department of Motor Vehicles not later than seven days after the date
96 of mailing of such suspension notice.

97 (2) If the person arrested (A) is involved in an accident resulting in a
98 fatality, or (B) has previously had such person's operator's license or
99 nonresident operating privilege suspended under the provisions of
100 section 14-227a during the ten-year period preceding the present
101 arrest, upon receipt of such report, the Commissioner of Motor
102 Vehicles may suspend any operator's license or nonresident operating
103 privilege of such person effective as of the date specified in a notice of
104 such suspension to such person. Any person whose operator's license
105 or nonresident operating privilege has been suspended in accordance
106 with this subdivision shall automatically be entitled to a hearing before
107 the commissioner, to be held in accordance with the provisions of
108 chapter 54. The commissioner shall send a suspension notice to such
109 person informing such person that such person's operator's license or
110 nonresident operating privilege is suspended as of the date specified in
111 such suspension notice, and that such person is entitled to a hearing
112 and may schedule such hearing by contacting the Department of
113 Motor Vehicles not later than seven days after the date of mailing of
114 such suspension notice. Any suspension issued under this subdivision
115 shall remain in effect until such suspension is affirmed or such
116 operator's license or nonresident operating privilege is reinstated in
117 accordance with subsections (f) and (h) of this section.

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

122 (g) If such person contacts the department to schedule a hearing, the
123 department shall assign a date, time and place for the hearing, which
124 date shall be prior to the effective date of the suspension, except that,
125 with respect to a person whose operator's license or nonresident
126 operating privilege is suspended in accordance with subdivision (2) of
127 subsection (e) of this section, such hearing shall be scheduled not later
128 than thirty days after such person contacts the department. At the
129 request of such person or the hearing officer and upon a showing of
130 good cause, the commissioner may grant one [continuance for a period
131 not to exceed fifteen days] or more continuances. The hearing shall be
132 limited to a determination of the following issues: (1) [Did the police
133 officer have probable cause to arrest the person for operating a motor
134 vehicle while under the influence of intoxicating liquor or any drug or
135 both; (2) was] Was such person placed under arrest; [(3)] (2) did such
136 person refuse to submit to such test or analysis or did such person
137 submit to such test or analysis, commenced within two hours of the
138 time of operation, and the results of such test or analysis indicated that
139 such person had an elevated blood alcohol content; and [(4)] (3) was
140 such person operating the motor vehicle. In the hearing, the results of
141 the test or analysis shall be sufficient to indicate the ratio of alcohol in
142 the blood of such person at the time of operation, [except that if the
143 results of the additional test indicate that the ratio of alcohol in the
144 blood of such person is twelve-hundredths of one per cent or less of
145 alcohol, by weight, and is higher than the results of the first test,
146 evidence shall be presented that demonstrates that the test results and
147 analysis thereof accurately indicate the blood alcohol content at the
148 time of operation] provided such test was commenced within two
149 hours of the time of operation. The fees of any witness summoned to
150 appear at the hearing shall be the same as provided by the general
151 statutes for witnesses in criminal cases.

152 (h) If, after such hearing, the commissioner finds on any one of the
153 said issues in the negative, the commissioner shall reinstate such
154 license or operating privilege. If, after such hearing, the commissioner
155 does not find on any one of the said issues in the negative or if such
156 person fails to appear at such hearing, the commissioner shall affirm
157 the suspension contained in the suspension notice for the appropriate
158 period specified in subsection (i) or (j) of this section. The
159 commissioner shall render a decision at the conclusion of such hearing
160 [or] and send a notice of the decision by bulk certified mail to such
161 person. [not later than thirty days or, if a continuance is granted, not
162 later than forty-five days from the date such person received notice of
163 such person's arrest by the police officer.] The notice of such decision
164 sent by bulk certified mail to the address of such person as shown by
165 the records of the commissioner shall be sufficient notice to such
166 person that such person's operator's license or nonresident operating
167 privilege is reinstated or suspended, as the case may be. [Unless a
168 continuance of the hearing is granted pursuant to subsection (g) of this
169 section, if the commissioner fails to render a decision within thirty
170 days from the date such person received notice of such person's arrest
171 by the police officer, the commissioner shall reinstate such person's
172 operator's license or nonresident operating privilege, provided
173 notwithstanding such reinstatement the commissioner may render a
174 decision not later than two days thereafter suspending such operator's
175 license or nonresident operating privilege.]

176 (i) Except as provided in subsection (j) of this section, the
177 commissioner shall suspend the operator's license or nonresident
178 operating privilege of a person who did not contact the department to
179 schedule a hearing, who failed to appear at a hearing or against whom,
180 after a hearing, the commissioner held pursuant to subsection (h) of
181 this section, as of the effective date contained in the suspension notice
182 or the date the commissioner renders a decision, whichever is later, for
183 a period of: (1) (A) Except as provided in subparagraph (B) of this
184 subdivision, ninety days, if such person submitted to a test or analysis
185 and the results of such test or analysis indicated that such person had

186 an elevated blood alcohol content, (B) one hundred twenty days, if
187 such person submitted to a test or analysis and the results of such test
188 or analysis indicated that the ratio of alcohol in the blood of such
189 person was sixteen-hundredths of one per cent or more of alcohol, by
190 weight, or (C) six months if such person refused to submit to such test
191 or analysis, (2) if such person has previously had such person's
192 operator's license or nonresident operating privilege suspended under
193 this section, (A) except as provided in subparagraph (B) of this
194 subdivision, nine months if such person submitted to a test or analysis
195 and the results of such test or analysis indicated that such person had
196 an elevated blood alcohol content, (B) ten months if such person
197 submitted to a test or analysis and the results of such test or analysis
198 indicated that the ratio of alcohol in the blood of such person was
199 sixteen-hundredths of one per cent or more of alcohol, by weight, and
200 (C) one year if such person refused to submit to such test or analysis,
201 and (3) if such person has two or more times previously had such
202 person's operator's license or nonresident operating privilege
203 suspended under this section, (A) except as provided in subparagraph
204 (B) of this subdivision, two years if such person submitted to a test or
205 analysis and the results of such test or analysis indicated that such
206 person had an elevated blood alcohol content, (B) two and one-half
207 years if such person submitted to a test or analysis and the results of
208 such test or analysis indicated that the ratio of alcohol in the blood of
209 such person was sixteen-hundredths of one per cent or more of
210 alcohol, by weight, and (C) three years if such person refused to
211 submit to such test or analysis.

212 (j) The commissioner shall suspend the operator's license or
213 nonresident operating privilege of a person [under] less than twenty-
214 one years of age who did not contact the department to schedule a
215 hearing, who failed to appear at a hearing or against whom, after a
216 hearing, the commissioner held pursuant to subsection (h) of this
217 section, as of the effective date contained in the suspension notice or
218 the date the commissioner renders a decision, whichever is later, for
219 twice the appropriate period of time specified in subsection (i) of this

220 section, except that, in the case of a person who is sixteen or seventeen
221 years of age at the time of the alleged offense, the period of suspension
222 for a first offense shall be one year if such person submitted to a test or
223 analysis and the results of such test or analysis indicated that such
224 person had an elevated blood alcohol content or eighteen months if
225 such person refused to submit to such test or analysis.

226 (k) Notwithstanding the provisions of subsections (b) to (j),
227 inclusive, of this section, any police officer who obtains the results of a
228 chemical analysis of a blood sample taken from an operator of a motor
229 vehicle involved in an accident who suffered or allegedly suffered
230 physical injury in such accident, or is otherwise deemed by a police
231 officer to require treatment or observation at a hospital, shall notify the
232 Commissioner of Motor Vehicles and submit to the commissioner a
233 written report if such results indicate that such person had an elevated
234 blood alcohol content, and if such person was arrested for violation of
235 section 14-227a in connection with such accident. The report shall be
236 made on a form approved by the commissioner containing such
237 information as the commissioner prescribes, and shall be subscribed
238 and sworn to under penalty of false statement, as provided in section
239 53a-157b, by the police officer. The commissioner may, after notice and
240 an opportunity for hearing, which shall be conducted by a hearing
241 officer on behalf of the commissioner in accordance with chapter 54,
242 suspend the motor vehicle operator's license or nonresident operating
243 privilege of such person for the appropriate period of time specified in
244 subsection (i) or (j) of this section. Each hearing conducted under this
245 subsection shall be limited to a determination of the following issues:
246 (1) Whether [the police officer had probable cause to arrest the person
247 for operating a motor vehicle while under the influence of intoxicating
248 liquor or drug or both; (2) whether] such person was placed under
249 arrest; [(3)] (2) whether such person was operating the motor vehicle;
250 [(4)] (3) whether the results of the analysis of the blood of such person
251 indicate that such person had an elevated blood alcohol content; and
252 [(5)] (4) whether the blood sample was obtained in accordance with
253 conditions for admissibility and competence as evidence as set forth in

254 subsection [(j)] (k) of section 14-227a. If, after such hearing, the
255 commissioner finds on any one of the said issues in the negative, the
256 commissioner shall not impose a suspension. The fees of any witness
257 summoned to appear at the hearing shall be the same as provided by
258 the general statutes for witnesses in criminal cases, as provided in
259 section 52-260.

260 (l) The provisions of this section shall apply with the same effect to
261 the refusal by any person to submit to an additional chemical test as
262 provided in subdivision (5) of subsection (b) of section 14-227a.

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

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

269 (o) For the purposes of this section, "elevated blood alcohol content"
270 means (1) a ratio of alcohol in the blood of such person that is eight-
271 hundredths of one per cent or more of alcohol, by weight, [or] (2) if
272 such person is operating a commercial motor vehicle, a ratio of alcohol
273 in the blood of such person that is four-hundredths of one per cent or
274 more of alcohol, by weight, or (3) if such person is [under] less than
275 twenty-one years of age, a ratio of alcohol in the blood of such person
276 that is two-hundredths of one per cent or more of alcohol, by weight.

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

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

282 (a) No person [under] less than twenty-one years of age shall
283 operate a motor vehicle [on a public highway of this state or on any

284 road of a district organized under the provisions of chapter 105, a
 285 purpose of which is the construction and maintenance of roads and
 286 sidewalks, or on any private road on which a speed limit has been
 287 established in accordance with the provisions of section 14-218a, or in
 288 any parking area for ten or more cars or on any school property] while
 289 the ratio of alcohol in the blood of such person is two-hundredths of
 290 one per cent or more of alcohol, by weight.

291 (b) The fact that the operator of a motor vehicle appears to be
 292 sixteen years of age or [over] older but [under] less than twenty-one
 293 years of age shall not constitute a reasonable and articulable suspicion
 294 that an offense has been or is being committed so as to justify an
 295 investigatory stop of such motor vehicle by a police officer.

296 (c) The provisions of subsections (b), (c), (d), (f), (g), (h), (i), (j) [] and
 297 (k) of section 14-227a, adapted accordingly, shall be applicable to a
 298 violation of subsection (a) of this section.

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

Statement of Purpose:

To make changes to the administrative per se procedures of the Department of Motor Vehicles: To authorize the Commissioner of Motor Vehicles to accept a police report that is prepared and transmitted as an electronic record, including electronic signature or signatures; to authorize an arresting officer to certify in such report that such officer had probable cause to arrest such person for a violation of subsection (a) of section 14-227 of the general statutes; to eliminate the determination of probable cause to make an arrest from the issues to be determined at a departmental hearing, and to amend the definition of "elevated blood alcohol content" to provide that if a person is operating a commercial motor vehicle, an elevated BAC is a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]