

File No. 651

Substitute House Bill No. 5515

House of Representatives, May 1, 1998. The Committee on Public Safety reported through REP. DARGAN, 115th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DRUNK DRIVING.

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

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2 statutes is repealed and the following is  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

4 (a) No person shall operate a motor vehicle  
5 while under the influence of intoxicating liquor  
6 or any drug or both. A person commits the offense  
7 of operating a motor vehicle while under the  
8 influence of intoxicating liquor or any drug or  
9 both if he operates a motor vehicle on a public  
10 highway of this state or on any road of a district  
11 organized under the provisions of chapter 105, a  
12 purpose of which is the construction and  
13 maintenance of roads and sidewalks, or on any  
14 private road on which a speed limit has been  
15 established in accordance with the provisions of  
16 section 14-218a, or in any parking area for ten or  
17 more cars or on any school property (1) while  
18 under the influence of intoxicating liquor or any  
19 drug or both or (2) while the ratio of alcohol in  
20 the blood of such person is [ten-hundredths]  
21 EIGHT-HUNDREDTHS of one per cent or more of  
22 alcohol, by weight.

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

41 (c) Except as provided in subsection (d) of  
42 this section, in any criminal prosecution for  
43 violation of subsection (a) or (b) of this  
44 section, evidence respecting the amount of alcohol  
45 or drug in the defendant's blood [or] AND urine at  
46 the time of the alleged offense, as shown by [a]  
47 chemical [analysis] ANALYSES of the defendant's  
48 breath, blood [or] AND urine shall be admissible  
49 and competent provided: (1) The defendant was  
50 afforded a reasonable opportunity to telephone an  
51 attorney prior to the performance of the test and  
52 consented to the taking of the [test] TESTS upon  
53 which such [analysis is] ANALYSES ARE made; (2) a  
54 true copy of the report of the test [result was]  
55 RESULTS WERE mailed to or personally delivered to  
56 the defendant within twenty-four hours or by the  
57 end of the next regular business day, after such  
58 [result was] RESULTS WERE known, whichever is  
59 later; (3) the [test was] TESTS WERE performed by  
60 or at the direction of a police officer according  
61 to methods and with equipment approved by the  
62 Department of Public Health and [was] WERE  
63 performed by a person certified or recertified for  
64 such purpose by said department or recertified by  
65 persons certified as instructors by the  
66 Commissioner of Public Health. [If a blood test is  
67 taken, it] THE BLOOD TEST shall be on a blood  
68 sample taken by a person licensed to practice  
69 medicine and surgery in this state, a  
70 phlebotomist, a qualified laboratory technician,

71 an emergency medical technician II or a registered  
72 nurse; (4) the [device] DEVICES used for such  
73 [test was] TESTS WERE checked for accuracy  
74 immediately before and after such [test was] TESTS  
75 WERE performed by a person certified by the  
76 Department of Public Health; (5) [an] additional  
77 chemical [test] TESTS of the same [type was] TYPES  
78 WERE performed at least thirty minutes after the  
79 initial [test was] TESTS WERE performed or, if  
80 requested by the police officer for reasonable  
81 cause, an additional chemical test of a different  
82 type was performed to detect the presence of a  
83 drug or drugs other than or in addition to  
84 alcohol, provided the results of the initial  
85 [test] TESTS shall not be inadmissible under this  
86 subsection if reasonable efforts were made to have  
87 such additional [test] TESTS performed in  
88 accordance with the conditions set forth in this  
89 subsection and such additional [test was] TESTS  
90 WERE not performed or [was] WERE not performed  
91 within a reasonable time, or the results of such  
92 additional [test] TESTS are not admissible for  
93 failure to meet a condition set forth in this  
94 subsection; and (6) evidence is presented that the  
95 [test was] TESTS WERE commenced within two hours  
96 of operation. In any prosecution under this  
97 section it shall be a rebuttable presumption that  
98 the results of such chemical [analysis] ANALYSES  
99 establish the ratio of alcohol in the blood of the  
100 defendant at the time of the alleged offense,  
101 except that if the results of the additional  
102 [test] TESTS indicate that the ratio of alcohol in  
103 the blood of such defendant is [twelve-hundredths]  
104 TEN-HUNDREDTHS of one per cent or less of alcohol,  
105 by weight, and is higher than the results of the  
106 first [test] TESTS, evidence shall be presented  
107 that demonstrates that the test results and the  
108 [analysis] ANALYSES thereof accurately indicate  
109 the blood alcohol content at the time of the  
110 alleged offense.

111 (d) In any prosecution for a violation of  
112 subdivision (1) of subsection (a) of this section,  
113 reliable evidence respecting the amount of alcohol  
114 in the defendant's blood [or] AND urine at the  
115 time of the alleged offense, as shown by [a]  
116 chemical [analysis] ANALYSES of the defendant's  
117 blood, breath [or] AND urine, otherwise admissible

118 under subsection (c) of this section, shall be  
119 admissible only at the request of the defendant.

120 (e) The Commissioner of Public Health shall  
121 ascertain the reliability of each method and type  
122 of device offered for chemical testing purposes of  
123 blood, of breath and of urine and certify those  
124 methods and types which he finds suitable for use  
125 in testing blood, in testing breath and in testing  
126 urine in this state. He shall adopt regulations  
127 governing the conduct of chemical tests, the  
128 operation and use of chemical test devices and the  
129 training, certification and annual recertification  
130 of operators of such devices as he finds necessary  
131 to protect the health and safety of persons who  
132 submit to chemical tests and to insure reasonable  
133 accuracy in testing results. Such regulations  
134 shall not require recertification of a police  
135 officer solely because such officer terminates his  
136 employment with the law enforcement agency for  
137 which certification was originally issued and  
138 commences employment with another such agency.

139 (f) In any criminal prosecution for a  
140 violation of subsection (a) or (b) of this  
141 section, evidence that the defendant refused to  
142 submit to [a] blood, breath [or] AND urine [test]  
143 TESTS requested in accordance with section  
144 14-227b, AS AMENDED BY SECTION 2 OF THIS ACT,  
145 shall be admissible provided the requirements of  
146 subsection (b) of said section have been  
147 satisfied. If a case involving a violation of  
148 subsection (a) of this section is tried to a jury,  
149 the court shall instruct the jury as to any  
150 inference that may or may not be drawn from the  
151 defendant's refusal to submit to [a] blood, breath  
152 [or] AND urine [test] TESTS.

153 (g) If a person is charged with a violation  
154 of the provisions of subsection (a) of this  
155 section, the charge may not be reduced, nolleed or  
156 dismissed unless the prosecuting authority states  
157 in open court his reasons for the reduction, nolle  
158 or dismissal.

159 (h) Any person who violates any provision of  
160 subsection (a) of this section shall: (1) For  
161 conviction of a first violation, (A) be fined not  
162 less than five hundred dollars nor more than one  
163 thousand dollars and (B) be (i) imprisoned not  
164 more than six months, forty-eight consecutive  
165 hours of which may not be suspended or reduced in

166 any manner or (ii) imprisoned not more than six  
167 months, with the execution of such sentence of  
168 imprisonment suspended entirely and a period of  
169 probation imposed requiring as a condition of such  
170 probation that such person perform one hundred  
171 hours of community service, as defined in section  
172 14-227e, and (C) have his motor vehicle operator's  
173 license or nonresident operating privilege  
174 suspended for one year; (2) for conviction of a  
175 second violation within ten years after a prior  
176 conviction for the same offense, be fined not less  
177 than five hundred dollars nor more than two  
178 thousand dollars and imprisoned not more than one  
179 year, ten consecutive days of which may not be  
180 suspended or reduced in any manner, and have his  
181 motor vehicle operator's license or nonresident  
182 operating privilege suspended for two years; (3)  
183 for conviction of a third violation within ten  
184 years after a prior conviction for the same  
185 offense, be fined not less than one thousand  
186 dollars nor more than four thousand dollars and  
187 imprisoned not more than two years, one hundred  
188 twenty consecutive days of which may not be  
189 suspended or reduced in any manner, and have his  
190 motor vehicle operator's license or nonresident  
191 operating privilege suspended for three years; and  
192 (4) for conviction of a fourth and subsequent  
193 violation within ten years after a prior  
194 conviction for the same offense, be fined not less  
195 than two thousand dollars nor more than eight  
196 thousand dollars and imprisoned not more than  
197 three years, one year of which may not be  
198 suspended or reduced in any manner, and have his  
199 motor vehicle operator's license or nonresident  
200 operating privilege permanently revoked upon such  
201 fourth offense. For purposes of the imposition of  
202 penalties for a second, third or fourth and  
203 subsequent offense pursuant to this subsection, a  
204 conviction under the provisions of subsection (a)  
205 of section 14-227a in effect on October 1, 1981,  
206 or as amended thereafter, a conviction under the  
207 provisions of either subdivision (1) or (2) of  
208 subsection (a) of this section or a conviction  
209 under the provisions of section 53a-56b or 53a-60d  
210 shall constitute a prior conviction for the same  
211 offense.

212 (i) Any person who violates subsection (b) of  
213 this section shall have committed an infraction.

214 (j) (1) The suspension of a motor vehicle  
215 operator's license or nonresident operating  
216 privilege imposed under subsection (h) of this  
217 section shall take effect immediately upon the  
218 expiration of any period in which an appeal of any  
219 conviction under subsection (a) of this section  
220 may be taken; provided if an appeal is taken, the  
221 suspension shall be stayed during the pendency of  
222 such appeal. If the suspension takes effect, the  
223 defendant shall immediately send his motor vehicle  
224 operator's license or nonresident operating  
225 privilege to the Department of Motor Vehicles. (2)  
226 The motor vehicle operator's license or  
227 nonresident operating privilege of a person found  
228 guilty under subsection (a) of this section who is  
229 under eighteen years of age shall be suspended for  
230 the period of time set forth in subsection (h) of  
231 this section, or until such person attains the age  
232 of eighteen years, whichever period is longer. (3)  
233 The motor vehicle operator's license or  
234 nonresident operating privilege of a person found  
235 guilty under subsection (a) of this section who,  
236 at the time of the offense, was operating a motor  
237 vehicle in accordance with a special operator's  
238 permit issued pursuant to section 14-37a shall be  
239 suspended for twice the period of time set forth  
240 in subsection (h) of this section.

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

246 (l) Notwithstanding the provisions of  
247 subsection (c) of this section, evidence  
248 respecting the amount of alcohol or drug in the  
249 blood of an operator of a motor vehicle involved  
250 in an accident who has suffered or allegedly  
251 suffered physical injury in such accident, which  
252 evidence is derived from a chemical analysis of a  
253 blood sample taken from such person after such  
254 accident at the scene of the accident, while en  
255 route to a hospital or at a hospital, shall be  
256 competent evidence to establish probable cause for  
257 the arrest by warrant of such person for a  
258 violation of subsection (a) of this section and  
259 shall be admissible and competent in any  
260 subsequent prosecution thereof if: (1) The blood  
261 sample was taken for the diagnosis and treatment

262 of such injury; (2) the blood sample was taken by  
263 a person licensed to practice medicine in this  
264 state, a resident physician or intern in any  
265 hospital in this state, a phlebotomist, a  
266 qualified laboratory technician, an emergency  
267 medical technician II or a registered nurse; (3) a  
268 police officer has demonstrated to the  
269 satisfaction of a judge of the Superior Court that  
270 such officer has reason to believe that such  
271 person was operating a motor vehicle while under  
272 the influence of intoxicating liquor or drug or  
273 both and that the chemical analysis of such blood  
274 sample constitutes evidence of the commission of  
275 the offense of operating a motor vehicle while  
276 under the influence of intoxicating liquor or drug  
277 or both in violation of subsection (a) of this  
278 section; and (4) such judge has issued a search  
279 warrant in accordance with section 54-33a  
280 authorizing the seizure of the chemical analysis  
281 of such blood sample.

282 (m) For the purpose of this section,  
283 "phlebotomist" means a staff member of a hospital,  
284 licensed under chapter 368v, who performs  
285 venipunctures to obtain blood samples as ordered  
286 by a licensed physician and is under the  
287 jurisdiction of the chief of pathology.

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

291 (a) Any person who operates a motor vehicle  
292 in this state shall be deemed to have given his  
293 consent to [a] chemical [analysis] ANALYSES of his  
294 blood, breath [or] AND urine and, if said person  
295 is a minor, his parent or parents or guardian  
296 shall also be deemed to have given his consent.

297 (b) If any such person, having been placed  
298 under arrest for operating a motor vehicle while  
299 under the influence of intoxicating liquor or any  
300 drug or both or while his ability to operate such  
301 motor vehicle is impaired by the consumption of  
302 intoxicating liquor, and thereafter, after being  
303 apprised of his constitutional rights, having been  
304 requested to submit to [a] blood, breath [or] AND  
305 urine [test] TESTS at the option of the police  
306 officer, having been afforded a reasonable  
307 opportunity to telephone an attorney prior to the  
308 performance of such [test] TESTS and having been  
309 informed that his license or nonresident operating

310 privilege may be suspended in accordance with the  
311 provisions of this section if he refuses to submit  
312 to such [test] TESTS or if he submits to such  
313 [test] TESTS and the results of such [test] TESTS  
314 indicate that the ratio of alcohol in his blood  
315 was [ten-hundredths] EIGHT-HUNDREDTHS of one per  
316 cent or more of alcohol, by weight, and that  
317 evidence of any such refusal shall be admissible  
318 in accordance with subsection (f) of section  
319 14-227a, AS AMENDED BY SECTION 1 OF THIS ACT, and  
320 may be used against him in any criminal  
321 prosecution, refuses to submit to the designated  
322 [test] TESTS, the [test] TESTS shall not be given;  
323 provided, if the person refuses or is unable to  
324 submit to a blood test, the police officer shall  
325 designate the breath [or] AND urine [test] TESTS  
326 as the [test] TESTS to be taken. The police  
327 officer shall make a notation upon the records of  
328 the police department that he informed the person  
329 that his license or nonresident operating  
330 privilege may be suspended if he refused to submit  
331 to such [test] TESTS or if he submitted to such  
332 [test] TESTS and the results of such [test] TESTS  
333 indicated that the ratio of alcohol in his blood  
334 was [ten-hundredths] EIGHT-HUNDREDTHS of one per  
335 cent or more of alcohol, by weight.

336 (c) If the person arrested refuses to submit  
337 to such [test or analysis] TESTS OR ANALYSES or  
338 submits to such [test or analysis] TESTS OR  
339 ANALYSES, commenced within two hours of the time  
340 of operation, and the results of such [test or  
341 analysis] TESTS OR ANALYSES indicate that the  
342 ratio of alcohol in the blood of such person is  
343 [ten-hundredths] EIGHT-HUNDREDTHS of one per cent  
344 or more of alcohol, by weight, the police officer,  
345 acting on behalf of the Commissioner of Motor  
346 Vehicles, shall immediately revoke and take  
347 possession of the motor vehicle operator's license  
348 or, if such person is a nonresident, suspend the  
349 nonresident operating privilege of such person,  
350 for a twenty-four-hour period and shall issue a  
351 temporary operator's license or nonresident  
352 operating privilege to such person valid for the  
353 period commencing twenty-four hours after issuance  
354 and ending thirty days after the date such person  
355 received notice of his arrest by the police  
356 officer. The police officer shall prepare a  
357 written report of the incident and shall mail the

358 report together with a copy of the completed  
359 temporary license form, any operator's license  
360 taken into possession and a copy of the results of  
361 any chemical [test or analysis] TESTS OR ANALYSES  
362 to the Department of Motor Vehicles within three  
363 business days. The report shall be made on a form  
364 approved by the Commissioner of Motor Vehicles and  
365 shall be subscribed and sworn to under penalty of  
366 false statement as provided in section 53a-157b by  
367 the arresting officer. If the person arrested  
368 refused to submit to such [test or analysis] TESTS  
369 OR ANALYSES, the report shall be endorsed by a  
370 third person who witnessed such refusal. The  
371 report shall set forth the grounds for the  
372 officer's belief that there was probable cause to  
373 arrest such person for operating a motor vehicle  
374 while under the influence of intoxicating liquor  
375 or any drug or both or while his ability to  
376 operate such motor vehicle is impaired by the  
377 consumption of intoxicating liquor, and shall  
378 state that such person had refused to submit to  
379 such [test or analysis] TESTS OR ANALYSES when  
380 requested by such police officer to do so or that  
381 such person submitted to such [test or analysis]  
382 TESTS OR ANALYSES, commenced within two hours of  
383 the time of operation, and the results of such  
384 [test or analysis] TESTS OR ANALYSES indicated  
385 that the ratio of alcohol in the blood of such  
386 person was [ten-hundredths] EIGHT-HUNDREDTHS of  
387 one per cent or more of alcohol, by weight.

388 (d) Upon receipt of such report, the  
389 Commissioner of Motor Vehicles may suspend any  
390 license or nonresident operating privilege of such  
391 person effective as of a date certain, which date  
392 shall be not later than thirty days after the date  
393 such person received notice of his arrest by the  
394 police officer. Any person whose license or  
395 operating privilege has been suspended in  
396 accordance with this subsection shall  
397 automatically be entitled to a hearing before the  
398 commissioner to be held prior to the effective  
399 date of the suspension. The commissioner shall  
400 send a suspension notice to such person informing  
401 such person that his operator's license or  
402 nonresident operating privilege is suspended as of  
403 a date certain and that he is entitled to a  
404 hearing prior to the effective date of the  
405 suspension and may schedule such hearing by

406 contacting the Department of Motor Vehicles not  
407 later than seven days after the date of mailing of  
408 such suspension notice.

409 (e) If such person does not contact the  
410 department to schedule a hearing, the commissioner  
411 shall affirm the suspension contained in the  
412 suspension notice for the appropriate period  
413 specified in subsection (h) of this section.

414 (f) If such person contacts the department to  
415 schedule a hearing, the department shall assign a  
416 date, time and place for the hearing, which date  
417 shall be prior to the effective date of the  
418 suspension. At the request of such person or the  
419 hearing officer and upon a showing of good cause,  
420 the commissioner may grant one continuance for a  
421 period not to exceed fifteen days. If a  
422 continuance is granted, the commissioner shall  
423 extend the validity of the temporary operator's  
424 license or nonresident operating privilege issued  
425 pursuant to subsection (c) of this section for a  
426 period not to exceed the period of such  
427 continuance. The hearing shall be limited to a  
428 determination of the following issues: (1) Did the  
429 police officer have probable cause to arrest the  
430 person for operating a motor vehicle while under  
431 the influence of intoxicating liquor or drug or  
432 both or while his ability to operate such motor  
433 vehicle was impaired by the consumption of  
434 intoxicating liquor; (2) was such person placed  
435 under arrest; (3) did such person refuse to submit  
436 to such [test or analysis] TESTS OR ANALYSES or  
437 did such person submit to such [test or analysis]  
438 TESTS OR ANALYSES, commenced within two hours of  
439 the time of operation, and the results of such  
440 [test or analysis] TESTS OR ANALYSES indicated  
441 that the ratio of alcohol in the blood of such  
442 person was [ten-hundredths] EIGHT-HUNDREDTHS of  
443 one per cent or more of alcohol, by weight; and  
444 (4) was such person operating the motor vehicle.  
445 In the hearing, the results of the [test or  
446 analysis] TESTS OR ANALYSES shall be sufficient to  
447 indicate the ratio of alcohol in the blood of such  
448 person at the time of operation, except that if  
449 the results of the additional [test] TESTS  
450 indicate that the ratio of alcohol in the blood of  
451 such person is [twelve-hundredths] TEN-HUNDREDTHS  
452 of one per cent or less of alcohol, by weight, and  
453 is higher than the results of the first [test]

454 TESTS, evidence shall be presented that  
455 demonstrates that the test results and [analysis]  
456 ANALYSES thereof accurately indicate the blood  
457 alcohol content at the time of operation. The fees  
458 of any witness summoned to appear at the hearing  
459 shall be the same as provided by the general  
460 statutes for witnesses in criminal cases.

461 (g) If, after such hearing, the commissioner  
462 finds on any one of the said issues in the  
463 negative, the commissioner shall reinstate such  
464 license or operating privilege. If, after such  
465 hearing, the commissioner does not find on any one  
466 of the said issues in the negative or if such  
467 person fails to appear at such hearing, the  
468 commissioner shall affirm the suspension contained  
469 in the suspension notice for the appropriate  
470 period specified in subsection (h) of this  
471 section. The commissioner shall render a decision  
472 at the conclusion of such hearing or send a notice  
473 of his decision by bulk certified mail to such  
474 person not later than thirty days or, if a  
475 continuance is granted, not later than forty-five  
476 days from the date such person received notice of  
477 his arrest by the police officer. The notice of  
478 such decision sent by certified mail to the  
479 address of such person as shown by the records of  
480 the commissioner shall be sufficient notice to  
481 such person that his operator's license or  
482 nonresident operating privilege is reinstated or  
483 suspended, as the case may be. Unless a  
484 continuance of the hearing is granted pursuant to  
485 subsection (f) of this section, if the  
486 commissioner fails to render a decision within  
487 thirty days from the date such person received  
488 notice of his arrest by the police officer, the  
489 commissioner shall reinstate such person's  
490 operator's license or nonresident operating  
491 privilege, provided notwithstanding such  
492 reinstatement the commissioner may render a  
493 decision not later than two days thereafter  
494 suspending such operator's license or nonresident  
495 operating privilege.

496 (h) The commissioner shall suspend the  
497 operator's license or nonresident operating  
498 privilege, and revoke the temporary operator's  
499 license or nonresident operating privilege issued  
500 pursuant to subsection (c) of this section, of a  
501 person who did not contact the department to

502 schedule a hearing, who failed to appear at a  
503 hearing or against whom, after a hearing, the  
504 commissioner held pursuant to subsection (g) of  
505 this section, as of the effective date contained  
506 in the suspension notice or the date the  
507 commissioner renders his decision, whichever is  
508 later, for a period of: (1) (A) Ninety days, if  
509 such person submitted to [a test or analysis]  
510 TESTS OR ANALYSES and the results of such [test or  
511 analysis] TESTS OR ANALYSES indicated that the  
512 ratio of alcohol in the blood of such person was  
513 [ten-hundredths] EIGHT-HUNDREDTHS of one per cent  
514 or more of alcohol, by weight, or (B) six months  
515 if such person refused to submit to such [test or  
516 analysis] TESTS OR ANALYSES, (2) one year if such  
517 person has previously had his operator's license  
518 or nonresident operating privilege suspended under  
519 this section, and (3) two years if such person has  
520 two or more times previously had his operator's  
521 license or nonresident operating privilege  
522 suspended under this section.

523 (i) The provisions of this section shall  
524 apply with the same effect to the refusal by any  
525 person to submit to [an] additional chemical  
526 [test] TESTS as provided in subdivision (5) of  
527 subsection (c) of section 14-227a, AS AMENDED BY  
528 SECTION 1 OF THIS ACT.

529 (j) The provisions of this section shall not  
530 apply to any person whose physical condition is  
531 such that, according to competent medical advice,  
532 such [test] TESTS would be inadvisable.

533 (k) The state shall pay the reasonable  
534 charges of any physician who, at the request of a  
535 municipal police department, takes a blood sample  
536 for purposes of a test under the provisions of  
537 this section.

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

541 PS COMMITTEE VOTE: YEA 16 NAY 2 JFS

\* \* \* \* \*

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

\* \* \* \* \*

**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5515**

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	See Explanation Below
STATE AGENCY(S)	Department of Motor Vehicles, Criminal Justice Agencies, Department of Mental Health and Addiction Services, Department of Public Health, Department of Public Safety

**EXPLANATION OF ESTIMATES:**

STATE AND MUNICIPAL IMPACT: The bill requires law enforcement officers to administer breath, blood and urine tests in arrests of persons for driving under the influence of alcohol or drugs. Currently, officers must administer any two of these tests. This would result in additional costs to State and local law enforcement agencies that cannot be determined at this time. It would result in all persons arrested for drunk driving being brought to the nearest hospital for a blood test. Depending on the time and location of the arrest, this could add a significant amount of time to complete an arrest for drunk driving. It would also increase the cost of testing for each arrest. This additional workload burden on law enforcement officers would act to discourage police officers from making arrests for drunk driving, especially in situations where the degree of apparent intoxication is relatively low.

In addition, the requirement of having these tests done within specified and reasonable time frames (current statutes) could result in cases being dismissed due to the inability to perform all three tests in a timely

manner. The use of three different tests at three different times could also result in inconsistencies in their Blood Alcohol Content (BAC) findings. This could result in savings to the criminal justice system by making convictions more difficult and thereby resulting in fewer individuals being arrested, fewer prosecutions, less participation in the pretrial alcohol education program, less revenue collected from the fees for participation in that program as well as from fines, and fewer incarcerations.

Since chemical tests results will not reach the Department of Motor Vehicles (DMV) within the statutory time requirement, the Department will no longer be able to pursue license suspensions under the Administrative Per Se program. Thus, as the result of the passage of this bill, the Department would experience cost savings of \$500,000. The revenue loss to the Transportation Fund could approximate \$800,000 (8,000 license suspensions x \$100 license restoration fee).

According to Judicial Department reports, the state collected \$1,583,141 in revenue from fines for driving under the influence (DUI) and \$106,669 for driving while impaired (DWI) in 1997. The bill would decrease the number of those who would participate in the Pretrial Alcohol Education Program which requires the payment of an application fee (\$50) and a program fee (\$350 prior to 7/1/97, \$425 afterward). The state collected about \$2.5 million from these fees in 1997. There are currently about 160 individuals incarcerated for driving under the influence.

The Toxicology Division of the Connecticut State Laboratory performs analyses of blood and urine samples taken from defendants suspected of driving while intoxicated or under the influence of an illegal substance. The Laboratory performs approximately 3,000 such tests annually at the request of law enforcement agencies. These tests are performed free of charge. An additional 11,000 breath analysis tests are performed by or under the direction of a police officer each year.

The Department of Public Health estimates that up to an additional 11,000 blood and/or urine tests will be submitted to the State Laboratory. A maximum first year expense of approximately \$166,200 will be associated

with two Chemist positions, needed chemical reagents and other laboratory supplies and the purchase of equipment to process the increased volume of tests. The annualized cost of this initiative will be approximately \$100,000 as one-time equipment expenses will not recur.

In addition, the DPH is entitled, pursuant to State statute, to receive a fee of \$50 from persons convicted of a substance abuse related crime if a test was performed by the Toxicology Division. To the extent that passage of this bill results in increased substance abuse related convictions, a potential minimal revenue gain to the State would occur.

\* \* \* \* \*

### OLR BILL ANALYSIS

sHB 5515

#### AN ACT CONCERNING DRUNK DRIVING

**SUMMARY:** This bill (1) lowers the blood alcohol level under the criminal driving under the influence law and the administrative license suspension law from 0.10% to 0.08% blood-alcohol content (BAC), (2) lowers from 0.07% to 0.05% the threshold BAC at which a driver would be considered impaired by alcohol and subject to a different charge; (3) requires BAC testing of a person arrested for operating under the influence of alcohol or while impaired by alcohol to include blood, breath, and urine tests, instead of any of the three types of tests; and (4) makes a change related to the 0.08% BAC requirement for second BAC test results.

EFFECTIVE DATE: October 1, 1998

#### FURTHER EXPLANATION

##### Criminal Offense

By law, it is a crime to operate a motor vehicle while under the influence of alcohol. This offense may be prosecuted with or without any direct evidence of a person's BAC. The determinative issue is whether a person's ability to drive has been affected to an appreciable degree.

It is also a crime under the same law to operate a motor vehicle with a BAC of 0.10% or above. The existence of a BAC of 0.10% or above is sufficient to establish the offense. The bill lowers this level to 0.08%.

### BAC Reduction

Currently, if a person submits to a chemical test of his BAC following an arrest for drunk or impaired driving and the results indicate a BAC of 0.10% or above, he is subject to an immediate administrative ("per se") license suspension and a subsequent criminal prosecution, which can, among other things, result in an additional license suspension following conviction (see BACKGROUND). A BAC result of more than 0.07%, but less than 0.10% is considered driving while impaired and is an infraction.

Under the bill, the BAC establishing the criminal offense and the administrative per se violation drops from 0.10% to 0.08% and the BAC range indicating impairment becomes 0.05% to 0.08% instead of 0.07% to 0.10%.

### BAC Test Administration and Results

Currently, once a police officer arrests someone based on the belief that the person was driving while under the influence of alcohol, drugs, or both or while impaired by alcohol, and after informing the person of his constitutional rights, the officer can request that the person submit to a blood, breath, or urine test to determine his BAC, if any. The officer must afford the person a reasonable opportunity to telephone an attorney before the test is performed and must inform him that his license or nonresident operating privilege may be suspended if he refuses the test or the result shows a BAC of 0.10% or above. A BAC of 0.10% or more may be admissible as evidence of intoxication in a criminal prosecution and as the basis of an administrative "per se" license suspension prior to adjudication of the criminal offense.

The bill requires, with one exception, that all three types of BAC tests (blood, breath, and urine) be performed on the arrested person and bases the administrative suspension process on refusal of all

three tests or, if taken, on results of all three tests showing a BAC of 0.08% or more. If someone refuses or is unable to submit to a blood test, the police officer must designate only the breath and urine test to be taken.

### Second Test Results

Current law requires administration of a second chemical test within a certain time of the initial test. When this second test results in a BAC of 0.12% or more and is higher than the initial test result, evidence must be presented at a criminal prosecution or per se suspension hearing that the test results and analysis indicate the BAC at the time of the alleged offense. The bill drops this second test threshold from 0.12% to 0.10%, reflecting the reduction in the drunk driving BAC level.

### BACKGROUND

#### Criminal Penalties for Driving Under the Influence or Driving with a BAC of 0.10% or Above

People convicted of either driving under the influence of alcohol or driving with a BAC of 0.10% or more are subject to the following criminal penalties:

<u>Conviction</u>	<u>Jail Sentence</u>	<u>Fine</u>	<u>License Suspension</u>
First	(a) Up to six months with mandatory minimum of two days or (b) 100 hours of community service	\$500- \$1,000	One year
Second	Up to one year, with mandatory minimum of 10 consecutive days	\$500- \$2,000	Two years
Third	Up to two years, with mandatory minimum of 120 consecutive days	\$1,000- \$4,000	Three years

Fourth	Up to three years,	\$2,000-	Life
	with mandatory	\$8,000	
	minimum of one year		

### Pretrial Alcohol Education Program

Those arrested for driving under the influence or driving with a 0.10% BAC or more for the first time may apply to court for the pretrial alcohol education program. If the court allows the person to take this program, the criminal prosecution is suspended. If the person satisfactorily completes the program, the criminal charge is dropped.

### Administrative Per Se License Suspension

The administrative per se license suspension law is separate from and additional to the criminal penalties imposed for driving under the influence or driving with a BAC of 0.10% or more. The administrative per se license suspension penalties are a 90-day suspension for a first offense, a one-year suspension for a second offense, and a two-year suspension for a third or subsequent offense.

A separate administrative per se license suspension law applies to drivers under age 21. It requires a license suspension for BAC levels between 0.02% and 0.10% for these drivers.

### Legislative History

The House referred the bill to the Public Health Committee on April 14 and the committee reported it favorably on April 16 without changes. The House referred it to the Public Safety Committee on April 26. The committee favorably reported a substitute bill on April 29. The reported bill adds two requirements. It (1) lowers the BAC threshold for the impairment infraction from 0.07% to 0.05% and (2) requires BAC testing, when administered to an arrested person, to consist of blood, breath, and urine tests, rather than any one of the three.

### **COMMITTEE ACTION**

Transportation Committee

Joint Favorable Change of Reference  
Yea 19      Nay 4

Judiciary Committee

Joint Favorable Substitute  
Yea 32      Nay 3

Public Health Committee

Joint Favorable Report  
Yea 16      Nay 4

Public Safety Committee

Joint Favorable Substitute  
Yea 16      Nay 2