Informe de Investigación

Título: Derecho comparado sobre Leyes de Tránsito II
Subtítulo: Conducción con los efectos del Alcohol

Rama del Derecho: Derecho de Tránsito	**Descriptor:** Normas de Tránsito
Tipo de investigación: Compuesta	**Palabras clave:** Conducción bajo los efectos del Alcohol.
Fuentes: Normativa Extranjera	**Fecha de elaboración:** 10-2009

Índice de contenido de la Investigación

1 Resumen

En el presente resumen, se compilan, las normas sobre alcholismo y conducción contenidas en las leyes de tránsito de algunos países como Estados Unidos en los estados de: Alabama, Connecticut, Delaware, Montana, Vermont y Washington; así como también: Finlandia, Italia, Canadá, Nueva Zelanda y el Reino Unido. El presente informe se encuentra en el idioma Inglés e Italiano(Esto por no encontrar una traducción adecuada al idioma original). Al inicio de cada referencia de Lugar, se encuentran los enlaces de internet,los cuales fueron obtenidos los días 16, 19 y 20 octubre de dos mil nueve.

2 Normativa

a)ESTADOS UNIDOS DE AMÉRICA

ALABAMA

http://www.legislature.state.al.us/CodeofAlabama/1975/32-5A-191.htm

Section 32-5A-191

Driving while under influence of alcohol, controlled substances, etc.

(a) A person shall not drive or be in actual physical control of any vehicle while:

(1) There is 0.08 percent or more by weight of alcohol in his or her blood;

(2) Under the influence of alcohol;

(3) Under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;

(4) Under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or

(5) Under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving.

(b) A person who is under the age of 21 years shall not drive or be in actual physical control of any vehicle if there is .02 percentage or more by weight of alcohol in his or her blood. The Department of Public Safety shall suspend or revoke the driver's license of any person, including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection. Notwithstanding the foregoing, upon the first violation of this subsection by a person whose blood alcohol level is between .02 and .08, the person's driver's

license or driving privilege shall be suspended for a period of 30 days in lieu of any penalties provided in subsection (e) of this section and there shall be no disclosure, other than to courts, law enforcement agencies, and the person's employer, by any entity or person of any information, documents, or records relating to the person's arrest, conviction, or adjudication of or finding of delinquency based on this subsection.

All persons, except as otherwise provided in this subsection for a first offense, including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection shall be fined pursuant to this section, notwithstanding any other law to the contrary, and the person shall also be required to attend and complete a DUI or substance abuse court referral program in accordance with subsection (i).

(c)(1) A school bus or day care driver shall not drive or be in actual physical control of any vehicle while in performance of his or her duties if there is greater than .02 percentage by weight of alcohol in his or her blood. A person convicted pursuant to this subsection shall be subject to the penalties provided by this section except that on the first conviction the Director of Public Safety shall suspend the driving privilege or driver's license for a period of one year.

(2) A person shall not drive or be in actual physical control of a commercial motor vehicle as defined in 49 CFR Part 390.5 of the Federal Motor Carrier Safety Regulations as adopted pursuant to Section 32-9A-2, if there is .04 percentage or greater by weight of alcohol in his or her blood. Notwithstanding the other provisions of this section, the commercial driver's license or commercial driving privilege of a person convicted of violating this subdivision shall be suspended for the period provided in accordance with 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and the person's regular driver's license or privilege to drive a regular motor vehicle shall be governed by the remainder of this section if the person is guilty of a violation of another provision of this section.

(d) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a controlled substance shall not constitute a defense against any charge of violating this section.

(e) Upon first conviction, a person violating this section shall be punished by imprisonment in the county or municipal jail for not more than one year, or by fine of not less than six hundred dollars ($600) nor more than two thousand one hundred dollars ($2,100), or by both a fine and imprisonment. In addition, on a first conviction, the Director of Public Safety shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days.

(f) On a second conviction within a five-year period, a person convicted of violating this section shall be punished by a fine of not less than one thousand one hundred dollars ($1,100) nor more than five thousand one hundred dollars ($5,100) and by imprisonment, which may include hard labor in the county or municipal jail for not more than one year. The sentence shall include a mandatory sentence, which is not subject to suspension or probation, of imprisonment in the county or municipal jail for not less than five days or community service for not less than 30 days. In addition the Director of Public Safety shall revoke the driving privileges or driver's license of the person convicted for a period of one year.

(g) On a third conviction, a person convicted of violating this section shall be punished by a fine of not less than two thousand one hundred dollars ($2,100) nor more than ten thousand one hundred dollars ($10,100) and by imprisonment, which may include hard labor, in the county or municipal jail for not less than 60 days nor more than one year, to include a minimum of 60 days which shall be served in the county or municipal jail and cannot be probated or suspended. In addition, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of three years.

(h) On a fourth or subsequent conviction, a person convicted of violating this section shall be guilty of a Class C felony and punished by a fine of not less than four thousand one hundred dollars ($4,100) nor more than ten thousand one hundred dollars ($10,100) and by imprisonment of not less than one year and one day nor more than 10 years. Any term of imprisonment may include hard labor for the county or state, and where imprisonment does not exceed three years confinement may be in the county jail. Where imprisonment does not exceed one year and one day, confinement shall be in the county jail. The minimum sentence shall include a term of imprisonment for at least one year and one day, provided, however, that there shall be a minimum mandatory sentence of 10 days which shall be served in the county jail. The remainder of the sentence may be suspended or probated, but only if as a condition of probation the defendant enrolls and successfully completes a state certified chemical dependency program recommended by the court referral officer and approved by the sentencing court. Where probation is granted, the sentencing court may, in its discretion, and where monitoring equipment is available, place the defendant on house arrest under electronic surveillance during the probationary term. In addition to the other penalties authorized, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of five years.

The Alabama habitual felony offender law shall not apply to a conviction of a felony pursuant to this subsection, and a conviction of a felony pursuant to this subsection shall not be a felony conviction for purposes of the enhancement of punishment pursuant to Alabama's habitual felony offender law.

(i) In addition to the penalties provided herein, any person convicted of violating this section shall be referred to the court referral officer for evaluation and referral to appropriate community resources. The defendant shall, at a minimum, be required to complete a DUI or substance abuse court referral program approved by the Administrative Office of Courts and operated in accordance with provisions of the Mandatory Treatment Act of 1990, Sections 12-23-1 to 12-23-19, inclusive. The Department of Public Safety shall not reissue a driver's license to a person convicted under this section without receiving proof that the defendant has successfully completed the required program.

(j) Neither reckless driving nor any other traffic infraction is a lesser included offense under a charge of driving under the influence of alcohol or of a controlled substance.

(k) Except for fines collected for violations of this section charged pursuant to a municipal ordinance, fines collected for violations of this section shall be deposited to the State General Fund; however, beginning October 1, 1995, of any amount collected over two hundred fifty dollars ($250) for a first conviction, over five hundred dollars ($500) for a second conviction within five years, over one

thousand dollars ($1,000) for a third conviction within five years, and over two thousand dollars ($2,000) for a fourth or subsequent conviction within five years, the first one hundred dollars ($100) of that additional amount shall be deposited to the Alabama Chemical Testing Training and Equipment Trust Fund, after three percent of the one hundred dollars ($100) is deducted for administrative costs, and beginning October 1, 1997, and thereafter, the second one hundred dollars ($100) of that additional amount shall be deposited in the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars ($100) for administrative costs and the remainder of the funds shall be deposited to the State General Fund. Fines collected for violations of this section charged pursuant to a municipal ordinance where the total fine is paid at one time shall be deposited as follows: The first three hundred fifty dollars ($350) collected for a first conviction, the first six hundred dollars ($600) collected for a second conviction within five years, the first one thousand one hundred dollars ($1,100) collected for a third conviction, and the first two thousand one hundred dollars ($2,100) collected for a fourth or subsequent conviction shall be deposited to the State Treasury with the first one hundred dollars ($100) collected for each conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund and the second one hundred dollars ($100) to the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars ($100) for administrative costs and depositing this amount in the general fund of the municipality, and the balance credited to the State General Fund. Any amounts collected over these amounts shall be deposited as otherwise provided by law. Fines collected for violations of this section charged pursuant to a municipal ordinance, where the fine is paid on a partial or installment basis, shall be deposited as follows: The first two hundred dollars ($200) of the fine collected for any conviction shall be deposited to the State Treasury with the first one hundred dollars ($100) collected for any conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund and the second one hundred dollars ($100) for any conviction credited to the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars ($100) for administrative costs and depositing this amount in the general fund of the municipality. The second three hundred dollars ($300) of the fine collected for a first conviction, the second eight hundred dollars ($800) collected for a second conviction, the second one thousand eight hundred dollars ($1,800) collected for a third conviction, and the second three thousand eight hundred dollars ($3,800) collected for a fourth conviction shall be divided with 50 percent of the funds collected to be deposited to the State Treasury to be credited to the State General Fund and 50 percent deposited as otherwise provided by law for municipal ordinance violations. Any amounts collected over these amounts shall be deposited as otherwise provided by law for municipal ordinance violations. Notwithstanding any provision of law to the contrary, 90 percent of any fine assessed and collected for any DUI offense charged by municipal ordinance violation in district or circuit court shall be computed only on the amount assessed over the minimum fine authorized, and upon collection shall be distributed to the municipal general fund with the remaining 10 percent distributed to the State General Fund.

(l) A person who has been arrested for violating this section shall not be released from jail under bond or otherwise, until there is less than the same percent by weight of alcohol in his or her blood as specified in subsection (a)(1) or, in the case of a person who is under the age of 21 years, subsection (b) hereof.

(m) Upon verification that a defendant arrested pursuant to this section is currently on probation from another court of this state as a result of a conviction for any criminal offense, the prosecutor shall provide written or oral notification of the defendant's subsequent arrest and pending prosecution to the court in which the prior conviction occurred.

(n) When any person over the age of 21 years is convicted pursuant to this section and a child under the age of 14 years was present in the vehicle at the time of the offense, the defendant shall be sentenced to double the minimum punishment that the person would have received if the child had not been present in the motor vehicle.

(o) A prior conviction within a five-year period for driving under the influence of alcohol or drugs from this state, a municipality within this state, or another state or territory or a municipality of another state or territory shall be considered by a court for imposing a sentence pursuant to this section.

(p) Any person convicted of driving under the influence of alcohol, or a controlled substance, or both, or any substance which impairs the mental or physical faculties in violation of this section, a municipal ordinance adopting this section, or a similar law from another state or territory or a municipality of another state or territory more than once in a five-year period shall have his or her motor vehicle registration for all vehicles owned by the repeat offender suspended by the Alabama Department of Revenue for the duration of the offender's driver's license suspension period, unless such action would impose an undue hardship to any individual, not including the repeat offender, who is completely dependent on the motor vehicle for the necessities of life, including any family member of the repeat offender and any co-owner of the vehicle.

(Acts 1980, No. 80-434, p. 604, §9-102; Acts 1981, No. 81-803, p. 1412, §1; Acts 1983, No. 83-620, p. 959, §1; Acts 1984, No. 84-259, p. 431, §1; Acts 1994, No. 94-590, p. 1089, §1; Acts 1995, No. 95-784, p. 1862, §2; Acts 1996, No. 96-341, p. 416, §1; Acts 1996, No. 96-705, p. 1174, §1; Acts 1997, No. 97-556, p. 985, §1; Act 99-432, p. 787, §1; Act 2000-677, p. 1376, §1; Act 2002-502, p. 1299, §1; Act 2005-326, p. 795, 1st Sp. Sess., §1; Act 2006-654, p. 1787, §1.)

CONNECTICUT

http://www.cga.ct.gov/2007/pub/Chap248.htm#Sec14-227a.htm

Sec. 14-227. Operation while intoxicated. Section 14-227 is repealed.

Sec. 14-227a. Operation while under the influence of liquor or drug or while having an elevated blood alcohol content.

(a) Operation while under the influence or while having an elevated blood alcohol content. No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, "elevated blood alcohol content" means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight, and "motor vehicle" includes a snowmobile and all-terrain vehicle, as those terms are

defined in section 14-379.

(b) Admissibility of chemical analysis. Except as provided in subsection (c) of this section, in any criminal prosecution for violation of subsection (a) of this section, evidence respecting the amount of alcohol or drug in the defendant's blood or urine at the time of the alleged offense, as shown by a chemical analysis of the defendant's breath, blood or urine shall be admissible and competent provided: (1) The defendant was afforded a reasonable opportunity to telephone an attorney prior to the performance of the test and consented to the taking of the test upon which such analysis is made; (2) a true copy of the report of the test result was mailed to or personally delivered to the defendant within twenty-four hours or by the end of the next regular business day, after such result was known, whichever is later; (3) the test was performed by or at the direction of a police officer according to methods and with equipment approved by the Department of Public Safety and was performed in accordance with the regulations adopted under subsection (d) of this section; (4) the device used for such test was checked for accuracy in accordance with the regulations adopted under subsection (d) of this section; (5) an additional chemical test of the same type was performed at least thirty minutes after the initial test was performed or, if requested by the police officer for reasonable cause, an additional chemical test of a different type was performed to detect the presence of a drug or drugs other than or in addition to alcohol, provided the results of the initial test shall not be inadmissible under this subsection if reasonable efforts were made to have such additional test performed in accordance with the conditions set forth in this subsection and such additional test was not performed or was not performed within a reasonable time, or the results of such additional test are not admissible for failure to meet a condition set forth in this subsection; and (6) evidence is presented that the test was commenced within two hours of operation. In any prosecution under this section it shall be a rebuttable presumption that the results of such chemical analysis establish the ratio of alcohol in the blood of the defendant at the time of the alleged offense, except that if the results of the additional test indicate that the ratio of alcohol in the blood of such defendant is twelve-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and the analysis thereof accurately indicate the blood alcohol content at the time of the alleged offense.

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

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

(e) Evidence of refusal to submit to test. In any criminal prosecution for a violation of subsection (a) of this section, evidence that the defendant refused to submit to a blood, breath or urine test

requested in accordance with section 14-227b shall be admissible provided the requirements of subsection (b) of said section have been satisfied. If a case involving a violation of subsection (a) of this section is tried to a jury, the court shall instruct the jury as to any inference that may or may not be drawn from the defendant's refusal to submit to a blood, breath or urine test.

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

(g) Penalties for operation while under the influence. Any person who violates any provision of subsection (a) of this section shall: (1) For conviction of a first violation, (A) be fined not less than five hundred dollars or more than one thousand dollars, and (B) be (i) imprisoned not more than six months, forty-eight consecutive hours of which may not be suspended or reduced in any manner, or (ii) imprisoned not more than six months, with the execution of such sentence of imprisonment suspended entirely and a period of probation imposed requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) have such person's motor vehicle operator's license or nonresident operating privilege suspended for one year; (2) for conviction of a second violation within ten years after a prior conviction for the same offense, (A) be fined not less than one thousand dollars or more than four thousand dollars, (B) be imprisoned not more than two years, one hundred twenty consecutive days of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) (i) have such person's motor vehicle operator's license or nonresident operating privilege suspended for three years or until the date of such person's twenty-first birthday, whichever is longer, or (ii) if such person has been convicted of a violation of subdivision (1) of subsection (a) of this section on account of being under the influence of intoxicating liquor or of subdivision (2) of subsection (a) of this section, have such person's motor vehicle operator's license or nonresident operating privilege suspended for one year and be prohibited for the two-year period following completion of such period of suspension from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j; and (3) for conviction of a third and subsequent violation within ten years after a prior conviction for the same offense, (A) be fined not less than two thousand dollars or more than eight thousand dollars, (B) be imprisoned not more than three years, one year of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) have such person's motor vehicle operator's license or nonresident operating privilege permanently revoked upon such third offense. For purposes of the imposition of penalties for a second or third and subsequent offense pursuant to this subsection, a conviction under the provisions of subsection (a) of this section in effect on October 1, 1981, or as amended thereafter, a conviction under the provisions of either subdivision (1) or (2) of subsection (a) of this section, a conviction under the provisions of section 53a-56b or 53a-60d or a conviction in any other state of any offense the essential elements of which are determined by the court to be substantially the same as subdivision (1) or (2) of subsection (a) of this section or section 53a-56b or 53a-60d, shall constitute a prior conviction for the same offense.

(h) Suspension of operator's license or nonresident operating privilege. (1) Each court shall report each conviction under subsection (a) of this section to the Commissioner of Motor Vehicles, in accordance with the provisions of section 14-141. The commissioner shall suspend the motor vehicle operator's license or nonresident operating privilege of the person reported as convicted for the period of time required by subsection (g) of this section. The commissioner shall determine the

period of time required by said subsection (g) based on the number of convictions such person has had within the specified time period according to such person's driving history record, notwithstanding the sentence imposed by the court for such conviction. (2) The motor vehicle operator's license or nonresident operating privilege of a person found guilty under subsection (a) of this section who is under eighteen years of age shall be suspended by the commissioner for the period of time set forth in subsection (g) of this section, or until such person attains the age of eighteen years, whichever period is longer. (3) The motor vehicle operator's license or nonresident operating privilege of a person found guilty under subsection (a) of this section who, at the time of the offense, was operating a motor vehicle in accordance with a special operator's permit issued pursuant to section 14-37a shall be suspended by the commissioner for twice the period of time set forth in subsection (g) of this section. (4) If an appeal of any conviction under subsection (a) of this section is taken, the suspension of the motor vehicle operator's license or nonresident operating privilege by the commissioner, in accordance with this subsection, shall be stayed during the pendency of such appeal.

(i) Installation of ignition interlock device. (1) The Commissioner of Motor Vehicles shall permit a person whose license has been suspended in accordance with the provisions of subparagraph (C)(ii) of subdivision (2) of subsection (g) of this section to operate a motor vehicle if (A) such person has served not less than one year of such suspension, and (B) such person has installed an approved ignition interlock device in each motor vehicle owned or to be operated by such person. No person whose license is suspended by the commissioner for any other reason shall be eligible to operate a motor vehicle equipped with an approved ignition interlock device. (2) All costs of installing and maintaining an ignition interlock device shall be borne by the person required to install such device. (3) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this subsection. The regulations shall establish procedures for the approval of ignition interlock devices, for the proper calibration and maintenance of such devices and for the installation of such devices by any firm approved and authorized by the commissioner. (4) The provisions of this subsection shall not be construed to authorize the continued operation of a motor vehicle equipped with an ignition interlock device by any person whose operator's license or nonresident operating privilege is withdrawn, suspended or revoked for any other reason. (5) The provisions of this subsection shall apply to any person whose license has been suspended in accordance with the provisions of subparagraph (C)(ii) of subdivision (2) of subsection (g) of this section on or after September 1, 2003.

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

(k) Seizure and admissibility of medical records of injured operator. Notwithstanding the provisions of subsection (b) of this section, evidence respecting the amount of alcohol or drug in the blood or urine of an operator of a motor vehicle involved in an accident who has suffered or allegedly suffered physical injury in such accident, which evidence is derived from a chemical analysis of a blood sample taken from or a urine sample provided by such person after such accident at the scene of the accident, while en route to a hospital or at a hospital, shall be competent evidence to establish probable cause for the arrest by warrant of such person for a violation of subsection (a) of this section and shall be admissible and competent in any subsequent prosecution thereof if: (1) The blood sample was taken or the urine sample was provided for the diagnosis and treatment of such injury; (2) if a blood sample was taken, the blood sample was taken in accordance with the regulations adopted under subsection (d) of this section; (3) a police officer has demonstrated to the satisfaction of a judge of the Superior Court that such officer has reason to believe that such person was operating a motor vehicle while under the influence of intoxicating

liquor or drug or both and that the chemical analysis of such blood or urine sample constitutes evidence of the commission of the offense of operating a motor vehicle while under the influence of intoxicating liquor or drug or both in violation of subsection (a) of this section; and (4) such judge has issued a search warrant in accordance with section 54-33a authorizing the seizure of the chemical analysis of such blood or urine sample. Such search warrant may also authorize the seizure of the medical records prepared by the hospital in connection with the diagnosis or treatment of such injury.

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

DELAWARE

http://delcode.delaware.gov/title21/c041/sc09/index.shtml

TITLE 21

Motor Vehicles, Operation and Equipment

CHAPTER 41. RULES OF THE ROAD Subchapter IX. Reckless Driving; Driving While Intoxicated

§ 4177. Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(a) No person shall drive a vehicle:

(1) When the person is under the influence of alcohol;

(2) When the person is under the influence of any drug;

(3) When the person is under the influence of a combination of alcohol and any drug;

(4) When the person's alcohol concentration is .08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that

alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;

(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2)a. No person shall be guilty under subsection (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under subsection (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.

(3)a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

c. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.

(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.

(c) For purposes of subchapter III of Chapter 27 of this title, this section and § 4177B of this title, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per two hundred ten liters of breath.

(2) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(3) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(4) "Vehicle" shall include any vehicle as defined in § 101(80) of this title, any off-highway vehicle as defined in § 101(39) of this title and any moped as defined in § 101(31) of this title.

(5) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

(6) "Alcohol concentration of .15 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .15 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to 20 or more grams per two hundred ten liters of breath.

(7) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(8) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

b. Cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of Title 16; or

c. Amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of Title 16; or

d. Methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of Title 16; or

e. Phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or

f. A designer drug as defined in § 4701 of Title 16; or

g. A substance or preparation having the property of releasing vapors or fumes which may be

used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(9) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.

(10) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(1) For the first offense, be fined not less than $500 nor more than $1,500 or imprisoned not more than 6 months or both, and shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of this title, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense, be fined not less than $750 nor more than $2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.

(3) For a third offense, be guilty of a class G felony, be fined not less than $1,500 nor more than $5,000 and imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than $3,000 nor more than $7,000, and imprisoned not less than 2 years nor more than 5 years.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not less than $3,500 nor more than $10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not less than $5,000 nor more than $10,000 and imprisoned not less than 5 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not less than $10,000 nor more than $15,000 and imprisoned not less than 10 years nor greater than 15 years.

(8) For the fourth, fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in

the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) The provisions of paragraphs (d)(3) and (4) of this section and the provisions of § 4177B(e)(2) of this title notwithstanding, the Attorney General may move the sentencing court to apply the provisions of paragraph (d)(3) of this section to any person who would otherwise be subject to a conviction and sentencing pursuant to paragraph (d)(4) of this section.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of $500 and not more than an additional $1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of $750 and not more than an additional $2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3) or (4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3) or (4) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (4) or (9) of this section.

(e) In addition to any penalty for the violation of subsection (a) or subsection (b) of this section, the court may prohibit a person convicted under either subsection from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; and such prohibition shall be for a period of not less than 1 year. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this subsection at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of $2,000 and be imprisoned for 60 days.

(f) In addition to the penalties prescribed in paragraphs (2), (3) and (4) of subsection (d) of this section, anyone convicted of a subsequent like offense shall be ordered to complete an alcohol evaluation and complete a program of education or rehabilitation which may include inpatient treatment and be followed by such other programs as established by the training facility, not to exceed a total of 15 months and pay a fee not to exceed the maximum fine.

(g) For purposes of a conviction premised upon subsection (a) of this section, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in subsection (c)(2) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(1) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence may only be admissible in proceedings for the determination of guilt when evidence or argument by the defendant is admitted or made relating to the alcohol concentration of the person at the time of driving.

(2) Nothing in this section shall preclude conviction of an offense defined in this Code based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(h)(1) For the purpose of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol therein stated.

(2) Any report introduced under paragraph (1) of this subsection must:

a. Identify the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (1) and (2) of this subsection.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

MONTANA

http://data.opi.state.mt.us/bills/mca/61/8/61-8-401.htm

61-8-401. Driving under influence of alcohol or drugs -- definitions. (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section.

http://data.opi.state.mt.us/bills/mca/61/8/61-8-402.htm

61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary

license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part.

VERMONT

http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=23&Chapter=013&Section=01201

Title 23: Motor Vehicles

Chapter 13: Operation of Vehicles

1201. Operating vehicle under the influence of intoxicating liquor or other substance; criminal refusal

§ 1201. Operating vehicle under the influence of intoxicating liquor or other substance; criminal refusal

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

(b) A person who has previously been convicted of a violation of this section shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer had reasonable grounds to believe the person was in violation of subsection (a) of this section.

(c) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and be involved in an accident or collision resulting in serious bodily injury or death to another and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer has reasonable grounds to believe the person has any amount of alcohol in the system.

(d) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(e) A person may not be convicted of more than one violation of subsection (a) of this section arising out of the same incident.

(f) For purposes of this section and section 1205 of this title, the defendant may assert as an affirmative defense that the person was not operating, attempting to operate, or in actual physical control of the vehicle because the person:

(1) had no intention of placing the vehicle in motion; and

(2) had not placed the vehicle in motion while under the influence.

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title. (Added 1969, No. 267 (Adj. Sess.), § 1; amended 1973, No. 16, § 1, eff. March 1, 1973; No. 79, § 1, eff. May 23, 1973; 1975, No. 10, § 2, eff. April 9, 1975; 1981, No. 103, §§ 2, 2a; 1983, No. 212 (Adj. Sess.), § 5; 1989, No. 68, § 2, eff. Dec. 1, 1989; 1991, No. 55, § 2; 1997, No. 56, § 1, eff. Aug. 1, 1997; 1999, No. 116 (Adj. Sess.), § 2; No. 160 (Adj. Sess.), § 15; 2001, No. 146 (Adj. Sess.), § 1; 2005, No. 37, § 1; 2007, No. 195 (Adj. Sess.), § 4.)

WASHINGTON

http://apps.leg.wa.gov/RCW/default.aspx?cite=46.61.502

RCW 46.61.502

Driving under the influence

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of (i) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), (ii) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection.

[2008 c 282 § 20; 2006 c 73 § 1; 1998 c 213 § 3; 1994 c 275 § 2; 1993 c 328 § 1; 1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

Notes:

Rules of court: Bail in criminal traffic offense cases -- Mandatory appearance -- CrRLJ 3.2.

Effective date -- 2006 c 73: "This act takes effect July 1, 2007." [2006 c 73 § 19.]

Effective date -- 1998 c 213: See note following RCW 46.20.308.

Short title -- Effective date -- 1994 c 275: See notes following RCW 46.04.015.

Legislative finding, purpose -- 1987 c 373: "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgement that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

Severability -- 1987 c 373: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 373 § 8.]

Severability -- 1979 ex.s. c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 176 § 8.]

Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.

Criminal history and driving record: RCW 46.61.513.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.

b)FINLANDIA

http://www.lexadin.nl/wlg/legis/nofr/eur/lxwefin.htm

http://www.lvm.fi/web/en/home

Transport and Maritime Law(en las cuales no se habla de conductor ebrio):

Act on Licences for Roadworthiness Test of Vehicles / Act on Registering of Ship's Crew 2006 / Act on Registration Services of Vehicles / Act on Transport of Dangerous Goods / Act on the Ice Classes of Ships and Icebreaker Assistance 2005 / Animal Transport Act 2006 / Decree on Marine Equipment / Decree on the Transport of Dangerous Goods by Air / Decree on the Vehicle Registration 1995 / Government Decree on Vessel Traffic Service 2005 / Government Decree on the Transport and Temporary Storage of Dangerous Goods in a Port Area / Highways Act / Pressure Equipment Act 1999 / Railway Act / Register of Ships Act / Register of Ships Decree / Seamen's Act (1978, amended 2006) / Ship and Port Facility Security Act / Vehicles Act 1090/2002 / Vehicles Act 2002 / Vehicular and Driver Data Register Act / Vessel Traffic Service Act

VER: http://www.lvm.fi/fileserver/road%20safety%202006-2010.pdf

ALCOLOCK INFO

http://www.lvm.fi/c/document_library/get_file?folderId=64261&name=DLFE-2312.pdf&title=Alcolock

A drink-driving offender may request for a right to drive a car fitted with an alcohol ignition interlock, alcolock, instead of being imposed an unconditional driving ban.

What does a "conditional right to drive" mean?

Offenders for drunken driving or aggravated drunken driving may regain their right to drive by having an alcolock installed in their car and committing to the terms of a conditional right to drive. The conditional right to drive does not change the punishment for drunken driving.

In order to receive an alcolock driving licence the driver must see a doctor or another health care professional to discuss the use of alcohol and drugs, their health impacts, and opportunities for rehabilitation.

The driver must request a certificate stating the purpose of the visit and submit it to the police of his or her place of residence.

What is an alcolock?

An alcolock is a device that prevents the car from starting, if the driver has a minimum of 0.1 mg alcohol per litre of exhaled air. The amount corresponds to approximately 0.2 ‰ alcohol in blood. During the drive the driver has to perform a random retest and blow into the alcolock. The retest does not stop a running engine but it will cause the vehicle horn to sound if the blowing is neglected or the alcohol level is above the legal limit.

All alcolock recordings and possible misuse of the device are stored in the central processing unit. Every two months the driver must take the vehicle to a manufacturer's representative that has been notified to the Finnish Vehicle Administration where the data will be read.

Who can obtain a conditional right to drive?

A conditional right to drive may be granted to a drink-driving offender, who is permanently residing in Finland, and has not been imposed a driving ban for any other reasons. He or she must have a driving licence entitling to drive a passenger car, van, lorry, bus or a tractor.

How to obtain a conditional right to drive?

A request for a conditional right to drive can be submitted to the investigating police or the court of law handling the drink-driving case. The request may also be submitted in writing. The police may grant a conditional right to drive already before the court proceedings.

How long must the alcolock be used? What does it cost?

The alcolock must be used for the time period ordered by the court, at least for a year and no more than three years. The costs for using the alcolock amount to approximately 110-160 euros a month. The costs are the responsibility of the driver.

Where to obtain an alcolock?

Alcolocks are available from the manufacturers' representatives, whose contact information is below. Information on installation shops can also be found on the Vehicle Administration's web pages at www.ake.fi . It is not necessary to buy an alcolock as it can also be rented for the required period.

After the installation the car needs to undergo a modification inspection. Certificates of the installation and of the modification inspection must be delivered to the police of the driver's place of residence.

What happens to the driving licence?

If caught driving under the influence of alcohol, the police will take away the drink-driving offender's driving licence.

The conditional right to drive begins when the police issue the driver a special alcolock driving licence. The licence will provide the right to drive cars referred to in the vehicle register and fitted with alcolocks only.

May others drive a car with an alcolock?

A car fitted with an alcolock may be driven by anyone.

However, the person imposed a conditional right to drive is responsible for appropriate use of the alcolock.

In case of misuse, his or her responsibility ends only if they can reliably prove that someone else had acted against the instructions.

What happens if the driver fails to comply with the conditions?

The conditional right to drive will be revoked and the driving ban that was imposed conditional will be enforced. The decision will be made by a court of law.

What will cause a revocation of a conditional right to drive?

A conditional right to drive will be revoked if the driver does not comply with the related conditions or if he or she is found guilty of drunken driving, aggravated drunken driving or aggravated endangering of traffic safety.

It is forbidden to circumvent or immobilise the alcolock. The conditional right to drive will also be revoked if the driver does not comply with the limitations related to the alcolock driving licence. For example, it is forbidden to drive a car not fitted with an alcolock. It is also forbidden to neglect blowing into the alcolock during the drive or to exceed the legal alcohol limit.

The driver is responsible for having the alcolock serviced at regular intervals and for following the manufacturer's instructions of use.

Alcolock importers' contact information: Liitin Oy tel. +358 207 119 600 www.liitin.fi

AL Agentur tel. +358 457 3435 254 www.alkolas.fi

Further information:

The Policen www.poliisi.fi

Ministry of Transport and Communications www.lvm.fi

List of alcolock service and installation shops: Finnish Vehicle Administration www.ake.fi

CONDITIONAL RIGHT TO DRIVE:

A drink-driving offender is caught. The Police take away the driving licence and impose a temporary driving ban with immediate effect.

A request for a conditional right to drive to the Police or, at the latest, at the District Court.

A decision concerning the conditional right to drive by the Police or the District Court session.

Installation of the alcolock and a modification inspection of the car.

Certificates to the Police of the alcolock installation, of a modification inspection, and of a visit to the doctor or another health care professional.

An alcolock driving licence from the Police. The conditional right to drive begins.

Servicing of the alcolock at two months intervals.

After the alcolock period ends, the alcolock driving licence is returned to the Police. The Police submit the normal driving licence. The alcolock may be removed from the car, and a modification inspection can be performed.

c)ITALIA:

http://www.parlamento.it/parlam/leggi/07160l.htm

Legge 2 ottobre 2007, n. 160

"Conversione in legge, con modificazioni, del decreto-legge 3 agosto 2007, n. 117, recante disposizioni urgenti modificative del codice della strada per incrementare i livelli di sicurezza nella circolazione " pubblicata nella *Gazzetta Ufficiale* n. 230 del 3 ottobre 2007

Legge di conversione

Art. 1.

1. Il decreto-legge 3 agosto 2007, n. 117, recante disposizioni urgenti modificative del codice della strada per incrementare i livelli di sicurezza nella circolazione, è convertito in legge con le modificazioni riportate in allegato alla presente legge.

2. La presente legge entra in vigore il giorno successivo a quello della sua pubblicazione nella *Gazzetta Ufficiale.*

Testo del decreto-legge coordinato con la legge di conversione pubblicato nella *Gazzetta Ufficiale* n. 230 del 3 ottobre 2007 (*) Le modifiche apportate dalla legge di conversione sono stampate con caratteri corsivi

Art. 1.

Disposizioni in materia di guida senza patente

1. All'art. 116 del decreto legislativo n. 285 del 1992, e successive modificazioni, il comma 13 e' sostituito dal seguente:

"13. Chiunque guida autoveicoli o motoveicoli senza aver conseguito la patente di guida e' punito con l'ammenda da euro 2.257 a euro 9.032; la stessa sanzione si applica ai conducenti che guidano senza patente perche' revocata o non rinnovata per mancanza dei requisiti previsti dal presente codice. Nell'ipotesi di reiterazione del reato nel biennio si applica altresi' la pena dell'arresto fino ad un anno. Per le violazioni di cui al presente comma e' competente il tribunale in composizione monocratica".

Art. 2.

Disposizioni in materia di limitazioni nella guida

1. All'art. 117 del decreto legislativo n. 285 del 1992, e successive modificazioni, sono apportate le seguenti modificazioni:

a) il comma 1 e' sostituito dal seguente:

"1. E' consentita la guida dei motocicli ai titolari di patente A, rilasciata alle condizioni e con le limitazioni dettate dalle disposizioni comunitarie in materia di patenti.";

b) dopo il comma 2 e' inserito il seguente:

"2-bis. Ai titolari di patente di guida di categoria B, per *il primo anno* dal rilascio non e' consentita la guida di autoveicoli aventi una potenza specifica, riferita alla tara, superiore a 50 kw/t. La limitazione di cui al presente comma non si applica ai veicoli adibiti al servizio di persone invalide, autorizzate ai sensi dell'art. 188, purche' la persona invalida sia presente sul veicolo.";

c) al comma 3, primo periodo, le parole: "ai commi 1 e 2" sono sostituite dalle seguenti: "ai commi 1, 2 e 2-bis";

d) al comma 5, primo periodo, le parole: "e comunque prima di aver raggiunto l'eta' di venti anni," sono soppresse e le parole: "da euro 74 a euro 296" sono sostituite dalle seguenti: "da euro 148 a euro 594".

2. Le disposizioni del comma 2-bis dell'art. 117 del decreto legislativo n. 285 del 1992, introdotto dal comma 1, lettera b), del presente articolo, si applicano ai titolari di patente di guida di categoria B rilasciata a fare data dal centottantesimo giorno successivo alla data di entrata in vigore del presente decreto.

3. All'art. 170 del decreto legislativo 30 aprile 1992, n. 285, e successive modificazioni, sono apportate le seguenti modifiche:

a) dopo il comma 1 e' inserito il seguente:

"1-bis. Sui veicoli di cui al comma 1 e' vietato il trasporto di minori di anni cinque.";

b) dopo il comma 6 e' inserito il seguente:

"6-bis. Chiunque viola le disposizioni del comma 1-bis e' soggetto alla sanzione amministrativa del pagamento di una somma da euro 148 a euro 594.".

Art. 3.

Disposizioni in materia di velocita' dei veicoli

1. All'art. 142 del decreto legislativo 30 aprile 1992, n. 285, e successive modificazioni, sono

apportate le seguenti modificazioni:

a) al comma 6, dopo le parole: "le risultanze di apparecchiature debitamente omologate," sono inserite le seguenti: "anche per il calcolo della velocita' media di percorrenza su tratti determinati,";
b) dopo il comma 6 e' inserito il seguente:

"6-bis. Le postazioni di controllo sulla rete stradale per il rilevamento della velocita' devono essere preventivamente segnalate e ben visibili, ricorrendo all'impiego di cartelli o di dispositivi di segnalazione luminosi, conformemente alle norme stabilite nel regolamento di esecuzione del presente codice. Le modalita' di impiego sono stabilite con decreto del Ministro dei trasporti, di concerto con il Ministro dell'interno.";

c) il comma 9 e' sostituito dai seguenti:

"9. Chiunque supera di oltre 40 km/h ma di non oltre 60 km/h i limiti massimi di velocita' e' soggetto alla sanzione amministrativa del pagamento di una somma da euro 370,00 a euro 1.458,00. Dalla violazione consegue la sanzione amministrativa accessoria della sospensione della patente di guida *da uno a tre mesi con il provvedimento di inibizione alla guida del veicolo, nella fascia oraria che va dalle ore 22 alle ore 7 del mattino, per i tre mesi successivi alla restituzione della patente di guida. Il provvedimento di inibizione alla guida e' annotato nell'anagrafe nazionale degli abilitati alla guida, di cui agli articoli 225 e 226 del presente codice.*

9-bis. Chiunque supera di oltre 60 km/h i limiti massimi di velocita' e' soggetto alla sanzione amministrativa del pagamento di una somma da euro 500 a euro 2.000. Dalla violazione consegue la sanzione amministrativa accessoria della sospensione della patente di guida da sei a dodici mesi, ai sensi delle norme di cui al capo I, sezione II, del titolo VI.";

d) il comma 11 e' sostituito dal seguente:

"11. Se le violazioni di cui ai commi 7, 8, 9 e 9-bis sono commesse alla guida di uno dei veicoli indicati al comma 3, lettere b), e), f), g), h), i) e l) le sanzioni amministrative pecuniarie e quelle accessorie ivi previste sono raddoppiate. L'eccesso di velocita' oltre il limite al quale e' tarato il limitatore di velocita' di cui all'art. 179 comporta, nei veicoli obbligati a montare tale apparecchio, l'applicazione delle sanzioni amministrative pecuniarie previste dai commi 2-bis e 3 del medesimo art. 179, per il caso di limitatore non funzionante o alterato. E' sempre disposto l'accompagnamento del mezzo presso un'officina autorizzata, per i fini di cui al comma 6-bis del citato art. 179.";

e) il comma 12 e' sostituito dal seguente:

"12. Quando il titolare di una patente di guida sia incorso, in un periodo di due anni, in una ulteriore violazione del comma 9, la sanzione amministrativa accessoria e' della sospensione della patente da otto a diciotto mesi, ai sensi delle norme di cui al capo I, sezione II, del titolo VI. Quando il titolare di una patente di guida sia incorso, in un periodo di due anni, in una ulteriore violazione del comma 9-bis, la sanzione amministrativa accessoria e' la revoca della patente, ai sensi delle norme di cui al capo I, sezione II, del titolo VI.".

2. Alla tabella dei punteggi allegata all'art. 126-bis del decreto legislativo n. 285 del 1992, e successive modificazioni, le parole:

Norma violata	Punti
Art. 142, comma 8	2
comma 9	10}

sono sostituite dalle seguenti:

Norma violata	Punti
Art. 142, comma 8	5
commi 9 e 9-bis	10}

3. All'attuazione delle disposizioni introdotte dal comma 1 del presente articolo si provvede nell'ambito delle risorse finanziarie disponibili a legislazione vigente e senza nuovi o maggiori oneri per la finanza pubblica.

Art. 3-bis.

Modifiche all'art. 157 del decreto legislativo n. 285 e successive modificazioni del 1992, in materia di accensione del motore durante la sosta o la fermata del veicolo.

1. All'art. 157 del decreto legislativo 30 aprile 1992, n. 285, sono apportate le seguenti modificazioni:

a) dopo il comma 7, e' inserito il seguente:

"7-bis. E' fatto divieto di tenere il motore acceso, durante la sosta o fermata del veicolo, allo scopo di mantenere in funzione l'impianto di condizionamento d'aria nel veicolo stesso; dalla violazione consegue la sanzione amministrativa del pagamento di una somma da euro 200 a euro 400.";

b) al comma 8 sono premesse le seguenti parole: "Fatto salvo quanto disposto dal comma 7-bis,".

Art. 4.

Disposizioni in materia di uso dei dispositivi radiotrasmittenti durante la guida

1. Il comma 3 dell'art. 173 del decreto legislativo n. 285 del 1992, e successive modificazioni, e' sostituito dai seguenti:

"3. Chiunque viola le disposizioni di cui al comma 1 e' soggetto alla sanzione amministrativa del pagamento di una somma da euro 70,00 a euro 285,00.

3-bis. Chiunque viola le disposizioni di cui al comma 2 e' soggetto alla sanzione amministrativa del pagamento di una somma da euro 148,00 a euro 594,00. Si applica la sanzione amministrativa accessoria della sospensione della patente di guida da uno a tre mesi, qualora lo stesso soggetto compia un'ulteriore violazione nel corso di un biennio.".

2. Alla tabella dei punteggi allegata all'art. 126-bis del decreto legislativo n. 285 del 1992, e successive modificazioni, le parole:

Norma violata	Punti
Art. 173, comma 3	5

sono sostituite dalle seguenti:

Norma violata	Punti

Art. 5.

Modifiche agli articoli 186 e 187 del decreto legislativo n. 285 del 1992, in materia di guida in stato di ebbrezza alcolica o sotto l'effetto di stupefacenti.

1. All'art. 186 del decreto legislativo n. 285 del 1992, e successive modificazioni, sono apportate le seguenti modificazioni:

a) il comma 2 e' sostituito dai seguenti:

"2. Chiunque guida in stato di ebbrezza e' punito, ove il fatto non costituisca piu' grave reato:

a) con l'ammenda da euro 500 a euro 2000, qualora sia stato accertato un valore corrispondente ad un tasso alcolemico superiore a 0,5 e non superiore a 0,8 grammi per litro (g/l). All'accertamento del reato consegue la sanzione amministrativa accessoria della sospensione della patente di guida da tre a sei mesi;

b) con l'ammenda da euro 800 a euro 3.200 e l'arresto fino a tre mesi, qualora sia stato accertato un valore corrispondente ad un tasso alcolemico superiore a 0,8 e non superiore a 1,5 grammi per litro (g/l). All'accertamento del reato consegue in ogni caso la sanzione amministrativa accessoria della sospensione della patente di guida da sei mesi ad un anno;

c) con l'ammenda da euro 1.500 a euro 6.000, l'arresto fino a sei mesi, qualora sia stato accertato un valore corrispondente ad un tasso alcolemico superiore a 1,5 grammi per litro (g/l). All'accertamento del reato consegue in ogni caso la sanzione amministrativa accessoria della sospensione della patente di guida da uno a due anni. La patente di guida e' sempre revocata, ai sensi del capo I, sezione II, del titolo VI, quando il reato e' commesso dal conducente di un autobus o di un veicolo di massa complessiva a pieno carico superiore a 3,5t. o di complessi di veicoli, ovvero in caso di recidiva nel biennio. Ai fini del ritiro della patente si applicano le disposizioni dell'art. 223.

2-bis. Se il conducente in stato di ebbrezza provoca un incidente stradale, le pene di cui al comma 2) sono raddoppiate ed e' disposto il fermo amministrativo del veicolo per novanta giorni ai sensi del Capo I, sezione II, del titolo VI, salvo che il veicolo appartenga a persona estranea al reato. E' fatta salva in ogni caso l'applicazione delle sanzioni accessorie previste dagli articoli 222 e 223.

2-ter. Competente a giudicare dei reati di cui al presente articolo e' il tribunale in composizione monocratica.

2-quater. Le disposizioni relative alle sanzioni accessorie di cui ai commi 2 e 2-bis si applicano anche in caso di applicazione della pena su richiesta delle parti";

b) al comma 5, dopo il terzo periodo e' aggiunto, in fine, il seguente: "Si applicano le disposizioni del comma 5-bis dell'art. 187.";

c) il comma 7 e' sostituito dal seguente:

"7. Salvo che il fatto costituisca reato, in caso di rifiuto dell'accertamento di cui ai commi 3, 4 o 5 il conducente e' soggetto alla sanzione amministrativa del pagamento di una somma da euro 2.500 a euro 10.000. Se la violazione e' commessa in occasione di un incidente stradale in cui il conducente e' rimasto coinvolto, si applica la sanzione amministrativa pecuniaria da euro 3.000 ad euro 12.000.

Dalle violazioni conseguono la sanzione amministrativa accessoria della sospensione della patente di guida per un periodo da sei mesi a due anni e del fermo amministrativo del veicolo per un periodo di centottanta giorni ai sensi del capo I, sezione II, del titolo VI, salvo che il veicolo appartenga a persona estranea alla violazione. Con l'ordinanza con la quale e' disposta la sospensione della patente, il prefetto ordina che il conducente si sottoponga a visita medica secondo le disposizioni del comma 8. Quando lo stesso soggetto compie piu' violazioni nel corso di un biennio, e' sempre disposta la sanzione amministrativa accessoria della revoca della patente di guida ai sensi del capo I, sezione II, del titolo VI.";

d) al comma 8, primo periodo, le parole: "del comma 2" sono sostituite dalle seguenti: "dei commi 2 e 2-bis";

e) il comma 9 e' sostituito dal seguente:

"9. Qualora dall'accertamento di cui ai commi 4 e 5 risulti un valore corrispondente ad un tasso alcolemico superiore a 1,5 grammi per litro, ferma restando l'applicazione delle sanzioni di cui ai commi 2 e 2-bis, il prefetto, in via cautelare, dispone la sospensione della patente fino all'esito della visita medica di cui al comma 8.".

2. All'art. 187 del decreto legislativo 30 aprile 1992, n. 285, e successive modificazioni, sono apportate le seguenti modifiche:

a) il comma 1 e' sostituito dai seguenti:

"1. Chiunque guida in stato di alterazione psico-fisica dopo aver assunto sostanze stupefacenti o psicotrope e' punito con l'ammenda da euro 1000 a euro 4000 e l'arresto fino a tre mesi. All'accertamento del reato consegue in ogni caso la sanzione amministrativa accessoria della sospensione della patente di guida da sei mesi ad un anno. La patente di guida e' sempre revocata, ai sensi del capo I, sezione II, del titolo VI, quando il reato e' commesso dal conducente di un autobus o di un veicolo di massa complessiva a pieno carico superiore a 3,5t. o di complessi di veicoli, ovvero in caso di recidiva nel biennio. Ai fini del ritiro della patente si applicano le disposizioni dell'art. 223.

1-bis. Se il conducente in stato di alterazione psico-fisica dopo aver assunto sostanze stupefacenti o psicotrope provoca un incidente stradale, le pene di cui al comma 1 sono raddoppiate ed e' disposto il fermo amministrativo del veicolo per novanta giorni ai sensi del capo I, sezione II, del titolo VI, salvo che il veicolo appartenga a persona estranea al reato. E' fatta salva in ogni caso l'applicazione delle sanzioni accessorie previste dagli articoli 222 e 223.

1-ter. Competente a giudicare dei reati di cui al presente articolo e' il tribunale in composizione monocratica. Si applicano le disposizioni dell'art. 186, comma 2-quater.";

b) dopo il comma 5 e' inserito il seguente:

"5-bis. Qualora l'esito degli accertamenti di cui ai commi 3, 4 e 5 non sia immediatamente disponibile e gli accertamenti di cui al comma 2 abbiano dato esito positivo, se ricorrono fondati motivi per ritenere che il conducente si trovi in stato di alterazione psico-fisica dopo l'assunzione di sostanze stupefacenti o psicotrope, gli organi di polizia stradale possono disporre il ritiro della patente di guida fino all'esito degli accertamenti e, comunque, per un periodo non superiore a dieci giorni. Si applicano le disposizioni dell'art. 216 in quanto compatibili. La patente ritirata e' depositata presso l'ufficio o il comando da cui dipende l'organo accertatore.";

c) il comma 7 e' abrogato;

d) il comma 8 e' sostituito dal seguente:

"8. Salvo che il fatto costituisca reato, in caso di rifiuto dell'accertamento di cui ai commi 2, 3 o 4, il conducente e' soggetto alle sanzioni di cui all'art. 186, comma 7. Con l'ordinanza con la quale e' disposta la sospensione della patente, il prefetto ordina che il conducente si sottoponga a visita medica ai sensi dell'art. 119".

Art. 6.

Nuove norme volte a promuovere la consapevolezza dei rischi di incidente stradale in caso di guida in stato di ebbrezza.

1. All'art. 230, comma 1 del decreto legislativo 30 aprile 1992, n. 285, e successive modificazioni, dopo le parole: "e delle regole di comportamento degli utenti" sono aggiunte, in fine, le seguenti:", con particolare riferimento all'informazione sui rischi conseguenti all'assunzione di sostanze psicotrope, stupefacenti e di bevande alcoliche".

2. Tutti i titolari e i gestori di locali ove si svolgono, con qualsiasi modalita' e in qualsiasi orario, spettacoli o altre forme di intrattenimento, congiuntamente all'attivita' di vendita e di somministrazione di bevande alcoliche, *devono interrompere la somministrazione di bevande alcoliche dopo le ore 2 della notte ed assicurarsi che all'uscita del locale sia possibile effettuare, in maniera volontaria da parte dei clienti, una rilevazione del tasso alcolemico; inoltre* devono esporre all'entrata, all'interno e all'uscita dei locali apposite tabelle che riproducano:

a) la descrizione dei sintomi correlati ai diversi livelli di concentrazione alcolemica nell'aria alveolare espirata;

b) le quantita', espresse in centimetri cubici, delle bevande alcoliche piu' comuni che determinano il superamento del tasso alcolemico per la guida in stato di ebbrezza, pari a 0,5 grammi per litro, da determinare anche sulla base del peso corporeo.

3. L'inosservanza delle disposizioni di cui al comma 2 comporta la sanzione di chiusura del locale da sette fino a trenta giorni, secondo la valutazione dell'autorita' competente.

4. Entro tre mesi dalla data di entrata in vigore del presente decreto, il Ministro della salute, con proprio decreto, stabilisce i contenuti delle tabelle di cui al comma 2.

Art. 6-bis.

Fondo contro l'incidentalita' notturna

1. E' istituito presso la Presidenza del Consiglio dei Ministri il Fondo contro l'incidentalita' notturna.

2. Chiunque, dopo le ore 20 e prima delle ore 7, viola gli articoli 141, 142, commi 8 e 9, 186 e 187 del decreto legislativo 30 aprile 1992, n. 285, e successive modificazioni, e' punito con la sanzione amministrativa aggiuntiva di euro 200 che vengono destinati al Fondo contro l'incidentalita' notturna.

3. Le risorse del Fondo di cui al comma 1 devono essere usate per le attivita' di contrasto dell'incidentalita' notturna.

4. Entro tre mesi dalla data di entrata in vigore della legge di conversione del presente decreto, il Ministro dell'economia e delle finanze, con decreto adottato di concerto con il Ministro dell'interno e con il Ministro dei trasporti, emana il regolamento per l'attuazione del presente articolo.

5. Per il finanziamento iniziale del Fondo di cui al comma 1 e' autorizzata la spesa di 500.000 euro per ciascuno degli anni 2007, 2008 e 2009. Al relativo onere si provvede mediante corrispondente

riduzione dell'autorizzazione di spesa di cui all'art. 1, comma 1036, della legge 27 dicembre 2006, n. 296.

Art. 6-ter.

Destinazione delle maggiori entrate derivanti dall'incremento delle sanzioni amministrative pecuniarie

1. Le maggiori entrate derivanti dall'incremento delle sanzioni amministrative pecuniarie disposto dal presente decreto sono destinate al finanziamento di corsi volti all'educazione stradale nelle scuole di ogni ordine e grado.

2. Con decreto del Ministro dell'economia e delle finanze, di concerto con il Ministro dei trasporti e con il Ministro della pubblica istruzione, da adottare entro quattro mesi dall'entrata in vigore della legge di conversione del presente decreto, si provvede all'attuazione del presente articolo disciplinando, agli effetti della definizione dei programmi e delle relative attivita' di formazione e di supporto didattico, le modalita' di collaborazione di enti ed organismi con qualificata esperienza e competenza nel settore.

Art. 7.

Norme di coordinamento

1. Le disposizioni del presente decreto che sostituiscono sanzioni penali con sanzioni amministrative si applicano anche alle violazioni commesse anteriormente alla data di entrata in vigore, purche' il procedimento penale non sia stato definito con sentenza o decreto penale irrevocabili.

d)CANADA

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h08_e.htm#BK83

Administrative licence suspension for blood alcohol concentration above .05

Determining whether to make a demand

48. (1) A police officer, readily identifiable as such, may require the driver of a motor vehicle to stop for the purpose of determining whether or not there is evidence to justify making a demand under section 254 of the Criminal Code (Canada). 2007, c. 13, s. 10.

Screening device breath test

(2) Where, upon demand of a police officer made under section 254 of the Criminal Code

(Canada), the driver of a motor vehicle or the operator of a vessel provides a sample of breath which, on analysis by an approved screening device as defined in that section, registers “Warn” or “Alert” or otherwise indicates that the concentration of alcohol in the person’s blood is 50 milligrams or more of alcohol in 100 millilitres of blood, the police officer may request that the person surrender his or her driver’s licence. 2007, c. 13, s. 10; 2009, c. 5, s. 15 (2).

Approved instrument test

(3) Where, upon demand of a police officer made under section 254 of the Criminal Code (Canada), the driver of a motor vehicle or the operator of a vessel provides a sample of breath which, on analysis by an instrument approved as suitable for the purpose of section 254 of the Criminal Code (Canada), indicates that the concentration of alcohol in his or her blood is 50 milligrams or more of alcohol in 100 millilitres of blood, a police officer may request that the person surrender his or her driver’s licence. 2007, c. 13, s. 10; 2009, c. 5, s. 15 (4).

Licence suspension

(4) Upon a request being made under subsection (2) or (3), the person to whom the request is made shall forthwith surrender his or her driver’s licence to the police officer and, whether or not the person is unable or fails to surrender the licence to the police officer, his or her driver’s licence is suspended from the time the request is made for the period of time determined under subsection (14). 2007, c. 13, s. 10.

Suspension concurrent with s. 48.3 suspension

(5) The licence suspension under this section runs concurrently with a suspension, if any, under section 48.3. 2007, c. 13, s. 10.

Note: On the first day that both the Statutes of Ontario, 2007, chapter 13, section 10 and the Statutes of Ontario, 2009, chapter 5, subsection 15 (6) are in force, subsection (5) is repealed by the Statutes of Ontario, 2009, chapter 5, subsection 15 (6) and the following substituted:

Suspension concurrent with administrative suspensions

(5) The licence suspension under this section runs concurrently with a suspension, if any, under section 48.1, 48.2.1 or 48.3. 2009, c. 5, s. 15 (6).

See: 2009, c. 5, ss. 15 (6), 59 (2).

Opportunity for second analysis

(6) Where an analysis of the breath of a person is made under subsection (2) and registers “Warn” or “Alert” or otherwise indicates that the concentration of alcohol in the person’s blood is 50 milligrams or more of alcohol in 100 millilitres of blood, the person may require that a second analysis be performed if the person requests the second analysis immediately after the police officer requests the surrender of his or her licence under subsection (2). 2009, c. 5, s. 15 (8).

Screening device, instrument used for second analysis

(6.1) The second analysis must be performed with a different approved screening device than was used in the analysis under subsection (2) or, if the police officer thinks it is preferable, with an instrument approved as suitable for the purpose of section 254 of the Criminal Code (Canada). 2009, c. 5, s. 15 (8).

Second analysis governs

(6.2) Where a person provides a sample of breath for the second analysis requested under

subsection (6) immediately upon being requested to do so by the police officer, the result of the second analysis governs and any suspension resulting from the analysis under subsection (2) continues or terminates accordingly. 2009, c. 5, s. 15 (8).

Calibration of screening device

(7) For the purposes of subsection (2), the approved screening device shall not be calibrated to register "Warn" or "Alert" or to otherwise indicate that the concentration of alcohol in the person's blood is 50 milligrams or more of alcohol in 100 millilitres of blood if the concentration of alcohol in the blood of the person whose breath is being analyzed is less than 50 milligrams of alcohol in 100 millilitres of blood. 2007, c. 13, s. 10.

Same

(8) It shall be presumed, in the absence of proof to the contrary, that any approved screening device used for the purposes of subsection (2) has been calibrated as required under subsection (7). 2007, c. 13, s. 10.

No appeal or hearing

(9) There is no appeal from, or right to be heard before, the suspension of a driver's licence under this section, but this subsection does not affect the taking of any proceeding in court. 2007, c. 13, s. 10.

Note: On the first day that both the Statutes of Ontario, 2007, chapter 13, section 10 and the Statutes of Ontario, 2009, chapter 5, subsection 15 (9) are in force, subsection (9) is amended by the Statutes of Ontario, 2009, chapter 5, subsection 15 (9) by striking out "but this subsection does not affect the taking of any proceeding in court" at the end. See: 2009, c. 5, ss. 15 (9), 59 (2).

Intent of suspension

(10) The suspension of a licence under this section is intended to safeguard the licensee and the public and does not constitute an alternative to any proceeding or penalty arising from the same circumstances or around the same time. 2007, c. 13, s. 10.

Duties of officer

(11) Every officer who asks for the surrender of a licence under this section shall,

(a) notify the Registrar of that fact, or cause the Registrar to be so notified, in the form and manner and within the time prescribed by the regulations;

(b) keep a record of the licence received with the name and address of the person and the date and time of the suspension; and

(c) as soon as practicable after receiving the licence, provide the licensee with a notice of suspension showing the time from which the suspension takes effect and the period of time for which the licence is suspended. 2007, c. 13, s. 10.

Removal of vehicle

(12) If the motor vehicle of a person whose licence is suspended under this section is at a location from which, in the opinion of a police officer, it should be removed and there is no person available who may lawfully remove the vehicle, the officer may remove and store the vehicle or cause it to be removed and stored, in which case the officer shall notify the person of the location of the storage. 2007, c. 13, s. 10.

Cost of removal

(13) Where a police officer obtains assistance for the removal and storage of a motor vehicle under this section, the costs incurred in moving and storing the vehicle are a lien on the vehicle that may be enforced under the Repair and Storage Liens Act by the person who moved or stored the vehicle at the request of the officer. 2007, c. 13, s. 10.

Period of suspension

(14) A driver's licence suspended under subsection (4) shall be suspended for,

(a) three days, in the case of a first suspension under this section;

(b) seven days, in the case of a second suspension under this section;

(c) 30 days, in the case of a third or subsequent suspension under this section. 2007, c. 13, s. 10.

Same

(15) The following previous suspensions shall not be taken into account in determining whether the current suspension is a first, second or subsequent suspension for the purpose of subsection (14):

1. A previous suspension that took effect more than five years before the current suspension takes effect.

2. A previous suspension that took effect before section 10 of the Safer Roads for a Safer Ontario Act, 2007 comes into force. 2007, c. 13, s. 10.

Police officer's other powers unchanged

(16) Subsection (1) shall not be construed so as to prevent a police officer from requiring a driver stopped under that subsection to surrender any licence, permit, card or other document that the officer is otherwise authorized to demand under this Act or the Compulsory Automobile Insurance Act or from requiring a driver to submit a vehicle to examinations and tests under subsection 82 (2) of this Act. 2007, c. 13, s. 10.

Regulations

(17) The Lieutenant Governor in Council may make regulations,

(a) respecting the form, manner and time within which the Registrar must be notified under subsection (11);

(b) prescribing other material or information to be forwarded to the Registrar under subsection (11). 2007, c. 13, s. 10.

Definitions

(18) In this section,

Note: On the first day that both the Statutes of Ontario, 2007, chapter 13, section 10 and the Statutes of Ontario, 2009, chapter 5, subsection 15 (11) are in force, subsection (18) is amended by the Statutes of Ontario, 2009, chapter 5, subsection 15 (11) by adding the following definition:

"**driver**" includes a person who has care or control of a motor vehicle; ("conducteur")

See: 2009, c. 5, ss. 15 (11), 59 (2).

"**driver's licence**" includes a motorized snow vehicle operator's licence and a driver's licence issued by any other jurisdiction; ("permis de conduire")

"**motor vehicle**" includes a motorized snow vehicle; ("véhicule automobile")

"**vessel**" means a vessel within the meaning of section 214 of the Criminal Code (Canada). ("bateau") 2007, c. 13, s. 10.

Note: On the first day that both the Statutes of Ontario, 2007, chapter 13, section 10 and the Statutes of Ontario, 2009, chapter 5, subsection 15 (13) are in force, section 48 is amended by the Statutes of Ontario, 2009, chapter 5, subsection 15 (13) by adding the following subsection:

Meaning of suspension for out-of-province licences

(19) With respect to a driver's licence issued by another jurisdiction, instead of suspending the person's driver's licence, the Registrar shall suspend the person's privilege to drive a motor vehicle in Ontario for the applicable period determined under subsection (14). 2009, c. 5, s. 15 (13).

See: 2009, c. 5, ss. 15 (13), 59 (2).

Breath testing, novice drivers

Application of subss. (2), (3) and (4)

48.1 (1) Subsections (2) and (3) apply and subsection (4) does not apply if the police officer who stops a novice driver uses one screening device for the purposes of section 48 and another screening device for the purposes of this section, and subsection (4) applies and subsections (2) and (3) do not apply if the police officer uses one screening device for the purposes of both section 48 and this section. 1993, c. 40, s. 5.

Screening device test, novice drivers

(2) Where a novice driver has been brought to a stop by a police officer under the authority of this Act and has provided a sample of breath under section 48 which, on analysis registers "Pass" or otherwise indicates that the novice driver has no alcohol in his or her body, but the police officer reasonably suspects that the novice driver has alcohol in his or her body, the police officer may, for the purposes of determining compliance with the regulations respecting novice drivers, demand that the novice driver provide within a reasonable time such a sample of breath as, in the opinion of the police officer, is necessary to enable a proper analysis of the breath to be made by means of a provincially approved screening device and, where necessary, to accompany the police officer for the purpose of enabling such a sample of breath to be taken. 1993, c. 40, s. 5; 2007, c. 13, s. 11 (1).

Surrender of licence

(3) Where, upon demand of a police officer made under subsection (2), a novice driver fails or refuses to provide a sample of breath or provides a sample of breath which, on analysis by a provincially approved screening device, registers "Presence of Alcohol" or otherwise indicates that the novice driver has alcohol in his or her body, the police officer may request the novice driver to surrender his or her driver's licence. 1993, c. 40, s. 5; 2007, c. 13, s. 11 (2).

Same

(4) Where a novice driver has been brought to a stop by a police officer under the authority of this Act and has provided a sample of breath under section 48 which, on analysis registers "Warn", "Alert" or "Presence of Alcohol" or otherwise indicates that the novice driver has alcohol in his or her body, or, upon demand of a police officer made under section 254 of the Criminal Code (Canada), fails or refuses to provide a sample of breath, the police officer may request the novice driver to surrender his or her licence. 1993, c. 40, s. 5; 2007, c. 13, s. 11 (3); 2009, c. 5, s. 16 (1).

Suspension of licence for twelve hours

(5) Upon a request being made under subsection (3) or (4), the novice driver to whom the request is made shall forthwith surrender his or her driver's licence to the police officer and, whether or not the novice driver is unable or fails to surrender the licence to the police officer, his or her licence is suspended for a period of twelve hours from the time the request is made. 1993, c. 40, s. 5; 2007, c. 13, s. 11 (4).

Note: On the first day that both the Statutes of Ontario, 2007, chapter 13, subsection 11 (4) and the Statutes of Ontario, 2009, chapter 5, subsection 16 (3) are in force, subsection (5) is repealed by the Statutes of Ontario, 2009, chapter 5, subsection 16 (3) and the following substituted:

Suspension of licence

(5) Upon a request being made under subsection (3), the novice driver to whom the request is made shall forthwith surrender his or her driver's licence to the police officer and, whether or not the novice driver is unable or fails to surrender the licence to the police officer, his or her licence is suspended for a period of 24 hours from the time of the request. 2009, c. 5, s. 16 (3).

Same

(5.1) Upon a request being made under subsection (4), the novice driver to whom the request is made shall forthwith surrender his or her driver's licence to the police officer and, whether or not the novice driver is unable or fails to surrender the licence to the police officer, his or her licence is suspended,

(a) if the novice driver provides a sample of breath that on analysis registers "Presence of Alcohol" or otherwise indicates that the novice driver has alcohol in his or her body, for 24 hours from the time the request is made;

(b) if the novice driver provides a sample of breath that on analysis registers "Warn" or "Alert" or otherwise indicates that the concentration of alcohol in the novice driver's blood is 50 milligrams or more of alcohol in 100 millilitres of blood, for the period determined under subsection 48 (14). 2009, c. 5, s. 16 (3).

See: 2009, c. 5, ss. 16 (3), 59 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 48.1 is amended by the Statutes of Ontario, 2009, chapter 5, subsection 16 (4) by adding the following subsection:

Same

(5.2) A suspension under clause (5.1) (b) is deemed to be a suspension under section 48. 2009, c. 5, s. 16 (4).

See: 2009, c. 5, ss. 16 (4), 59 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 48.1 is amended by the Statutes of Ontario, 2009, chapter 5, subsection 16 (5) by adding the following subsection:

Suspension concurrent with other administrative suspensions

(5.3) The licence suspension under this section runs concurrently with a suspension, if any, under section 48, 48.2.1 or 48.3. 2009, c. 5, s. 16 (5).

See: 2009, c. 5, ss. 16 (5), 59 (2).

Opportunity for second analysis

(6) Where an analysis of the breath of the novice driver is made under subsection (3) or (4) and

registers “Warn”, “Alert” or “Presence of Alcohol” or otherwise indicates that the novice driver has alcohol in his or her body, the novice driver may require that a second analysis be performed if the novice driver requests the second analysis immediately after the police officer requests the surrender of his or her licence under subsection (3) or (4). 2009, c. 5, s. 16 (7).

Screening device, instrument used for second analysis

(6.1) The second analysis must be performed with a different approved screening device than was used in the analysis under subsection (3) or (4), as the case may be, or, if the police officer thinks it is preferable, with an instrument approved as suitable for the purpose of section 254 of the Criminal Code (Canada). 2009, c. 5, s. 16 (7).

Second analysis governs

(6.2) Where a novice driver provides a sample of breath for the second analysis requested under subsection (6) immediately upon being requested to do so by the police officer, the result of the second analysis governs and any suspension resulting from the analysis under subsection (3) or (4) continues or terminates accordingly. 2009, c. 5, s. 16 (7).

Calibration of screening device

(7) For the purposes of this section, the provincially approved screening device shall be calibrated to register “Presence of Alcohol” if the concentration of alcohol in the blood of the person whose breath is being analyzed is as prescribed by the regulations, and despite anything in this section, the reading on a provincially approved screening device for “Presence of Alcohol” may be another term or symbol that conveys the same meaning. 1993, c. 40, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed by the Statutes of Ontario, 2009, chapter 5, subsection 16 (8) and the following substituted:

Calibration of screening device

(7) The provincially approved screening device shall not be calibrated to register “Presence of Alcohol” if the concentration of alcohol in the blood of the person whose breath is being analyzed is less than 10 milligrams of alcohol in 100 millilitres of blood, and despite anything in this section, the reading shown on a provincially approved screening device for “Presence of Alcohol” may be another term or symbol that conveys the same meaning. 2009, c. 5, s. 16 (8).

See: 2009, c. 5, ss. 16 (8), 59 (2).

Same

(8) It shall be presumed, in the absence of proof to the contrary, that any provincially approved screening device used for the purposes of this section has been calibrated as required by the regulations. 1993, c. 40, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed by the Statutes of Ontario, 2009, chapter 5, subsection 16 (8) and the following substituted:

Same

(8) It shall be presumed, in the absence of proof to the contrary, that any provincially approved screening device used for the purposes of this section has been calibrated as required by subsection (7). 2009, c. 5, s. 16 (8).

No appeal or right to be heard

(8.1) There is no appeal from, or right to be heard before, the suspension of a driver's licence under this section. 2009, c. 5, s. 16 (8).

See: 2009, c. 5, ss. 16 (8), 59 (2).

Intent of suspension

(9) The suspension of a licence under this section is intended to ensure that novice drivers acquire experience and develop or improve safe driving skills in controlled conditions and to safeguard the licensee and the public and does not constitute an alternative to any proceeding or penalty arising from the same circumstances or around the same time. 1993, c. 40, s. 5.

Duty of officer

(10) Every officer who asks for the surrender of a licence under this section shall keep a written record of the licence received with the name and address of the person and the date and time of the suspension and, at the time of receiving the licence, shall provide the licensee with a written statement of the time from which the suspension takes effect, the length of the period during which the licence is suspended and the place where the licence may be recovered. 2008, c. 17, s. 38.

Removal of vehicle

(11) If the motor vehicle of a person whose licence is suspended under this section is at a location from which, in the opinion of a police officer, it should be removed and there is no person available who may lawfully remove the vehicle, the officer may remove and store the vehicle or cause it to be removed and stored, in which case, the officer shall notify the person of the location of the storage. 1993, c. 40, s. 5.

Cost of removal

(12) Where a police officer obtains assistance for the removal and storage of a motor vehicle under this section, the costs incurred in moving and storing the vehicle are a lien on the vehicle that may be enforced under the Repair and Storage Liens Act by the person who moved or stored the vehicle at the request of the officer. 1993, c. 40, s. 5.

Offence

(13) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made to him or her by a police officer under this section. 1993, c. 40, s. 5.

Definitions

(14) In this section,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (14) is amended by the Statutes of Ontario, 2009, chapter 5, subsection 16 (9) by adding the following definitions:

"driver" includes a person who has care or control of a motor vehicle; ("conducteur")

"driver's licence" includes a motorized snow vehicle operator's licence and a driver's licence issued by any other jurisdiction; ("permis de conduire")

"motor vehicle" includes a motorized snow vehicle; ("véhicule automobile")

See: 2009, c. 5, ss. 16 (9), 59 (2).

"novice driver" has the meaning prescribed by the regulations made under section 57.1; ("conducteur débutant")

"provincially approved screening device" means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is prescribed for the purposes of this section by the regulations made under section 57.1. ("appareil de détection approuvé par la province") 1993, c. 40, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "provincially approved screening device" is repealed by the Statutes of Ontario, 2009, chapter 5, subsection 16 (10) and the following substituted:

"provincially approved screening device" means,

(a) an approved screening device as defined in the Criminal Code (Canada), or

(b) a screening device that meets the standards of the Alcohol Test Committee of the Canadian Society of Forensic Sciences. ("appareil de détection approuvé par la province")

See: 2009, c. 5, ss. 16 (10), 59 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 48.1 is amended by the Statutes of Ontario, 2009, chapter 5, subsection 16 (11) by adding the following subsection:

Meaning of suspension for out-of-province licences

(15) With respect to a driver's licence issued by another jurisdiction, instead of suspending the person's driver's licence, the Registrar shall suspend the person's privilege to drive a motor vehicle in Ontario for the applicable period specified in subsection (5) or determined under subsection (5.1). 2009, c. 5, s. 16 (11).

See: 2009, c. 5, ss. 16 (11), 59 (2).

Breath testing, driver accompanying novice

48.2 (1) Where a police officer has brought a novice driver to a stop under the authority of this Act, and the police officer reasonably suspects that the accompanying driver has alcohol in his or her body, the police officer may, for the purposes of determining whether the novice driver is in compliance with the regulations respecting novice drivers, demand that the accompanying driver provide forthwith a sample of breath into an approved screening device as defined in section 254 of the Criminal Code (Canada) as if he or she was the person operating the motor vehicle. 1993, c. 40, s. 5.

Direction to novice driver

(2) Where, upon demand of a police officer made under subsection (1), an accompanying driver fails or refuses to provide a sample of breath or provides a sample of breath which, on analysis by an approved screening device, as defined in section 254 of the Criminal Code (Canada), registers "Warn", "Alert" or "Fail" or otherwise indicates that the concentration of alcohol in the accompanying driver's blood is 50 milligrams or more of alcohol in 100 millilitres of blood, the police officer may direct the novice driver not to drive a motor vehicle on a highway except in compliance with the regulations respecting novice drivers. 1993, c. 40, s. 5; 2007, c. 13, s. 12 (1).

Opportunity for second analysis

(3) Where an analysis of the breath of an accompanying driver is made under subsection (2) and registers "Warn", "Alert" or "Fail" or otherwise indicates that the concentration of alcohol in the accompanying driver's blood is 50 milligrams or more of alcohol in 100 millilitres of blood, the accompanying driver may require that a second analysis be performed if the accompanying driver requests the second analysis immediately after the police officer gives a direction to the novice

driver under subsection (2). 2009, c. 5, s. 17 (2).

Screening device, instrument used for second analysis

(3.1) The second analysis must be performed with a different approved screening device than was used in the analysis under subsection (2) or, if the police officer thinks it is preferable, with an instrument approved as suitable for the purpose of section 254 of the Criminal Code (Canada). 2009, c. 5, s. 17 (2).

Second analysis governs

(3.2) Where an accompanying driver provides a sample of breath for the second analysis requested under subsection (3) immediately upon being requested to do so by the police officer, the result of the second analysis governs and any direction given by the police officer under subsection (2) continues or terminates accordingly. 2009, c. 5, s. 17 (2).

Calibration of screening device

(4) For the purposes of subsection (2), the approved screening device referred to in that subsection shall not be calibrated to register “Warn” or “Alert” if the concentration of alcohol in the blood of the person whose breath is being analyzed is less than 50 milligrams of alcohol in 100 millilitres of blood. 1993, c. 40, s. 5.

Same

(5) It shall be presumed, in the absence of proof to the contrary, that any approved screening device used for the purposes of subsection (2) has been calibrated as required under subsection (4). 1993, c. 40, s. 5.

Intent of direction

(6) The direction under this section to a novice driver not to drive a motor vehicle on a highway is intended to ensure that novice drivers acquire experience and develop or improve safe driving skills in controlled conditions and to safeguard the licensee and the public and does not constitute an alternative to any proceeding or penalty arising from the same circumstances or around the same time. 1993, c. 40, s. 5.

Removal of vehicle

(7) If the motor vehicle of a person who is directed not to drive under this section is at a location from which, in the opinion of a police officer, it should be removed and there is no person available who may lawfully remove the vehicle, the officer may remove and store the vehicle or cause it to be removed and stored, in which case, the officer shall notify the person of the location of the storage. 1993, c. 40, s. 5.

Cost of removal

(8) Where a police officer obtains assistance for the removal and storage of a motor vehicle under this section, the costs incurred in moving and storing the vehicle are a lien on the vehicle that may be enforced under the Repair and Storage Liens Act by the person who moved or stored the vehicle at the request of the officer. 1993, c. 40, s. 5.

Offence

(9) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made to him or her by a police officer under this section. 1993, c. 40, s. 5.

Definitions

(10) In this section,

"accompanying driver" and "novice driver" have the meanings prescribed by the regulations made under section 57.1. 1993, c. 40, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, Part IV is amended by the Statutes of Ontario, 2009, chapter 5, section 18 by adding the following section:

e)NUEVA ZELANDA

Land Transport Amendment Act 2009, Public Act 2009 No 17, Date of assent 25 June 2009.

http://www.legislation.govt.nz/act/public/2009/0017/latest/DLM2014902.html

Certificates in blood-alcohol proceedings

http://www.legislation.govt.nz/act/public/1998/0110/latest/DLM434844.html#DLM434844

(1) Except as provided in section 79, production of a certificate to which this section applies in proceedings for an offence against this Part is sufficient evidence, in the absence of proof to the contrary, of such of the matters as are stated in the certificate and of the sufficiency of the authority and qualifications of the person by whom the certificate is made and, in the case of a certificate referred to in subsection (5), of the person who carried out the analysis.

(2) This section applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying that—

o

(a) A specimen of venous blood was taken by the practitioner or medical officer in accordance with normal medical procedures from a person named in the certificate; and

o

(b) The specimen was divided by the practitioner or medical officer into 2 parts, or the specimen was insufficient for division and the practitioner or medical officer took a further specimen; and

o

(c) The practitioner or medical officer placed and sealed in a separate bottle each part or

specimen (as the case may be); and

o

(d) Each such separate bottle was received by the practitioner or medical officer in a sealed blood specimen collecting kit; and

o

(e) The practitioner or medical officer handed each such separate bottle to an enforcement officer named in the certificate.

(3) This section also applies to a certificate purporting to be signed by a medical practitioner and certifying that—

o

(a) The person named in the certificate was in a hospital or doctor's surgery; and

o

(b) The practitioner, being a medical practitioner in immediate charge of the examination, care, or treatment of that person, took a blood specimen or caused a blood specimen to be taken by any other medical practitioner or any medical officer from the person under section 73; and

o

(c) At the time the blood specimen was taken from the person, the practitioner had reasonable grounds to suspect that the person was in the hospital or doctor's surgery as a result of an accident involving a motor vehicle; and

o

(d) Before taking the blood specimen or causing the blood specimen to be taken from the person, the practitioner examined the person and was satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and

o

(e) The practitioner either—

+

(i) Told the person that the blood specimen was being or had been taken under section 73 for evidential purposes; or

+

(ii) If the person was unconscious when the specimen was taken, notified the person in writing as soon as practicable that the blood specimen was taken under section 73 for evidential purposes.

(4) This section also applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying—

o

(a) All the matters referred to in paragraphs (a) to (d) of subsection (2); and

o

(b) That the practitioner or medical officer sent or caused to be sent by post, personal delivery, or delivery by courier, on a specified date, both parts of the specimen (or both specimens) to a specified approved analyst in accordance with section 74; and

o

(c) That the practitioner or medical officer notified the Commissioner in writing of the approved analyst to whom the parts of the specimen (or the specimens) were delivered or posted.

(5) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that—

o

(a) A blood specimen in a sealed bottle was, on a specified date, delivered to an approved analyst (or a person employed by an approved laboratory and approved for the purpose by an approved analyst) for analysis, and was delivered by registered post or personal delivery or delivery by courier; and

o

(b) On analysis of the blood specimen by an analyst specified in the certificate, a specified proportion of alcohol or of a drug, or both (as the case may be), was found in the specimen; and

o

(c) No such deterioration or congealing was found as would prevent a proper analysis.

(6) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that, following an application under section 74, a part of a blood specimen was posted to a specified private analyst by registered post, personal delivery, or delivery by courier, and addressed to the private analyst at the address given in the application.

(7) For the purposes of this section, it is not necessary for the person making a certificate to specify his or her entitlement to give the certificate if the certificate indicates that the person belongs to the general category of persons who may make such a certificate.

Compare: 1962 No 135 s 58G

Subsections (2) to (4) were amended, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48) by omitting the word ""registered"" wherever it occurred. See sections 178 to 227 of that Act as to the transitional provisions.

Arrest of persons for alcohol or drug-related offences, or assault on enforcement officer

http://www.legislation.govt.nz/act/public/1998/0110/latest/DLM435115.html#DLM435115

(1) An enforcement officer may arrest a person without warrant if the officer has good cause to suspect that the person—

o

(a) Has committed an offence against any of sections 58 to 62; or

o

(b) Has assaulted that or any other enforcement officer while the officer was acting in the course of the officer's official duties.

(2) A person assisting an enforcement officer may arrest without warrant a person referred to in subsection (1)(b).

(3) A person other than a sworn member of the Police who exercises any power of arrest conferred by this section must, as soon as practicable, deliver the arrested person into the custody of a sworn member of the Police.

(4) The obligation in subsection (3) does not apply until the completion of the exercise of any powers that may be exercised under this Act in respect of the arrested person or any vehicle driven by that person.

(5) The powers conferred by this section are in addition to any other powers of arrest under this Act.

Compare: 1962 No 135 s 62, 62A, 62B

New section 209A inserted

http://www.legislation.govt.nz/act/public/2009/0017/latest/DLM2014950.html#DLM2014951

The following section is inserted after section 209:

"209A Analysing blood specimens for statistical or research purposes related to use of drugs or alcohol

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"(1) Without limiting the purposes for which a blood specimen may be analysed or re-analysed under this Act, a person may, for statistical or research purposes related to the use of drugs or alcohol, analyse or re-analyse in an approved laboratory a blood specimen from a person taken under section 72 or 73.

"(2) Subsection (1) applies to any blood specimen taken under this Act before, during, or after it comes into force.

"(3) No analysis of a blood specimen under subsection (1) may be used as evidence in any proceedings for an offence.

"(4) A blood specimen analysed or re-analysed under subsection (1) must be treated in a manner that does not identify the person from whom the blood specimen is taken."

209 Taking of blood specimens for statistical or research purposes

http://www.legislation.govt.nz/act/public/1998/0110/latest/DLM435639.html#DLM435639

(1) Despite anything in any Act or rule of law, a medical practitioner or medical officer employed by an approved health authority—

o

(a) May, with the general or special approval of that health authority, take for statistical or research purposes, whether in the hospital at which the practitioner or officer is employed or otherwise, a blood specimen from a person who the practitioner or officer believes is in the hospital at which the practitioner or officer is employed for examination, care, or treatment as a result of an accident involving a motor vehicle:

o

(b) May, with the consent of a person from whom such a blood specimen may be taken under this subsection, take for such purposes a specimen of breath, saliva, urine, perspiration, or eye vapour from that person.

(2) A blood, breath, saliva, urine, perspiration, or eye vapour specimen taken under this section must be labelled that it was taken for statistical or research purposes, and evidence as to the proportion of alcohol or of a drug found in that specimen is not admissible in any civil or criminal proceedings in any court or in proceedings before a person acting judicially.

(3) Subsections (5) and (6) of section 73 apply to every blood, breath, saliva, urine, perspiration, or eye vapour specimen taken under this section as if the specimen had been taken under that section.

(4) For the purposes of this section, a person acting judicially means any person having in New Zealand by law authority to hear, receive, and examine evidence.

Compare: 1962 No 135 s 58J

Subsection (1) was amended, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48) by omitting ""registered"". See sections 178 to 227 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69) by omitting ""(as defined in section 2 of the Evidence Act 1908)"". See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (4) was inserted, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

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Road Traffic Act 1988 (c. 52)

Motor vehicles: drink and drugs

4. Driving, or being in charge, when under influence of drink or drugs.

— (1) A person who, when driving or attempting to drive a [F2 mechanically propelled vehicle] on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.
(2) Without prejudice to subsection (1) above, a person who, when in charge of a [F2 mechanically propelled vehicle] which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.
(3) For the purposes of subsection (2) above, a person shall be deemed not to have been in charge of a [F2 mechanically propelled vehicle] if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.
(4) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3) above, disregard any injury to him and any damage to the vehicle.
(5) For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.
F3 (6) . . . . . .
F3 (7) . . . . . .
F3 (8) . . . . . .
Annotations:
Amendments (Textual)
F2 Words in s. 4(1)(2)(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 4; S.I. 1992/1286, art. 2, Sch.
F3 S. 4(6)-(8) repealed (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 111, 174(2), 178, Sch. 7 para. 27(2)(4), Sch. 17 Pt. 2 ; S.I. 2005/3495, art. 2(1)(m)(u) (subject to art. 2(2))

5. Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.

Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.
— (1) If a person—
(a) drives or attempts to drive a motor vehicle on a road or other public place, or
(b) is in charge of a motor vehicle on a road or other public place,
after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence.

(2) It is a defence for a person charged with an offence under subsection (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.
(3) The court may, in determining whether there was such a likelihood as is mentioned in subsection (2) above, disregard any injury to him and any damage to the vehicle.
6. Power to administer preliminary tests

[F4
6. Power to administer preliminary tests
(1) If any of subsections (2) to (5) applies a constable may require a person to co-operate with any one or more preliminary tests administered to the person by that constable or another constable.
(2) This subsection applies if a constable reasonably suspects that the person—
(a) is driving, is attempting to drive or is in charge of a motor vehicle on a road or other public place, and
(b) has alcohol or a drug in his body or is under the influence of a drug.
(3) This subsection applies if a constable reasonably suspects that the person—
(a) has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place while having alcohol or a drug in his body or while unfit to drive because of a drug, and
(b) still has alcohol or a drug in his body or is still under the influence of a drug.
(4) This subsection applies if a constable reasonably suspects that the person—
(a) is or has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place, and
(b) has committed a traffic offence while the vehicle was in motion.
(5) This subsection applies if—
(a) an accident occurs owing to the presence of a motor vehicle on a road or other public place, and
(b) a constable reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident.
(6) A person commits an offence if without reasonable excuse he fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section.
(7) A constable may administer a preliminary test by virtue of any of subsections (2) to (4) only if he is in uniform.
(8) In this section—
(a) a reference to a preliminary test is to any of the tests described in sections 6A to 6C, and
(b) “traffic offence” means an offence under—
(i) a provision of Part II of the Public Passenger Vehicles Act 1981 (c. 14),
(ii) a provision of the Road Traffic Regulation Act 1984 (c. 27),
(iii) a provision of the Road Traffic Offenders Act 1988 (c. 53) other than a provision of Part III, or
(iv) a provision of this Act other than a provision of Part V.]
Annotations:
Amendments (Textual)
F4 Ss. 6-6E substituted (29.3.2004 for certain purposes and 30.3.2004 otherwise) for s. 6 by Railways and Transport Safety Act 2003 (c. 20), ss. 107, 120, Sch. 7 para. 1 ; S.I. 2004/827, art. 2 , 3
Modifications etc. (not altering text)
C1 S. 6 applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

[F5
6A Preliminary breath test

(1) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit.
(2) A preliminary breath test administered in reliance on section 6(2) to (4) may be administered only at or near the place where the requirement to co-operate with the test is imposed.
(3) A preliminary breath test administered in reliance on section 6(5) may be administered—
(a)
at or near the place where the requirement to co-operate with the test is imposed, or
(b)
if the constable who imposes the requirement thinks it expedient, at a police station specified by him.]

Annotations:

Amendments (Textual)

F5 Ss. 6-6E substituted (29.3.2004 for certain purposes and 30.3.2004 otherwise) for s. 6 by Railways and Transport Safety Act 2003 (c. 20), ss. 107, 120, Sch. 7 para. 1 ; S.I. 2004/827, arts. 2 , 3

Modifications etc. (not altering text)

C2 Ss. 6A-6E applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

6B Preliminary impairment test

(1) A preliminary impairment test is a procedure whereby the constable administering the test—
(a) observes the person to whom the test is administered in his performance of tasks specified by the constable, and
(b) makes such other observations of the person's physical state as the constable thinks expedient.
(2) The Secretary of State shall issue (and may from time to time revise) a code of practice about—
(a) the kind of task that may be specified for the purpose of a preliminary impairment test,
(b) the kind of observation of physical state that may be made in the course of a preliminary impairment test,
(c) the manner in which a preliminary impairment test should be administered, and
(d) the inferences that may be drawn from observations made in the course of a preliminary impairment test.
(3) In issuing or revising the code of practice the Secretary of State shall aim to ensure that a preliminary impairment test is designed to indicate—
(a) whether a person is unfit to drive, and
(b) if he is, whether or not his unfitness is likely to be due to drink or drugs.
(4) A preliminary impairment test may be administered—
(a) at or near the place where the requirement to co-operate with the test is imposed, or
(b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.
(5) A constable administering a preliminary impairment test shall have regard to the code of practice under this section.
(6) A constable may administer a preliminary impairment test only if he is approved for that purpose by the chief officer of the police force to which he belongs.
(7) A code of practice under this section may include provision about—
(a) the giving of approval under subsection (6), and
(b) in particular, the kind of training that a constable should have undergone, or the kind of qualification that a constable should possess, before being approved under that subsection.

Annotations:

Modifications etc. (not altering text)

C3 Ss. 6A-6E applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

6C Preliminary drug test

(1) A preliminary drug test is a procedure by which a specimen of sweat or saliva is—
(a)obtained, and
(b)used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the person to whom the test is administered has a drug in his body.
(2) A preliminary drug test may be administered—
(a)at or near the place where the requirement to co-operate with the test is imposed, or
(b)if the constable who imposes the requirement thinks it expedient, at a police station specified by him.

Annotations:

Modifications etc. (not altering text)

C4 Ss. 6A-6E applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

6D Arrest

(1) A constable may arrest a person without warrant if as a result of a preliminary breath test the constable reasonably suspects that the proportion of alcohol in the person's breath or blood exceeds the prescribed limit.
[F6 (1A) The fact that specimens of breath have been provided under section 7 of this Act by the person concerned does not prevent subsection (1) above having effect if the constable who imposed on him the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in the breath of the person.]
(2) A constable may arrest a person without warrant if—
(a)the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under section 6, and
(b)the constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug.
[F7 (2A) A person arrested under this section may, instead of being taken to a police station, be detained at or near the place where the preliminary test was, or would have been, administered, with a view to imposing on him there a requirement under section 7 of this Act.]
(3) A person may not be arrested under this section while at a hospital as a patient.

Annotations:

Amendments (Textual)

F6 S. 6D(1A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(2) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))
F7 S. 6D(2A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(3) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))
Modifications etc. (not altering text)
C5 Ss. 6A-6E applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

6E Power of entry

(1) A constable may enter any place (using reasonable force if necessary) for the purpose of—

(a) imposing a requirement by virtue of section 6(5) following an accident in a case where the constable reasonably suspects that the accident involved injury of any person, or

(b) arresting a person under section 6D following an accident in a case where the constable reasonably suspects that the accident involved injury of any person.

(2) This section—

(a) does not extend to Scotland, and

(b) is without prejudice to any rule of law or enactment about the right of a constable in Scotland to enter any place.

Annotations:

Modifications etc. (not altering text)

C6 Ss. 6A-6E applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

7. Provision of specimens for analysis.

— (1) In the course of an investigation into whether a person has committed an offence under [F8 section 3A, 4] or 5 of this Act a constable may, subject to the following provisions of this section and section 9 of this Act, require him—

(a)to provide two specimens of breath for analysis by means of a device of a type approved by the Secretary of State, or

(b)to provide a specimen of blood or urine for a laboratory test.

[F9 (2) A requirement under this section to provide specimens of breath can only be made—

(a)at a police station,

(b)at a hospital, or

(c)at or near a place where a relevant breath test has been administered to the person concerned or would have been so administered but for his failure to co-operate with it.

(2A) For the purposes of this section “a relevant breath test” is a procedure involving the provision by the person concerned of a specimen of breath to be used for the purpose of obtaining an indication whether the proportion of alcohol in his breath or blood is likely to exceed the prescribed limit.

(2B) A requirement under this section to provide specimens of breath may not be made at or near a place mentioned in subsection (2)(c) above unless the constable making it—

(a)is in uniform, or

(b)has imposed a requirement on the person concerned to co-operate with a relevant breath test in circumstances in which section 6(5) of this Act applies.

(2C) Where a constable has imposed a requirement on the person concerned to co-operate with a relevant breath test at any place, he is entitled to remain at or near that place in order to impose on him there a requirement under this section.

(2D) If a requirement under subsection (1)(a) above has been made at a place other than at a police station, such a requirement may subsequently be made at a police station if (but only if)—

(a)a device or a reliable device of the type mentioned in subsection (1)(a) above was not available at that place or it was for any other reason not practicable to use such a device there, or

(b)the constable who made the previous requirement has reasonable cause to believe that the device used there has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned.]

(3) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless—

(a)the constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required, or
(b)[F10 specimens of breath have not been provided elsewhere and]at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a) above is not available at the police station or it is then for any other reason not practicable to use such a device there, or
[F11 (bb)a device of the type mentioned in subsection (1)(a) above has been used [F12 (at the police station or elsewhere)] but the constable who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned, or]
[F13 (bc)as a result of the administration of a preliminary drug test, the constable making the requirement has reasonable cause to believe that the person required to provide a specimen of blood or urine has a drug in his body, or]
(c)the suspected offence is one under [F14 section 3A or 4] of this Act and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug;
but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.
(4) If the provision of a specimen other than a specimen of breath may be required in pursuance of this section the question whether it is to be a specimen of blood or a specimen of urine [F15 and, in the case of a specimen of blood, the question who is to be asked to take it shall be decided (subject to subsection (4A)) by the constable making the requirement].
[F16 (4A) Where a constable decides for the purposes of subsection (4) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—
(a)the medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or
(b)the registered health care professional who is asked to take it is of that opinion and there is no contrary opinion from a medical practitioner;
and, where by virtue of this subsection there can be no requirement to provide a specimen of blood, the constable may require a specimen of urine instead.]
(5) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.
(6) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.
(7) A constable must, on requiring any person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

Annotations:

Amendments (Textual)

F8 Words in S. 7(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 42(a); S.I. 1992/1286, art. 2, Sch.
F9 S. 7(2)-(2D) substituted (1.7.2005) for s. 7(2) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(5) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))
F10 Words in s. 7(3)(b) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(6)(a) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))
F11 S. 7(3)(bb) inserted (4.7.1996 but with effect (1.4.1997) as mentioned in s. 63(3)(4)) by 1996 c. 25, s. 63(1) (with s. 78(1)); S.I. 1997/682, art. 2(1)(b)
F12 Words in s. 7(3)(bb) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(6)(b) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))
F13 S. 7(3)(bc) inserted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 107, 120, Sch. 7 para. 2 ; S.I. 2004/827, art. 3
F14 Words in s. 7(3)(c) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 42(b); S.I. 1992/1286, art. 2, Sch.
F15 Words in s. 7(4) substituted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. 55(1), 108(2); S.I. 2003/808, art. 2(e)
F16 S. 7(4A) inserted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. 55(2), 108(2); S.I. 2003/808, art. 2(e)

Modifications etc. (not altering text)
C7 S. 7 applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

[F17

7ASpecimens of blood taken from persons incapable of consenting

(1) A constable may make a request to a medical practitioner for him to take a specimen of blood from a person ("the person concerned") irrespective of whether that person consents if—

(a) that person is a person from whom the constable would (in the absence of any incapacity of that person and of any objection under section 9) be entitled under section 7 to require the provision of a specimen of blood for a laboratory test;

(b) it appears to that constable that that person has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;

(c) it appears to that constable that that person is or may be incapable (whether or not he has purported to do so) of giving a valid consent to the taking of a specimen of blood; and

(d) it appears to that constable that that person's incapacity is attributable to medical reasons.

(2) A request under this section—

(a) shall not be made to a medical practitioner who for the time being has any responsibility (apart from the request) for the clinical care of the person concerned; and

(b) shall not be made to a medical practitioner other than a police medical practitioner unless—

(i) it is not reasonably practicable for the request to made to a police medical practitioner; or

(ii) it is not reasonably practicable for such a medical practitioner (assuming him to be willing to do so) to take the specimen.

(3) It shall be lawful for a medical practitioner to whom a request is made under this section, if he thinks fit—

(a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and

(b) to provide the sample to a constable.

(4) If a specimen is taken in pursuance of a request under this section, the specimen shall not be subjected to a laboratory test unless the person from whom it was taken—

(a) has been informed that it was taken; and

(b) has been required by a constable to give his permission for a laboratory test of the specimen; and

(c) has given his permission.

(5) A constable must, on requiring a person to give his permission for the purposes of this section for a laboratory test of a specimen, warn that person that a failure to give the permission may render him liable to prosecution.

(6) A person who, without reasonable excuse, fails to give his permission for a laboratory test of a specimen of blood taken from him under this section is guilty of an offence.

(7) In this section "police medical practitioner" means a medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of a police force.]

Annotations:

Amendments (Textual)
F17 S. 7A inserted (1.10.2002) by 2002 c. 30, s. 56(1); S.I. 2002/2306, art. 2(d)(v)
Modifications etc. (not altering text)
C8 S. 7A applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

8. Choice of specimens of breath.

— (1) Subject to subsection (2) below, of any two specimens of breath provided by any person in pursuance of section 7 of this Act that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(2) If the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under section 7(4) of this Act and, if he then provides such a specimen, neither specimen of breath shall be used.

[F18 (2A) If the person who makes a claim under subsection (2) above was required to provide specimens of breath under section 7 of this Act at or near a place mentioned in subsection (2)(c) of that section, a constable may arrest him without warrant.]

(3) The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (2) above.

Annotations:

Amendments (Textual)

F18 S. 8(2A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(7) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))

Modifications etc. (not altering text)

C9 S. 8 applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

9. Protection for hospital patients.

— (1) While a person is at a hospital as a patient he shall not be required [F19 to co-operate with a preliminary test] or to provide a specimen [F20 under section 7 of this Act] unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—

(a) if the requirement is then made, [F21 it shall be for co-operation with a test administered, or for the provision of a specimen, at the hospital], but

(b) if the medical practitioner objects on the ground specified in subsection (2) below, the requirement shall not be made.

[F22 (1A) While a person is at a hospital as a patient, no specimen of blood shall be taken from him under section 7A of this Act and he shall not be required to give his permission for a laboratory test of a specimen taken under that section unless the medical practitioner in immediate charge of his case—

(a) has been notified of the proposal to take the specimen or to make the requirement; and

(b) has not objected on the ground specified in subsection (2).

F22 (2) The ground on which the medical practitioner may object is—

(a) in a case falling within subsection (1), that the requirement or the provision of the specimen or (if one is required) the warning required by section 7(7) of this Act would be prejudicial to the proper care and treatment of the patient; and

(b) in a case falling within subsection (1A), that the taking of the specimen, the requirement or the warning required by section 7A(5) of this Act would be so prejudicial.]

Annotations:

Amendments (Textual)

F19 Words in s. 9(1) substituted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 107, 120, Sch. 7 para. 3(a) ; S.I. 2004/827, art. 3

F20 Words in s. 9(1) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(8) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))

F21 Words in s. 9(1)(a) substituted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 107, 120, Sch. 7 para. 3(b) ; S.I. 2004/827, art. 3

F22 S. 9(1A)(2) substituted for s. 9(2) (1.10.2002) by 2002 c. 30, s. 56(2); S.I. 2002/2306, art. 2(d)(v)

Modifications etc. (not altering text)
C10 S. 9 applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

10. Detention of persons affected by alcohol or a drug.

— (1) Subject to subsections (2) and (3) below, a person required [F23 under section 7 or 7A] to provide a specimen of breath, blood or urine may afterwards be detained at a police station [F24 (or, if the specimen was provided otherwise than at a police station, arrested and taken to and detained at a police station) if a constable has reasonable grounds for believing] that, were that person then driving or attempting to drive a [F25 mechanically propelled vehicle] on a road, he would [F26 commit] an offence under section 4 or 5 of this Act.

(2) [F27 Subsection (1) above does not apply to the person if it ought reasonably to appear to the] constable that there is no likelihood of his driving or attempting to drive a [F25 mechanically propelled vehicle] whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

[F28 (2A) A person who is at a hospital as a patient shall not be arrested and taken from there to a police station in pursuance of this section if it would be prejudicial to his proper care and treatment as a patient.]

(3) A constable must consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and must act on the medical practitioner's advice.

Annotations:

Amendments (Textual)

F23 Words in s. 10(1) inserted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 107, 120, Sch. 7 para. 4 ; S.I. 2004/827, art. 3

F24 Words in s. 10(1) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(10)(a) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))

F25 Words in s. 10(1)(2) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 43; S.I. 1992/1286, art. 2,Sch.

F26 Words in s. 10(1) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(10)(b) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))

F27 Words in s. 10(2) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(11) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))

F28 S. 10(2A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 154(12) , 178; S.I. 2005/1521, art. 3(1) (subject to art. 3(4)(5))

Modifications etc. (not altering text)
C11 S. 10 applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3

11. Interpretation of sections 4 to 10.

— (1) The following provisions apply for the interpretation of sections [F29 3A] to 10 of this Act.

(2) In those sections—

F30 ...

"drug" includes any intoxicant other than alcohol,

"fail" includes refuse,

"hospital" means an institution which provides medical or surgical treatment for in-patients or out-patients,

"the prescribed limit" means, as the case may require—

(a) 35 microgrammes of alcohol in 100 millilitres of breath,

(b) 80 milligrammes of alcohol in 100 millilitres of blood, or

(c) 107 milligrammes of alcohol in 100 millilitres of urine,

or such other proportion as may be prescribed by regulations made by the Secretary of State.
[F31 “registered health care professional” means a person (other than a medical practitioner) who is —
(a) a registered nurse; or
(b) a registered member of a health care profession which is designated for the purposes of this paragraph by an order made by the Secretary of State.]
[F32 (2A) A health care profession is any profession mentioned in section 60(2) of the Health Act 1999 (c. 8) other than the profession of practising medicine and the profession of nursing.
(2B) An order under subsection (2) shall be made by statutory instrument; and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]
(3) [F33 A person does not co-operate with a preliminary test or provide a specimen of breath for analysis unless his co-operation or the specimen]—
(a) is sufficient to enable the test or the analysis to be carried out, and
(b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.
[F34 (4) A person provides a specimen of blood if and only if—
(a) he consents to the taking of such a specimen from him; and
(b) the specimen is taken from him by a medical practitioner or, if it is taken in a police station, either by a medical practitioner or by a registered health care professional.]

Annotations:

Amendments (Textual)

F29 Words "3A" in s. 11(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 44; S.I. 1992/1286, art. 2, Sch.
F30 In s. 11(2) definition of "breath test" repealed (30.3.2004) by Railways and Transport Safety Act 2003, (c. 20), ss. 107, 118, 120, Sch. 7 para. 5(a), Sch. 8 ; S.I. 2004/827, art. 3
F31 In s. 11(2) definition of "registered health care professional" inserted (1.10.2002 for certain purposes and 1.4.2003 otherwise) by Police Reform Act 2002 (c. 30), ss. 55(3), 108(2); S.I. 2002/2306, art. 4(d); S.I. 2003/808, art. 2(e)
F32 S. 11(2A)(2B) inserted (1.10.2002 for certain purposes and 1.4.2003 otherwise) by Police Reform Act 2002 (c. 30), ss. 55(4), 108(2); S.I. 2002/2306, art. 4(d); S.I. 2003/808, art. 2(e)
F33 Words in s. 11(3) substituted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 30), ss. 107, 120, Sch. 7 para. 5(b) ; S.I. 2004/827, art. 3
F34 S. 11(4) substituted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. 55(5), 108(2); S.I. 2003/808, art. 2(e)
Modifications etc. (not altering text)
C12 S. 11 applied (with modifications) (29.3.2004 for certain purposes and 30.3.2004 otherwise) by Railways and Transport Safety Act 2003 (c. 20), ss. 83(1)(3) , 96(1)(3) , 120 (with ss. 90, 100); S.I. 2004/827, arts. 2 , 3