

HB7349



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB7349

Introduced 11/08/04, by Rep. William B. Black

SYNOPSIS AS INTRODUCED:

625 ILCS 5/11-501

from Ch. 95 1/2, par. 11-501

Amends the Illinois Vehicle Code. Provides that any person convicted a fourth time of DUI is not eligible for probation or conditional discharge. Effective January 1, 2005.

LRB093 23466 DRH 53459 b

A BILL FOR

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Vehicle Code is amended by changing
5 Section 11-501 as follows:

6 (625 ILCS 5/11-501) (from Ch. 95 1/2, par. 11-501)

7 Sec. 11-501. Driving while under the influence of alcohol,
8 other drug or drugs, intoxicating compound or compounds or any
9 combination thereof.

10 (a) A person shall not drive or be in actual physical
11 control of any vehicle within this State while:

12 (1) the alcohol concentration in the person's blood or
13 breath is 0.08 or more based on the definition of blood and
14 breath units in Section 11-501.2;

15 (2) under the influence of alcohol;

16 (3) under the influence of any intoxicating compound or
17 combination of intoxicating compounds to a degree that
18 renders the person incapable of driving safely;

19 (4) under the influence of any other drug or
20 combination of drugs to a degree that renders the person
21 incapable of safely driving;

22 (5) under the combined influence of alcohol, other drug
23 or drugs, or intoxicating compound or compounds to a degree
24 that renders the person incapable of safely driving; or

25 (6) there is any amount of a drug, substance, or
26 compound in the person's breath, blood, or urine resulting
27 from the unlawful use or consumption of cannabis listed in
28 the Cannabis Control Act, a controlled substance listed in
29 the Illinois Controlled Substances Act, or an intoxicating
30 compound listed in the Use of Intoxicating Compounds Act.

31 (b) The fact that any person charged with violating this
32 Section is or has been legally entitled to use alcohol, other

1 drug or drugs, or intoxicating compound or compounds, or any
2 combination thereof, shall not constitute a defense against any
3 charge of violating this Section.

4 (b-1) With regard to penalties imposed under this Section:

5 (1) Any reference to a prior violation of subsection
6 (a) or a similar provision includes any violation of a
7 provision of a local ordinance or a provision of a law of
8 another state that is similar to a violation of subsection
9 (a) of this Section.

10 (2) Any penalty imposed for driving with a license that
11 has been revoked for a previous violation of subsection (a)
12 of this Section shall be in addition to the penalty imposed
13 for any subsequent violation of subsection (a).

14 (b-2) Except as otherwise provided in this Section, any
15 person convicted of violating subsection (a) of this Section is
16 guilty of a Class A misdemeanor.

17 (b-3) In addition to any other criminal or administrative
18 sanction for any second conviction of violating subsection (a)
19 or a similar provision committed within 5 years of a previous
20 violation of subsection (a) or a similar provision, the
21 defendant shall be sentenced to a mandatory minimum of 5 days
22 of imprisonment or assigned a mandatory minimum of 240 hours of
23 community service as may be determined by the court.

24 (b-4) In the case of a third ~~or subsequent~~ violation
25 committed within 5 years of a previous violation of subsection
26 (a) or a similar provision, in addition to any other criminal
27 or administrative sanction, a mandatory minimum term of either
28 10 days of imprisonment or 480 hours of community service shall
29 be imposed.

30 (b-5) The imprisonment or assignment of community service
31 under subsections (b-3) and (b-4) shall not be subject to
32 suspension, nor shall the person be eligible for a reduced
33 sentence.

34 (b-6) A person convicted of violating subsection (a) or a
35 similar provision a fourth or subsequent time is guilty of a
36 Class 2 felony and is not eligible for a sentence of probation

1 or conditional discharge.

2 (c) (Blank).

3 (c-1) (1) A person who violates subsection (a) during a
4 period in which his or her driving privileges are revoked
5 or suspended, where the revocation or suspension was for a
6 violation of subsection (a), Section 11-501.1, paragraph
7 (b) of Section 11-401, or for reckless homicide as defined
8 in Section 9-3 of the Criminal Code of 1961 is guilty of a
9 Class 4 felony.

10 (2) A person who violates subsection (a) a third time,
11 if the third violation occurs during a period in which his
12 or her driving privileges are revoked or suspended where
13 the revocation or suspension was for a violation of
14 subsection (a), Section 11-501.1, paragraph (b) of Section
15 11-401, or for reckless homicide as defined in Section 9-3
16 of the Criminal Code of 1961, is guilty of a Class 3
17 felony.~~(2.1) A person who violates subsection (a) a third~~
18 ~~time, if the third violation occurs during a period in~~
19 ~~which his or her driving privileges are revoked or~~
20 ~~suspended where the revocation or suspension was for a~~
21 ~~violation of subsection (a), Section 11-501.1, subsection~~
22 ~~(b) of Section 11-401, or for reckless homicide as defined~~
23 ~~in Section 9-3 of the Criminal Code of 1961, is guilty of a~~
24 ~~Class 3 felony;~~ and if the person receives a term of
25 probation or conditional discharge, he or she shall be
26 required to serve a mandatory minimum of 10 days of
27 imprisonment or shall be assigned a mandatory minimum of
28 480 hours of community service, as may be determined by the
29 court, as a condition of the probation or conditional
30 discharge. This mandatory minimum term of imprisonment or
31 assignment of community service shall not be suspended or
32 reduced by the court.

33 (2.2) A person who violates subsection (a), if the
34 violation occurs during a period in which his or her
35 driving privileges are revoked or suspended where the
36 revocation or suspension was for a violation of subsection

1 (a) or Section 11-501.1, shall also be sentenced to an
2 additional mandatory minimum term of 30 consecutive days of
3 imprisonment, 40 days of 24-hour periodic imprisonment, or
4 720 hours of community service, as may be determined by the
5 court. This mandatory term of imprisonment or assignment of
6 community service shall not be suspended or reduced by the
7 court.

8 ~~(3) A person who violates subsection (a) a fourth or~~
9 ~~subsequent time, if the fourth or subsequent violation~~
10 ~~occurs during a period in which his or her driving~~
11 ~~privileges are revoked or suspended where the revocation or~~
12 ~~suspension was for a violation of subsection (a), Section~~
13 ~~11-501.1, paragraph (b) of Section 11-401, or for reckless~~
14 ~~homicide as defined in Section 9-3 of the Criminal Code of~~
15 ~~1961, is guilty of a Class 2 felony and is not eligible for~~
16 ~~a sentence of probation or conditional discharge.~~

17 (c-2) (Blank).

18 (c-3) (Blank).

19 (c-4) (Blank).

20 (c-5) A person who violates subsection (a), if the person
21 was transporting a person under the age of 16 at the time of
22 the violation, is subject to an additional mandatory minimum
23 fine of \$1,000, an additional mandatory minimum 140 hours of
24 community service, which shall include 40 hours of community
25 service in a program benefiting children, and an additional 2
26 days of imprisonment. The imprisonment or assignment of
27 community service under this subsection (c-5) is not subject to
28 suspension, nor is the person eligible for a reduced sentence.

29 (c-6) Except as provided in subsections (c-7) and (c-8) a
30 person who violates subsection (a) a second time, if at the
31 time of the second violation the person was transporting a
32 person under the age of 16, is subject to an additional 10 days
33 of imprisonment, an additional mandatory minimum fine of
34 \$1,000, and an additional mandatory minimum 140 hours of
35 community service, which shall include 40 hours of community
36 service in a program benefiting children. The imprisonment or

1 assignment of community service under this subsection (c-6) is
2 not subject to suspension, nor is the person eligible for a
3 reduced sentence.

4 (c-7) Except as provided in subsection (c-8), any person
5 convicted of violating subsection (c-6) or a similar provision
6 within 10 years of a previous violation of subsection (a) or a
7 similar provision shall receive, in addition to any other
8 penalty imposed, a mandatory minimum 12 days imprisonment, an
9 additional 40 hours of mandatory community service in a program
10 benefiting children, and a mandatory minimum fine of \$1,750.
11 The imprisonment or assignment of community service under this
12 subsection (c-7) is not subject to suspension, nor is the
13 person eligible for a reduced sentence.

14 (c-8) Any person convicted of violating subsection (c-6) or
15 a similar provision within 5 years of a previous violation of
16 subsection (a) or a similar provision shall receive, in
17 addition to any other penalty imposed, an additional 80 hours
18 of mandatory community service in a program benefiting
19 children, an additional mandatory minimum 12 days of
20 imprisonment, and a mandatory minimum fine of \$1,750. The
21 imprisonment or assignment of community service under this
22 subsection (c-8) is not subject to suspension, nor is the
23 person eligible for a reduced sentence.

24 (c-9) Any person convicted a third time for violating
25 subsection (a) or a similar provision, if at the time of the
26 third violation the person was transporting a person under the
27 age of 16, is guilty of a Class 4 felony and shall receive, in
28 addition to any other penalty imposed, an additional mandatory
29 fine of \$1,000, an additional mandatory 140 hours of community
30 service, which shall include 40 hours in a program benefiting
31 children, and a mandatory minimum 30 days of imprisonment. The
32 imprisonment or assignment of community service under this
33 subsection (c-9) is not subject to suspension, nor is the
34 person eligible for a reduced sentence.

35 (c-10) Any person convicted of violating subsection (c-9)
36 or a similar provision a third time within 20 years of a

1 previous violation of subsection (a) or a similar provision is
2 guilty of a Class 4 felony and shall receive, in addition to
3 any other penalty imposed, an additional mandatory 40 hours of
4 community service in a program benefiting children, an
5 additional mandatory fine of \$3,000 ~~\$3000~~, and a mandatory
6 minimum 120 days of imprisonment. The imprisonment or
7 assignment of community service under this subsection (c-10) is
8 not subject to suspension, nor is the person eligible for a
9 reduced sentence.

10 (c-11) Any person convicted a fourth or subsequent time for
11 violating subsection (a) or a similar provision, if at the time
12 of the fourth or subsequent violation the person was
13 transporting a person under the age of 16, and if the person's
14 3 prior violations of subsection (a) or a similar provision
15 occurred while transporting a person under the age of 16 or
16 while the alcohol concentration in his or her blood, breath, or
17 urine was 0.16 or more based on the definition of blood,
18 breath, or urine units in Section 11-501.2, is guilty of a
19 Class 2 felony, is not eligible for probation or conditional
20 discharge, and is subject to a minimum fine of \$3,000.

21 (c-12) Any person convicted of a first violation of
22 subsection (a) or a similar provision, if the alcohol
23 concentration in his or her blood, breath, or urine was 0.16 or
24 more based on the definition of blood, breath, or urine units
25 in Section 11-501.2, shall be subject, in addition to any other
26 penalty that may be imposed, to a mandatory minimum of 100
27 hours of community service and a mandatory minimum fine of
28 \$500.

29 (c-13) Any person convicted of a second violation of
30 subsection (a) or a similar provision committed within 10 years
31 of a previous violation of subsection (a) or a similar
32 provision ~~committed within 10 years of a previous violation of~~
33 ~~subsection (a) or a similar provision~~, if at the time of the
34 second violation of subsection (a) or a similar provision the
35 alcohol concentration in his or her blood, breath, or urine was
36 0.16 or more based on the definition of blood, breath, or urine

1 units in Section 11-501.2, shall be subject, in addition to any
2 other penalty that may be imposed, to a mandatory minimum of 2
3 days of imprisonment and a mandatory minimum fine of \$1,250.

4 (c-14) Any person convicted of a third violation of
5 subsection (a) or a similar provision within 20 years of a
6 previous violation of subsection (a) or a similar provision, if
7 at the time of the third violation of subsection (a) or a
8 similar provision the alcohol concentration in his or her
9 blood, breath, or urine was 0.16 or more based on the
10 definition of blood, breath, or urine units in Section
11 11-501.2, is guilty of a Class 4 felony and shall be subject,
12 in addition to any other penalty that may be imposed, to a
13 mandatory minimum of 90 days of imprisonment and a mandatory
14 minimum fine of \$2,500.

15 (c-15) Any person convicted of a fourth or subsequent
16 violation of subsection (a) or a similar provision, if at the
17 time of the fourth or subsequent violation the alcohol
18 concentration in his or her blood, breath, or urine was 0.16 or
19 more based on the definition of blood, breath, or urine units
20 in Section 11-501.2, and if the person's 3 prior violations of
21 subsection (a) or a similar provision occurred while
22 transporting a person under the age of 16 or while the alcohol
23 concentration in his or her blood, breath, or urine was 0.16 or
24 more based on the definition of blood, breath, or urine units
25 in Section 11-501.2, is guilty of a Class 2 felony and is not
26 eligible for a sentence of probation or conditional discharge
27 and is subject to a minimum fine of \$2,500.

28 (d) (1) Every person convicted of committing a violation of
29 this Section shall be guilty of aggravated driving under
30 the influence of alcohol, other drug or drugs, or
31 intoxicating compound or compounds, or any combination
32 thereof if:

33 (A) the person committed a violation of subsection
34 (a) or a similar provision for the third or subsequent
35 time;

36 (B) the person committed a violation of subsection

1 (a) while driving a school bus with persons 18 years of
2 age or younger on board;

3 (C) the person in committing a violation of
4 subsection (a) was involved in a motor vehicle accident
5 that resulted in great bodily harm or permanent
6 disability or disfigurement to another, when the
7 violation was a proximate cause of the injuries;

8 (D) the person committed a violation of subsection
9 (a) for a second time and has been previously convicted
10 of violating Section 9-3 of the Criminal Code of 1961
11 or a similar provision of a law of another state
12 relating to reckless homicide in which the person was
13 determined to have been under the influence of alcohol,
14 other drug or drugs, or intoxicating compound or
15 compounds as an element of the offense or the person
16 has previously been convicted under subparagraph (C)
17 or subparagraph (F) of this paragraph (1);

18 (E) the person, in committing a violation of
19 subsection (a) while driving at any speed in a school
20 speed zone at a time when a speed limit of 20 miles per
21 hour was in effect under subsection (a) of Section
22 11-605 of this Code, was involved in a motor vehicle
23 accident that resulted in bodily harm, other than great
24 bodily harm or permanent disability or disfigurement,
25 to another person, when the violation of subsection (a)
26 was a proximate cause of the bodily harm; or

27 (F) the person, in committing a violation of
28 subsection (a), was involved in a motor vehicle,
29 snowmobile, all-terrain vehicle, or watercraft
30 accident that resulted in the death of another person,
31 when the violation of subsection (a) was a proximate
32 cause of the death.

33 (2) Except as provided in this paragraph (2), a person
34 convicted of aggravated driving under the influence of
35 alcohol, other drug or drugs, or intoxicating compound or
36 compounds, or any combination thereof is guilty of a Class

1 4 felony. For a violation of subparagraph (C) of paragraph
2 (1) of this subsection (d), the defendant, if sentenced to
3 a term of imprisonment, shall be sentenced to not less than
4 one year nor more than 12 years. Aggravated driving under
5 the influence of alcohol, other drug or drugs, or
6 intoxicating compound or compounds, or any combination
7 thereof as defined in subparagraph (F) of paragraph (1) of
8 this subsection (d) is a Class 2 felony, for which the
9 defendant, if sentenced to a term of imprisonment, shall be
10 sentenced to: (A) a term of imprisonment of not less than 3
11 years and not more than 14 years if the violation resulted
12 in the death of one person; or (B) a term of imprisonment
13 of not less than 6 years and not more than 28 years if the
14 violation resulted in the deaths of 2 or more persons. For
15 any prosecution under this subsection (d), a certified copy
16 of the driving abstract of the defendant shall be admitted
17 as proof of any prior conviction. Any person sentenced
18 under this subsection (d) who receives a term of probation
19 or conditional discharge must serve a minimum term of
20 either 480 hours of community service or 10 days of
21 imprisonment as a condition of the probation or conditional
22 discharge. This mandatory minimum term of imprisonment or
23 assignment of community service may not be suspended or
24 reduced by the court.

25 (e) After a finding of guilt and prior to any final
26 sentencing, or an order for supervision, for an offense based
27 upon an arrest for a violation of this Section or a similar
28 provision of a local ordinance, individuals shall be required
29 to undergo a professional evaluation to determine if an
30 alcohol, drug, or intoxicating compound abuse problem exists
31 and the extent of the problem, and undergo the imposition of
32 treatment as appropriate. Programs conducting these
33 evaluations shall be licensed by the Department of Human
34 Services. The cost of any professional evaluation shall be paid
35 for by the individual required to undergo the professional
36 evaluation.

1 (e-1) Any person who is found guilty of or pleads guilty to
2 violating this Section, including any person receiving a
3 disposition of court supervision for violating this Section,
4 may be required by the Court to attend a victim impact panel
5 offered by, or under contract with, a County State's Attorney's
6 office, a probation and court services department, Mothers
7 Against Drunk Driving, or the Alliance Against Intoxicated
8 Motorists. All costs generated by the victim impact panel shall
9 be paid from fees collected from the offender or as may be
10 determined by the court.

11 (f) Every person found guilty of violating this Section,
12 whose operation of a motor vehicle while in violation of this
13 Section proximately caused any incident resulting in an
14 appropriate emergency response, shall be liable for the expense
15 of an emergency response as provided under Section 5-5-3 of the
16 Unified Code of Corrections.

17 (g) The Secretary of State shall revoke the driving
18 privileges of any person convicted under this Section or a
19 similar provision of a local ordinance.

20 (h) Blank.

21 (i) The Secretary of State shall require the use of
22 ignition interlock devices on all vehicles owned by an
23 individual who has been convicted of a second or subsequent
24 offense of this Section or a similar provision of a local
25 ordinance. The Secretary shall establish by rule and regulation
26 the procedures for certification and use of the interlock
27 system.

28 (j) In addition to any other penalties and liabilities, a
29 person who is found guilty of or pleads guilty to violating
30 subsection (a), including any person placed on court
31 supervision for violating subsection (a), shall be fined \$500,
32 payable to the circuit clerk, who shall distribute the money as
33 follows: 20% to the law enforcement agency that made the arrest
34 and 80% shall be forwarded to the State Treasurer for deposit
35 into the General Revenue Fund. If the person has been
36 previously convicted of violating subsection (a) or a similar

1 provision of a local ordinance, the fine shall be \$1,000. In
2 the event that more than one agency is responsible for the
3 arrest, the amount payable to law enforcement agencies shall be
4 shared equally. Any moneys received by a law enforcement agency
5 under this subsection (j) shall be used to purchase law
6 enforcement equipment that will assist in the prevention of
7 alcohol related criminal violence throughout the State. This
8 shall include, but is not limited to, in-car video cameras,
9 radar and laser speed detection devices, and alcohol breath
10 testers. Any moneys received by the Department of State Police
11 under this subsection (j) shall be deposited into the State
12 Police DUI Fund and shall be used to purchase law enforcement
13 equipment that will assist in the prevention of alcohol related
14 criminal violence throughout the State.

15 (k) The Secretary of State Police DUI Fund is created as a
16 special fund in the State treasury. All moneys received by the
17 Secretary of State Police under subsection (j) of this Section
18 shall be deposited into the Secretary of State Police DUI Fund
19 and, subject to appropriation, shall be used to purchase law
20 enforcement equipment to assist in the prevention of alcohol
21 related criminal violence throughout the State.

22 (l) Whenever an individual is sentenced for an offense
23 based upon an arrest for a violation of subsection (a) or a
24 similar provision of a local ordinance, and the professional
25 evaluation recommends remedial or rehabilitative treatment or
26 education, neither the treatment nor the education shall be the
27 sole disposition and either or both may be imposed only in
28 conjunction with another disposition. The court shall monitor
29 compliance with any remedial education or treatment
30 recommendations contained in the professional evaluation.
31 Programs conducting alcohol or other drug evaluation or
32 remedial education must be licensed by the Department of Human
33 Services. If the individual is not a resident of Illinois,
34 however, the court may accept an alcohol or other drug
35 evaluation or remedial education program in the individual's
36 state of residence. Programs providing treatment must be

1 licensed under existing applicable alcoholism and drug
2 treatment licensure standards.

3 (m) In addition to any other fine or penalty required by
4 law, an individual convicted of a violation of subsection (a),
5 Section 5-7 of the Snowmobile Registration and Safety Act,
6 Section 5-16 of the Boat Registration and Safety Act, or a
7 similar provision, whose operation of a motor vehicle,
8 snowmobile, or watercraft while in violation of subsection (a),
9 Section 5-7 of the Snowmobile Registration and Safety Act,
10 Section 5-16 of the Boat Registration and Safety Act, or a
11 similar provision proximately caused an incident resulting in
12 an appropriate emergency response, shall be required to make
13 restitution to a public agency for the costs of that emergency
14 response. The restitution may not exceed \$1,000 per public
15 agency for each emergency response. As used in this subsection
16 (m), "emergency response" means any incident requiring a
17 response by a police officer, a firefighter carried on the
18 rolls of a regularly constituted fire department, or an
19 ambulance.

20 (Source: P.A. 92-248, eff. 8-3-01; 92-418, eff. 8-17-01;
21 92-420, eff. 8-17-01; 92-429, eff. 1-1-02; 92-431, eff. 1-1-02;
22 92-651, eff. 7-11-02; 93-156, eff. 1-1-04; 93-213, eff.
23 7-18-03; 93-584, eff. 8-22-03; 93-712, eff. 1-1-05; 93-800,
24 eff. 1-1-05; 93-840, eff. 7-30-04; revised 10-21-04.)

25 Section 99. Effective date. This Act takes effect January
26 1, 2005.