



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0914

Introduced 2/10/2009, by Rep. Paul D. Froehlich

#### SYNOPSIS AS INTRODUCED:

625 ILCS 5/2-118

from Ch. 95 1/2, par. 2-118

625 ILCS 5/6-206.1

from Ch. 95 1/2, par. 6-206.1

Amend the Illinois Vehicle Code. Provides that the decision whether to rescind (rather than the decision to rescind) an implied consent suspension is based upon the totality of the evidence in a hearing which the Secretary of State has jurisdiction based on implied consent to testing of the person's blood, breath, or urine for the presence of alcohol, drugs, or intoxicating compounds. Adds the offense of aggravated fleeing or attempt to elude a peace officer to the list of violations that if the holder of a Monitoring Device Driving Permit (MDDP) is convicted of or receives court supervision for that violation, the MDDP will be cancelled. Provides that a person who has received a statutory summary suspension and also had a MDDP cancelled, or would have been cancelled had notification of a violation been received prior to expiration of the MDDP, will have their driving privileges suspended for a period of not less than twice the original summary suspension period, or for another specified time period, and during the period of suspension, the person may apply for a restricted driving permit, which must comply with the standards set forth in the Secretary of State's Blood Alcohol Ignition Interlock Device (BAIID) program (instead of only being allowed to operate vehicles equipped with an ignition interlock device). Effective immediately.

LRB096 10397 AJT 20567 b

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 Sections 2-118 and 6-206.1 as follows:

6 (625 ILCS 5/2-118) (from Ch. 95 1/2, par. 2-118)  
7 Sec. 2-118. Hearings.

8 (a) Upon the suspension, revocation or denial of the  
9 issuance of a license, permit, registration or certificate of  
10 title under this Code of any person the Secretary of State  
11 shall immediately notify such person in writing and upon his  
12 written request shall, within 20 days after receipt thereof,  
13 set a date for a hearing to commence within 90 calendar days  
14 from the date of the written request for all requests related  
15 to a suspension, revocation, or the denial of the issuance of a  
16 license, permit, registration, or certificate of title  
17 occurring after July 1, 2002, in the County of Sangamon, the  
18 County of Jefferson, or the County of Cook, as such person may  
19 specify, unless both parties agree that such hearing may be  
20 held in some other county. The Secretary may require the  
21 payment of a fee of not more than \$50 for the filing of any  
22 petition, motion, or request for hearing conducted pursuant to  
23 this Section. These fees must be deposited into the Secretary

1 of State DUI Administration Fund, a special fund created in the  
2 State treasury, and, subject to appropriation and as directed  
3 by the Secretary of State, shall be used for operation of the  
4 Department of Administrative Hearings of the Office of the  
5 Secretary of State and for no other purpose. The Secretary  
6 shall establish by rule the amount and the procedures, terms,  
7 and conditions relating to these fees.

8 (b) At any time after the suspension, revocation or denial  
9 of a license, permit, registration or certificate of title of  
10 any person as hereinbefore referred to, the Secretary of State,  
11 in his or her discretion and without the necessity of a request  
12 by such person, may hold such a hearing, upon not less than 10  
13 days' notice in writing, in the Counties of Sangamon,  
14 Jefferson, or Cook or in any other county agreed to by the  
15 parties.

16 (c) Upon any such hearing, the Secretary of State, or his  
17 authorized agent may administer oaths and issue subpoenas for  
18 the attendance of witnesses and the production of relevant  
19 books and records and may require an examination of such  
20 person. Upon any such hearing, the Secretary of State shall  
21 either rescind or, good cause appearing therefor, continue,  
22 change or extend the Order of Revocation or Suspension, or upon  
23 petition therefore and subject to the provisions of this Code,  
24 issue a restricted driving permit or reinstate the license or  
25 permit of such person.

26 (d) All hearings and hearing procedures shall comply with

1 requirements of the Constitution, so that no person is deprived  
2 of due process of law nor denied equal protection of the laws.  
3 All hearings shall be held before the Secretary of State or  
4 before such persons as may be designated by the Secretary of  
5 State and appropriate records of such hearings shall be kept.  
6 Where a transcript of the hearing is taken, the person  
7 requesting the hearing shall have the opportunity to order a  
8 copy thereof at his own expense. The Secretary of State shall  
9 enter an order upon any hearing conducted under this Section,  
10 related to a suspension, revocation, or the denial of the  
11 issuance of a license, permit, registration, or certificate of  
12 title occurring after July 1, 2002, within 90 days of its  
13 conclusion and shall immediately notify the person in writing  
14 of his or her action.

15 (d-5) Any hearing over which the Secretary of State has  
16 jurisdiction because of a person's implied consent to testing  
17 of the person's blood, breath, or urine for the presence of  
18 alcohol, drugs, or intoxicating compounds may be conducted upon  
19 a review of the official police reports. Either party, however,  
20 may subpoena the arresting officer and any other law  
21 enforcement officer who was involved in the petitioner's arrest  
22 or processing after arrest, as well as any other person whose  
23 testimony may be probative to the issues at the hearing. The  
24 failure of a law enforcement officer to answer the subpoena  
25 shall be considered grounds for a continuance if, in the  
26 hearing officer's discretion, the continuance is appropriate.

1 The failure of the arresting officer to answer a subpoena shall  
2 not, in and of itself, be considered grounds for the rescission  
3 of an implied consent suspension. Rather, the hearing shall  
4 proceed on the basis of the other evidence available, and the  
5 hearing officer shall assign this evidence whatever probative  
6 value is deemed appropriate. The decision whether to rescind  
7 shall be based upon the totality of the evidence.

8 (e) The action of the Secretary of State in suspending,  
9 revoking or denying any license, permit, registration, or  
10 certificate of title shall be subject to judicial review in the  
11 Circuit Court of Sangamon County, in the Circuit Court of  
12 Jefferson County, or in the Circuit Court of Cook County, and  
13 the provisions of the Administrative Review Law, and all  
14 amendments and modifications thereto, and the rules adopted  
15 pursuant thereto, are hereby adopted and shall apply to and  
16 govern every action for the judicial review of final acts or  
17 decisions of the Secretary of State hereunder.

18 (Source: P.A. 95-627, eff. 6-1-08.)

19 (625 ILCS 5/6-206.1) (from Ch. 95 1/2, par. 6-206.1)

20 Sec. 6-206.1. Monitoring Device Driving Permit.  
21 Declaration of Policy. It is hereby declared a policy of the  
22 State of Illinois that the driver who is impaired by alcohol,  
23 other drug or drugs, or intoxicating compound or compounds is a  
24 threat to the public safety and welfare. Therefore, to provide  
25 a deterrent to such practice, a statutory summary driver's

1 license suspension is appropriate. It is also recognized that  
2 driving is a privilege and therefore, that the granting of  
3 driving privileges, in a manner consistent with public safety,  
4 is warranted during the period of suspension in the form of a  
5 monitoring device driving permit. A person who drives and fails  
6 to comply with the requirements of the monitoring device  
7 driving permit commits a violation of Section 6-303 of this  
8 Code.

9 The following procedures shall apply whenever a first  
10 offender is arrested for any offense as defined in Section  
11 11-501 or a similar provision of a local ordinance:

12 (a) Subsequent to a notification of a statutory summary  
13 suspension of driving privileges as provided in Section  
14 11-501.1, the court, after informing the first offender, as  
15 defined in Section 11-500, of his or her right to a monitoring  
16 device driving permit, hereinafter referred to as a MDDP, and  
17 of the obligations of the MDDP, shall enter an order directing  
18 the Secretary of State (hereinafter referred to as the  
19 Secretary) to issue a MDDP to the offender, unless the offender  
20 has opted, in writing, not to have a MDDP issued. After opting  
21 out of having a MDDP issued, at any time during the summary  
22 suspension, the offender may petition the court for an order  
23 directing the Secretary to issue a MDDP. However, the court  
24 shall not enter the order directing the Secretary to issue the  
25 MDDP, in any instance, if the court finds:

26 (1) The offender's driver's license is otherwise

1           invalid;

2           (2) Death or great bodily harm resulted from the arrest  
3           for Section 11-501;

4           (3) That the offender has been previously convicted of  
5           reckless homicide or aggravated driving under the  
6           influence involving death; or

7           (4) That the offender is less than 18 years of age.

8           Any court order for a MDDP shall order the person to pay  
9           the Secretary a MDDP Administration Fee in an amount not to  
10          exceed \$30 per month, to be deposited into the Monitoring  
11          Device Driving Permit Administration Fee Fund. The Secretary  
12          shall establish by rule the amount and the procedures, terms,  
13          and conditions relating to these fees. The order shall further  
14          specify that the offender must have an ignition interlock  
15          device installed within 14 days of the date the Secretary  
16          issues the MDDP. The ignition interlock device provider must  
17          notify the Secretary, in a manner and form prescribed by the  
18          Secretary, of the installation. If the Secretary does not  
19          receive notice of installation, the Secretary shall cancel the  
20          MDDP.

21          A MDDP shall not become effective prior to the 31st day of  
22          the original statutory summary suspension.

23          (a-1) A person issued a MDDP may drive for any purpose and  
24          at any time, subject to the rules adopted by the Secretary  
25          under subsection (g). The person must, at his or her own  
26          expense, drive only vehicles equipped with an ignition

1 interlock device as defined in Section 1-129.1, but in no event  
2 shall such person drive a commercial motor vehicle.

3 (a-2) Persons who are issued a MDDP and must drive  
4 employer-owned vehicles in the course of their employment  
5 duties may seek permission to drive an employer-owned vehicle  
6 that does not have an ignition interlock device. The employer  
7 shall provide to the Secretary a form, as prescribed by the  
8 Secretary, completed by the employer verifying that the  
9 employee must drive an employer-owned vehicle in the course of  
10 employment. If approved by the Secretary, the form must be in  
11 the driver's possession while operating an employer-owner  
12 vehicle not equipped with an ignition interlock device. No  
13 person may use this exemption to drive a school bus, school  
14 vehicle, or a vehicle designed to transport more than 15  
15 passengers. No person may use this exemption to drive an  
16 employer-owned motor vehicle that is owned by an entity that is  
17 wholly or partially owned by the person holding the MDDP, or by  
18 a family member of the person holding the MDDP. No person may  
19 use this exemption to drive an employer-owned vehicle that is  
20 made available to the employee for personal use. No person may  
21 drive the exempted vehicle more than 12 hours per day, 6 days  
22 per week.

23 (b) (Blank).

24 (c) (Blank).

25 (c-1) If the holder of the MDDP is convicted of or receives  
26 court supervision for a violation of Section 6-206.2, 6-303,



1 11-204, 11-204.1, 11-401, 11-501, 11-503, 11-506 or a similar  
2 provision of a local ordinance or a similar out-of-state  
3 offense or is convicted of or receives court supervision for  
4 any offense for which alcohol or drugs is an element of the  
5 offense and in which a motor vehicle was involved (for an  
6 arrest other than the one for which the MDDP is issued), or  
7 de-installs the BAIID without prior authorization from the  
8 Secretary, the MDDP shall be cancelled.

9 (c-5) If the court determines that the person seeking the  
10 MDDP is indigent, the court shall provide the person with a  
11 written document, in a form prescribed by the Secretary, as  
12 evidence of that determination, and the person shall provide  
13 that written document to an ignition interlock device provider.  
14 The provider shall install an ignition interlock device on that  
15 person's vehicle without charge to the person, and seek  
16 reimbursement from the Indigent BAIID Fund. If the court has  
17 deemed an offender indigent, the BAIID provider shall also  
18 provide the normal monthly monitoring services and the  
19 de-installation without charge to the offender and seek  
20 reimbursement from the Indigent BAIID Fund. Any other monetary  
21 charges, such as a lockout fee or reset fee, shall be the  
22 responsibility of the MDDP holder. A BAIID provider may not  
23 seek a security deposit from the Indigent BAIID Fund. The court  
24 shall also forward a copy of the indigent determination to the  
25 Secretary, in a manner and form as prescribed by the Secretary.

26 (d) The Secretary shall, upon receiving a court order,

1 issue a MDDP to a person who applies for a MDDP under this  
2 Section. Such court order shall contain the name, driver's  
3 license number, and legal address of the applicant. This  
4 information shall be available only to the courts, police  
5 officers, and the Secretary, except during the actual period  
6 the MDDP is valid, during which time it shall be a public  
7 record. The Secretary shall design and furnish to the courts an  
8 official court order form to be used by the courts when  
9 directing the Secretary to issue a MDDP.

10 Any submitted court order that contains insufficient data  
11 or fails to comply with this Code shall not be utilized for  
12 MDDP issuance or entered to the driver record but shall be  
13 returned to the issuing court indicating why the MDDP cannot be  
14 so entered. A notice of this action shall also be sent to the  
15 MDDP applicant by the Secretary.

16 (e) (Blank).

17 (f) (Blank).

18 (g) The Secretary shall adopt rules for implementing this  
19 Section. The rules adopted shall address issues including, but  
20 not limited to: compliance with the requirements of the MDDP;  
21 methods for determining compliance with those requirements;  
22 the consequences of noncompliance with those requirements;  
23 what constitutes a violation of the MDDP; and the duties of a  
24 person or entity that supplies the ignition interlock device.

25 (h) The rules adopted under subsection (g) shall provide,  
26 at a minimum, that the person is not in compliance with the

1 requirements of the MDDP if he or she:

2 (1) tampers or attempts to tamper with or circumvent  
3 the proper operation of the ignition interlock device;

4 (2) provides valid breath samples that register blood  
5 alcohol levels in excess of the number of times allowed  
6 under the rules;

7 (3) fails to provide evidence sufficient to satisfy the  
8 Secretary that the ignition interlock device has been  
9 installed in the designated vehicle or vehicles; or

10 (4) fails to follow any other applicable rules adopted  
11 by the Secretary.

12 (i) Any person or entity that supplies an ignition  
13 interlock device as provided under this Section shall, in  
14 addition to supplying only those devices which fully comply  
15 with all the rules adopted under subsection (g), provide the  
16 Secretary, within 7 days of inspection, all monitoring reports  
17 of each person who has had an ignition interlock device  
18 installed. These reports shall be furnished in a manner or form  
19 as prescribed by the Secretary.

20 (j) Upon making a determination that a violation of the  
21 requirements of the MDDP has occurred, the Secretary shall  
22 extend the summary suspension period for an additional 3 months  
23 beyond the originally imposed summary suspension period,  
24 during which time the person shall only be allowed to drive  
25 vehicles equipped with an ignition interlock device; provided  
26 further there are no limitations on the total number of times

1 the summary suspension may be extended. The Secretary may,  
2 however, limit the number of extensions imposed for violations  
3 occurring during any one monitoring period, as set forth by  
4 rule. Any person whose summary suspension is extended pursuant  
5 to this Section shall have the right to contest the extension  
6 through a hearing with the Secretary, pursuant to Section 2-118  
7 of this Code. If the summary suspension has already terminated  
8 prior to the Secretary receiving the monitoring report that  
9 shows a violation, the Secretary shall be authorized to suspend  
10 the person's driving privileges for 3 months, provided that the  
11 Secretary may, by rule, limit the number of suspensions to be  
12 entered pursuant to this paragraph for violations occurring  
13 during any one monitoring period. Any person whose license is  
14 suspended pursuant to this paragraph, after the summary  
15 suspension had already terminated, shall have the right to  
16 contest the suspension through a hearing with the Secretary,  
17 pursuant to Section 2-118 of this Code. The only permit the  
18 person shall be eligible for during this new suspension period  
19 is a MDDP.

20 (k) A person who has had his or her summary suspension  
21 extended for the third time, or has any combination of 3  
22 extensions and new suspensions, entered as a result of a  
23 violation that occurred while holding the MDDP, so long as the  
24 extensions and new suspensions relate to the same summary  
25 suspension, shall have his or her vehicle impounded for a  
26 period of 30 days, at the person's own expense. A person who

1 has his or her summary suspension extended for the fourth time,  
2 or has any combination of 4 extensions and new suspensions,  
3 entered as a result of a violation that occurred while holding  
4 the MDDP, so long as the extensions and new suspensions relate  
5 to the same summary suspension, shall have his or her vehicle  
6 subject to seizure and forfeiture. The Secretary shall notify  
7 the prosecuting authority of any third or fourth extensions or  
8 new suspension entered as a result of a violation that occurred  
9 while the person held a MDDP. Upon receipt of the notification,  
10 the prosecuting authority shall impound or forfeit the vehicle.

11 (1) A person whose driving privileges have been suspended  
12 under Section 11-501.1 of this Code and who had a MDDP that was  
13 cancelled, or would have been cancelled had notification of a  
14 violation been received prior to expiration of the MDDP,  
15 pursuant to subsection (c-1) of this Section, shall not be  
16 eligible for reinstatement when the summary suspension is  
17 scheduled to terminate. Instead, the person's driving  
18 privileges ~~, but instead~~ shall be suspended for a period of not  
19 less than twice the original summary suspension period, or for  
20 the length of any extensions entered under subsection (j),  
21 whichever is longer. During the period of suspension, the  
22 person shall be eligible only to apply for a restricted driving  
23 permit. If a restricted driving permit is granted, the offender  
24 may only operate vehicles equipped with a ~~an ignition interlock~~  
25 ~~device~~ BAIID in accordance with this Section. ~~, for a period of~~  
26 ~~not less than twice the original summary suspension period, or~~

1 ~~for the length of any extensions entered under subsection (j),~~  
2 ~~whichever is longer.~~

3 (m) Any person or entity that supplies an ignition  
4 interlock device under this Section shall, for each ignition  
5 interlock device installed, pay 5% of the total gross revenue  
6 received for the device, including monthly monitoring fees,  
7 into the Indigent BAIID Fund. This 5% shall be clearly  
8 indicated as a separate surcharge on each invoice that is  
9 issued. The Secretary shall conduct an annual review of the  
10 fund to determine whether the surcharge is sufficient to  
11 provide for indigent users. The Secretary may increase or  
12 decrease this surcharge requirement as needed.

13 (n) Any person or entity that supplies an ignition  
14 interlock device under this Section that is requested to  
15 provide an ignition interlock device to a person who presents  
16 written documentation of indigency from the court, as provided  
17 in subsection (c-5) of this Section, shall install the device  
18 on the person's vehicle without charge to the person and shall  
19 seek reimbursement from the Indigent BAIID Fund.

20 (o) The Indigent BAIID Fund is created as a special fund in  
21 the State treasury. The Secretary shall, subject to  
22 appropriation by the General Assembly, use all money in the  
23 Indigent BAIID Fund to reimburse ignition interlock device  
24 providers who have installed devices in vehicles of indigent  
25 persons pursuant to court orders issued under this Section. The  
26 Secretary shall make payments to such providers every 3 months.

1 If the amount of money in the fund at the time payments are  
2 made is not sufficient to pay all requests for reimbursement  
3 submitted during that 3 month period, the Secretary shall make  
4 payments on a pro-rata basis, and those payments shall be  
5 considered payment in full for the requests submitted.

6 (p) The Monitoring Device Driving Permit Administration  
7 Fee Fund is created as a special fund in the State treasury.  
8 The Secretary shall, subject to appropriation by the General  
9 Assembly, use the money paid into this fund to offset its  
10 administrative costs for administering MDDPs.

11 (Source: P.A. 94-307, eff. 9-30-05; 94-357, eff. 1-1-06;  
12 94-930, eff. 6-26-06; 95-400, eff. 1-1-09; 95-578, eff. 1-1-09;  
13 95-855, eff. 1-1-09; 95-876, eff. 8-21-08.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.