

AN ACT concerning transportation.

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

Section 5. The Illinois Vehicle Code is amended by changing Sections 2-118 and 6-206.1 as follows:

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

Sec. 2-118. Hearings.

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

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

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

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

(d) All hearings and hearing procedures shall comply with

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

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

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

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

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

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

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

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

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

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

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

invalid;

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

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

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

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

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

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

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

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

(b) (Blank).

(c) (Blank).

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

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

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

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

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

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

(e) (Blank).

(f) (Blank).

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

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

requirements of the MDDP if he or she:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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