



SPONSOR: Rep. Miro & Rep. Keeley & Sen. Sokola
Rep. Wilson

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 320

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVING UNDER THE INFLUENCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 4177, Title 21 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 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~~.05 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving ~~08~~.05 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~~.05 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 paragraph (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~~ .05 or more within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(5) of this section when the person's alcohol concentration was ~~08~~ .05 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~~ .05 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 and this subchapter, the following definitions shall apply:

(1) "Alcohol concentration of ~~08~~ .05 or more" shall mean:

Section 2. Amend § 2742, Title 21 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2742. Revocation; notice; hearing [Effective until fulfillment of the contingency in 81 Del. Laws, c. 155, § 2]

(f) The hearing under this section shall be before the Secretary or the Secretary's designee. The scope of the hearing shall cover the issues of:

51 (1) With respect to subsections (b) and (c) of this section, whether the police officer had probable cause to
52 believe the person was in violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming
53 thereto.

54 (2) With respect to paragraph (c)(1) of this section, whether by a preponderance of the evidence it appears that
55 the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto. For purposes of
56 this subsection an alcohol concentration of ~~.08~~ .05 or more pursuant to testing provided for in this section, or § 4177 of
57 this title, or a positive indication of the presence of drugs, shall be conclusive evidence of said violation.

58 (3) With respect to paragraph (c)(2) of this section, whether by a preponderance of the evidence it appears that
59 the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto. For purposes
60 of this subsection an alcohol concentration of .02 or more pursuant to the testing referred to in this section shall be
61 conclusive evidence of said violation.

62 (4) With respect to subsection (b) of this section, whether the person refused to permit the test after being
63 informed of the penalty of revocation for such refusal.

64 Section 3. Amend § 4177C, Title 21 of the Delaware Code by making deletions as shown by strikethrough and
65 insertions as shown by underline as follows:

66 § 4177C. Ignition interlock licenses; reinstatement of license.

67 (e) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than ~~.08~~
68 .05 (1) who is convicted of a first offense pursuant to § 4177 of this title, (2) who makes a first offense election pursuant to
69 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not
70 established that the person was under the influence of any other intoxicating substance, shall be granted a conditional
71 license immediately upon application, and shall not be required to complete a course of instruction established under 4177D
72 of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than
73 ~~.08~~ .05 is under the influence of alcohol.

SYNOPSIS

This bill lowers the blood alcohol content requirement for driving under the influence from .08 to .05.