

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 61

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1
2 RELATING TO MOTOR VEHICLES AND CRIMES AND PUNISHMENTS; AMENDING SECTION
3 18-8002, IDAHO CODE, TO DELETE LANGUAGE RELATING TO A PERSON REFUSING TO
4 SUBMIT TO OR FAILING TO COMPLETE CERTAIN EVIDENTIARY TESTING, TO REVISE
5 A PENALTY PROVISION IF A MOTORIST REFUSES TO SUBMIT TO OR COMPLETE CER-
6 TAIN EVIDENTIARY TESTING AND TO REVISE PROVISIONS RELATING TO A REQUEST
7 FOR A HEARING; AMENDING SECTION 18-8002A, IDAHO CODE, TO DELETE LAN-
8 GUAGE RELATING TO A PERSON REFUSING TO SUBMIT TO OR FAILING TO COMPLETE
9 AND PASS CERTAIN EVIDENTIARY TESTING, TO REVISE PROVISIONS RELATING TO
10 SERVICE OF SUSPENSION, TO REVISE PROVISIONS RELATING TO A PEACE OFFICER
11 FORWARDING TO THE DEPARTMENT A COPY OF A COMPLETED NOTICE OF SUSPENSION,
12 TO DELETE REFERENCES TO A TEMPORARY PERMIT AND TO REVISE PROVISIONS
13 RELATING TO AN ORDER VACATING A SUSPENSION; DECLARING AN EMERGENCY AND
14 PROVIDING AN EFFECTIVE DATE.

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS
19 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF
20 TESTS. (1) Any person who drives or is in actual physical control of a motor
21 vehicle in this state shall be deemed to have given his consent to eviden-
22 tiary testing for concentration of alcohol as defined in section 18-8004,
23 Idaho Code, and to have given his consent to evidentiary testing for the
24 presence of drugs or other intoxicating substances, provided that such
25 testing is administered at the request of a peace officer having reasonable
26 grounds to believe that person has been driving or in actual physical control
27 of a motor vehicle in violation of the provisions of section 18-8004, Idaho
28 Code, or section 18-8006, Idaho Code.

29 (2) Such person shall not have the right to consult with an attorney be-
30 fore submitting to such evidentiary testing.

31 (3) At the time evidentiary testing for concentration of alcohol, or
32 for the presence of drugs or other intoxicating substances is requested, the
33 person shall be informed that if he refuses to submit to or if he fails to com-
34 plete, evidentiary testing:

35 (a) He is subject to a civil penalty of two hundred fifty dollars (\$250)
36 for refusing to take the test;

37 (b) ~~His driver's license will be seized by the peace officer and a tem-~~
38 ~~porary permit will be issued; provided however, that no peace officer~~
39 ~~shall issue a temporary permit pursuant to this section to a driver~~
40 ~~whose driver's license or permit has already been and is suspended or~~
41 ~~revoked because of previous violations, and in no instance shall a tem-~~

1 ~~porary permit be issued to a driver of a commercial vehicle who refuses~~
2 ~~to submit to or fails to complete an evidentiary test;~~

3 ~~(e) He has the right to request a hearing within seven (7) days to show~~
4 ~~cause why he refused to submit to, or complete evidentiary testing;~~

5 ~~(d~~c~~) If he does not request a hearing or does not prevail at the hearing,~~
6 ~~the court shall sustain the civil penalty and his driver's license will~~
7 ~~be suspended absolutely for one (1) year if this is his first refusal and~~
8 ~~two (2) years if this is his second refusal within ten (10) years;~~

9 ~~(e~~d~~) Provided however, if he is enrolled in and is a participant in~~
10 ~~good standing in a drug court approved by the supreme court drug court~~
11 ~~and mental health court coordinating committee under the provisions~~
12 ~~of chapter 56, title 19, Idaho Code, then he shall be eligible for re-~~
13 ~~stricted noncommercial driving privileges for the purpose of getting~~
14 ~~to and from work, school or an alcohol treatment program, which may be~~
15 ~~granted by the presiding judge of the drug court, provided that he has~~
16 ~~served a period of absolute suspension of driving privileges of at least~~
17 ~~forty-five (45) days, that an ignition interlock device is installed on~~
18 ~~each of the motor vehicles owned or operated, or both, by him and that he~~
19 ~~has shown proof of financial responsibility; and~~

20 ~~(f~~e~~) After submitting to evidentiary testing he may, when practicable,~~
21 ~~at his own expense, have additional tests made by a person of his own~~
22 ~~choosing.~~

23 (4) If the motorist refuses to submit to or complete evidentiary test-
24 ing after the information has been given in accordance with subsection (3)
25 above:

26 (a) He shall be fined a civil penalty of two hundred fifty dollars
27 (\$250) and his driver's license or permit shall be seized by the peace
28 officer and forwarded to the court and a temporary permit shall be is-
29 sued by the peace officer which allows him to operate a motor vehicle
30 until the date of his hearing, if a hearing is requested, but in no event
31 for more than thirty (30) days; provided however, that no peace offi-
32 cer shall issue a temporary permit pursuant to this section to a driver
33 whose driver's license or permit has already been and is suspended or
34 revoked because of previous violations and in no instance shall a tempo-
35 rary permit be issued to a driver of a commercial vehicle who refuses to
36 submit to or fails to complete an evidentiary test;

37 (b) A written request may be made within seven (7) calendar days for a
38 hearing before the court; if requested, the hearing must be held within
39 thirty (30) days of the seizure date of service unless this period is,
40 for good cause shown, extended by the court for one (1) additional
41 thirty (30) day period. ~~The court, in granting such an extension, may,~~
42 ~~for good cause shown, extend the defendant's temporary driving privi-~~
43 ~~leges for one (1) additional thirty (30) day period.~~ The hearing shall
44 be limited to the question of why the defendant did not submit to, or
45 complete, evidentiary testing, and the burden of proof shall be upon the
46 defendant; the court shall sustain a two hundred fifty dollar (\$250)
47 civil penalty immediately and suspend all the defendant's driving privi-
48 leges immediately for one (1) year for a first refusal and two (2) years
49 for a second refusal within ten (10) years unless it finds that the peace

1 officer did not have legal cause to stop and request him to take the test
2 or that the request violated his civil rights;

3 (c) If a hearing is not requested by written notice to the court con-
4 cerned within seven (7) calendar days, upon receipt of a sworn statement
5 by the peace officer of the circumstances of the refusal, the court
6 shall sustain a two hundred fifty dollar (\$250) civil penalty and sus-
7 pend the defendant's driving privileges for one (1) year for a first
8 refusal and two (2) years for a second refusal within ten (10) years,
9 during which time he shall have absolutely no driving privileges of any
10 kind;

11 (d) Notwithstanding the provisions of subsection (4)(b) and (c) of
12 this section, if the defendant is enrolled in and is a participant in
13 good standing in a drug court approved by the supreme court drug court
14 and mental health court coordinating committee under the provisions of
15 chapter 56, title 19, Idaho Code, then the defendant shall be eligible
16 for restricted noncommercial driving privileges for the purpose of
17 getting to and from work, school or an alcohol treatment program, which
18 may be granted by the presiding judge of the drug court, provided that
19 the defendant has served a period of absolute suspension of driving
20 privileges of at least forty-five (45) days, that an ignition interlock
21 device is installed on each of the motor vehicles owned or operated, or
22 both, by the defendant and that the defendant has shown proof of finan-
23 cial responsibility as defined and in the amounts specified in section
24 49-117, Idaho Code, provided that the restricted noncommercial driving
25 privileges may be continued if the defendant successfully completes the
26 drug court, and that the court may revoke such privileges for failure to
27 comply with the terms of probation or with the terms and conditions of
28 the drug court program; and

29 (e) After submitting to evidentiary testing at the request of the peace
30 officer, he may, when practicable, at his own expense, have additional
31 tests made by a person of his own choosing. The failure or inability to
32 obtain an additional test or tests by a person shall not preclude the ad-
33 mission of results of evidentiary testing for alcohol concentration or
34 for the presence of drugs or other intoxicating substances taken at the
35 direction of the peace officer unless the additional test was denied by
36 the peace officer.

37 (5) Any sustained civil penalty or suspension of driving privileges un-
38 der this section or section 18-8002A, Idaho Code, shall be a civil penalty
39 separate and apart from any other suspension imposed for a violation of other
40 Idaho motor vehicle codes or for a conviction of an offense pursuant to this
41 chapter, and may be appealed to the district court.

42 (6) No hospital, hospital officer, agent, or employee, or health care
43 professional licensed by the state of Idaho, whether or not such person has
44 privileges to practice in the hospital in which a body fluid sample is ob-
45 tained or an evidentiary test is made, shall incur any civil or criminal li-
46 ability for any act arising out of administering an evidentiary test for al-
47 cohol concentration or for the presence of drugs or other intoxicating sub-
48 stances at the request or order of a peace officer in the manner described in
49 this section and section 18-8002A, Idaho Code; provided that nothing in this

1 section shall relieve any such person or legal entity from civil liability
2 arising from the failure to exercise the community standard of care.

3 (a) This immunity extends to any person who assists any individual to
4 withdraw a blood sample for evidentiary testing at the request or order
5 of a peace officer, which individual is authorized to withdraw a blood
6 sample under the provisions of section 18-8003, Idaho Code, regardless
7 of the location where the blood sample is actually withdrawn.

8 (b) A peace officer is empowered to order an individual authorized in
9 section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary
10 testing when the peace officer has probable cause to believe that the
11 suspect has committed any of the following offenses:

12 (i) Aggravated driving under the influence of alcohol, drugs or
13 other intoxicating substances as provided in section 18-8006,
14 Idaho Code;

15 (ii) Vehicular manslaughter as provided in subsection (3) (a), (b)
16 and (c) of section 18-4006, Idaho Code;

17 (iii) Aggravated operating of a vessel on the waters of the state
18 while under the influence of alcohol, drugs or other intoxicating
19 substances as provided in section 67-7035, Idaho Code; or

20 (iv) Any criminal homicide involving a vessel on the waters of the
21 state while under the influence of alcohol, drugs or other intoxi-
22 cating substances.

23 (c) Nothing herein shall limit the discretion of the hospital admin-
24 istration to designate the qualified hospital employee responsible to
25 withdraw the blood sample.

26 (d) The law enforcement agency that requests or orders withdrawal of
27 the blood sample shall pay the reasonable costs to withdraw such blood
28 sample, perform laboratory analysis, preserve evidentiary test re-
29 sults, and testify in judicial proceedings. The court may order resti-
30 tution pursuant to the provisions of section 18-8003(2), Idaho Code.

31 (e) The withdrawal of the blood sample may be delayed or terminated if:

32 (i) In the reasonable judgment of the hospital personnel with-
33 drawal of the blood sample may result in serious bodily injury to
34 hospital personnel or other patients; or

35 (ii) The licensed health care professional treating the suspect
36 believes the withdrawal of the blood sample is contraindicated be-
37 cause of the medical condition of the suspect or other patients.

38 (7) "Actual physical control" as used in this section and section
39 18-8002A, Idaho Code, shall be defined as being in the driver's position of
40 the motor vehicle with the motor running or with the motor vehicle moving.

41 (8) Any written notice required by this section shall be effective upon
42 mailing.

43 (9) For the purposes of this section and section 18-8002A, Idaho Code,
44 "evidentiary testing" shall mean a procedure or test or series of proce-
45 dures or tests, including the additional test authorized in subsection (10)
46 of this section, utilized to determine the concentration of alcohol or the
47 presence of drugs or other intoxicating substances in a person.

48 (10) A person who submits to a breath test for alcohol concentration,
49 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-
50 quested to submit to a second evidentiary test of blood or urine for the pur-

1 pose of determining the presence of drugs or other intoxicating substances
2 if the peace officer has reasonable cause to believe that a person was driv-
3 ing under the influence of any drug or intoxicating substance or the combined
4 influence of alcohol and any drug or intoxicating substance. The peace of-
5 ficer shall state in his or her report the facts upon which that belief is
6 based.

7 (11) Notwithstanding any other provision of law to the contrary, the
8 civil penalty imposed under the provisions of this section must be paid, as
9 ordered by the court, to the county justice fund or the county current ex-
10 pense fund where the incident occurred. If a person does not pay the civil
11 penalty imposed as provided in this section within thirty (30) days of the
12 imposition, unless this period has been extended by the court for good cause
13 shown, the prosecuting attorney representing the political subdivision
14 where the incident occurred may petition the court in the jurisdiction where
15 the incident occurred to file the order imposing the civil penalty as an or-
16 der of the court. Once entered, the order may be enforced in the same manner
17 as a final judgment of the court. In addition to the civil penalty, attor-
18 ney's fees, costs and interest may be assessed against any person who fails
19 to pay the civil penalty.

20 SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
23 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
24 TESTS. (1) Definitions. As used in this section:

25 (a) "Actual physical control" means being in the driver's position of a
26 motor vehicle with the motor running or with the vehicle moving.

27 (b) "Administrative hearing" means a hearing conducted by a hearing
28 officer to determine whether a suspension imposed by the provisions of
29 this section should be vacated or sustained.

30 (c) "Department" means the Idaho transportation department and, as the
31 context requires, shall be construed to include any agent of the depart-
32 ment designated by rule as hereinafter provided.

33 (d) "Director" means the director of the Idaho transportation depart-
34 ment.

35 (e) "Evidentiary testing" means a procedure or test or series of proce-
36 dures or tests utilized to determine the concentration of alcohol or the
37 presence of drugs or other intoxicating substances in a person, includ-
38 ing additional testing authorized by subsection (6) of this section. An
39 evidentiary test for alcohol concentration shall be based on a formula
40 of grams of alcohol per one hundred (100) cubic centimeters of blood,
41 per two hundred ten (210) liters of breath, or sixty-seven (67) millili-
42 ters of urine. Analysis of blood, breath or urine for the purpose of de-
43 termining alcohol concentration shall be performed by a laboratory op-
44 erated by the Idaho state police or by a laboratory approved by the Idaho
45 state police under the provisions of approval and certification stan-
46 dards to be set by the Idaho state police, or by any other method ap-
47 proved by the Idaho state police. Notwithstanding any other provision
48 of law or rule of court, the results of any test for alcohol concentra-
49 tion and records relating to calibration, approval, certification or

1 quality control performed by a laboratory operated and approved by the
2 Idaho state police or by any other method approved by the Idaho state po-
3 lice shall be admissible in any proceeding in this state without the ne-
4 cessity of producing a witness to establish the reliability of the test-
5 ing procedure for examination.

6 (f) "Hearing officer" means a person designated by the department to
7 conduct administrative hearings. The hearing officer shall have au-
8 thority to administer oaths, examine witnesses and take testimony,
9 receive relevant evidence, issue subpoenas, regulate the course and
10 conduct of the hearing and make a final ruling on the issues before him.

11 (g) "Hearing request" means a request for an administrative hearing on
12 the suspension imposed by the provisions of this section.

13 (2) Information to be given. At the time of evidentiary testing for
14 concentration of alcohol, or for the presence of drugs or other intoxicat-
15 ing substances is requested, the person shall be informed that if the person
16 refuses to submit to or fails to complete evidentiary testing, or if the per-
17 son submits to and completes evidentiary testing and the test results indi-
18 cate an alcohol concentration or the presence of drugs or other intoxicating
19 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
20 the person shall be informed substantially as follows (but need not be in-
21 formed verbatim):

22 If you refuse to submit to or if you fail to complete and pass eviden-
23 tiary testing for alcohol or other intoxicating substances:

24 (a) ~~The peace officer will seize your driver's license and issue a no-~~
25 ~~tice of suspension and a temporary driving permit to you, but no peace~~
26 ~~officer will issue you a temporary driving permit if your driver's li-~~
27 ~~cence or permit has already been and is suspended or revoked. No peace~~
28 ~~officer shall issue a temporary driving permit to a driver of a commer-~~
29 ~~cial vehicle who refuses to submit to or fails to complete and pass an~~
30 ~~evidentiary test;~~

31 (b) You have the right to request a hearing within seven (7) days of the
32 notice of suspension of your driver's license to show cause why you re-
33 fused to submit to or to complete and pass evidentiary testing and why
34 your driver's license should not be suspended;

35 (c) If you refused or failed to complete evidentiary testing and do not
36 request a hearing before the court or do not prevail at the hearing, your
37 driver's license will be suspended. The suspension will be for one (1)
38 year if this is your first refusal. The suspension will be for two (2)
39 years if this is your second refusal within ten (10) years. You will not
40 be able to obtain a temporary restricted license during that period;

41 (d) If you complete evidentiary testing and fail the testing and do not
42 request a hearing before the department or do not prevail at the hear-
43 ing, your driver's license will be suspended. This suspension will be
44 for ninety (90) days if this is your first failure of evidentiary test-
45 ing, but you may request restricted noncommercial vehicle driving privi-
46 leges after the first thirty (30) days. The suspension will be for one
47 (1) year if this is your second failure of evidentiary testing within
48 five (5) years. You will not be able to obtain a temporary restricted
49 license during that period;

1 (e) If you become enrolled in and are a participant in good standing in
2 a drug court approved by the supreme court drug court and mental health
3 court coordinating committee under the provisions of chapter 56, ti-
4 tle 19, Idaho Code, you shall be eligible for restricted noncommercial
5 driving privileges for the purpose of getting to and from work, school
6 or an alcohol treatment program, which may be granted by the presiding
7 judge of the drug court, provided that you have served a period of abso-
8 lute suspension of driving privileges of at least forty-five (45) days,
9 that an ignition interlock device is installed on each of the motor ve-
10 hicles owned or operated, or both, by you and that you have shown proof
11 of financial responsibility; and

12 (f) After submitting to evidentiary testing you may, when practicable,
13 at your own expense, have additional tests made by a person of your own
14 choosing.

15 (3) Rulemaking authority of the Idaho state police. The Idaho state po-
16 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

17 (a) What testing is required to complete evidentiary testing under this
18 section; and

19 (b) What calibration or checking of testing equipment must be performed
20 to comply with the department's requirements. Any rules of the Idaho
21 state police shall be in accordance with the following: a test for alco-
22 hol concentration in breath as defined in section 18-8004, Idaho Code,
23 and subsection (1) (e) of this section will be valid for the purposes of
24 this section if the breath alcohol testing instrument was approved for
25 testing by the Idaho state police in accordance with section 18-8004,
26 Idaho Code, at any time within ninety (90) days before the evidentiary
27 testing. A test for alcohol concentration in blood or urine as defined
28 in section 18-8004, Idaho Code, that is reported by the Idaho state po-
29 lice or by any laboratory approved by the Idaho state police to perform
30 this test will be valid for the purposes of this section.

31 (4) Suspension.

32 (a) Upon receipt of the sworn statement of a peace officer that there
33 existed legal cause to believe a person had been driving or was in actual
34 physical control of a motor vehicle while under the influence of alco-
35 hol, drugs or other intoxicating substances and that the person submit-
36 ted to a test and the test results indicated an alcohol concentration or
37 the presence of drugs or other intoxicating substances in violation of
38 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
39 suspend the person's driver's license, driver's permit, driving privi-
40 leges or nonresident driving privileges:

41 (i) For a period of ninety (90) days for a first failure of ev-
42 identiary testing under the provisions of this section. The
43 first thirty (30) days of the suspension shall be absolute and the
44 person shall have absolutely no driving privileges of any kind.
45 Restricted noncommercial vehicle driving privileges applicable
46 during the remaining sixty (60) days of the suspension may be re-
47 quested as provided in subsection (9) of this section.

48 (ii) For a period of one (1) year for a second and any subsequent
49 failure of evidentiary testing under the provisions of this sec-
50 tion within the immediately preceding five (5) years. No driving

1 privileges of any kind shall be granted during the suspension im-
2 posed pursuant to this subsection.

3 The person may request an administrative hearing on the suspension as
4 provided in subsection (7) of this section. Any right to contest the
5 suspension shall be waived if a hearing is not requested as therein pro-
6 vided.

7 (b) The suspension shall become effective thirty (30) days after ser-
8 vice upon the person of the notice of suspension. The notice shall be in
9 a form provided by the department and shall state:

10 (i) The reason and statutory grounds for the suspension;

11 (ii) The effective date of the suspension;

12 (iii) The suspension periods to which the person may be subject as
13 provided in subsection (4) (a) of this section;

14 (iv) The procedures for obtaining restricted noncommercial vehi-
15 cle driving privileges;

16 (v) The rights of the person to request an administrative hear-
17 ing on the suspension and that if an administrative hearing is not
18 requested within seven (7) days of service of the notice of suspen-
19 sion the right to contest the suspension shall be waived;

20 (vi) The procedures for obtaining an administrative hearing on
21 the suspension;

22 (vii) The right to judicial review of the hearing officer's deci-
23 sion on the suspension and the procedures for seeking such review.

24 (c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)
25 of this section, a person who is enrolled in and is a participant in
26 good standing in a drug court approved by the supreme court drug court
27 and mental health court coordinating committee under the provisions
28 of chapter 56, title 19, Idaho Code, shall be eligible for restricted
29 noncommercial driving privileges for the purpose of getting to and from
30 work, school or an alcohol treatment program, which may be granted by
31 the presiding judge of the drug court, provided that the offender has
32 served a period of absolute suspension of driving privileges of at least
33 forty-five (45) days, that an ignition interlock device is installed on
34 each of the motor vehicles owned or operated, or both, by the offender
35 and that the offender has shown proof of financial responsibility as
36 defined and in the amounts specified in section 49-117, Idaho Code,
37 provided that the restricted noncommercial driving privileges may be
38 continued if the offender successfully completes the drug court, and
39 that the court may revoke such privileges for failure to comply with the
40 terms of probation or with the terms and conditions of the drug court
41 program.

42 (5) Service of suspension by peace officer or the department. If the
43 driver submits to evidentiary testing after the information in subsection
44 (2) of this section has been provided and the results of the test indicate
45 an alcohol concentration or the presence of drugs or other intoxicating
46 substances in violation of the provisions of section 18-8004, 18-8004C or
47 18-8006, Idaho Code:

48 (a) ~~The peace officer shall take possession of the person's driver's~~
49 ~~license, shall issue a temporary permit which shall be valid for a pe-~~
50 ~~riod not to exceed thirty (30) days from the date of issuance, and,~~

1 acting on behalf of the department, ~~will~~ serve the person with a notice
2 of suspension in the form and containing the information required under
3 subsection (4) of this section. The department may serve the person
4 with a notice of suspension if the peace officer failed to issue the no-
5 tice of suspension or failed to include the date of service as provided
6 in subsection (4) (b) of this section.

7 (b) Within five (5) business days following service of a notice of sus-
8 pension the peace officer shall forward to the department a copy of the
9 completed notice of suspension form upon which the date of service upon
10 the driver shall be clearly indicated, ~~a copy of any completed tempo-~~
11 ~~rary permit form along with any confiscated driver's license,~~ a certi-
12 fied copy or duplicate original of the results of all tests for alco-
13 hol concentration, as shown by analysis of breath administered at the
14 direction of the peace officer, and a sworn statement of the officer,
15 which may incorporate any arrest or incident reports relevant to the ar-
16 rest and evidentiary testing setting forth:

17 (i) The identity of the person;

18 (ii) Stating the officer's legal cause to stop the person;

19 (iii) Stating the officer's legal cause to believe that the per-
20 son had been driving or was in actual physical control of a motor
21 vehicle while under the influence of alcohol, drugs or other in-
22 toxicating substances in violation of the provisions of section
23 18-8004, 18-8004C or 18-8006, Idaho Code;

24 (iv) That the person was advised of the consequences of taking and
25 failing the evidentiary test as provided in subsection (2) of this
26 section;

27 (v) That the person was lawfully arrested;

28 (vi) That the person was tested for alcohol concentration, drugs
29 or other intoxicating substances as provided in this chapter, and
30 that the results of the test indicated an alcohol concentration or
31 the presence of drugs or other intoxicating substances in viola-
32 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
33 Idaho Code.

34 If an evidentiary test of blood or urine was administered rather than
35 a breath test, the peace officer or the department shall serve the no-
36 tice of suspension once the results are received. The sworn statement
37 required in this subsection shall be made on forms in accordance with
38 rules adopted by the department.

39 (c) The department may serve the person with a notice of suspension if
40 the peace officer failed to issue the notice of suspension or failed to
41 include the date of service as provided in subsection (4) (b) of this
42 section.

43 (6) Additional tests. After submitting to evidentiary testing at the
44 request of the peace officer, the person may, when practicable, at his own
45 expense, have additional tests for alcohol concentration or for the presence
46 of drugs or other intoxicating substances made by a person of his own choos-
47 ing. The person's failure or inability to obtain additional tests shall not
48 preclude admission of the results of evidentiary tests administered at the
49 direction of the peace officer unless additional testing was denied by the
50 peace officer.

1 (7) Administrative hearing on suspension. A person who has been served
2 with a notice of suspension after submitting to an evidentiary test may re-
3 quest an administrative hearing on the suspension before a hearing officer
4 designated by the department. The request for hearing shall be in writing
5 and must be received by the department within seven (7) calendar days of the
6 date of service upon the person of the notice of suspension, and shall in-
7 clude what issue or issues shall be raised at the hearing. The date on which
8 the hearing request was received shall be noted on the face of the request.

9 If a hearing is requested, the hearing shall be held within twenty (20)
10 days of the date the hearing request was received by the department unless
11 this period is, for good cause shown, extended by the hearing officer for
12 one ten (10) day period. Such extension shall not operate as a stay of the
13 suspension ~~and any temporary permit shall expire thirty (30) days after ser-~~
14 ~~vice of the notice of suspension,~~ notwithstanding an extension of the hear-
15 ing date beyond such thirty (30) day period. Written notice of the date and
16 time of the hearing shall be sent to the party requesting the hearing at least
17 seven (7) days prior to the scheduled hearing date. The department may con-
18 duct all hearings by telephone if each participant in the hearing has an op-
19 portunity to participate in the entire proceeding while it is taking place.

20 The hearing shall be recorded. The sworn statement of the arresting of-
21 ficer, and the copy of the notice of suspension ~~and any temporary permit~~ is-
22 sued by the officer shall be admissible at the hearing without further evi-
23 dentiary foundation. The results of any tests for alcohol concentration or
24 the presence of drugs or other intoxicating substances by analysis of blood,
25 urine or breath administered at the direction of the peace officer and the
26 records relating to calibration, certification, approval or quality control
27 pertaining to equipment utilized to perform the tests shall be admissible as
28 provided in section 18-8004(4), Idaho Code. The arresting officer shall not
29 be required to participate unless directed to do so by a subpoena issued by
30 the hearing officer.

31 The burden of proof shall be on the person requesting the hearing. The
32 hearing officer shall not vacate the suspension unless he finds, by a prepon-
33 derance of the evidence, that:

- 34 (a) The peace officer did not have legal cause to stop the person; or
35 (b) The officer did not have legal cause to believe the person had been
36 driving or was in actual physical control of a vehicle while under the
37 influence of alcohol, drugs or other intoxicating substances in viola-
38 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
39 Code; or
40 (c) The test results did not show an alcohol concentration or the pres-
41 ence of drugs or other intoxicating substances in violation of section
42 18-8004, 18-8004C or 18-8006, Idaho Code; or
43 (d) The tests for alcohol concentration, drugs or other intoxicating
44 substances administered at the direction of the peace officer were not
45 conducted in accordance with the requirements of section 18-8004(4),
46 Idaho Code, or the testing equipment was not functioning properly when
47 the test was administered; or
48 (e) The person was not informed of the consequences of submitting to ev-
49 identiary testing as required in subsection (2) of this section.

1 If the hearing officer finds that the person has not met his burden of proof,
2 he shall sustain the suspension. The hearing officer shall make findings of
3 fact and conclusions of law on each issue and shall enter an order vacating
4 or sustaining the suspension. ~~If the suspension is vacated, the person's~~
5 ~~driver's license, unless unavailable by reason of an existing suspension,~~
6 ~~revocation, cancellation, disqualification or denial shall be returned to~~
7 ~~him.~~ The findings of fact, conclusions of law and order entered by the hear-
8 ing officer shall be considered a final order pursuant to the provisions of
9 chapter 52, title 67, Idaho Code, except that motions for reconsideration of
10 such order shall be allowed and new evidence can be submitted.

11 The facts as found by the hearing officer shall be independent of the de-
12 termination of the same or similar facts in the adjudication of any criminal
13 charges arising out of the same occurrence. The disposition of those crim-
14 inal charges shall not affect the suspension required to be imposed under
15 the provisions of this section. If a license is suspended under this section
16 and the person is also convicted on criminal charges arising out of the same
17 occurrence for a violation of the provisions of section 18-8004, 18-8004C
18 or 18-8006, Idaho Code, both the suspension under this section and the sus-
19 pension imposed pursuant to the provisions of section 18-8005 or 18-8006,
20 Idaho Code, shall be imposed, but the periods of suspension shall run concur-
21 rently, with the total period of suspension not to exceed the longer of the
22 applicable suspension periods, unless the court ordering the suspension in
23 the criminal case orders to the contrary.

24 (8) Judicial review. A party aggrieved by the decision of the hear-
25 ing officer may seek judicial review of the decision in the manner provided
26 for judicial review of final agency action provided in chapter 52, title 67,
27 Idaho Code.

28 (9) Restricted noncommercial vehicle driving privileges. A person
29 served with a notice of suspension for ninety (90) days pursuant to this
30 section may apply to the department for restricted noncommercial vehicle
31 driving privileges, to become effective after the thirty (30) day absolute
32 suspension has been completed. The request may be made at any time after ser-
33 vice of the notice of suspension. Restricted noncommercial vehicle driving
34 privileges will be issued for the person to travel to and from work and for
35 work purposes not involving operation of a commercial vehicle, to attend an
36 alternative high school, work on a GED, for postsecondary education, or to
37 meet the medical needs of the person or his family if the person is eligible
38 for restricted noncommercial vehicle driving privileges. Any person whose
39 driving privileges are suspended under the provisions of this chapter may be
40 granted privileges to drive a noncommercial vehicle but shall not be granted
41 privileges to operate a commercial motor vehicle.

42 (10) Rules. The department may adopt rules under the provisions of
43 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
44 sions of this section.

45 SECTION 3. An emergency existing therefor, which emergency is hereby
46 declared to exist, this act shall be in full force and effect on and after May
47 1, 2011.