

108-202, §6(b), Feb. 29, 2004, 118 Stat. 483; Pub. L. 108-224, §5(b), Apr. 30, 2004, 118 Stat. 632; Pub. L. 108-263, §5(b), June 30, 2004, 118 Stat. 703; Pub. L. 108-280, §5(b), July 30, 2004, 118 Stat. 881; Pub. L. 108-310, §6(a)(2), Sept. 30, 2004, 118 Stat. 1152; Pub. L. 109-14, §5(a)(2), May 31, 2005, 119 Stat. 329; Pub. L. 109-20, §5(a)(2), July 1, 2005, 119 Stat. 351; Pub. L. 109-35, §5(a)(2), July 20, 2005, 119 Stat. 384; Pub. L. 109-37, §5(a)(2), July 22, 2005, 119 Stat. 399; Pub. L. 109-40, §5(a)(2), July 28, 2005, 119 Stat. 416; Pub. L. 109-59, title I, §1407(a), (b), Aug. 10, 2005, 119 Stat. 1231; Pub. L. 112-141, div. A, title I, §1404(i), July 6, 2012, 126 Stat. 559; Pub. L. 114-94, div. A, title I, §1446(a)(9), Dec. 4, 2015, 129 Stat. 1437.)

## REFERENCES IN TEXT

Section 104, referred to in subsec. (e)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

## AMENDMENTS

2015—Subsec. (f)(2). Pub. L. 114-94 substituted “118(b)” for “118(b)(2)”.

2012—Subsec. (e)(1), (2). Pub. L. 112-141 added pars. (1) and (2) and struck out former pars. (1) and (2) which related to penalty generally and amount to be withheld, respectively.

2005—Subsec. (e). Pub. L. 109-59, §1407(a)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 109-40 substituted “\$91,315,068 for the period of October 1, 2004, through July 30, 2005” for “\$90,410,958 for the period of October 1, 2004, through July 27, 2005”.

Pub. L. 109-37 substituted “\$90,410,958 for the period of October 1, 2004, through July 27, 2005” for “\$89,100,000 for the period of October 1, 2004, through July 21, 2005”.

Pub. L. 109-35 substituted “\$89,100,000 for the period of October 1, 2004, through July 21, 2005” for “\$88,000,000 for the period of October 1, 2004, through July 19, 2005”.

Pub. L. 109-20 substituted “\$88,000,000 for the period of October 1, 2004, through July 19, 2005” for “\$82,500,000 for the period of October 1, 2004, through June 30, 2005”.

Pub. L. 109-14 substituted “\$82,500,000 for the period of October 1, 2004, through June 30, 2005” for “\$73,333,333 for the period of October 1, 2004, through May 31, 2005”.

Subsec. (f). Pub. L. 109-59, §1407(a)(1), redesignated subsec. (e) as (f).

Subsec. (f)(1). Pub. L. 109-59, §1407(b), substituted “2004, and \$110,000,000 for fiscal year 2005” for “2004, and”.

2004—Subsec. (e)(1). Pub. L. 108-310 struck out “and” after “2003,” and inserted “, and \$73,333,333 for the period of October 1, 2004, through May 31, 2005” before period at end.

Pub. L. 108-280 substituted “\$110,000,000 for fiscal year 2004” for “\$100,000,000 for the period of October 1, 2003, through July 31, 2004”.

Pub. L. 108-263 substituted “\$100,000,000 for the period of October 1, 2003, through July 31, 2004” for “\$90,000,000 for the period of October 1, 2003, through June 30, 2004”.

Pub. L. 108-224 substituted “\$90,000,000 for the period of October 1, 2003, through June 30, 2004” for “\$70,000,000 for the period of October 1, 2003, through April 30, 2004”.

Pub. L. 108-202 substituted “\$70,000,000 for the period of October 1, 2003, through April 30, 2004” for “\$50,000,000 for the period of October 1, 2003, through February 29, 2004”.

2003—Subsec. (e)(1). Pub. L. 108-88 struck out “and” after “2002,” and inserted before period at end “, and \$50,000,000 for the period of October 1, 2003, through February 29, 2004”.

## EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

## EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

## WITHHOLDING OF FUNDS FOR FAILURE TO ENACT AND ENFORCE LAWS RELATING TO DRIVING WHILE INTOXICATED

Pub. L. 106-346, §101(a) [title III, §351], Oct. 23, 2000, 114 Stat. 1356, 1356A-34, directed the Secretary to withhold a percentage, beginning in fiscal year 2004, of the amount required to be apportioned for Federal-aid highways to any State under former pars. (1), (3), and (4) of section 104(b) of this title, if a State had not enacted and was not enforcing a provision described in section 163(a) of this title, and provided for increase of the apportionment by an amount equal to such reduction if within 4 years from the date of the reduction the Secretary determined that such State had enacted and was enforcing a provision described in section 163(a) of this title, prior to repeal by Pub. L. 109-59, title I, §1407(c), Aug. 10, 2005, 119 Stat. 1231.

**§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ALCOHOL CONCENTRATION.—The term “alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms “driving while intoxicated” and “driving under the influence” mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) MOTOR VEHICLE.—The term “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(4) REPEAT INTOXICATED DRIVER LAW.—The term “repeat intoxicated driver law” means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

(A) receive—

(i) a suspension of all driving privileges for not less than 1 year; or

(ii) a suspension of unlimited driving privileges for 1 year, allowing for the reinstatement of limited driving privileges subject to restrictions and limited exemptions as established by State law, if an ignition interlock device is installed for not less than 1 year on each of the motor vehicles owned or operated, or both, by the individual;

(B) be subject to the impoundment or immobilization of, or the installation of an ignition interlock system on, each motor vehicle owned or operated, or both, by the individual;

(C) receive an assessment of the individual’s degree of abuse of alcohol and treatment as appropriate; and

(D) receive—

(i) in the case of the second offense—

(I) an assignment of not less than 30 days of community service; or

(II) not less than 5 days of imprisonment; and

(ii) in the case of the third or subsequent offense—

(I) an assignment of not less than 60 days of community service; or

(II) not less than 10 days of imprisonment.

(b) TRANSFER OF FUNDS.—

(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b)<sup>1</sup> to the apportionment of the State under section 402—

(A) to be used for alcohol-impaired driving countermeasures; or

(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(2) FISCAL YEAR 2012 AND THEREAFTER.—

(A) RESERVATION OF FUNDS.—On October 1, 2011, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall reserve an amount equal to 2.5 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State certifies to the Secretary the means by which the States will use those reserved funds among the uses authorized under subparagraphs (A) and (B) of paragraph (1), and paragraph (3).

(B) TRANSFER OF FUNDS.—As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall—

(i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and

(ii) release the reserved funds identified by the State as described in paragraph (3).

(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

(A) IN GENERAL.—A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

(B) STATE DEPARTMENTS OF TRANSPORTATION.—If the State makes an election

under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.

(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (2) may be derived from the following:

(A) The apportionment of the State under section 104(b)(1).

(B) The apportionment of the State under section 104(b)(2).

(6) TRANSFER OF OBLIGATION AUTHORITY.—

(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

(ii) the ratio that—

(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

(Added Pub. L. 105-178, title I, §1406(a), as added Pub. L. 105-206, title IX, §9005(a), July 22, 1998, 112 Stat. 845; amended Pub. L. 109-59, title I, §1401(a)(3)(C), Aug. 10, 2005, 119 Stat. 1225; Pub. L. 110-244, title I, §115, June 6, 2008, 122 Stat. 1606; Pub. L. 112-141, div. A, title I, §1403, July 6, 2012, 126 Stat. 556; Pub. L. 114-94, div. A, title I, §§1414, 1446(a)(10), Dec. 4, 2015, 129 Stat. 1420, 1437.)

#### AMENDMENT OF SECTION

*Pub. L. 114-94, div. A, title I, §§1414, 1446(a)(10), title IV, §4015, Dec. 4, 2015, 129 Stat. 1420, 1437, 1513, provided that, effective Oct. 1, 2016, this section is amended:*

*(1) in subsection (a)—*

<sup>1</sup> See References in Text note below.

(a) by redesignating paragraphs (1) to (4) as paragraphs (2) to (5), respectively;

(b) by adding paragraph (1) to read as follows:

“(1) 24-7 sobriety program.—The term ‘24-7 sobriety program’ has the meaning given the term in section 405(d)(7)(A).”;

(c) in paragraph (5), as redesignated—

(i) by inserting “or combination of laws or programs” after “State law” in the introductory provisions;

(ii) by amending subparagraph (A) to read as follows:

“(A) receive, for a period of not less than 1 year—

“(i) a suspension of all driving privileges;

“(ii) a restriction on driving privileges that limits the individual to operating only motor vehicles with an ignition interlock device installed, unless a special exception applies;

“(iii) a restriction on driving privileges that limits the individual to operating motor vehicles only if participating in, and complying with, a 24-7 sobriety program; or

“(iv) any combination of clauses (i) through (iii).”;

(iii) by striking subparagraph (B);

(iv) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(v) in subparagraph (C), as redesignated—

(I) by inserting “(unless the State certifies that the general practice is that such an individual will be incarcerated)” before the semicolon in clause (i)(II); and

(II) by inserting “(unless the State certifies that the general practice is that such an individual will receive 10 days of incarceration)” before the period at the end in clause (ii)(II); and

(d) by adding paragraph (6) to read as follows:

“(6) Special exception.—The term ‘special exception’ means an exception under a State alcohol-ignition interlock law for the following circumstances:

“(A) The individual is required to operate an employer’s motor vehicle in the course and scope of employment and the business entity that owns the vehicle is not owned or controlled by the individual.

“(B) The individual is certified by a medical doctor as being unable to provide a deep lung breath sample for analysis by an ignition interlock device.”; and

(2) in subsection (b)—

(a) by striking “transferred” and inserting “reserved” in paragraph (3)(A); and

(b) by inserting “or released” after “transferred” in paragraph (5).

See 2015 Amendment notes below.

#### REFERENCES IN TEXT

Section 104, referred to in subsec. (b)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

#### AMENDMENTS

2015—Subsec. (a)(1) to (4). Pub. L. 114-94, §1414(1), (2), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 114-94, §1414(1), (3)(A), redesignated par. (4) as (5) and inserted “or combination of

laws or programs” after “State law” in introductory provisions.

Subsec. (a)(5)(A). Pub. L. 114-94, §1414(3)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “receive—

“(i) a suspension of all driving privileges for not less than 1 year; or

“(ii) a suspension of unlimited driving privileges for 1 year, allowing for the reinstatement of limited driving privileges subject to restrictions and limited exemptions as established by State law, if an ignition interlock device is installed for not less than 1 year on each of the motor vehicles owned or operated, or both, by the individual;”.

Subsec. (a)(5)(B). Pub. L. 114-94, §1414(3)(C), (D), redesignated subpar. (C) as (B) and struck out former subpar. (B), which read as follows: “be subject to the impoundment or immobilization of, or the installation of an ignition interlock system on, each motor vehicle owned or operated, or both, by the individual;”.

Subsec. (a)(5)(C). Pub. L. 114-94, §1414(3)(D), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (a)(5)(C)(i)(II). Pub. L. 114-94, §1414(3)(E)(i), inserted before semicolon “(unless the State certifies that the general practice is that such an individual will be incarcerated)”.

Subsec. (a)(5)(C)(ii)(II). Pub. L. 114-94, §1414(3)(E)(ii), inserted before period at end “(unless the State certifies that the general practice is that such an individual will receive 10 days of incarceration)”.

Subsec. (a)(6). Pub. L. 114-94, §1414(4), added par. (6).

Subsec. (b)(3)(A). Pub. L. 114-94, §1446(a)(10)(A), substituted “reserved” for “transferred”.

Subsec. (b)(5). Pub. L. 114-94, §1446(a)(10)(B), inserted “or released” after “transferred” in introductory provisions.

2012—Subsec. (a)(3). Pub. L. 112-141, §1403(a)(1), (2), redesignated par. (4) as (3) and struck out former par. (3) which defined “license suspension”.

Subsec. (a)(4). Pub. L. 112-141, §1403(a)(2), (3), redesignated par. (5) as (4), added subpar. (A), and struck out former subpar. (A) which read as follows: “receive—

“(i) a driver’s license suspension for not less than 1 year; or

“(ii) a combination of suspension of all driving privileges for the first 45 days of the suspension period followed by a reinstatement of limited driving privileges for the purpose of getting to and from work, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual;”.

Former par. (4) redesignated (3).

Subsec. (a)(5). Pub. L. 112-141, §1403(a)(2), redesignated par. (5) as (4).

Subsec. (b)(2). Pub. L. 112-141, §1403(b)(1), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).”

Subsec. (b)(3). Pub. L. 112-141, §1403(b)(2), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 148.”

Subsec. (b)(5). Pub. L. 112-141, §1403(b)(3), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: “The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

“(A) The apportionment of the State under section 104(b)(1).

“(B) The apportionment of the State under section 104(b)(3).

“(C) The apportionment of the State under section 104(b)(4).”

2008—Subsec. (a)(5)(A), (B). Pub. L. 110-244 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) receive a driver’s license suspension for not less than 1 year;

“(B) be subject to the impoundment or immobilization of each of the individual’s motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;”.

2005—Subsec. (b)(3). Pub. L. 109-59 substituted “148” for “152”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-94, div. A, title IV, §4015, Dec. 4, 2015, 129 Stat. 1513, provided that: “Notwithstanding any other provision of this Act [div. A of Pub. L. 114-94, see Tables for classification], except for the technical corrections in section 4014 [amending sections 402, 403, and 405 of this title], the amendments made by this Act to sections 164, 402, and 405 of title 23, United States Code, shall be effective on October 1, 2016.”

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### EFFECTIVE DATE

Section effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, see section 9016 of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

### § 165. Territorial and Puerto Rico highway program

(a) DIVISION OF FUNDS.—Of funds made available in a fiscal year for the territorial and Puerto Rico highway program—

(1) \$158,000,000 shall be for the Puerto Rico highway program under subsection (b); and

(2) \$42,000,000 shall be for the territorial highway program under subsection (c).

(b) PUERTO RICO HIGHWAY PROGRAM.—

(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

(2) TREATMENT OF FUNDS.—Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

(A) APPORTIONMENT.—

(i) IN GENERAL.—For the purpose of imposing any penalty under this title or title 49, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b) and 144 (as in effect for fiscal year 1997) for each program funded under those sections in an amount determined by multiplying—

(I) the aggregate of the amounts for the fiscal year; by

(II) the proportion that—

(aa) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

(bb) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

(ii) EXCEPTION.—Funds identified under clause (i) as having been apportioned for

the national highway system, the surface transportation block grant program, and the Interstate maintenance program shall be deemed to have been apportioned 50 percent for the national highway performance program and 50 percent for the surface transportation program for purposes of imposing such penalties.

(B) PENALTY.—The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title or title 49.

(C) ELIGIBLE USES OF FUNDS.—Of amounts allocated to Puerto Rico for the Puerto Rico Highway Program for a fiscal year—

(i) at least 50 percent shall be available only for purposes eligible under section 119;

(ii) at least 25 percent shall be available only for purposes eligible under section 148; and

(iii) any remaining funds may be obligated for activities eligible under chapter 1.

(3) EFFECT ON APPORTIONMENTS.—Except as otherwise specifically provided, Puerto Rico shall not be eligible to receive funds apportioned to States under this title.

(c) TERRITORIAL HIGHWAY PROGRAM.—

(1) TERRITORY DEFINED.—In this subsection, the term “territory” means any of the following territories of the United States:

(A) American Samoa.

(B) The Commonwealth of the Northern Mariana Islands.

(C) Guam.

(D) The United States Virgin Islands.

(2) PROGRAM.—

(A) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each government of a territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

(i) designated by the Governor or chief executive officer of each territory; and

(ii) approved by the Secretary.

(B) FEDERAL SHARE.—The Federal share of Federal financial assistance provided to territories under this subsection shall be in accordance with section 120(g).

(3) TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories, on a continuing basis—

(i) to engage in highway planning;

(ii) to conduct environmental evaluations;

(iii) to administer right-of-way acquisition and relocation assistance programs; and