

HOUSE BILL ANALYSIS

HB 1940

Title: An act relating to driving while under the influence of liquor or drugs.

Brief Description: Integrating ignition interlocks into administrative revocation of drivers' licenses.

Sponsors: Representatives Robertson, Appelwick, Sheahan, Regala, Scott, O'Brien, Ogden, Cooper, Blalock, Costa, Cole, Conway, Cody, Wolfe and Cooke.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background:

IGNITION INTERLOCKS.

Under legislation enacted in 1994, courts are given explicit authority to order that ignition interlock or other devices be installed on the cars of certain drivers. Included among such drivers are those who are convicted of alcohol-related driving offenses and those who have been granted a deferred prosecution on such a charge. Among these offenses is the crime of drunk driving.

Ignition interlock devices are alcohol analyzing devices designed to prevent a person with alcohol in his or her system from starting a car. Other biological or technical devices may be installed for the same purpose. If a court orders the installation of one of these devices, the Department of Licensing (DOL) is to mark the person's driver's license indicating the person is allowed to operate a car only if it is equipped with such a device.

DUI PROCEDURES AND PENALTIES.

Various procedures, penalties, and programs may apply in the case of a person arrested for drunk driving (DUI).

IMPLIED CONSENT LAW REFUSALS AND DUI PROSECUTIONS FOR INTOXICATION. Under the implied consent law, a person arrested for DUI is required to submit to a test of his or her breath or blood alcohol concentration (BAC). A person who refuses the test is subject to administrative action by DOL to suspend

or revoke the driver's license. License suspension or revocation is the only action that may be taken against a driver for a refusal. The license suspension or revocation does not depend on whether the person was intoxicated or had a BAC of any particular level. It depends only on whether the person refused the test.

A BAC test result is not necessary for a criminal prosecution. A person who has refused a BAC test may also be criminally charged with and convicted of DUI if it can be proved that the person was intoxicated. Criminal conviction results in jail time, fine, and suspension or revocation of a license. A decision not to charge the crime, or a trial that results in an acquittal, however, does not affect an administrative license action based on a refusal to take a BAC test.

ADMINISTRATIVE AND CRIMINAL PER SE- DUI VIOLATIONS. A person who takes the test and shows a BAC above a certain level is subject to DOL administrative action and criminal prosecution solely on the basis of the BAC. Administrative action and criminal prosecution are independent of each other. Either or both may occur following the same incident.

A person with a BAC level above the permissible level has committed a per se- DUI violation. For a per se violation, neither DOL in an administrative action, nor the prosecution in a criminal case, need prove that the person was intoxicated. The permissible BAC level for a person 21 years or older is 0.10, and for a person under 21 it is 0.02. (BAC is measured in grams per 210 liters of breath or 100 milliliters of blood.)

CRIMINAL PENALTIES AND ADMINISTRATIVE ACTIONS. The criminal penalties and the administrative actions resulting from an incident vary depending on several factors. Refusals result in longer administrative loss of driving privileges than do criminal or administrative violations. For instance:

- o A first administrative per se violation results only in a probationary license rather than a suspension;
- o A first criminal conviction results in suspension for 90 days or 120 days depending on the BAC level, if available, and if not, whether unavailability is due to refusal; and
- o A first administrative action for a refusal results in suspension for one year.

The Criminal penalties and administrative actions both vary with the number of prior offenses or refusals that the person has. Criminal penalties also vary depending on the level of the BAC. BACs of more than 0.15 result in more jail time, longer loss of driving privileges, and larger fines.

A license suspension or revocation resulting from a criminal DUI conviction runs consecutively with an administrative suspension or revocation for an implied consent refusal.

A person convicted of DUI is also required to undergo an alcohol assessment and may be required to participate in treatment.

DEFERRED PROSECUTION. A person charged with DUI may also petition the court for a deferred prosecution. The petitioner must stipulate to the sufficiency and admissibility of the evidence against him or her and must waive various procedural rights. The petitioner must also allege that the conduct that led to his or her arrest was the result of alcoholism, drug addiction, or mental problems that are amenable to treatment. If the petition is granted, the court will defer the criminal DUI prosecution on the condition that the person undergo a two-year treatment program. Failure to comply with the terms of a deferral can result in removal of the person from the deferral and reinstatement of the criminal prosecution.

OCCUPATIONAL LICENSES. A person convicted of a first DUI within five years may be eligible for an occupational– license. DOL may grant such a license to a person if, among other things, the person’s employment makes it essential that he or she be able to drive. Various restrictions are placed on the occupational license such as prescribed hours and routes with which the driver must comply.

Persons who lose their licenses through administrative action may not apply for an occupational license.

Summary of Bill: Use of ignition interlock devices is expanded, and various periods of license suspension or revocation are increased for implied consent and DUI violations.

Periods of administrative revocation of a driver’s license for refusing to take a BAC test are increased as follows:

- o For a first refusal within five years, from one year to 540 days;
- o For a second refusal within five years, from two years to three years; and
- o For a third refusal within five years, a new revocation period of four years is created.

Periods of suspension or revocation following a criminal DUI conviction are increased as follows:

- o For a first conviction, with a BAC of at least .15, or with no BAC due to refusal, from suspension for 120 days to revocation for one year;

- o For a second conviction, with a BAC of less than .10, or with no BAC for reasons other than refusal, from revocation for one year to revocation for two years; and
- o For a second conviction, with a BAC of at least .15, or with no BAC due to refusal, from revocation for 450 days to revocation for 900 days;
- o For a third conviction, with a BAC of less than .15, or with no BAC for reasons other than refusal, from revocation for two years to revocation for three years; and
- o For a third conviction, with a BAC of at least .15, or with no BAC due to refusal, from revocation for three years to revocation for four years.

Periods of license suspension are unchanged for per se administrative actions and for first time criminal convictions with a BAC of less than .15 or with no BAC for reasons other than refusal.

Occupational licenses are replaced with temporary restricted licenses.— Following an initial prescribed period of a license loss resulting from criminal conviction or administrative action, a person may petition DOL for a temporary restricted license. These prescribed periods range from the first 30 days to the first year of the suspension or revocation. If granted, the temporary restricted license is good for the remainder of the period of suspension or revocation, including any period of consecutive license loss arising from the same incident.

One of the requirements for a temporary restricted license is that the petitioner, other than a petitioner who was a first-time offender with a BAC of less than .15, must agree to installation of an ignition interlock device on his or her car. The person must also agree to drive no other car for the period of suspension or revocation.

The circumstances under which a temporary restricted license may be used are expanded beyond the employment needs applicable to occupational licenses. Those new circumstances include the necessity of driving to: (1) provide continuing health care to the petitioner or a dependent; (2) pursue education; (3) attend substance abuse treatment; or (4) fulfill court-ordered community service responsibilities.

Installation of an ignition interlock device is made an alternative to removal from a deferred prosecution when a person has violated some condition of the deferral, if such a device had not already been installed as part of the original deferral.

Driving a car in violation of the license restrictions that accompany installation of an interlock device is made a misdemeanor.

As part of an alcohol assessment ordered following a DUI conviction, the diagnostic agency must make a recommendation to the sentencing court regarding the possible installation of an ignition interlock device.

A sentencing court may order installation of such a device following the expiration of any period of license suspension or revocation and for up to as long as the court has jurisdiction over the offender.

Fiscal Note: Not requested.

Effective Date: The bill takes effect January 1, 1998.

Office of Program Research