

# HOUSE BILL REPORT

## SHB 2660

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### As Amended by the Senate

**Title:** An act relating to alcohol-related offenses.

**Brief Description:** Revising provisions involving alcohol-related offenses.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives G. Simpson, Carrell, McMahan, Lovick, Kenney and Wallace; by request of Office of the Lieutenant Governor).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/29/04, 2/5/04 [DPS].

##### **Floor Activity:**

Passed House: 2/17/04, 96-0.

Senate Amended.

Passed Senate: March 5, 2004, 48-0.

House Refused to Concur.

#### **Brief Summary of Substitute Bill**

- Expands the mandatory use of ignition interlocks with respect to criminal convictions, administrative actions, temporary restricted licenses and deferred prosecutions.
- Creates a "temporary restricted license" which replaces the "occupational license" for drivers who have lost their licenses because of DUI-related criminal or administrative sanctions and which is to be granted only if the applicant has installed an ignition interlock.
- Increases the periods of driver's license suspension or revocation for DUI convictions, but allows administrative and criminal periods of suspension arising from the same incident to run concurrently.

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#### **HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair;

Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Bill Perry (786-7123).

**Background:**

Implied Consent Law.

Any person who operates a motor vehicle in this state is deemed to have given consent for a blood or breath alcohol concentration (BAC) test if he or she is arrested for driving while under the influence of alcohol or drugs (DUI). This provision in the state's motor vehicle code is known as the Implied Consent Law.

A so-called "per se" violation of the DUI law consists of operating a motor vehicle while having a BAC of 0.08 or more for persons over the age of 21, or having a BAC of 0.02 or more for younger drivers. (The BAC measurement is of either grams of alcohol per 210 liters of breath, or grams of alcohol per 100 milliliters of blood.)

If an arresting officer has reasonable grounds to believe a driver has committed DUI, the officer may request the driver to take a BAC test. If the driver refuses the test, his or her driver's license will be administratively suspended or revoked by the Department of Licensing (DOL). If the driver submits to the test and fails it, i.e., registers above the legal BAC limit, the DOL will also administratively suspend or revoke the license. The length of the suspension or revocation is generally longer for a refusal than for a failure of the BAC test. The period of suspension or revocation escalates with successive incidents, ranging from one year for a first refusal and 90 days for a first failure, to two years for a second or subsequent refusal or failure. These administrative sanctions against a person's driving privileges are completely independent of the outcome of any criminal prosecution that may arise out of the same incident. However, except for first-time, low BAC offenders, periods of license suspension or revocation under these administrative provisions run consecutively to any period of suspension or revocation required upon a criminal conviction arising out of the same incident.

Driving While Under the Influence.

The DUI law contains a system of escalating penalties that increase with the number of past offenses and the BAC level of the offender at the time of the current offense. In addition to mandatory periods of incarceration, DUI convictions carry mandatory loss of driving privileges, mandatory fines, mandatory alcohol abuse screening, and, in the case of offenders with high BACs or with repeat offenses, mandatory use of ignition interlocks upon restoration of driving privileges.

Driving while under the influence is a gross misdemeanor that carries a maximum jail sentence of one year and a maximum fine of \$5,000. For each level of the offense, however, a mandatory minimum jail sentence and fine must be imposed. The minimum

jail sentences range from one day in jail *or* 15 days of electronic home detention, to 120 days in jail *and* 150 days of electronic home monitoring. The minimum fines range from \$350 to \$1,500.

Periods of license loss range as follows for first, second and third offenses within seven years:

- If the driver's BAC was below 0.15, or there was no BAC for reasons other than the driver's refusal to take the test: 90 days, two years, and three years;
- If the driver's BAC was at or above 0.15, or there was no BAC because of refusal: one year, 900 days; and four years.

#### Occupational Licenses.

Drivers who have had their licenses suspended may, under certain circumstances, apply for an "occupational" driver's license. Such a license is for the purpose of allowing the person to work, or in some instances to get training or to get treatment for substance abuse.

The authority to drive under such a license is limited to driving that is directly related to employment, training or treatment. The license must be accompanied by specific detailed restrictions on the hours of the day when driving is allowed and by a general description of the permitted routes for traveling to and from work or treatment. An occupational license is good for either the length of the suspension or revocation, or for two years, whichever is shorter.

One category of persons who may apply for an occupational license is drivers who have had their licenses suspended by the DOL for one of three specified reasons. These reasons are:

- failure to pay a traffic ticket;
- driving without insurance; or
- committing multiple driving offenses with a frequency that indicates a disrespect for traffic laws or a disregard for the safety of others.

A person who has had his or her license suspended for one of these reasons may apply to the DOL for an occupational license if he or she is engaged in an occupation that makes driving essential, or he or she:

- is in an apprenticeship or training program that requires a license;
- has applied for such a program (in which case an occupational license will be good for only 14 days);
- is enrolled in a WorkFirst program that requires a license; or
- is undergoing substance abuse treatment or attending substance abuse meetings and does not have transit services available to get to and from the treatment or

meetings.

If the reason for the loss of license was failure to pay a fine, then the applicant must also enter into a payment plan with the court in order for the DOL to issue an occupational license.

Another category of persons who may apply for an occupational license is drivers who have had their licenses suspended or revoked as the result of a conviction for a crime such as DUI or as the result of administrative action for a violation of the implied consent law. A person who has had his or her license suspended for one of these reasons may also apply to the DOL for an occupational license if he or she is engaged in an occupation or trade that makes driving essential, and:

- at least the first 30 days of the suspension or revocation has passed; and
- if the loss of license was through DOL action, it was for the driver's first implied consent law violation.

For either category of drivers, the applicant must also:

- meet certain requirements, including having insurance coverage or otherwise showing proof of financial responsibility;
- not have committed within the previous year an offense requiring loss of driving privileges;
- not have committed DUI, Vehicular Assault, or Vehicular Homicide within the previous seven years; and
- show proof of insurance.

#### Ignition Interlocks.

Under legislation enacted in 1994, courts are given explicit authority to order that ignition interlocks or other devices be installed on the cars of certain drivers. Ignition interlocks 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 DOL is to mark the person's driver's license indicating that the person is allowed to operate a car only if it is equipped with such a device.

In some instances, the installation and use of interlocks are required. Those instances are cases in which a person has been convicted of or given a deferred prosecution for DUI. First-time DUI offenders with lower amounts of alcohol in their blood or breath, and persons granted a deferred prosecution who have no prior DUI conviction, are not subject to this mandatory provision. Use of a device is required for specified periods of time following the restoration of the person's driver's license. For first, second and third required uses, the periods are respectively, one year, five years, and ten years.

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## **Summary of Substitute Bill:**

Mandatory use of ignition interlocks is expanded with respect to DUI crimes, deferred prosecutions, implied consent law violations and temporary restricted driver's licenses. A new temporary restricted license is created that is similar to an occupational license. Periods of license suspension and revocation are lengthened for DUI convictions. However, periods of administrative and criminal suspensions or revocations arising out of the same incident are to run concurrently instead of consecutively.

### Implied Consent Law.

Persons who lose driving privileges under the implied consent law are eligible for a "temporary restricted" license that is similar to an occupational license. Drivers who have lost their license either because they refused the BAC test or because they took the test and failed it, may, after a minimum period of license loss, apply to the DOL for a temporary restricted license. The DOL is to set these minimum periods of license loss after considering any applicable federal requirements for funding grants.

### Occupational or Temporary Restricted Licenses.

"Occupational" licenses are re-designated as "temporary restricted licenses" for persons who have lost their drivers' licenses for an offense for which license loss is mandatory. Among these offenses are alcohol-related offenses such as DUI.

An applicant for a temporary restricted license who has committed an alcohol-related offense must show proof of the installation of an ignition interlock device.

### Driving While Under the Influence.

Offenders of driving while under the influence who have refused to take the BAC test receive increased periods of revocation upon conviction. The periods of license loss for a first, second and third-time offender, respectively, are two years (instead of one), three years (instead of 900 days), and four years (unchanged).

### Ignition Interlock.

An interlock is required after the suspension or revocation of a license for *any* DUI offense, including a first-time, low BAC offense, as well as for a first degree negligent driving offense and any alcohol-related deferred prosecution, including a first deferred prosecution.

The DOL is required to have interlock vendor notification of an interlock installation before the department may issue any license for which an interlock is required. The DOL must also suspend the license of a person required to use an interlock upon learning from the interlock vendor, or otherwise, that the required device is no longer functioning.

## **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes several structural and technical changes and in addition does the following:

Removes the House version's addition of Negligent Driving in the First Degree as an offense for which the DOL must require the use of an interlock; Raises the application fee for a temporary restricted license from \$25 to \$100; Clarifies the operation of the concurrent running of periods of driver's license loss that are imposed by administrative and criminal proceedings arising out of the same incident. (Note: One of the structural changes made by the amendment has resulted in an erroneous cross reference in section 6 of the amendment that makes it unclear whether persons who violate the Implied Consent law may apply for a temporary restricted license.)

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Drunk drivers continue to kill too many people each year. Ignition interlocks represent a physical barrier that can prevent drunks from driving. The bill will result in the increased use of interlocks. At the same time, it will encourage drivers who have lost their licenses to get an occupational or temporary restricted license so they can drive legally. This will reduce the huge number of unlicensed drivers on the road and reduce the huge number of driving while license suspended cases that clog the courts. Because drivers pay for their own interlocks, the bill will not cost the taxpayers anything.

The bill does not extend the availability of the occupational or temporary restricted license far enough. Occupational or temporary restricted license should be extended further to cover stay-at-home parents who need to transport children.

(With concerns) Many first-time, low BAC offenders will not re-offend, and making them use an interlock is potentially devastating, especially if their employment involves transporting clients. It may not be a good idea to completely remove judicial discretion.

The bill extends the availability of the occupational or temporary restricted license too far. Too many grounds are allowed.

**Testimony Against:** None.

**Persons Testifying:** (In support) Representative G. Simpson, prime sponsor; Antonio Sanchez, Office of the Lieutenant Governor; Pete Youngers, Mothers Against Drunk Driving; and Geoffrey Burg, Washington Association of Criminal Defense Lawyers.

(With concerns) Steve Lind, Washington State Traffic Safety Commission.

**Persons Signed In To Testify But Not Testifying:** None.