

# FINAL BILL REPORT

## SHB 2660

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C 95 L 04

Synopsis as Enacted

**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).

**House Committee on Judiciary**

**Senate Committee on Highways & Transportation**

**Senate Committee on Judiciary**

### **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.

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 for which license loss is mandatory or as the result of administrative action for a first-time, low BAC (below 0.15) failure of a test administered under the implied consent law. A person who has had his or her license suspended for one of these reasons may apply to the DOL for an occupational license only 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.

The application fee for an occupational license is \$25.

#### 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.

#### **Summary:**

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 some DUI convictions. However,

periods of administrative and criminal suspensions or revocations arising out of the same incident are to be credited against each other on a day-for-day basis.

#### Implied Consent Law

All persons who lose driving privileges under the implied consent law and who are otherwise qualified 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 as well as implied consent law violations.

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

Some DUI offenders 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 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.

The application fee for an occupational or temporary restricted license is set at \$100.

#### **Votes on Final Passage:**

House	96	0	
Senate	48	0	(Senate amended)
House			(House refused to concur)
Senate	47	0	(Senate amended)
House	96	0	(House concurred)

**Effective:** June 10, 2004