
Judiciary Committee

HB 2742

Title: An act relating to accountability for persons driving under the influence of intoxicating liquor or drugs.

Brief Description: Addressing accountability for persons driving under the influence of intoxicating liquor or drugs.

Sponsors: Representatives Goodman, Liias, Sells, Hasegawa, Maxwell, Roberts, Jacks, Carlyle, Rolfes, Simpson, O'Brien and Morrell.

Brief Summary of Bill

- Broadens the category of persons who may apply for ignition interlock licenses (IIL) and removes the requirement that a person in deferred prosecution apply for IIL.
- Expands the exception to ignition interlock requirements applicable to vehicles under an employer's care.
- Provides that an ignition interlock requirement on a person's regular driver's license may not be removed until certain conditions are met.
- Changes the definitions of "prior offenses" and "within seven years" for the purposes of sentencing.
- Addresses liability of municipalities and counties when a person is under probation or supervision and required to use an ignition interlock device.
- Makes other changes to driving-related statutes.

Hearing Date: 1/21/10

Staff: Trudes Tango (786-7384).

Background:

License Suspension of Persons Arrested for DUI

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

When a person is arrested for driving under the influence of alcohol or any drug (DUI), the person's driver's license may be suspended as a result of an administrative action by the Department of Licensing (DOL) and as a result of a criminal conviction.

An administrative suspension is based on either refusing to take the breath or blood alcohol concentration test (BAC) when arrested, or having a BAC of .08 or higher. Administrative suspension periods last from 90 days to two years depending on whether the driver refused the BAC and whether there have been prior offenses.

The suspension based on a criminal conviction also varies, ranging from 90 days to four years, depending on the offender's BAC level and prior offenses.

Ignition interlock license (IIL)

An ignition interlock license authorizes a person to drive a noncommercial vehicle with an ignition interlock device while his or her regular driver's license is suspended for alcohol-related DUI. Persons who have an administrative suspension may apply for an IIL. Persons who are suspended based on a conviction are ordered by the court to apply for an IIL. The court may waive the requirement under certain circumstances. If the requirement is waived, the court must order the person to submit to alcohol monitoring. Persons who receive a deferred prosecution must also apply for an IIL. An IIL is not available for persons convicted of DUI based on drug use.

A person is not eligible to receive an IIL if the person has been convicted of vehicular homicide or vehicular assault within seven years of the current offense. The IIL lasts for the length of time the person's regular driver's license is suspended.

An ignition interlock device is not required on cars owned by the person's employer and driven as a requirement of employment during working hours. The person must provide the DOL with a declaration from the employer that the person is required to drive a vehicle owned by the employer.

The DOL must notify the person that the IIL will be cancelled when the DOL receives evidence that a functioning device is no longer installed or that the person has been charged with a new offense that would suspend the person's regular driver's license. The license will be cancelled 15 days from the mailing of the notice. Under some circumstances, a person may reapply for an IIL.

There is a \$100 licensing fee for an IIL. Unless costs are waived by the ignition interlock company or the person is indigent, the person must pay for installing and leasing the device plus an additional \$20 per month. The \$20 is deposited into an account and must be used to assist indigent persons with the costs of using ignition interlock devices.

Additional ignition interlock requirements

After the suspension period of the person's regular license expires and the person is eligible to reinstate his or her regular license, the person must drive with an ignition interlock device for either one year, five years, or 10 years, depending on whether the person was previously restricted. This requirement is not related to the IIL.

Prior offenses

The penalties and license suspension periods under the DUI statutes vary depending on, among other things, whether the person has had any prior offenses within seven years. The terms "prior offense" and "within seven years" are defined. In a recent Washington State Supreme Court (Court) case, the Court held that the terms are ambiguous. According to the Court, the terms, when read together, could mean either: (1) that the offense to be counted as a "prior" must have occurred before the offense for which the defendant is being sentenced; or (2) that the offense to be counted as a prior could have occurred either before or after -- so long as it is within seven years of -- the offense for which the defendant is being sentenced.

In the case, one of the defendants was arrested in 2001 for DUI. He received a deferred prosecution. In 2005, he was again arrested for DUI. His deferred prosecution was revoked. The issue was whether the 2005 conviction counts as a "prior offense within seven years" of the 2001 deferred prosecution, for purposes of sentencing. The Court stated that the term "within" may mean any time before, during, or after a specified period. The prosecution argued that had the Legislature wished to limit prior offenses to those that occur only before the current offense, it could have done so by specifying that "within seven years" meant seven years before the current offense.

Summary of Bill:

Ignition interlock license (IIL)

Changes are made as to who may apply for an IIL. A person who has been convicted of vehicular homicide due to alcohol or vehicular assault due to alcohol may apply for an IIL. Persons who have lost their licenses due to DUI based on drug use may apply for an IIL. Persons who enter into deferred prosecutions for DUI are no longer required to apply for an IIL.

The employer vehicle exception is expanded to include those vehicles leased or rented by the person's employer and vehicles whose care or maintenance is the temporary responsibility of the employer and driven at the direction of the employer.

The requirement for a court to order alcohol monitoring is narrowed. Alcohol monitoring is required in cases in which the court has ordered that the person refrain from consuming alcohol.

The list of circumstances under which the court may waive the requirement that a person apply for an IIL is expanded. The court may waive the requirement if the person lives out of state and the devices are not reasonably available, if the person: (1) is not a Washington resident; (2) is a habitual traffic offender; or (3) has been suspended based on noncompliance with a child support order or other circumstances apply.

Additional ignition interlock requirements

When a person has his or her regular driver's license reinstated and an ignition interlock device is required to be installed, the requirement shall remain in effect until the DOL receives a declaration from the person's ignition interlock vendor certifying that there have been no "incidents" in the four consecutive months prior to the date the requirement expires. An "incident" is: (1) an attempt to start the vehicle with a BAC of .04 or more; (2) failure to take or pass any required re-test; or (3) failure of the person to appear at the vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

Prior offenses

The definitions of "prior offenses" and "within seven years" are amended. A prior offense "within seven years" means that the arrest for the prior offense occurred either before or *after* the arrest for the current offense. If a deferred prosecution is revoked based on a subsequent DUI-related conviction, the subsequent conviction may not be treated as a "prior offense" of the revoked deferred prosecution for the purposes of sentencing.

Liability

If a person is required by a court to install an ignition interlock device and the person is under the jurisdiction of the municipality or county probation or supervision department, that department must verify the initial installation of the device on all vehicles for which the person is a registered owner. The municipality or county has no further obligation to supervise the use of the device by the person and is not civilly liable for any injuries caused by the person for failing to use the device or for committed DUI.

Other provisions

It is a gross misdemeanor, rather than a misdemeanor, for a person to drive a vehicle without an ignition interlock device when the person's driving record indicates an ignition interlock requirement.

A person is driving while license suspended in the second degree if he or she is driving while his or her license is suspended and the person is eligible to obtain an IIL but did not obtain one.

Procedures for the DOL to cancel IIL and occupational and temporary restricted licenses are amended to be consistent with current practices for cancellations of regular driver's licenses. The effective date of cancellation would be 45 days, rather than 15 days, from the date of mailing the notice of cancellation.

Appropriation: None.

Fiscal Note: Received on 1/20/10.

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