

SENATE BILL REPORT

2SHB 2742

As Reported by Senate Committee On:
Judiciary, February 26, 2010

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: House Committee on Transportation (originally sponsored by Representatives Goodman, Liias, Sells, Hasegawa, Maxwell, Roberts, Jacks, Carlyle, Rolfes, Simpson, O'Brien and Morrell).

Brief History: Passed House: 2/12/10, 97-0.

Committee Activity: Judiciary: 2/23/10, 2/26/10 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Lidia Mori (786-7755)

Background: After an arrest for driving under the influence of alcohol or any drug (DUI), the driver's license of the person 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 ignition interlock license (IIL) authorizes a person to drive a noncommercial vehicle with an ignition interlock device while his or her regular driver's license is suspended for an alcohol-related DUI. People 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 and the court may waive the requirement under certain circumstances. If it 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. It is not available for people convicted of vehicular homicide, vehicular assault, or a DUI based on drug use, if the offense occurs within seven years of the current offense. The IIL lasts for the length of time the person's regular driver's license is suspended.

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.

After the suspension period of the person's regular license concludes 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 ten years, depending on whether the person was previously restricted. 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 penalties and license suspension periods under the DUI statutes vary depending on whether the person has had any prior offenses within seven years. The terms are defined. A recent Washington state supreme court case, *City of Seattle v Winebrenner*, held that the terms, prior offense and within seven years are ambiguous. According to the Court, the terms could mean: (1) to be counted as a prior, the offense must have occurred before the offense for which the defendant is being sentenced; or (2) to be counted as a prior, the offense 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. 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 (Recommended Amendments): A person who has been convicted of vehicular homicide or vehicular assault while operating the vehicle under the influence of alcohol or any drug and persons who have lost their licenses due to driving under the influence of a drug other than alcohol may apply for an IIL. Persons who enter into deferred prosecutions for DUI are no longer required to apply for an IIL.

The exception pertaining to driving a vehicle without an ignition interlock if it is owned by an employer 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 to cases in which the court has ordered that the person refrain from consuming alcohol. A person is not eligible to receive an IIL if he or she is not a resident of Washington, has never had a driver's license, has been certified as noncompliant with a child support order, or is a habitual traffic offender. If a court finds that a person is not eligible to receive an IIL, the court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

When a person is restricted to driving only a motor vehicle that is equipped with an ignition interlock device, the restriction will remain in effect until the DOL receives a declaration from the person's ignition interlock device vendor certifying that there have been no incidents in the four consecutive months prior to the date the restriction expires. An incident is: (1) an attempt to start the vehicle with a BAC of .04 or higher; (2) failure to take or pass any required re-test; or (3) failure of the person to appear at the vendor when required.

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.

If a person is required to install an ignition interlock device on all motor vehicles operated by the person and the person is under the jurisdiction of the municipality or county probation or supervision department, the department must verify the initial installation of an ignition interlock device. The county probation or supervision department satisfies this requirement by receiving a written verification from a company stating that it has installed the required device on a vehicle owned or operated by the person. 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 or damages caused by the person for failing to use a device or for driving under the influence of intoxicating liquor or any drug.

It is a gross misdemeanor for a person to drive a vehicle without an ignition interlock device when the person is required to have one. A person commits the offense of 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 IILs 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 is 45 days from the date of mailing the notice of cancellation.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): When a person is restricted to driving only a motor vehicle that is equipped with an ignition interlock device, the restriction will remain in effect until the DOL receives a declaration from the person's ignition interlock device vendor certifying that there have been no incidents in the four consecutive months prior to the date the restriction expires. An incident is: (1) an attempt to start the vehicle with a BAC of .04 or higher; (2) failure to take or pass any required re-test; or (3) failure of the person to appear at the vendor when required.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2011.

Staff Summary of Public Testimony on Second Substitute House Bill: PRO: There were ten fewer alcohol related fatalities this year than the year before and ten fewer alcohol related serious injury accidents this year than the year before. This bill will allow more defendants to be eligible for ignition interlock licenses. The federal government is watching the effect of ignition interlock licenses closely. If there is a failure on the part of the driver in terms of proper usage of the ignition interlock device, within four months of when it is due to come off, the device will stay on. There was a case in Whatcom County where the ignition interlock device was required but the probation department didn't even ask if the device had been installed. This bill puts in place a process for verification. Both MADD and the State

Patrol believe when a person is convicted of DUI, the court must mandate that a person apply for an ignition interlock license; it should not be voluntary.

OTHER: The district and municipal court judges continue to have concerns regarding the provision that requires the court to order someone to apply for an ignition interlock license. In a time of reduced court resources, this will add more time to DUI sentencing and more hearings will be required for follow-up. Also, there will be increased interpreter fees. From a defense standpoint, it will mean more time away from work for the defendant where these are follow-up hearings. The court would still order the person not to drive without a valid license and insurance and to have an ignition interlock device if required to do so by the DOL. This issue has been brought up at the interim work group meetings and in the House. The House made some accommodation for our concerns but did not change "shall" to "may." The bill doesn't provide direction to the court as to how often it should follow-up on the order to apply for an ignition interlock license and what the penalties should be if a person doesn't comply.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Randolph Vranish, Washington State Patrol.

OTHER: Judge Glenn Phillips, District & Municipal Court Judges Association; Judge Mark Eide, District & Municipal Court Judges Association.