

# HOUSE BILL REPORT

## E2SHB 3254

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**As Passed House:**

February 18, 2008

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

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

**Sponsors:** By House Committee on Transportation (originally sponsored by Representatives Goodman, Pedersen, Simpson, Morrell, Green, Kelley, Kagi and Roberts).

**Brief History:**

**Committee Activity:**

Judiciary: 1/30/08, 2/5/08 [DPS];

Transportation: 2/8/08 [DP2S(w/o sub JUDI)].

**Floor Activity:**

Passed House: 2/18/08, 95-0.

**Brief Summary of Engrossed Second Substitute Bill**

- Creates an ignition interlock license (IIL) that allows a person to drive while his or her regular license is suspended due to driving under the influence of intoxicating liquor or any drug (DUI), and makes temporary restricted licenses unavailable for persons convicted of DUI.
- Requires applicants for an IIL to complete an alcohol and drug assessment, and creates uniform standards for assessments of DUI offenders.
- Creates a pilot program to monitor compliance by IIL holders and vendors.
- Shortens the time period, from 30 days to 20 days, in which a person arrested for DUI must request a hearing from the Department of Licensing.
- Makes other changes related to sentencing and felony DUI.

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*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.*

## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

**Staff:** Trudes Tango (786-7384).

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 17 members: Representatives Clibborn, Chair; Flannigan, Vice Chair; Appleton, Campbell, Dickerson, Eddy, Hudgins, Jarrett, Loomis, Rolfes, Sells, Springer, Takko, Upthegrove, Wallace, Williams and Wood.

**Staff:** Teresa Berntsen (786-7301).

### **Background:**

When a person is arrested for driving under the influence (DUI), the arresting officer must take certain steps, including marking the person's driver's license. The marked license becomes a temporary license valid for 60 days or until the suspension of the person's license is sustained at a Department of Licensing (DOL) hearing, whichever occurs first. Courts consider a driver's license a property right once it is issued and therefore some due process of law is required before suspension.

#### *License Suspension of Persons Arrested for DUI*

The arrested person may have his or her license suspended as a result of an administrative action by the DOL and as a result of a criminal conviction for DUI. Within 30 days of arrest, the person may request a DOL hearing to contest the license suspension. The hearing must be held within 60 days after arrest.

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 incidents.

A court-ordered suspension is based on a DUI conviction, and like the administrative suspension, the suspension periods vary depending on the offender's BAC level and prior offenses. License suspensions for DUI convictions can range from 90 days to four years.

#### *Ignition Interlock Requirements for Person Convicted of DUI*

After the period of license suspension for a DUI conviction has expired, a person may drive only a vehicle equipped with an ignition interlock device. The device must be installed on any vehicle operated by the driver. However, an ignition interlock device is not required on

vehicles owned by the driver's employer. The time periods required for an ignition interlock device are one year, five years, and 10 years for the first, second, and third times the person is required to have such a device installed. It is a misdemeanor crime for a person who is required to use an interlock to drive without one.

An interlock device is also required as a condition of receiving a temporary restricted license (TRL). A TRL allows a person to drive while his or her regular license is suspended, and is available to persons suspended for various reasons, not just DUI. A TRL may be issued under limited circumstances, such as when the person demonstrates that it is necessary for him or her to drive for work, school, treatment, or other reasons specified in statute. There is no employer exemption for temporary restricted licenses.

#### Alcohol and Drug Assessments

As part of his or her sentence, a person convicted of DUI must submit to an alcohol assessment prepared by an alcoholism agency approved by the Department of Social and Health Services (DSHS) or by the court's own DSHS-approved probation department. Persons seeking a deferred prosecution of a DUI charge must also obtain an assessment prepared by a DSHS-approved alcoholism or drug program.

#### Other Provisions

Generally, a conviction for DUI is a gross misdemeanor. However, a conviction for DUI is a class C felony if the person has four or more prior DUI-related offenses or the person has a prior Washington conviction for a DUI-related vehicular homicide or DUI-related vehicular assault. The felony DUI statute does not explicitly list out-of-state convictions for DUI-related vehicular homicide and DUI-related vehicular assault.

When sentencing a person convicted of DUI-related vehicular homicide, the court must impose an additional two year sentence for each prior DUI-related offense the offender has. This two year sentencing enhancement for DUI-related vehicular homicide does not explicitly state that the enhancement is exempt from any earned early release time or that the enhancement is mandatory, to be served in total confinement, and to run consecutively.

#### **Summary of Engrossed Second Substitute Bill:**

An ignition interlock license (IIL) is created that authorizes a person to drive a noncommercial vehicle with an ignition interlock device while his or her regular driver's license is suspended for DUI.

#### Ignition Interlock License

Beginning Jan. 1, 2009, any person who has had or will have his or her license suspended administratively may apply to the DOL for an IIL. The person can apply for an IIL at any time, including immediately after being arrested or after a hearing revoking his or her license. The DOL shall require the person to maintain the device on all vehicles operated by the person for the remainder of the period of suspension.

A person receiving an IIL waives his or her right to a DOL hearing on the suspension of the person's regular license. The time period for when a person must request a hearing after being

arrested for DUI is shortened from 30 days to 20 days. Temporary restricted licenses will not be available to persons who have lost their licenses due to DUI.

For those persons convicted of DUI, the court must order that the offender apply for an IIL. The court may waive the requirement if the offender does not own a car, is not eligible to receive an IIL, or ignition interlocks are not available in the offender's area. If waived, the court must order the offender to submit to alcohol monitoring. The period of time required for interlock use or alcohol monitoring for convicted persons is one year, five years, or ten years, depending on whether the person has previously been required to have an interlock device.

#### Requirements for Ignition Interlock Licenses

A person is not eligible to get an IIL if the person has committed any vehicular homicide or vehicular assault within seven years prior to the current DUI. A person must complete an alcohol and drug assessment either before the IIL is issued or within 30 days of receiving an IIL. The assessment must comply with the uniform standards created for assessments of DUI offenders.

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 canceled when the DOL receives evidence that a functioning device is no longer installed or if the person has not completed an alcohol and drug assessment. The license will be canceled 15 days from the mailing of the notice, but if the person proves that a functioning device has been installed or if the person completes an assessment, the cancellation will be stayed. If the license is cancelled, the driver can obtain a new ignition interlock license at no charge upon proving that a device has been installed or that an assessment has been completed.

The DOL must cancel the IIL if the driver has been convicted of operating a motor vehicle in violation of the IIL restrictions or if the driver is convicted of a separate offense that would warrant a suspension of a regular license.

#### Compliance Pilot Program

A pilot program is created to monitor compliance by persons required to use the devices and by interlock companies and vendors. The DOL, Washington State Patrol (WSP), and Washington Traffic Safety Commission (WTSC) must coordinate to establish a compliance pilot program targeting at least one county in Eastern Washington and one county in Western Washington. In addition, the WTSC must track recidivism of persons required to have an ignition interlock license.

#### Alcohol and Drug Assessments

Uniform standards are established for alcohol and drug assessments for persons applying for an ignition interlock license or petitioning the court for a deferred prosecution of DUI charges. The assessment must be done by a certified chemical dependency professional or a

supervised trainee who is qualified under rules of the Department of Health, or by a probation assessment officer qualified under the DSHS rules. Assessments must include:

- an evaluation of the person's: (a) BAC level at the time of arrest; (b) self-reported driving record; and (c) abstract driving record that includes a 15 year history of all alcohol-related convictions;
- the person's defendant case history from the court or a statement describing the circumstances that prevented obtaining a defendant case history;
- a copy of the police report if a BAC test was refused; and
- a drug screen with a written assessment and recommendations, or a statement describing circumstances surrounding the refusal to do a drug screen.

#### Other Provisions

A conviction for violating a restriction of an IIL requires immediate revocation of the license and is punishable by a fine of not less than \$50 nor more than \$2,000 and/or imprisonment for not more than six months. In addition, it is the crime of Driving While License is Suspended (DWLS) if a person drives while his or her ignition interlock license is revoked.

An ignition interlock device revolving fund is created to assist in covering the costs of ignition interlock devices for indigent persons.

The two year sentencing enhancement for DUI-related vehicular homicide is not subject to earned early release time, and is mandatory, must be served in total confinement, and must run consecutive to all other sentences. A DUI conviction is a class C felony if the person has an out-of-state conviction for an offense that is comparable to Washington's DUI-related vehicular assault or DUI-related vehicular homicide.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 6, 2008.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed except section 2, regarding implied consent; section 4, regarding the offense of driving while license suspended; sections 5, 6, and 7, regarding temporary restricted licenses; and sections 10 through 13, regarding penalties associated with driving under the influence of any liquor or drugs, which take effect January 1, 2009. However, the bill is null and void unless funded in the budget.

#### **Staff Summary of Public Testimony:** (Judiciary)

(In support) This bill shortens the period under which a DUI offender can drive after being arrested. A large number of people continue to drive whether they have a license or not. An ignition interlock license will hold them accountable. Technology will prevent people from driving drunk. Washington could be the second state in the country with an ignition interlock license law. New Mexico's ignition interlock license law has resulted in lower re-offender rates. The use of ignition interlocks is a proven best practice. The state has the power to conditionally reinstate a person's driver's license. This will be a new tool for law enforcement.

**Staff Summary of Public Testimony:** (Transportation)

(In support) Reducing impaired driving is a top priority for the Washington Traffic Safety Commission (Commission), and the requirements in the bill for the Commission will have minimal fiscal impacts that can be absorbed.

(Opposed) None.

**Persons Testifying:** (Judiciary) Representative Goodman, prime sponsor; Rob McKenna, Attorney General; Lowell Porter, Liz Luce, Chief Batiste, Department of Licensing; Kathy Schuster; Dave Johnson, Washington Coalition of Crime Victims; Gordon Schuster; Nora Sizemore; Joan Oquist; and Jerry Stanton, Ignition Interlock of Washington Inc.

**Persons Testifying:** (Transportation) Steve Lind, Washington Traffic Safety Commission.

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

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