

Representative Edward H. Redd proposes the following substitute bill:

INTERLOCK RESTRICTED DRIVER AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill modifies provisions relating to interlock restricted drivers.

Highlighted Provisions:

This bill:

- ▶ requires an interlock restricted driver to have written verification of certain information from the driver's employer in the driver's possession while operating the employer's motor vehicle;
- ▶ requires the Driver License Division to post the ignition interlock restriction on a person's electronic record that is available to law enforcement;
- ▶ amends the requirements for an affirmative defense to an interlock restricted driver violation;
- ▶ amends the requirements for the Driver License Division to clear the suspension for an interlock restricted driver violation;
- ▶ requires the Driver License Division to suspend the driving privileges of an interlock restricted driver in certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **41-6a-518**, as last amended by Laws of Utah 2011, Chapter 421

31 **41-6a-518.2**, as last amended by Laws of Utah 2009, Chapter 390

32 **53-3-1007**, as last amended by Laws of Utah 2014, Chapter 101

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **41-6a-518** is amended to read:

36 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost --**

37 **Impecuniosity -- Fee.**

38 (1) As used in this section:

39 (a) "Commissioner" means the commissioner of the Department of Public Safety.

40 (b) "Ignition interlock system" or "system" means a constant monitoring device or any
41 similar device certified by the commissioner that prevents a motor vehicle from being started
42 or continuously operated without first determining the driver's breath alcohol concentration.

43 (c) "Probation provider" means the supervisor and monitor of the ignition interlock
44 system required as a condition of probation who contracts with the court in accordance with
45 Subsections **41-6a-507(2)** and (3).

46 (2) (a) In addition to any other penalties imposed under Sections **41-6a-503** and
47 **41-6a-505**, and in addition to any requirements imposed as a condition of probation, the court
48 may require that any person who is convicted of violating Section **41-6a-502** and who is
49 granted probation may not operate a motor vehicle during the period of probation unless that
50 motor vehicle is equipped with a functioning, certified ignition interlock system installed and
51 calibrated so that the motor vehicle will not start or continuously operate if the operator's blood
52 alcohol concentration exceeds a level ordered by the court.

53 (b) If a person convicted of violating Section **41-6a-502** was under the age of 21 when
54 the violation occurred, the court shall order the installation of the ignition interlock system as a
55 condition of probation.

56 (c) The division shall post the ignition interlock restriction on the electronic record

57 available to law enforcement.

58 (d) This section does not apply to a person convicted of a violation of Section
59 41-6a-502 whose violation involves drugs other than alcohol.

60 (3) If the court imposes the use of an ignition interlock system as a condition of
61 probation, the court shall:

62 (a) stipulate on the record the requirement for and the period of the use of an ignition
63 interlock system;

64 (b) order that an ignition interlock system be installed on each motor vehicle owned or
65 operated by the probationer, at the probationer's expense;

66 (c) immediately notify the Driver License Division and the person's probation provider
67 of the order; and

68 (d) require the probationer to provide proof of compliance with the court's order to the
69 probation provider within 30 days of the order.

70 (4) (a) The probationer shall provide timely proof of installation within 30 days of an
71 order imposing the use of a system or show cause why the order was not complied with to the
72 court or to the probationer's probation provider.

73 (b) The probation provider shall notify the court of failure to comply under Subsection
74 (4)(a).

75 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification
76 under Subsection (4)(b), the court shall order the Driver License Division to suspend the
77 probationer's driving privileges for the remaining period during which the compliance was
78 imposed.

79 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable
80 to excuse the probationer's failure to comply with the court's order.

81 (5) (a) Any probationer required to install an ignition interlock system shall have the
82 system monitored by the manufacturer or dealer of the system for proper use and accuracy at
83 least semiannually and more frequently as the court may order.

84 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the
85 court or the person's probation provider.

86 (ii) The report shall be issued within 14 days following each monitoring.

87 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the

88 reasonable costs of leasing or buying and installing and maintaining the system.

89 (b) A probationer may not be excluded from this section for inability to pay the costs,
90 unless:

91 (i) the probationer files an affidavit of impecuniosity; and

92 (ii) the court enters a finding that the probationer is impecunious.

93 (c) In lieu of waiver of the entire amount of the cost, the court may direct the
94 probationer to make partial or installment payments of costs when appropriate.

95 (d) The ignition interlock provider shall cover the costs of waivers by the court under
96 this Subsection (6).

97 (7) (a) If a probationer is required in the course and scope of employment to operate a
98 motor vehicle owned by the probationer's employer, the probationer may operate that motor
99 vehicle without installation of an ignition interlock system only if:

100 (i) the motor vehicle is used in the course and scope of employment;

101 (ii) the employer has been notified that the employee is restricted; ~~[and]~~

102 (iii) the employee has ~~[proof of the notification]~~ in the employee's possession while
103 operating the employer's motor vehicle[-] written verification from the employer that:

104 (A) the employer is aware that the employee is an interlock restricted driver;

105 (B) the vehicle the employee is operating for employment purposes is not made
106 available to the employee for personal use;

107 (C) the business entity that employs the employee is not all or partly owned or
108 controlled by the employee;

109 (D) the employer's insurance company is aware that the employee is an interlock
110 restricted driver; and

111 (E) the employee has been added to the employer's insurance policy as an operator of
112 the vehicle.

113 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
114 probationer subject to this section for personal use, no exemption under this section shall apply.

115 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
116 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
117 system shall notify the employer and obtain consent in writing from the employer to install a
118 system in the employer-owned motor vehicle.

119 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
120 by a probationer subject to this section is not a motor vehicle owned by the employer and does
121 not qualify for an exemption under this Subsection (7).

122 (8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
123 the commissioner shall make rules setting standards for the certification of ignition interlock
124 systems.

125 (b) The standards under Subsection (8)(a) shall require that the system:

126 (i) not impede the safe operation of the motor vehicle;

127 (ii) have features that make circumventing difficult and that do not interfere with the
128 normal use of the motor vehicle;

129 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

130 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
131 concentration exceeds a specified level;

132 (v) work accurately and reliably in an unsupervised environment;

133 (vi) resist tampering and give evidence if tampering is attempted;

134 (vii) operate reliably over the range of motor vehicle environments; and

135 (viii) be manufactured by a party who will provide liability insurance.

136 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
137 independent laboratory tests relied upon in certification of ignition interlock systems by other
138 states.

139 (d) A list of certified systems shall be published by the commissioner and the cost of
140 certification shall be borne by the manufacturers or dealers of ignition interlock systems
141 seeking to sell, offer for sale, or lease the systems.

142 (e) (i) In accordance with Section [63J-1-504](#), the commissioner may establish an
143 annual dollar assessment against the manufacturers of ignition interlock systems distributed in
144 the state for the costs incurred in certifying.

145 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the
146 manufacturers on a fair and reasonable basis.

147 (f) The commissioner shall require a provider of an ignition interlock system certified
148 in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10,
149 Ignition Interlock System Program Act.

150 (9) There shall be no liability on the part of, and no cause of action of any nature shall
151 arise against, the state or its employees in connection with the installation, use, operation,
152 maintenance, or supervision of an interlock ignition system as required under this section.

153 Section 2. Section **41-6a-518.2** is amended to read:

154 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
155 **interlock system.**

156 (1) As used in this section:

157 (a) "Ignition interlock system" means a constant monitoring device or any similar
158 device that:

159 (i) is in working order at the time of operation or actual physical control; and

160 (ii) is certified by the commissioner of public safety in accordance with Subsection
161 **41-6a-518(8)**~~]; and~~].

162 (b) (i) "Interlock restricted driver" means a person who:

163 (A) has been ordered by a court or the Board of Pardons and Parole as a condition of
164 probation or parole not to operate a motor vehicle without an ignition interlock system;

165 (B) within the last 18 months has been convicted of a driving under the influence
166 violation under Section **41-6a-502** that was committed on or after July 1, 2009;

167 (C) (I) within the last three years has been convicted of an offense that occurred after
168 May 1, 2006 which would be a conviction as defined under Section **41-6a-501**; and

169 (II) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10 years
170 from the date that one or more prior offenses was committed if the prior offense resulted in a
171 conviction as defined in Subsection **41-6a-501(2)**;

172 (D) within the last three years has been convicted of a violation of this section;

173 (E) within the last three years has had the person's driving privilege revoked for refusal
174 to submit to a chemical test under Section **41-6a-520**, which refusal occurred after May 1,
175 2006;

176 (F) within the last three years has been convicted of a violation of Section **41-6a-502**
177 and was under the age of 21 at the time the offense was committed;

178 (G) within the last six years has been convicted of a felony violation of Section
179 **41-6a-502** for an offense that occurred after May 1, 2006; or

180 (H) within the last 10 years has been convicted of automobile homicide under Section

181 76-5-207 for an offense that occurred after May 1, 2006~~;~~ and].

182 (ii) "Interlock restricted driver" does not include a person if:

183 (A) the person's conviction described in Subsection (1)(b)(i)(C)(I) is a conviction under
184 Section 41-6a-517; and

185 (B) all of the person's prior convictions described in Subsection (1)(b)(i)(C)(II) are
186 convictions under Section 41-6a-517.

187 (2) The division shall post the ignition interlock restriction on a person's electronic
188 record that is available to law enforcement.

189 ~~[(2)]~~ (3) For purposes of this section, a plea of guilty or no contest to a violation of
190 Section 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in
191 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been
192 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

193 ~~[(3)]~~ (4) An interlock restricted driver that operates or is in actual physical control of a
194 vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.

195 ~~[(4)(a)]~~ (5) It is an affirmative defense to a charge of a violation of Subsection ~~[(3)]~~ (4)
196 if:

197 ~~[(i)]~~ (a) an interlock restricted driver:

198 ~~[(A)]~~ (i) operated or was in actual physical control of a vehicle owned by the interlock
199 restricted driver's employer;

200 ~~[(B)]~~ (ii) had given written notice to the employer of the interlock restricted driver's
201 interlock restricted status prior to the operation or actual physical control under Subsection
202 ~~[(4)(a)(i)]~~ (5)(a); and

203 ~~[(C)]~~ (iii) had on the interlock restricted driver's person or in the vehicle at the time of
204 operation or actual physical control ~~[proof of having given notice to the interlock restricted~~
205 ~~driver's employer; and]~~ written verification from the person's employer that:

206 (A) the employer is aware that the employee is an interlock restricted driver;

207 (B) the vehicle the employee is operating for employment purposes is not made
208 available to the employee for personal use;

209 (C) the business entity that employs the employee is not all or partly owned or
210 controlled by the employee;

211 (D) the employer's insurance company is aware that the employee is an interlock

212 restricted driver; and

213 (E) the employee has been added to the employer's insurance policy as an operator of
214 the vehicle; and

215 ~~[(ii)]~~ (b) the operation or actual physical control under Subsection ~~[(4)(a)(i)(A)]~~
216 (5)(a)(i) was in the scope of the interlock restricted driver's employment.

217 ~~[(b)]~~ (6) The affirmative defense under Subsection ~~[(4)(a)]~~ (5) does not apply to:

218 ~~[(i)]~~ (a) an employer-owned motor vehicle that is made available to an interlock
219 restricted driver for personal use; or

220 ~~[(ii)]~~ (b) a motor vehicle owned by a business entity that is all or partly owned or
221 controlled by the interlock restricted driver.

222 Section 3. Section **53-3-1007** is amended to read:

223 **53-3-1007. Ignition interlock system provider -- Notification to the division upon**
224 **installation or removal of an ignition interlock system -- License suspension or revocation**
225 **for failure to install or remove.**

226 (1) An ignition interlock system provider who installs an ignition interlock system on a
227 person's vehicle shall:

228 (a) provide proof of installation to the person; and

229 (b) electronically notify the division of installation of an ignition interlock system on
230 the person's vehicle.

231 (2) An ignition interlock system provider shall electronically notify the division if a
232 person has removed an ignition interlock system from the person's vehicle.

233 (3) If an individual is an interlock restricted driver, the division shall:

234 (a) suspend the person's driving privilege for the duration of the restriction period as
235 defined in Section [41-6a-518.2](#); and

236 (b) notify the person of the suspension period in place and the requirements for
237 reinstatement of the driving privilege with respect to the ignition interlock restriction
238 suspension~~;~~ ~~and~~.

239 ~~[(c)]~~ (4) The division shall clear the suspension upon:

240 ~~[(i)]~~ (a) receipt of payment of the fee or fees specified in Section [53-3-105](#); and

241 ~~[(ii)(A)]~~ (b)(i) receipt of electronic notification from an ignition interlock system
242 provider showing proof of the installation of an ignition interlock system on the person's

243 vehicle or the vehicle the person will be operating; ~~It is~~ ~~or~~ ~~It is~~

244 (ii) if the person does not own a vehicle or will not be operating a vehicle owned by
245 another individual:

246 ~~[(B) electronically verifying]~~ (A) electronic verification that the person does not have
247 a vehicle registered in the person's name in the state of Utah[-]; and

248 (B) receipt of written verification from the person's employer that:

249 (I) the employer is aware that the person is an interlock restricted driver;

250 (II) the vehicle the person is operating for employment purposes is not made available
251 to the person for personal use;

252 (III) the employer's business entity that ~~It is~~ ~~employees~~ ~~employs~~ ~~It is~~ the person is not all
252a or partly owned

253 or controlled by the person;

254 (IV) ~~It is~~ ~~that~~ ~~It is~~ the insurance company is aware that the person is an interlock restricted
255 driver; and

256 (V) the person has been added to the employer's insurance policy as an operator of the
257 vehicle ~~It is~~ ; or

257a (iii) if the person is not a resident of the state of Utah, electronic verification that the
257b person is licensed in the person's state of residence or is in the process of obtaining a license in
257c the person's state of residence ~~It is~~ .

258 (5) If Subsection (4)(b)(ii) applies, the division shall biannually:

259 (a) electronically verify the person does not have a vehicle registered in the person's
260 name in the state of Utah; and

261 (b) require the person to provide updated documentation as outlined in Subsections
262 (4)(b)(ii).

263 (6) If the person does not provide the required documentation, the division shall
264 suspend the person's driving privilege until the division receives:

265 (a) if the person has a registered vehicle in the person's name in the state of Utah:

266 (i) payment of the fee or fees specified in Section [53-3-105](#); and

267 (ii) electronic notification from an ignition interlock system provider showing proof of
268 the installation of an ignition interlock system on the person's vehicle or the vehicle the person
269 will be operating; or

270 (b) if the person does not own a vehicle or will not be operating a vehicle owned by
271 another individual:

272 (i) electronic verification that the person does not have a vehicle registered in the
273 person's name in the state of Utah; and

274 (ii) written verification from the person's employer that:
275 (A) the employer is aware that the person is an interlock restricted driver;
276 (B) the vehicle the person is operating for employment purposes is not made available
277 to the person for personal use;
278 (C) the business entity that employs the person is not all or partly owned or controlled
279 by the person;
280 (D) the employer's insurance company is aware that the person is an interlock restricted
281 driver; and
282 (E) the person has been added to the employer's insurance policy as an operator of the
283 vehicle.

284 ~~[(4)]~~ (7) By following the procedures in Title 63G, Chapter 4, Administrative
285 Procedures Act, the division shall suspend the license of any person without receiving a record
286 of the person's conviction of crime seven days after receiving electronic notification from an
287 ignition interlock system provider that a person has removed an ignition interlock system from
288 the person's vehicle or a vehicle owned by another individual and operated by the person if the
289 person is an interlock restricted driver until:

290 ~~[(a) the division:]~~
291 ~~[(i)]~~ (a) the division receives payment of the fee or fees specified in Section 53-3-105;
292 and
293 ~~[(ii) (A)]~~ (b)(i) the division receives electronic notification from an ignition interlock
294 system provider showing new proof of the installation of an ignition interlock system; or
295 (ii) if the person does not own a vehicle or will not be operating a vehicle owned by
296 another individual, the division receives:

297 ~~[(B) electronically verifies]~~ (A) electronic verification that the person does not have a
298 vehicle registered in the person's name in the state of Utah; ~~[or]~~ and
299 (B) written verification from the person's employer that:
300 (I) the employer is aware that the person is an interlock restricted driver;
301 (II) the vehicle the person is operating for employment purposes is not made available
302 to the person for personal use;
303 (III) the business entity that employs the person is not all or partly owned or controlled
304 by the person;

- 305 (IV) the employer's insurance company is aware that the person is an interlock
306 restricted driver; and
- 307 (V) the person has been added to the employer's insurance policy as an operator of the
308 vehicle; or
- 309 ~~[(b)]~~ (c) the person's interlock restricted period has expired.
- 310 ~~[(5)]~~ (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
311 Act, the division shall make rules establishing:
- 312 (a) procedures for certification and regulation of ignition interlock system providers;
313 (b) acceptable documentation for proof of the installation of an ignition interlock
314 device;
- 315 (c) procedures for an ignition interlock system provider to electronically notify the
316 division; and
- 317 (d) policies and procedures for the administration of the ignition interlock system
318 program created under this section.