

INTERLOCK RESTRICTED DRIVER AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to interlock restricted drivers.

Highlighted Provisions:

This bill:

- ▶ defines "employer verification";
- ▶ 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

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **41-6a-518**, as last amended by Laws of Utah 2015, Chapters 412 and 438

32 **41-6a-518.2**, as last amended by Laws of Utah 2009, Chapter 390

33 **53-3-1007**, as last amended by Laws of Utah 2014, Chapter 101



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

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

37 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost --**

38 **Impecuniosity -- Fee.**

39 (1) As used in this section:

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

41 (b) "Employer verification" means written verification from the employer that:

42 (i) the employer is aware that the employee is an interlock restricted driver;

43 (ii) the vehicle the employee is operating for employment purposes is not made

44 available to the employee for personal use;

45 (iii) the business entity that employs the employee is not entirely or partly owned or

46 controlled by the employee;

47 (iv) the employer's auto insurance company is aware that the employee is an interlock

48 restricted driver; and

49 (v) the employee has been added to the employer's auto insurance policy as an operator

50 of the vehicle.

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

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

58 (2) (a) In addition to any other penalties imposed under Sections **41-6a-503** and

59 41-6a-505, and in addition to any requirements imposed as a condition of probation, the court
60 may require that any person who is convicted of violating Section 41-6a-502 and who is
61 granted probation may not operate a motor vehicle during the period of probation unless that
62 motor vehicle is equipped with a functioning, certified ignition interlock system installed and
63 calibrated so that the motor vehicle will not start or continuously operate if the operator's blood
64 alcohol concentration exceeds a level ordered by the court.

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

68 (c) (i) If a person is convicted of a violation of Section 41-6a-502 within 10 years of a
69 prior conviction as defined in Subsection 41-6a-501(2), the court shall order the installation of
70 the interlock ignition system, at the person's expense, for all motor vehicles registered to that
71 person and all motor vehicles operated by that person.

72 (ii) A person who operates a motor vehicle without an ignition interlock device as
73 required under this Subsection (2)(c) is in violation of Section 41-6a-518.2.

74 (d) The division shall post the ignition interlock restriction on the electronic record
75 available to law enforcement.

76 (e) This section does not apply to a person convicted of a violation of Section
77 41-6a-502 whose violation involves drugs other than alcohol.

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

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

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

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

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

88 (4) (a) The probationer shall provide timely proof of installation within 30 days of an
89 order imposing the use of a system or show cause why the order was not complied with to the

90 court or to the probationer's probation provider.

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

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

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

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

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

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

105 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the
106 reasonable costs of leasing or buying and installing and maintaining the system.

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

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

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

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

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

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

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

119 (ii) the employer has been notified that the employee is restricted; and

120 (iii) the employee has [~~proof of the notification~~] employer verification in the

121 employee's possession while operating the employer's motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 (e) (i) In accordance with Section [63J-1-504](#), the commissioner may establish an

152 annual dollar assessment against the manufacturers of ignition interlock systems distributed in
153 the state for the costs incurred in certifying.

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

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

159 (9) A violation of this section is a class C misdemeanor.

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

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

164 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
165 **interlock system.**

166 (1) As used in this section:

167 (a) "~~ignition~~ Ignition interlock system" means a constant monitoring device or any
168 similar device that:

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

170 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
171 **41-6a-518(8)**~~[, and]~~.

172 (b) (i) "~~interlock~~ Interlock restricted driver" means a person who:

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

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

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

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

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

183 (E) within the last three years has had the person's driving privilege revoked for refusal
 184 to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1,
 185 2006;

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

188 (G) within the last six years has been convicted of a felony violation of Section
 189 41-6a-502 for an offense that occurred after May 1, 2006; or

190 (H) within the last 10 years has been convicted of automobile homicide under Section
 191 76-5-207 for an offense that occurred after May 1, 2006~~[, and]~~.

192 (ii) "[~~interlock~~] Interlock restricted driver" does not include a person [~~if~~]:

193 (A) [~~the person's~~] whose conviction described in Subsection (1)(b)(i)(C)(I) is a
 194 conviction under Section 41-6a-517; and

195 (B) [~~all of the person's~~] whose prior convictions described in Subsection
 196 (1)(b)(i)(C)(II) are all convictions under Section 41-6a-517.

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

199 [~~(2)~~] (3) For purposes of this section, a plea of guilty or no contest to a violation of
 200 Section 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in
 201 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been
 202 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

203 [~~(3)~~] (4) An interlock restricted driver that operates or is in actual physical control of a
 204 vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.

205 [~~(4)(a)~~] (5) It is an affirmative defense to a charge of a violation of Subsection [~~(3)~~] if:
 206 (i) ~~an interlock restricted driver~~] (4) if:

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

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

212 [~~(C)~~] (c) the interlock restricted driver had on the interlock restricted driver's person, or
 213 in the vehicle, at the time of operation or physical control [~~proof of having given notice to the~~

214 ~~interlock restricted driver's employer; and~~ employer verification, as defined in Subsection
215 41-6a-518(1); and

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

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

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

223 [(ii)] (b) a motor vehicle owned by a business entity that is [~~at~~] entirely or partly
224 owned or controlled by the interlock restricted driver.

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

226 **53-3-1007. Ignition interlock system provider -- Notification to the division upon**
227 **installation or removal of an ignition interlock system -- License suspension or revocation**
228 **for failure to install or remove.**

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

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

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

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

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

237 (a) suspend the person's driving privilege for the duration of the restriction period as
238 defined in Section 41-6a-518.2; and

239 (b) notify the person of the suspension period in place and the requirements for
240 reinstatement of the driving privilege with respect to the ignition interlock restriction
241 suspension[~~; and~~].

242 [(c)] (4) The division shall clear [~~the~~] a suspension described in Subsection (3) upon:

243 [(i)] (a) receipt of payment of the fee or fees [~~specified in~~] required under Section
244 53-3-105; and

245 ~~[(ii)-(A)]~~ (b) (i) receipt of electronic notification from an ignition interlock system
246 provider showing proof of the installation of an ignition interlock system on the person's
247 vehicle or the vehicle the person will be operating; [or]
248 (ii) if the person does not own a vehicle or will not be operating a vehicle owned by
249 another individual:
250 ~~[(B) electronically verifying]~~
251 (A) electronic verification that the person does not have a vehicle registered in the
252 person's name in the state of Utah[-]; and
253 (B) receipt of employer verification, as defined in Subsection 41-6a-518(1); or
254 (iii) if the person is not a resident of the state of Utah, electronic verification that the
255 person is licensed in the person's state of residence or is in the process of obtaining a license in
256 the person's state of residence.
257 (5) If Subsection (4)(b)(ii) applies, the division shall every six months:
258 (a) electronically verify the person does not have a vehicle registered in the person's
259 name in the state of Utah; and
260 (b) require the person to provide updated documentation described in Subsection
261 (4)(b)(ii).
262 (6) If the person described in Subsection (5) does not provide the required
263 documentation described in Subsection (4)(b)(ii), the division shall suspend the person's
264 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 required under 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) employer verification, as defined in Subsection 41-6a-518(1).
275 ~~[(4)]~~ (7) By following the procedures in Title 63G, Chapter 4, Administrative

276 Procedures Act, the division shall suspend the license of any person without receiving a record
277 of the person's conviction of crime seven days after receiving electronic notification from an
278 ignition interlock system provider that a person has removed an ignition interlock system from
279 the person's vehicle or a vehicle owned by another individual and operated by the person if the
280 person is an interlock restricted driver until:

281 [~~(a) the division:~~]

282 [~~(i)~~] (a) the division receives payment of the fee or fees specified in Section [53-3-105](#);

283 [~~and~~]

284 [~~(ii) (A)~~] (b) (i) the division receives electronic notification from an ignition interlock
285 system provider showing new proof of the installation of an ignition interlock system; or

286 (ii) if the person does not own a vehicle or will not be operating a vehicle owned by
287 another individual, the division receives:

288 [~~(B) electronically verifies~~]

289 (A) electronic verification that the person does not have a vehicle registered in the
290 person's name in the state of Utah; [~~or~~] and

291 (B) employer verification, as defined in Subsection [41-6a-518\(1\)](#); or

292 [~~(b)~~] (c) the person's interlock restricted period has expired.

293 [~~(5)~~] (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
294 Act, the division shall make rules establishing:

295 (a) procedures for certification and regulation of ignition interlock system providers;

296 (b) acceptable documentation for proof of the installation of an ignition interlock
297 device;

298 (c) procedures for an ignition interlock system provider to electronically notify the
299 division; and

300 (d) policies and procedures for the administration of the ignition interlock system
301 program created under this section.