

**Representative Edward H. Redd** proposes the following substitute bill:

**INTERLOCK RESTRICTED DRIVER AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Edward H. Redd**

Senate Sponsor: Scott K. Jenkins

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**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:**



26 None

27 **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~~] who operates or is in actual physical  
204 control of a vehicle in [~~this~~] the state without an ignition interlock system is guilty of a class B  
205 misdemeanor.

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

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

210 [~~(B)~~] (b) the interlock restricted driver had given written notice to the employer of the  
211 interlock restricted driver's interlock restricted status prior to the operation or actual physical

212 control under Subsection ~~[(4)(a)(i); and]~~ (5)(a);

213 ~~[(c)]~~ (c) the interlock restricted driver had on the interlock restricted driver's person<sub>2</sub> or  
 214 in the vehicle<sub>2</sub> at the time of operation or physical control ~~[proof of having given notice to the~~  
 215 ~~interlock restricted driver's employer; and]~~ employer verification, as defined in Subsection  
 216 41-6a-518(1); and

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

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

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

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

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

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

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

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

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

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

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

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

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



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

244 ~~[(f)]~~ (a) receipt of payment of the fee or fees ~~[specified in]~~ required under Section

245 53-3-105; and

246 ~~[(f)]~~ (A) (b) (i) receipt of electronic notification from an ignition interlock system

247 provider showing proof of the installation of an ignition interlock system on the person's

248 vehicle or the vehicle the person will be operating; ~~[or]~~

249 (ii) if the person does not own a vehicle or will not be operating a vehicle owned by

250 another individual:

251 ~~[(B)]~~ electronically verifying]

252 (A) electronic verification that the person does not have a vehicle registered in the

253 person's name in the state ~~[of Utah.]; and~~

254 (B) receipt of employer verification, as defined in Subsection 41-6a-518(1); or

255 (iii) if the person is not a resident of Utah, electronic verification that the person is

256 licensed in the person's state of residence or is in the process of obtaining a license in the

257 person's state of residence.

258 (5) If Subsection (4)(b)(ii) applies, the division shall every six months:

259 (a) electronically verify the person does not have a vehicle registered in the person's

260 name in the state; and

261 (b) require the person to provide updated documentation described in Subsection

262 (4)(b)(ii).

263 (6) If the person described in Subsection (5) does not provide the required

264 documentation described in Subsection (4)(b)(ii), the division shall suspend the person's

265 driving privilege until:

266 (a) the division receives payment of the fee or fees required under Section 53-3-105;

267 and

268 (b) (i) the division:

269 (A) receives electronic notification from an ignition interlock system provider showing

270 proof of the installation of an ignition interlock system on the person's vehicle or the vehicle

271 the person will be operating; or

272 (B) if the person does not own a vehicle or will not be operating a vehicle owned by

273 another individual, receives electronic verification that the person does not have a vehicle

274 registered in the person's name in the state, and receives employer verification, as defined in  
275 Subsection 41-6a-518(1); or

276 (ii) if the person is not a resident of Utah, electronic verification that the person is  
277 licensed in the person's state of residence or is in the process of obtaining a license in the  
278 person's state of residence.

279 ~~[(4)]~~ (7) By following the procedures in Title 63G, Chapter 4, Administrative  
280 Procedures Act, the division shall suspend the license of any person without receiving a record  
281 of the person's conviction of crime seven days after receiving electronic notification from an  
282 ignition interlock system provider that a person has removed an ignition interlock system from  
283 the person's vehicle or a vehicle owned by another individual and operated by the person if the  
284 person is an interlock restricted driver until:

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

287 ~~[(i)]~~ (b) (i) (A) the division receives electronic notification from an ignition interlock  
288 system provider showing new proof of the installation of an ignition interlock system on the  
289 person's vehicle or the vehicle the person will be operating; or

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

291 (B) if the person does not own a vehicle or will not be operating a vehicle owned by  
292 another individual, the division receives electronic verification that the person does not have a  
293 vehicle registered in the person's name in the state ~~[of Utah; or]~~, and receives employer  
294 verification, as defined in Subsection 41-6a-518(1);

295 (ii) if the person is not a resident of Utah, the division receives electronic verification  
296 that the person is licensed in the person's state of residence or is in the process of obtaining a  
297 license in the person's state of residence; or

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

299 ~~[(5)]~~ (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
300 Act, the division shall make rules establishing:

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

302 (b) acceptable documentation for proof of the installation of an ignition interlock  
303 device;

304 (c) procedures for an ignition interlock system provider to electronically notify the

305 division; and  
306 (d) policies and procedures for the administration of the ignition interlock system  
307 program created under this section.