

HB0191S01 compared with HB0191

~~deleted text~~ shows text that was in HB0191 but was deleted in HB0191S01.

inserted text shows text that was not in HB0191 but was inserted into HB0191S01.

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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: _____

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;

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- ▶ 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:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

Impecuniosity -- Fee.

(1) As used in this section:

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

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

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

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

available to the employee for personal use;

(iii) the business entity that employs the employee is not entirely or partly owned or controlled by the employee;

(iv) the employer's auto insurance company is aware that the employee is an interlock restricted driver; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the motor vehicle is used in the course and scope of employment;
- (ii) the employer has been notified that the employee is restricted; and
- (iii) the employee has [~~proof of the notification~~] employer verification in the employee's possession while operating the employer's motor vehicle.

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

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

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

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

- (b) The standards under Subsection (8)(a) shall require that the system:
- (i) not impede the safe operation of the motor vehicle;
 - (ii) have features that make circumventing difficult and that do not interfere with the normal use of the motor vehicle;
 - (iii) require a deep lung breath sample as a measure of breath alcohol concentration;
 - (iv) prevent the motor vehicle from being started if the driver's breath alcohol concentration exceeds a specified level;
 - (v) work accurately and reliably in an unsupervised environment;
 - (vi) resist tampering and give evidence if tampering is attempted;
 - (vii) operate reliably over the range of motor vehicle environments; and

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(ii)~~ (A) (b) (i) receipt of electronic notification from an ignition interlock system provider showing proof of the installation of an ignition interlock system on the person's vehicle or the vehicle the person will be operating; [or]

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

~~(B) electronically verifying]~~

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

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

(iii) if the person is not a resident of {the state of } Utah, electronic verification that the person is licensed in the person's state of residence or is in the process of obtaining a license in the person's state of residence.

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

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

(b) require the person to provide updated documentation described in Subsection (4)(b)(ii).

(6) If the person described in Subsection (5) does not provide the required documentation described in Subsection (4)(b)(ii), the division shall suspend the person's driving privilege until:

(a) the division receives:

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

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~~(i)~~ payment of the fee or fees required under Section 53-3-105; and

(b) (i) the division:

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

~~(B)~~ if the person does not own a vehicle or will not be operating a vehicle owned by another individual;

~~(i)~~, receives electronic verification that the person does not have a vehicle registered in the person's name in the state ~~of Utah~~, and

~~(ii)~~ receives employer verification, as defined in Subsection 41-6a-518(1); or

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

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

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

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

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

~~(ii) if the person does not own a vehicle or will not be operating a vehicle owned by another individual, the division receives:]~~ on the person's vehicle or the vehicle the person will be operating; or

~~(B) electronically verifies]~~

~~(A)~~ (B) if the person does not own a vehicle or will not be operating a vehicle owned by another individual, the division receives electronic verification that the person does not have

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a vehicle registered in the person's name in the state ~~[of Utah, (f) or (t)]~~ and ~~f~~

~~(B)~~ receives employer verification, as defined in Subsection 41-6a-518(1);

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

~~(b)~~ (c)iii the person's interlock restricted period has expired.

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

- (a) procedures for certification and regulation of ignition interlock system providers;
- (b) acceptable documentation for proof of the installation of an ignition interlock device;
- (c) procedures for an ignition interlock system provider to electronically notify the division; and
- (d) policies and procedures for the administration of the ignition interlock system program created under this section.

~~f~~

Legislative Review Note

Office of Legislative Research and General Counsel