
DIGEST

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HB 769 Engrossed

2022 Regular Session

Wright

Abstract: Provides relative to ignition interlock devices and maintenance services.

Present law defines "ignition interlock device" as a constant monitoring device that prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol level of the operator through the taking of a breath sample for testing. Further specifies that the system must be calibrated so that the motor vehicle may not be started if the blood alcohol level of the operator, as measured by the test, reaches a level established by the court, consistent with the rules promulgated by the Dept. of Public Safety and Corrections.

Proposed law modifies present law by providing that the definition for ignition interlock device will be the same definition as set forth in proposed law.

Proposed law requires the ignition interlock device be calibrated for accuracy by using a dry alcohol standard with an alcohol reference value between .020 and .050g/210L.

Proposed law provides procedures for calibration including a three second purge prior to introducing a reference sample into a device if using more than six inches of open tubing, an "as found" check to introduce the sample into the device without an adjustment for accuracy which consists of reference checks with the result of each check being within plus or minus 0.005g/210L of the reference value introduced into the device, and a requirement to remove any device that does not pass calibration after adjustment while keeping the serial number of the device on record for three years.

Present law requires the rules and regulations that the secretary sets for the proper approval, installation, and use of ignition interlock devices include but not be limited to requirements that the devices or systems: (1) do not impede the safe operation of the vehicle, (2) correlate with established measures of alcohol impairment, (3) work accurately and reliably in an unsupervised environment, (4) resist tampering and give evidence if tampering is attempted, (5) are difficult to circumvent, (6) minimize inconvenience to a sober user, (7) require a proper, deep lung breath sample or other accurate measure of blood alcohol content equivalence, (8) operate reliably over the range of automobile environments, and (9) are manufactured by a party who will provide product liability insurance and a bond against malfunction of the device.

Proposed law removes the present law requirements and instead mandates the rules and regulations include but are not limited to requiring the devices: (1) are manufactured by a business entity that will provide product liability insurance and a bond against malfunction of the device, (2) are installed

in such a manner that it must not interfere with the normal operation of the vehicle after it is started, (3) protects against compromise or circumvention and preserves evidence of such activity, (4) are resistant to tampering, (5) have the ability to work reliably and accurately in an unsupervised environment, (6) are designed to permit a "restart" within three minutes of a stall or when the ignition has been turned off, (7) measure a person's breath-alcohol concentration by the delivery of a deep lung sample directly into the device, (8) prevent operation of the vehicle if the breath-alcohol concentration of the sample introduced into the device exceeds 0.02g of alcohol per 210L of breath, (9) ensure the automatic and complete purge of residual alcohol before allowing subsequent tests, (10) allow a minimum of 1200ml or 1.2L of breath for an acceptable breath sample, (11) require random retests, (12) include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an ignition interlock device, (13) have all primary components, as identified by the Dept. of Public Safety and Corrections, office of state police, applied technology unit, with a unique serial number, which includes, but is not limited to, the storage device, handset, and camera, (14) enter a permanent lockout if the ignition interlock device has not been calibrated and serviced within a period of 35 days subsequent to its installation or last calibration or inspection, whichever occurs first, (15) uniquely identify and record each time the vehicle has a start attempt or is actually started, the results of all tests and retests violations, how long the vehicle was operated, and any indication of circumvention or tampering with the ignition interlock device or tests, (16) on or before January 1, 2023, require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time, and 30 minutes prior to any subsequent attempts to start the vehicle after the initial start failure occurs, (17) visibly indicate to the user or any qualified person that the unit is on, the unit is in need of service or calibration, the passage or failure of the breath alcohol content threshold on the breath sample introduced, and any other indication required by the department, (18) enter into violation reset under certain conditions, (19) if a violation reset occurs, the device must enter into a permanent lockout within five days unless the device is serviced at a mobile or fixed site service center by an ignition interlock technician or calibration technician where it will be calibrated and downloaded, and (20) incorporate a camera that does not distract or impede the driver in any manner from the safe and legal operation of the vehicle.

Proposed law requires a camera be installed on any new ignition interlock device beginning Aug. 1, 2022, and all devices by Jan. 31, 2023.

Proposed law modifies present law by having the device prevent a motor vehicle from operating and requiring it be equipped with a camera capable of recording a digital image of the person using the device.

Proposed law requires the manufacturer, vendor, ignition interlock technician or calibration technician to notify the originating court, if any, of violation reset conditions within five days of servicing an ignition interlock device.

Proposed law further requires the manufacturer, vendor or ignition interlock technician or calibration technician to provide notification to the Dept. of Public Safety and Corrections, office of motor vehicles, and the Dept. of Public Safety and Corrections, office of state police, applied technology unit in an acceptable electronic format.

Proposed law requires all reports to the originating court, Dept. of Public Safety and Corrections, office of motor vehicles, and the Dept. of Public Safety and Corrections, office of state police, applied technology unit include: (a) the full name, address, and driver's license number of the restricted operator and lessee, (b) the registration number of the motor vehicle in which the ignition interlock device was installed, (c) the unique serial number of the ignition interlock device, and (d) the toll free telephone number of a representative that can explain the report from an ignition interlock device.

Proposed law authorizes the deputy secretary to set and collect nonrefundable fees applicable to the certification, renewal or recertification of ignition interlock devices, service centers, and technicians.

Proposed law requires fees established by the department be based on a calendar year and not exceed the following for each designated fee:

- (1) \$1,000 for an initial device certification.
- (2) \$500 for an annual device certification renewal.
- (3) \$250 for an initial service center by the end of fiscal year 2023-2024.
- (4) \$75 for annual service center certification renewal.
- (5) \$50 for an initial ignition interlock technician certification by the end of fiscal year 2024-2025.
- (6) \$25 for an annual ignition interlock technician certification renewal.
- (7) \$25 for an initial calibration technician certification by the end of fiscal year 2024-2025.
- (8) \$10 for an annual calibration technician certification renewal.
- (9) \$10 for an installation verification form.
- (10) \$5 for a 30 day calibration.

Proposed law further provides the fees must be remitted to the manufacturer, vendor, or service center to the office of state police, applied technology unit on or before the 25th day of each month.

Proposed law requires special costs associated with an installation verification fee or 30 day calibration fee be forwarded on or before the 25th day of each month following their collection to the state treasurer for immediate deposit in the state treasury.

Proposed law requires the treasurer to create a special fund in the state treasury designated as the Public Safety Ignition Interlock Regulation Fund, and to credit an amount equal to the total amount of costs received after compliance with requirements of the Constitution of Louisiana relative to the Bond Security and Redemption Fund.

Proposed law further requires the funds in the Public Safety Ignition Interlock Regulation Fund be used solely to fund activities of the office of state police, applied technology unit, in executing its responsibilities in the regulation of ignition interlock devices, service centers and technicians.

Proposed law requires the Dept. of Public Safety and Corrections, office of state police to provide standards for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock devices in accordance with present law.

Proposed law requires a manufacturer or vendor to notify affected customers of any changes in their service agreement during any suspension or revocation period as a result of an ignition interlock device technician that is found to be out of compliance.

Proposed law grants an ignition interlock device technician the right to an administrative hearing pursuant to present law to contest the suspension or revocation, or both. Proposed law further provides standards for requesting a hearing, hearing procedure, and evidence.

Proposed law requires an ignition interlock device to employ: (a) fuel cell technology, specific for alcohols, (b) other alcohol specific technology approved by the Dept. of Public Safety and Corrections, office of state police, applied technology unit, which meets present law federal standards, (c) technology capable of taking a photograph identifying the user providing the breath sample and recording the time the breath sample was provided, and (d) technology capable of providing the global positioning coordinates at the time of each rolling retest refusal or circumvention when required by the originating court, the Dept. of Public Safety and Corrections, office of motor vehicles, or office state police, applied technology unit.

Proposed law requires an ignition interlock device meet or exceed the minimum test standards according to rules adopted by the office of state police, applied technology unit, and be maintained in accordance with the rules and standards adopted by the office of state police.

Proposed law requires the Dept. of Public Safety and Corrections, office of state police to provide standards and monitor compliance for ignition interlock affordability plans for individuals.

Proposed law provides that economic hardship is defined as an individual that is eligible for Supplemental Nutrition Assistance Program (SNAP), Medicaid, social security disability insurance (SSDI), social security income (SSI), or a judge's order for services of an indigent public defender when the defendant demonstrated income below one hundred twenty-five percent of the federal poverty level (IPD). Proposed law further provides that individuals that meet the economic standard will not be required to pay more than 50% of the assessed fees.

Proposed law provides that individuals that meet the economic hardship standard are responsible for any optional services an individual elects, fees related to any violation reset or permanent lockout as defined in present law, state-mandated fees, and any costs related to damaged, missing or unreturned equipment and recovery of such equipment.

Proposed law provides that individuals become eligible for the affordability plan on the date that the

individual provides the ignition interlock manufacturer or ignition interlock service center acceptable documentation verifying that the individual meets the standard for economic hardship.

Proposed law prevents an ignition interlock manufacturer or ignition interlock service center from refusing service to an individual that has demonstrated eligibility for the affordability plan in accordance with this proposed law.

Proposed law grants an individual who feels that they have been refused service after providing the documentation required under proposed law the right to file a complaint with the office of state police, applied technology unit. Proposed law further provides that all complaints must be investigated within 30 days of receipt of the complaint.

Proposed law provides that if the investigation substantiates the refusal of service, the office of state police, applied technology unit, may issue a warning, suspension, or revocation of the certification for the ignition interlock manufacturer or service center based on the facts of the investigation and history of similar complaints related to manufacturer or service center.

Present law provides that the court may require any person placed on probation as provided for in present law (R.S. 14:98(B)) and must require any person placed on probation as provided in present law (R.S. 14:98(C)) not operate a motor vehicle during the period of probation unless the vehicle is equipped with a functioning ignition interlock device.

Present law provides that if an offender has a blood alcohol concentration of 0.20 percent or more by body weight on a first offense DWI, the offender must be issued a restricted driver's license for a two-year period and be required to have an ignition interlock device installed on his vehicle for the first 12 months of the two-year period.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight and requiring the ignition interlock device be installed for the entire two-year period.

Present law further provides that if an offender has a blood alcohol concentration of 0.20 percent or more by body weight on a second offense DWI, the offender must be issued a restricted driver's license for a four-year period and be required to have an ignition interlock device installed on his vehicle during the first three years of the four-year period.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight and requiring the ignition interlock device be installed for the entire four-year period.

Present law authorizes an individual who installs a Dept. of Public Safety and Corrections approved ignition interlock device as a requirement of bail, a part of a pre-trial diversion program, or a term of a suspended or deferred sentence as provided in present law, for an offense involving the operation of a motor vehicle under the influence of alcohol, drugs, or both, and was arrested or subsequently convicted of such an offense, to receive credit towards suspension time or any

reinstatement requirement that may be imposed if any of the following occurs:

- (1) The installation and monitoring of the ignition interlock device is reported to the Dept. of Public Safety and Corrections by the manufacturer in accordance with present law.
- (2) The individual whose driving privilege is restricted appears at an office of motor vehicle field office and is issued a renewed or duplicate driver's license that contains a restriction code indicating that any vehicle operated by the individual must be equipped with an ignition interlock device.

Present law prohibits an individual from receiving credit towards suspension time or any reinstatement requirement if the manufacturer reports to the Dept. of Public Safety and Corrections that any combination of two of the following violations have occurred in a one- month period, including any repeat violation of the same type:

- (1) Tampering with the device.
- (2) Circumventing the device.
- (3) Failure to bring the ignition interlock device in for required service.
- (4) Failure to take or pass a re-test.
- (5) Failure to pass a breath test.
- (6) Use of the emergency override feature without justification.
- (7) Unauthorized removal of the device.

Proposed law modifies present law to prohibit an individual from receiving credit towards suspension time or any reinstatement requirement if the manufacturer reports to the Dept. of Public Safety and Corrections that any of the following violations have occurred once during the period of installation:

- (1) The restricted operator fails to have the ignition interlock device serviced within the time period prescribed in present law.
- (2) The device has recorded any, or a combination, of the following three or more times in a 30 day period.
 - (a) A random retest fail or skip.
 - (b) An initial start failure before starting the vehicle unless a second breath test below the alcohol limit is recorded within 10 minutes of the initial start failure.

Present law prohibits an individual from receiving credit towards suspension time or any reinstatement requirement if the individual is charged or arrested for any offense involving the operation of a motor vehicle while under the influence of alcohol, drugs, or both, during the period in which the individual is required to have an ignition interlock device as a requirement of bail, a part of a pre-trial diversion program, or a term of a suspended or deferred sentence as provided in present law.

Present law provides that upon a first conviction or a plea of guilty or no contest and the offender has a blood alcohol concentration of 0.20 percent or more by body weight, the offender must have his driver's license suspended for two years, receive a restricted driver's license for the entire period after proving that he has an ignition interlock device installed on his vehicle, which must remain installed for the first 12 months of the two-year period.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight and requiring the ignition interlock device be installed for the entire two-year period.

Present law further provides that upon a second conviction or a plea of guilty or no contest and the offender has a blood alcohol concentration of 0.20 percent or more by body weight, the offender must have his driver's license suspended for four years, receive a restricted driver's license after the first 45 days of the four-year suspension after proving that he has an ignition interlock device installed on his vehicle, which must remain installed for the first three years of the four-year period.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight and requiring the ignition interlock device be installed for the entire four-year period.

Present law requires the offender, upon a first offense, to not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of present law (R.S. 14:98.5(C) and R.S. 32:378.2). Requires the ignition interlock device remain installed and operative on the vehicle during the first 12-month period of suspension of his driver's license following the date of conviction.

Proposed law changes the required time period for the ignition interlock to remain installed and operative from the first 12-month period of the suspension to the entire period of the suspension.

Present law requires the court to require the offender, upon a second offense, to not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of present law (R.S. 14:98.5(C), R.S. 15:306, and R.S. 32:378.2). Requires the ignition interlock device remain installed and operative on the vehicle during the first three years of the four-year period of the suspension of his driver's license.

Proposed law changes the required time period for the ignition interlock to remain installed and

operative from the first three years of the four-year period of the suspension to the entire four year period of suspension.

Present law grants eligibility for a restricted driver's license to any licensee who has had their license suspended for a DWI violation after a period of 12 months upon proof that his vehicle is equipped with an ignition interlock device. Proposed law requires the device remain on the vehicle for six months after issuance of the restricted driver's license.

Proposed law modifies present law by eliminating the 12 month waiting period for the restricted driver's license and requires the device remain on the vehicle for 12 months after issuance of the restricted driver's license.

Present law provides that on or after September 30, 2003, if a person has submitted to a breath alcohol concentration test and the test results show a blood alcohol level of 0.08 percent or above by weight, his driving privileges will be suspended for 90 days from the date of suspension on first offense violation, without eligibility for a hardship license for the first 30 days, and for 365 days from the date of suspension, without eligibility for a hardship license, on second and subsequent violations occurring within five years of the first offense.

Proposed law modifies present law by removing the enacting date, increasing the suspension for a first offense from 90 days to 180 days, removing the provision disallowing a person eligibility for a hardship license.

Present law provides that if a person has submitted to a breath alcohol concentration test and the test results show a blood alcohol level of 0.20 percent or above by weight, his driving privileges will be suspended for two years on a first offense violation and for four years on a second offense violation.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight.

Present law provides that any licensee whose license has been suspended for a first or second DWI offense and either refused to submit to the test or submitted to the test and the test showed a blood alcohol level of less than 0.20 percent must, upon proof that his motor vehicle has been equipped with a functioning ignition interlock device, be immediately granted a restricted license.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight.

Present law provides that if a person has submitted to the test as a result of a first violation and the test results show a blood alcohol level of 0.20 percent or above by weight, he will be eligible for a hardship license during the entire period of the imposed two-year suspension after he shows proof that his motor vehicle is equipped with an ignition interlock device, which must remain installed on his motor vehicle during the first 12 month period of his driver's license suspension.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15

percent or more by body weight and requiring the device be installed for the entire period of suspension.

Present law provides that if a person has submitted to the test as a result of a second violation and the test results show a blood alcohol level of 0.20 percent or above by weight, he will be eligible for a hardship license during the entire four-year period of the suspension after he shows proof that his motor vehicle is been equipped with an ignition interlock device, which must remain installed on his motor vehicle during the first three-years of the four-year suspension.

Proposed law modifies present law by lowering the blood alcohol concentration threshold to 0.15 percent or more by body weight and requiring the device be installed for the entire period of suspension.

Present law provides that any person who has refused to submit to an approved chemical test for intoxication, after being requested to do so, for a second DWI arrest and whose driver's license has been suspended in accordance with law must have an ignition interlock device installed in their motor vehicle.

Proposed law modifies present law by extending this requirement to first, third, or subsequent arrests for DWI violations.

Present law provides that any person who has submitted to an approved chemical test for intoxication where the results indicate a blood alcohol level of 0.08 percent or above and whose driver's license has been suspended in accordance with law for an arrest occurring within 10 years of the first arrest must have an ignition interlock device installed in their motor vehicle.

Proposed law removes the 10 year exception for a first time offender and modifies present law by requiring the arrest be made for a violation of present law (R.S. 14.98, 14.98.6, or 98.6) or a parish or municipal ordinance.

Proposed law provides that upon notice to the department that a driver has caused the ignition interlock device to enter a violation reset or a permanent lockout, the department must extend the period the ignition interlock device is required by an additional six months and further restrict the driver's license. Proposed law further requires the department to notify the driver that his driver's license will be restricted for an additional six months.

Present law provides that in a case of first refusal or first submission to a test for intoxication and when there has been no prior suspension of the driver's license, if suspension is otherwise proper, upon proving to the dept. that the suspension of driving privileges would prevent the person from earning a livelihood, the dept. may require the licensee to surrender his regular license and issue, at a cost of \$50.00 plus the cost of the license, a special restricted operator's license to be effective for the remaining period of suspension.

Proposed law modifies present law by requiring the provision also apply to a second offense, removing the requirement of no prior suspension, adding that an ignition interlock device be installed

in the vehicle the person will drive, and requiring the licensee surrender his regular license unless it has been previously surrendered.

Present law provides that any licensee who has had his license suspended for a first or second DWI offense must, upon proof of need to the Dept. of Public Safety and Corrections, be issued an ignition interlock restricted license sufficient to maintain livelihood or allow the licensee to maintain the necessities of life.

Proposed law repeals present law.

Present law requires the department immediately cancel and seize the restricted license upon receiving satisfactory evidence of violation of the restrictions, and no person will have driving privileges of any kind for a period of six months from the receipt by the department of the cancelled restricted license.

Proposed law modifies present law by adding the removal of the ignition interlock device prior to the expiration of the restricted license as a reason for the department to cancel and seize a restricted driver's license. Proposed law further provides that no violation of present and proposed law will occur if the license is reinstated pursuant to present law prior to the removal of the ignition interlock device.

(Amends R.S. 14:98.1(A)(2) and (3)(b) and (c) and 98.2(A)(2) and (3)(b) and (c), R.S. 15:307(Section heading), (A), (C), (D), and (E), R.S. 32:378.2(A), (B)(1)(a)(ii), (aa), (bb), (M)(2), and (N), 414(A)(1)(c), (i), and (ii) and (D)(1)(b), 667(B)(1)(b) and (c), and (3), and (I)(1)(a) and (b), and 668(B)(1)(a)(intro. para.), (i), (c), and (2); Adds R.S. 15:307(B)(3), (F), (G), and (H), 307.1, 307.2, and R.S. 32:667(B)(3)(d) and (K))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.
2. Change the required time period for the ignition interlock to remain installed and operative for a first offense from the first 12-month period of the suspension to the entire period of the suspension.
3. Change the required time period for the ignition interlock to remain installed and operative for a second offense from the first three years of the four-year period of the suspension to the entire four year period of suspension.