

IN THE SENATE

SENATE BILL NO. 1388

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 18-8002A, IDAHO CODE, TO PROVIDE THAT SUSPENSION OF DRIVING PRIVILEGES SHALL BE VACATED IN CERTAIN INSTANCES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have au-

1 thority to administer oaths, examine witnesses and take testimony,
2 receive relevant evidence, issue subpoenas, regulate the course and
3 conduct of the hearing and make a final ruling on the issues before him.

4 (g) "Hearing request" means a request for an administrative hearing on
5 the suspension imposed by the provisions of this section.

6 (2) Information to be given. At the time of evidentiary testing for
7 concentration of alcohol or for the presence of drugs or other intoxicating
8 substances is requested, the person shall be informed that if the person re-
9 fuses to submit to or fails to complete evidentiary testing, or if the per-
10 son submits to and completes evidentiary testing and the test results indi-
11 cate an alcohol concentration or the presence of drugs or other intoxicating
12 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
13 the person shall be informed substantially as follows (but need not be in-
14 formed verbatim):

15 If you refuse to submit to or if you fail to complete and pass eviden-
16 tiary testing for alcohol or other intoxicating substances:

17 (a) The peace officer will issue a notice of suspension and you will be
18 required to install, at your expense, a state-approved ignition inter-
19 lock system on all motor vehicles you operate for a period to end one (1)
20 year following the end of the suspension period;

21 (b) You have the right to request a hearing within seven (7) days of the
22 notice of suspension of your driver's license to show cause why you re-
23 fused to submit to or to complete and pass evidentiary testing and why
24 your driver's license should not be suspended;

25 (c) If you refused or failed to complete evidentiary testing and do not
26 request a hearing before the court or do not prevail at the hearing, your
27 driver's license will be suspended and you will be required to install,
28 at your expense, a state-approved ignition interlock system on all mo-
29 tor vehicles you operate for a period to end one (1) year following the
30 end of the suspension period. The suspension will be for one (1) year if
31 this is your first refusal. The suspension will be for two (2) years if
32 this is your second refusal within ten (10) years. You will not be able
33 to obtain a temporary restricted license during that period;

34 (d) If you complete evidentiary testing and fail the testing and do not
35 request a hearing before the department or do not prevail at the hear-
36 ing, your driver's license will be suspended and you will be required to
37 install, at your expense, a state-approved ignition interlock system on
38 all motor vehicles you operate for a period to end one (1) year following
39 the end of the suspension period. This suspension will be for ninety
40 (90) days if this is your first failure of evidentiary testing, but you
41 may request restricted noncommercial vehicle driving privileges after
42 the first thirty (30) days. The suspension will be for one (1) year
43 if this is your second failure of evidentiary testing within five (5)
44 years. You will not be able to obtain a temporary restricted license
45 during that period;

46 (e) However, if you are admitted to a problem solving court program and
47 have served at least forty-five (45) days of an absolute suspension of
48 driving privileges, you may be eligible for a restricted permit for the
49 purpose of getting to and from work, school or an alcohol treatment pro-

1 gram, but only if you install, at your expense, a state-approved igni-
2 tion interlock system on all motor vehicles you operate;

3 (f) However, if you are admitted to a diversion program under section
4 19-3509, Idaho Code, you may be eligible for a restricted permit for the
5 purpose of getting to and from work, school, medical appointments, or
6 a treatment program, but only if you install, at your expense, a state-
7 approved ignition interlock system on all motor vehicles you operate;
8 and

9 (g) After submitting to evidentiary testing, you may, when practica-
10 ble, at your own expense, have additional tests made by a person of your
11 own choosing.

12 (3) Rulemaking authority of the Idaho state police. The Idaho state po-
13 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

14 (a) What testing is required to complete evidentiary testing under this
15 section; and

16 (b) What calibration or checking of testing equipment must be performed
17 to comply with the department's requirements. Any rules of the Idaho
18 state police shall be in accordance with the following: a test for alco-
19 hol concentration in breath as defined in section 18-8004, Idaho Code,
20 and subsection (1) (e) of this section will be valid for the purposes of
21 this section if the breath alcohol testing instrument was approved for
22 testing by the Idaho state police in accordance with section 18-8004,
23 Idaho Code, at any time within ninety (90) days before the evidentiary
24 testing. A test for alcohol concentration in blood or urine as defined
25 in section 18-8004, Idaho Code, that is reported by the Idaho state po-
26 lice or by any laboratory approved by the Idaho state police to perform
27 this test will be valid for the purposes of this section.

28 (4) Suspension and ignition interlock system.

29 (a) Upon receipt of the sworn statement of a peace officer that there
30 existed legal cause to believe a person had been driving or was in actual
31 physical control of a motor vehicle while under the influence of alco-
32 hol, drugs or other intoxicating substances and that the person submit-
33 ted to a test and the test results indicated an alcohol concentration or
34 the presence of drugs or other intoxicating substances in violation of
35 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
36 suspend the person's driver's license, driver's permit, driving privi-
37 leges or nonresident driving privileges:

38 (i) For a period of ninety (90) days for a first failure of evi-
39 dentiary testing under the provisions of this section. The
40 first thirty (30) days of the suspension shall be absolute and the
41 person shall have absolutely no driving privileges of any kind.
42 Restricted noncommercial vehicle driving privileges applicable
43 during the remaining sixty (60) days of the suspension may be re-
44 quested as provided in subsection (9) of this section.

45 (ii) For a period of one (1) year for a second and any subsequent
46 failure of evidentiary testing under the provisions of this sec-
47 tion within the immediately preceding five (5) years. No driving
48 privileges of any kind shall be granted during the suspension im-
49 posed pursuant to this subparagraph.

1 The department shall also direct the installation, at the offender's
2 expense, of a state-approved ignition interlock system meeting the re-
3 quirements of section 18-8008, Idaho Code, on all motor vehicles oper-
4 ated by the offender for a period to end one (1) year following the end of
5 the suspension period.

6 The person may request an administrative hearing on the suspension as
7 provided in subsection (7) of this section. Any right to contest the
8 suspension shall be waived if a hearing is not requested as therein pro-
9 vided.

10 (b) The suspension shall become effective thirty (30) days after ser-
11 vice upon the person of the notice of suspension and notice of the re-
12 quirement to install, at his expense, a state-approved ignition inter-
13 lock system for a period to end one (1) year following the end of the sus-
14 pension period. The notice shall be in a form provided by the department
15 and shall state:

16 (i) The reason and statutory grounds for the suspension and the
17 requirement to install the ignition interlock system;

18 (ii) The effective date of the suspension and the requirement to
19 install the ignition interlock system;

20 (iii) The suspension periods to which the person may be subject as
21 provided in paragraph (a) of this subsection;

22 (iv) The procedures for obtaining restricted noncommercial vehi-
23 cle driving privileges;

24 (v) The rights of the person to request an administrative hear-
25 ing on the suspension and that, if an administrative hearing is not
26 requested within seven (7) days of service of the notice of suspen-
27 sion and notice of the requirement to install the ignition inter-
28 lock system, the right to contest the suspension shall be waived;

29 (vi) The procedures for obtaining an administrative hearing on
30 the suspension;

31 (vii) The right to judicial review of the hearing officer's deci-
32 sion on the suspension and the procedures for seeking such review.

33 (c) Notwithstanding the provisions of paragraph (a) (i) and (ii) of
34 this subsection, a person who is enrolled in and is a participant in
35 good standing in a drug court or mental health court approved by the
36 supreme court drug court and mental health court coordinating commit-
37 tee under the provisions of chapter 56, title 19, Idaho Code, or other
38 similar problem solving court utilizing community-based sentencing
39 alternatives shall be eligible for restricted noncommercial driving
40 privileges for the purpose of getting to and from work, school or an al-
41 cohol treatment program, which may be granted by the presiding judge of
42 the drug court or mental health court or other similar problem solving
43 court, provided that the offender has served a period of absolute sus-
44 pension of driving privileges of at least forty-five (45) days, that a
45 state-approved ignition interlock system is installed, at his expense,
46 on all motor vehicles operated by him for a period to end one (1) year
47 following the end of the suspension period and that the offender has
48 shown proof of financial responsibility as defined and in the amounts
49 specified in section 49-117, Idaho Code, provided that the restricted
50 noncommercial driving privileges may be continued if the offender

1 successfully completes the drug court, mental health court or other
2 similar problem solving court, and that the court may revoke such privi-
3 leges for failure to comply with the terms of probation or with the terms
4 and conditions of the drug court, mental health court or other similar
5 problem solving court program.

6 (5) Service of suspension and ignition interlock system by peace of-
7 ficer or the department. If the driver submits to evidentiary testing af-
8 ter the information in subsection (2) of this section has been provided and
9 the results of the test indicate an alcohol concentration or the presence
10 of drugs or other intoxicating substances in violation of the provisions of
11 section 18-8004, 18-8004C or 18-8006, Idaho Code:

12 (a) The peace officer shall, acting on behalf of the department, serve
13 the person with a notice of suspension and notice of the requirement to
14 install, at his expense, a state-approved ignition interlock system for
15 a period to end one (1) year following the end of the suspension period
16 in the form and containing the information required under subsection
17 (4) of this section. The department may serve the person with a notice
18 of suspension and the requirement to install the ignition interlock
19 system if the peace officer failed to do so or failed to include the date
20 of service as provided in subsection (4) (b) of this section.

21 (b) Within five (5) business days following service of a notice of sus-
22 pension and notice of the requirement to install the ignition interlock
23 system, the peace officer shall forward to the department a copy of the
24 completed notice of suspension and notice of the requirement to install
25 the ignition interlock system form upon which the date of service upon
26 the driver shall be clearly indicated, a certified copy or duplicate
27 original of the results of all tests for alcohol concentration, as shown
28 by analysis of breath administered at the direction of the peace offi-
29 cer, and a sworn statement of the officer, which may incorporate any
30 arrest or incident reports relevant to the arrest and evidentiary test-
31 ing setting forth:

32 (i) The identity of the person;

33 (ii) Stating the officer's legal cause to stop the person;

34 (iii) Stating the officer's legal cause to believe that the per-
35 son had been driving or was in actual physical control of a motor
36 vehicle while under the influence of alcohol, drugs or other in-
37 toxicating substances in violation of the provisions of section
38 18-8004, 18-8004C or 18-8006, Idaho Code;

39 (iv) That the person was advised of the consequences of taking and
40 failing the evidentiary test as provided in subsection (2) of this
41 section;

42 (v) That the person was lawfully arrested;

43 (vi) That the person was tested for alcohol concentration, drugs
44 or other intoxicating substances as provided in this chapter, and
45 that the results of the test indicated an alcohol concentration or
46 the presence of drugs or other intoxicating substances in viola-
47 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
48 Idaho Code.

49 If an evidentiary test of blood or urine was administered rather than
50 a breath test, the peace officer or the department shall serve the no-

1 tice of suspension once the results are received. The sworn statement
2 required in this subsection shall be made on forms in accordance with
3 rules adopted by the department.

4 (c) The department may serve the person with a notice of suspension if
5 the peace officer failed to issue the notice of suspension or failed to
6 include the date of service as provided in subsection (4) (b) of this
7 section.

8 (6) Additional tests. After submitting to evidentiary testing at the
9 request of the peace officer, the person may, when practicable, at his own
10 expense, have additional tests for alcohol concentration or for the presence
11 of drugs or other intoxicating substances made by a person of his own choos-
12 ing. The person's failure or inability to obtain additional tests shall not
13 preclude admission of the results of evidentiary tests administered at the
14 direction of the peace officer unless additional testing was denied by the
15 peace officer.

16 (7) Administrative hearing on suspension. A person who has been served
17 with a notice of suspension and notice of the requirement to install the ig-
18 nition interlock system after submitting to an evidentiary test may request
19 an administrative hearing on the suspension before a hearing officer desig-
20 nated by the department. The hearing may be held only on the suspension and
21 not on the requirement to install an ignition interlock system. The request
22 for hearing shall be in writing and must be received by the department within
23 seven (7) calendar days of the date of service upon the person of the notice
24 of suspension and notice of the requirement to install the ignition inter-
25 lock system and shall include what issue or issues shall be raised at the
26 hearing. The date on which the hearing request was received shall be noted
27 on the face of the request.

28 If a hearing is requested, the hearing shall be held within twenty (20)
29 days of the date the hearing request was received by the department unless
30 this period is, for good cause shown, extended by the hearing officer for a
31 ten (10) day period. Such extension shall not operate as a stay of the sus-
32 pension, notwithstanding an extension of the hearing date beyond such thirty
33 (30) day period. Written notice of the date and time of the hearing shall
34 be sent to the party requesting the hearing at least seven (7) days prior to
35 the scheduled hearing date. The department may conduct all hearings by tele-
36 phone if each participant in the hearing has an opportunity to participate in
37 the entire proceeding while it is taking place.

38 The hearing shall be recorded. The sworn statement of the arresting of-
39 ficer, and the copy of the notice of suspension and the notice of the require-
40 ment to install the ignition interlock system issued by the officer shall
41 be admissible at the hearing without further evidentiary foundation. The
42 results of any tests for alcohol concentration or the presence of drugs or
43 other intoxicating substances by analysis of blood, urine or breath adminis-
44 tered at the direction of the peace officer and the records relating to cal-
45 ibration, certification, approval or quality control pertaining to equip-
46 ment utilized to perform the tests shall be admissible as provided in section
47 18-8004(4), Idaho Code. The arresting officer shall not be required to par-
48 ticipate unless directed to do so by a subpoena issued by the hearing offi-
49 cer.

1 The burden of proof shall be on the person requesting the hearing. The
2 hearing officer shall not vacate the suspension unless he finds, by a prepon-
3 derance of the evidence, that:

4 (a) The peace officer did not have legal cause to stop the person; or

5 (b) The officer did not have legal cause to believe the person had been
6 driving or was in actual physical control of a vehicle while under the
7 influence of alcohol, drugs or other intoxicating substances in viola-
8 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
9 Code; or

10 (c) The test results did not show an alcohol concentration or the pres-
11 ence of drugs or other intoxicating substances in violation of section
12 18-8004, 18-8004C or 18-8006, Idaho Code; or

13 (d) The tests for alcohol concentration, drugs or other intoxicating
14 substances administered at the direction of the peace officer were not
15 conducted in accordance with the requirements of section 18-8004(4),
16 Idaho Code, or the testing equipment was not functioning properly when
17 the test was administered; or

18 (e) The person was not informed of the consequences of submitting to ev-
19 identary testing as required in subsection (2) of this section.

20 If the hearing officer finds that the person has not met his burden of proof,
21 he shall sustain the suspension. The hearing officer shall make findings of
22 fact and conclusions of law and shall enter an order vacating or sustaining
23 the suspension. The findings of fact, conclusions of law and order entered
24 by the hearing officer shall be considered a final order pursuant to the pro-
25 visions of chapter 52, title 67, Idaho Code, except that motions for recon-
26 sideration of such order shall be allowed and new evidence can be submitted.

27 The facts as found by the hearing officer shall be independent of the de-
28 termination of the same or similar facts in the adjudication of any criminal
29 charges arising out of the same occurrence. The disposition of those crim-
30 inal charges shall not affect the suspension and the requirement to install
31 the ignition interlock system required to be imposed under the provisions
32 of this section. If a license is suspended under this section and the per-
33 son is also convicted on criminal charges arising out of the same occurrence
34 for a violation of the provisions of section 18-8004, 18-8004C or 18-8006,
35 Idaho Code, both the suspension under this section and the suspension im-
36 posed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code,
37 shall be imposed, but the periods of suspension shall run concurrently, with
38 the total period of suspension not to exceed the longer of the applicable
39 suspension periods, unless the court ordering the suspension in the criminal
40 case orders to the contrary. If a license is suspended pursuant to this sec-
41 tion and the criminal charges arising out of the same occurrence for a viola-
42 tion of the provisions of section 18-8004, 18-8004C, or 18-8006, Idaho Code,
43 are vacated or dismissed, then both the suspension pursuant to this section
44 and the suspension imposed pursuant to the provisions of section 18-8005 or
45 18-8006, Idaho Code, shall also be vacated. The defendant's driving priv-
46 ileges shall be restored on the effective date the criminal charges are va-
47 cated or dismissed.

48 (8) Judicial review. A party aggrieved by the decision of the hearing
49 officer may seek judicial review of the decision in the manner provided for
50 judicial review of final agency action provided in chapter 52, title 67,

1 Idaho Code. Upon motion of the person required to install an ignition in-
2 terlock device pursuant to subsection (4) (a) of this section, a court in its
3 discretion may relieve the person from the installation of the device where
4 the court finds it clear and convincing that the person will not present a
5 danger to the public or that there are exceptional or mitigating circum-
6 stances demonstrating that installation of the device is unnecessary or
7 unwarranted. Financial hardship, standing alone, is not an exceptional or
8 mitigating circumstance. A court may determine that an offender is eligible
9 to utilize available funds from the court interlock device and electronic
10 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
11 installation and operation of an ignition interlock device, based on evi-
12 dence of financial hardship.

13 (9) Restricted noncommercial vehicle driving privileges. A person
14 served with a notice of suspension for ninety (90) days pursuant to this
15 section may apply to the department for restricted noncommercial vehicle
16 driving privileges, to become effective after the thirty (30) day absolute
17 suspension has been completed. The request may be made at any time after ser-
18 vice of the notice of suspension. Restricted noncommercial vehicle driving
19 privileges will be issued for the person to travel to and from work and for
20 work purposes not involving operation of a commercial vehicle, to attend an
21 alternative high school, work on a GED, for postsecondary education, or to
22 meet the medical needs of the person or his family if the person is eligible
23 for restricted noncommercial vehicle driving privileges. Any person whose
24 driving privileges are suspended under the provisions of this chapter may be
25 granted privileges to drive a noncommercial vehicle but shall not be granted
26 privileges to operate a commercial motor vehicle.

27 (10) As used in this section, "at his expense," "at your expense" and "at
28 the offender's expense" include the cost of obtaining, installing, using and
29 maintaining an ignition interlock system.

30 (11) Rules. The department may adopt rules under the provisions of
31 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
32 sions of this section.