A BILL

SECTION 1. SHORT TITLE.

SECTION 2. IMPAIRED DRIVING.

* Definitions
  + "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
  + "Alcohol or drug-related conviction" means any of the following:
    - Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing the violation of driving under the influence, or conviction of the violation of driving under the influence;
    - Conviction of an act which was committed on a military reservation and which would constitute the violation of driving under the influence.
    - "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b)(1), including a diversion agreement entered into prior to the effective date of this act.
  + “Motor vehicle” means any motor vehicle having a gross weight of 10,000 pounds or less that is required to be equipped with safety belts by Federal Motor Vehicle Safety Primary No. 208. Passenger cars are required to have belts if built after December 31, 1967. Light trucks and multi-purpose vehicles are required to have safety belts is built after December 31, 1971.
  + "Occurrence" means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, including an arrest which occurred prior to the effective day of this act.
  + "Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.
  + "Other competent evidence" includes:
    - Alcohol concentration tests obtained from samples taken two hours or more after the operation or attempted operation of a vehicle; or
    - Readings obtained from a partial alcohol concentration test on a breath testing machine.
  + "Test failure" or "fails a test" refers to a person's having results of a test administered pursuant to this act, other than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person's blood or breath, and includes failure of any such test on a military reservation.
  + "Test refusal" or "refuses a test" refers to a person's failure to submit to or complete any test, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.
* Application
  + No person shall operate or attempt to operate any vehicle while:
    - The alcohol concentration in the person's blood or breath as shown by any competent evidence is .08 or more;
    - The alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;
    - Under the influence of alcohol to a degree that renders the person incapable of safely operating a vehicle;
    - Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vehicle; or
    - Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vehicle.
  + No person shall operate or attempt to operate any vehicle if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
* Penalties
  + If a person refuses a test, the division shall:
    - On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, or in states with an Ignition Interlock restricted license, restrict the person's driving privileges for one year to operating only a motor vehicle equipped with an ignition interlock device;
    - On the person's second occurrence, suspend the person's driving privileges for two years;
    - On the person's third occurrence, suspend the person's driving privileges for three years;
    - On the person's fourth occurrence, suspend the person's driving privileges for 10 years; and
    - On the person's fifth or subsequent occurrence, revoke the person's driving privileges permanently.
  + If a person fails a test or has an alcohol or drug-related conviction, the division shall:
    - Suspend the person's driving privileges for 30 days, and then restrict the person's driving privileges for six months to operating only a motor vehicle equipped with an ignition interlock device.;
    - On the person's second, third or fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to operating only a motor vehicle equipped with an ignition interlock device; and
    - On the person's fifth or subsequent occurrence, suspend the person’s driving privileges for five years and at the end of the suspension, restrict the person’s driving privileges for five years to operating only a motor vehicle equipped with an ignition interlock device.
  + Whenever a person's driving privileges have been restricted to operating only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated.
  + If a person whose driving privileges have been restricted to operating only a motor vehicle equipped with an ignition interlock device registers a failure, circumvention, or other violation, the period of restriction shall restart.
  + If a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction, the division shall:
    - On the person's first occurrence, suspend the person's driving privileges for six months and at the end of the suspension, restrict the person’s driving privileges for six month to only operating a motor vehicle equipped with an ignition interlock device;
    - On the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to operating only a motor vehicle equipped with an ignition interlock device;
    - On the person's third occurrence, suspend the person's driving privileges for three years and at the end of the suspension, restrict the person's driving privileges for three years to operating only a motor vehicle equipped with an ignition interlock device;
    - On the person's fourth occurrence, suspend the person's driving privileges for four years and at the end of the suspension, restrict the person's driving privileges for four years to operating only a motor vehicle equipped with an ignition interlock device; and
    - On the person's fifth or subsequent occurrence, suspend the person's driving privileges for five years and at the end of the suspension, restrict the person’s driving privileges for five years to operating only a motor vehicle equipped with an ignition interlock device.
  + Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a court for a conviction of the violation of driving under the influence, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program.
  + Suggested Addition: Compliance-Based Removed of the Interlock Order, Ignition Interlock Indigent Device Fund and Administrative Fees to Division/ DMV; Penalties for Tampering or Circumventing the Interlock/ Failure to Install

SECTION 3. MEDICATED DRIVING.

* Definitions
  + “Motor vehicle” means any motor vehicle having a gross weight of 10,000 pounds or less that is required to be equipped with safety belts by Federal Motor Vehicle Safety Primary No. 208. Passenger cars are required to have belts if built after December 31, 1967. Light trucks and multi-purpose vehicles are required to have safety belts is built after December 31, 1971.
  + “Controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of the Controlled Substances Act (21 USC 802). The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.
  + “Controlled substance analog” is a substance which:
    - the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;
    - which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
    - With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
  + "Occurrence" means a drug-related conviction, including an arrest which occurred prior to the effective day of this act.
* Application
  + No person may operate a motor vehicle while:
    - Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, or under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving.
* Penalties
  + If a person has a drug-related conviction, the division shall:
    - On the person's first occurrence, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges for an additional 335 days;
    - On the person's second, third or fourth occurrence, suspend the person's driving privileges for one year; and
    - On the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.
  + If a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction, the division shall:
    - On the person's first occurrence, suspend the person's driving privileges for one year;
    - On the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years;
    - On the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension restrict the person's driving privileges for three years;
    - On the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years; and
    - On the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

SECTION 4. SPEEDING.

* Definitions
  + “Motor vehicle” means any motor vehicle having a gross weight of 10,000 pounds or less that is required to be equipped with safety belts by Federal Motor Vehicle Safety Primary No. 208. Passenger cars are required to have belts if built after December 31, 1967. Light trucks and multi-purpose vehicles are required to have safety belts is built after December 31, 1971.
  + “Reckless driving” means:
    - Speeding 20 miles per hour or more above the posted speed limit; or
    - Racing; or
    - Passing or overtaking an emergency vehicle; or
    - Passing a school bus; or
    - Any one or more moving violations that causes the defensive reaction of another driver to avoid a collision.
* Application
  + No person shall drive a motor vehicle at a speed greater than is reasonable and prudent and having regard to the actual and potential hazards and conditions then existing.  Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic, or by reason of weather or highway conditions.
  + No person shall operate a motor vehicle on a public highway at a speed of 20 miles per hour in excess of a state speed zone or local speed limit.
* Exemptions
  + This section does not apply to a driver who is:
    - A law enforcement, fire service, or emergency medical services professional performing official duties.
* Penalties
  + A person who violates this section may be imprisoned upon a first conviction not more than three months or fined not more than $300.00, or both; and upon a second conviction shall be imprisoned not more than six months or fined not more than $500.00, or both.
  + Every person convicted of reckless driving shall be punished:
    - Upon a first conviction by imprisonment for a period of not less than five days nor more than 90 days, or by fine of not less than $25.00 nor more than $500.00, or by both such fine and imprisonment;
    - Upon a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than six months, or by a fine of not less than $50.00 nor more than $500.00, or by both such fine and imprisonment, and the court may prohibit the person so convicted from driving a motor vehicle on the public highways of this state for a period not exceeding six months, and the license of the person shall be suspended for such period by the Director of Public Safety.

SECTION 5. SAFETY BELT ENFORCEMENT AND CHILD SAFETY SEATS.

* Definitions
  + For the purposes of this section, "motor vehicle" includes:
    - “Motor vehicle” means any motor vehicle having a gross weight of 10,000 pounds or less that is required to be equipped with safety belts by Federal Motor Vehicle Safety Primary No. 208. Passenger cars are required to have belts if built after December 31, 1967. Light trucks and multi-purpose vehicles are required to have safety belts is built after December 31, 1971.
    - “Driver” means a person who drives or is in actual physical control of a motor vehicle.
    - “Safety belt” means and strap, webbing, or similar device designed to secure a person in a motor vehicle including all necessary buckles and other fasteners, and all hardware designed for installing such safety belt assembly in a motor vehicle.
* Application
  + This section only applies to:
    - Motor vehicles that meet the manual seat belt safety standards as set forth in 49 C.F.R. Sec. 571.208;
    - Motorcycles, when equipped with safety belts that meet the standards set forth in 49 C.F.R. Part 571; and
    - Neighborhood electric vehicles and medium-speed electric vehicles that meet the seat belt standards as set forth in 49 C.F.R. Sec. 571.500.
  + Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.
  + No person may operate a motor vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device.
  + Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle or medium-speed electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:
    - A child must be restrained in a child restraint system, if the passenger seating position equipped with a safety belt system allows sufficient space for installation, until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system must comply with standards of the United States Department of Transportation and must be secured in the vehicle in accordance with instructions of the vehicle manufacturer and the child restraint system manufacturer.
    - A child who is eight years of age or older or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting child restraint system.
    - The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.
* Exemptions
  + This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required under 49 C.F.R. Part 571 are occupied.
  + This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.
  + This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or fewer passengers, including the driver, operated by auto transportation companies, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.
  + The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts.
* Penalties
  + A person violating this section shall be issued a notice of traffic infraction. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.
  + Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

SECTION 6. DISTRACTED DRIVING.

* Definitions
  + "Electronic communication device" means an electronic device, including but not limited to a wireless telephone, personal digital assistant, or a portable or mobile computer while being used for the purpose of composing, reading, or sending an electronic message, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.
  + "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. "Electronic message" includes, but is not limited to electronic mail, a text message, an instant message, or a command or request to access an Internet site.
* Purpose
  + The purpose of this section is to:
    - Improve the safety of the roads for all drivers and passengers by prohibiting drivers of motor vehicles from engaging in text messaging;
    - Prevent accidents caused by the distractive practice of text messaging while operating a motor vehicle;
    - Preserve human life and maintain the safety of the citizens and visitors to our state by taking steps to reduce motor vehicle accidents, injuries, and deaths;
    - Reduce health care costs, health insurance rates, and automobile insurance rates by attempting to reduce the number of motor vehicle accidents that cause injury, death, and property damage; and
    - Reduce the amount of time that law enforcement and the court system work on accidents and offenses arising out of motor vehicle accidents caused by drivers who are distracted by sending or reading text messages.
* Application
  + Except as otherwise provided in this section, a person shall not read, manually type, or send an electronic message on an electronic communication device that is located in the person’s hand or in the person’s lap while operating a motor vehicle.
* Exemptions
  + This section does not apply to a driver who is:
    - A law enforcement, fire service, or emergency medical services professional performing official duties; or,
    - Reporting an emergency, or criminal or suspicious activity to law enforcement authorities; or,
    - Receiving messages related to the operation or navigation of a motor vehicle; safety-related information including emergency, traffic, or weather alerts; data used primarily by the motor vehicle; or radio; or,
    - Using a device or system for navigation purposes; or,
    - Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate a feature or function.
* Penalties
  + A driver violating this section shall be subject to a penalty of:
    - For the first offense: traffic infraction or violation including a minimum fine of $75 and action against driving privileges.
    - For subsequent offenses: penalties should escalate in accordance with the State’s motor vehicle and traffic laws.
    - For any offense that results in a death or serious injury: the infraction should increase to a felony (criminal offense) with penalties consistent with State sentencing guideline.

Addendum

Compliance Based Removal of the Interlock Order

* If the Court orders an ignition interlock device, the Court shall order the division to issue to the Defendant a restricted interlock license which indicates the Defendant is allowed to operate a motor vehicle only if it is equipped with an ignition interlock device. Such order shall remain in effect for the prescribed period of interlock usage. Such order will end and not be extended if the Defendant blows alcohol fee for the duration of the period for which he or she may only operate a motor vehicle with an ignition interlock device.
* An interlock restriction imposed under this section shall remain in effect until the department received a declaration from the person’s ignition interlock device vendor, in a form provided by or approved by the division, certifying that, in the four consecutive months prior to the suspension termination date, none of the following have occurred:
  + An attempt to start a vehicle with a breath alcohol concentration level of 0.04 or greater; or
  + Failure to successfully complete any required treatment or education; or
  + Failure of the person to appear at the ignition interlock vendor when required for maintenance, repairs, calibration, monitoring, inspection, or replacement of the device.

\Ignition Interlock Indigent Device Fund/ Administrative Fees to the Division

* The costs incurred in order to comply with the ignition interlock requirements shall be paid by the person order to install an ignition interlock device unless the Court or the division has determine the person to be indigent.
* The “Ignition Interlock Device Fund” shall be created for the purpose of installing and/or removing the interlock device or a person deemed by the Court or the division to be indigent. A person is determined indigent if the person has a household income at or below 150 of the nonfarm federal poverty line for the continent United States as defined by the U.S. Department of Labor under 42 U.S.C. 9902(2). The Court or the division shall limit the person’s liability for costs of the ignition interlock device to:
  + One-half the cost of equipping each motor vehicle; and
  + One-half of the cost per day per vehicle to maintain the ignition interlock device.
* Non-indigent offenders shall pay to the Court Clerk or the division an ignition interlock surcharge of $50.
* A person ordered to install an ignition interlock device shall pay an ignition interlock administrative fee, unless the Court or the division has determined the person to be indigent. The fee, established by the division and collected at the time of ignition interlock device installation, shall be at least thirty dollars but not more than sixty dollars. The ignition interlock device vendor shall remit the fees to the division on a quarterly basis. A percentage of the fee may cover cost of the division to administer the ignition interlock device program and a percentage of the fee shall be directed to the “Ignition Interlock Device Fund.”

Penalties for Failure to Install, Tampering with or Circumventing the Ignition Interlock Device

* Any person restricted to operating a motor vehicle with an ignition interlock device who operates a motor vehicle without the use of such device or who tampers with or alters the ignition interlock device in any way shall be punished with a felony and shall receive an extension on the length of time the person may only operate a motor vehicle with an ignition interlock device.
* No person may remove, disconnect, tamper with, or otherwise circumvent the operation of an ignition interlock device installed as a result of a court or administrative order, or fail to have the ignition interlock device installed as ordered by the court. This section does not apply to the removal of an ignition interlock device upon the expiration of the order requiring the motor vehicle to be so equipped or to necessary repairs to a malfunctioning ignition interlock device by a person authorized by the division.

Hybrid Judicial and Division Interlock Program

* Authority to administer the Ignition Interlock Program shall be vested with a state’s Department of Motor Vehicles in conjunction with a state’s judiciary. The Department of Motor Vehicles shall establish regulations for the Ignition Interlock Program. These regulations shall include:
  + Ensuring the presence of licensed interlock providers within the state; and
  + Requiring the use of the most modern anti-circumvention fuel cell technology interlock systems; and
  + Maintaining reporting systems for those sentenced to use interlocks.

Allow arrested offender the option to install ignition interlock device sooner is Administrative License Revocation (ALR) hearing is waived

* On behalf of the director, the arresting peace officer submitting a sworn report under this section shall serve notice of the revocation on the arrested person and revocation shall be effective fifteen days after the date of arrest. The notice of revocation shall contain a statement of explanation regarding the administrative license revocation procedure. The peace officer shall also provide to the arrest person information prepared and approved by the director describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days of a person’s arrest or the person’s right to an administrative hearing to contest the revocation will be foreclosed. The director shall prepare and approve the information form, the application for an ignition interlock permit, and the notice of revocation and shall provide them to law enforcement agencies.
* Any arrested person who submits an application for an ignition interlock permit in lieu of a petition for an administrative license revocation hearing regarding the revocation of his or her operator’s license pursuant to this section shall complete the application for an ignition interlock permit in which such person acknowledges that he or she understand that he or she will have his or her license administratively revoked pursuant to this section, that he or she waives his or her right to a hearing to contest the revocation, and that he or she understands that he or she is required to have an ignition interlock permit in order to operate a motor vehicle for the period of revocation and shall include sufficient evidence that an ignition interlock device is installed on one or more vehicles that will be operated by the arrest person. Upon the arrested person’s completion of the ignition interlock permit application process, the department shall issue the person an ignition interlock permit, subject to any applicable requirements and any applicable no-drive period if the person is otherwise eligible.
* An arrested person who is issued an ignition interlock permit pursuant to this section shall receive day-for-day credit for the period he or she has a valid ignition interlock permit against the license revocation period imposed by the court arising from the same incident.
* If a person files a completed application for an ignition interlock permit, the person waives his or her right to contest the revocation of his or her operator’s license.
* Any person who has not petitioned for an administrative license revocation hearing and is subject to an administrative license revocation may immediately apply for an ignition interlock permit to use during the applicable period of revocation, subject to the following restrictions:
  + If such person submitted to an chemical test which disclosed the presence of a concentration of alcohol and has no prior administrative license revocations at the time the order of revocation is issued, the ignition interlock device permit will be immediately available fifteen days after the date of arrest or the date of notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock device; and
  + If such person submitted to an chemical test which disclosed the presence of a concentration of alcohol and has one or more prior administrative license revocations on which final orders have been issued, the ignition interlock device permit will be immediately available fifteen days after the date of arrest or the date of notice of revocation was provided to the arrested person plus firty0five additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock device, upon complete of an application process for an ignition interlock permit; and
  + If such person refused to submit to a chemical test of blood, breath, or urine as required, the ignition interlock permit will be available beginning fifteen days after the date of arrest or the date of notification of revocation plus ninety additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; and
  + Any person who petitions for an administrative license revocation hearing shall not be eligible for an ignition interlock permit unless order by the court at the time of sentencing for the related criminal proceeding.

Penalties for driving drunk with a minor passenger in a vehicle

* If a person fails or refuses a test or has an alcohol or drug-related conviction and there is a passenger in the motor vehicle under the age of sixteen, the court shall charge the person with a Class E felony punishable by up to four years imprisonment.
* Persons charged with driving with a blood alcohol level of 0.08 or higher and with a child under the age of sixteen in the motor vehicle shall have their license automatically revoked pending prosecution.
* Persons charged with driving with a blood alcohol level of 0.08 or higher and with a child under the age of sixteen in the motor vehicle shall install and maintain an ignition interlock device on any vehicle owned and/or operated by such driver for an additional six months to any existing interlock order, in addition to any term of imprisonment.
* Persons who drive while intoxicated or impaired by drugs and cause the death of a child younger than 16 in the car may be charged with a Class B felony, punishable by up to 25 years of imprisonment.
* Persons who drive while intoxicated or impaired by drugs and cause serious physical injury to a child in the vehicle may be charged with a Class C felony, punishable by up to 15 years imprisonment.
* Persons who are a parent, guardian, custodian or otherwise legally responsible for a child who are charged with driving while impaired by alcohol or drugs while that child is a passenger in the car would be reported to the Statewide Central Register of Child Abuse and Maltreatment by the arresting agency.