



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0918/1
EVM:kjf:jm

2015 ASSEMBLY BILL 50

February 17, 2015 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Judiciary.

1 **AN ACT** *to amend* 110.10 (4) and (5) and 343.30 (1q) (b) 3. and 4.; and *to create*
2 343.30 (1q) (b) 6. and 343.30 (1q) (em) of the statutes; **relating to:** access to
3 ignition interlock device reports, occupational license eligibility periods for
4 participants in certain treatment projects, and granting rule-making
5 authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Problem-Solving Courts, Alternatives, and Diversions.

Ignition Interlock Device Reports

Current law requires a court to order that a person's operating privileges for the operation of a "Class D" vehicle be restricted to operating vehicles that are equipped with

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an ignition interlock device and, unless the court finds doing so will cause undue financial hardship, the court must also order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device if either of the following applies:

- The person improperly refused to take a chemical test for intoxication while driving or operating a motor vehicle.
- The person has violated prohibitions on operating under the influence of an intoxicant or other drug (OWI), homicide by intoxicated use of a vehicle, or injury by intoxicated use of a vehicle, and either of the following applies:
 - The person had an alcohol concentration of 0.15% or more at the time of the offense.
 - The person is a repeat OWI offender.

The Department of Transportation (DOT) is required to promulgate rules to provide for the implementation of an ignition interlock device program that will be conveniently available to persons throughout this state. The rules must include provisions that include the following:

- Requiring ignition interlock device providers operating in this state to provide the department and law enforcement agencies with installation, service, tampering, and failure reports in a timely manner.
- Requiring ignition interlock device providers to notify the department of any ignition interlock device tampering, circumvention, bypass or violation resets, including all relevant data recorded in the device's memory. Upon receiving a notice, the department must immediately provide the notice and data to the assessment agency that is administering the violator's driver safety plan.

DOT rules currently require an ignition interlock service provider (service provider) to provide a certificate of installation or removal to the customer. The rules require the customer to present a copy of the certificate to DOT as a condition of obtaining a license and require the service provider to provide a copy of the certificate to the sheriff of the county where the customer resides. DOT rules also require that a service provider be responsible for all of the following:

- Following the manufacturer's specifications for service and repair.
- Reporting to the sheriff of the county where the customer resides when any failure to report for required servicing occurs. All devices shall be scheduled for service at intervals not to exceed 60 days.
- Each time a device is serviced, reviewing the data recorded in the device's memory and retain a copy of the data in the customer's file. Any tampering, circumvention, bypass, or violation resets must be immediately reported to the sheriff in the county where the customer resides.

This bill requires DOT to promulgate rules that require ignition interlock device providers operating in this state to provide installation, service, and other requested reports to DOT and, as designated by DOT, courts and law enforcement agencies. These reports must be provided in a timely manner and in a standardized format established by DOT. The bill also requires DOT to promulgate rules requiring ignition interlock device providers operating in this state to notify DOT, and as designated by DOT, courts and law enforcement agencies of any ignition interlock device tampering, circumvention, failure, bypass, or violation resets, including all relevant data recorded in the device's memory. The rules must require the information to be provided in a timely manner and in a standardized format established by DOT.

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Current law specifies when a person may become eligible for an occupational license if his or her driver's license was suspended or revoked. One requirement for eligibility is that the person wait until at least 15 days have elapsed since the date of revocation or suspension before he or she may be eligible for an occupational license, unless another minimum waiting period or immediate eligibility is expressly provided by law. In the case of an appeal that is subsequently dismissed or affirmed, the person must wait until at least 15 days have elapsed since the date of revocation or suspension following the dismissal or affirmance of the appeal to be eligible for an occupational license. However, if a person's driver's license has been suspended or revoked as a result of a second or subsequent OWI conviction, then the person must wait until 45 days have elapsed before he or she may be eligible for an occupational license.

Also under current law, an executive state agency may not promulgate a rule unless it first presents a statement of the scope of the proposed rule for approval to the governor. The scope of a proposed rule must also be approved by the head of the agency and may only occur after the scope is approved by the governor.

This bill provides an exception to the occupational license minimum waiting period for eligibility that is applicable to a person who has two or more prior OWI convictions, suspensions, or revocations. Under the bill, a court may order that a person is not subject to the 45-day minimum waiting period for an occupational license, and must specify the date that he or she becomes eligible, if the person is ordered or sentenced to comply with a county or tribal project that operates within the continuum from arrest to discharge from supervision and provides alternatives to prosecution, incarceration, or both, including suspended and deferred prosecution projects or community-based corrections (a treatment court participant). No order may be entered unless the person has completed the court-ordered assessment of his or her use of alcohol, controlled substances, or controlled substance analogs, and must be complying with the driver safety plan in order for the court to enter such an order. The court's order must specify the date that the person becomes immediately eligible, subject to other eligibility requirements applicable to any occupational license applicant, including the 15-day minimum waiting period.

This bill requires DOT to present a scope of the rules it is required to promulgate regarding the ignition interlock device program, as amended by the bill, to the governor within 90 days after the effective date of the bill. It also requires DOT to submit a proposed form of these rules to the Legislative Council Rules Clearinghouse within 15 months after the DOT secretary approves the scope of the proposed rule.

- 1 **SECTION 1.** 110.10 (4) and (5) of the statutes are amended to read:
- 2 110.10 (4) Requiring ignition interlock device providers operating in this state
- 3 to provide the department and, as designated by the department, courts and law
- 4 enforcement agencies ~~designated by the department~~ with installation, and service,
- 5 ~~tampering and failure reports~~ and other reports requested by the department or
- 6 designated courts or law enforcement agencies in a timely manner and in a
- 7 standardized format established by the department.

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1 (5) Requiring ignition interlock device providers operating in this state to
2 notify the department and, as designated by the department, courts and law
3 enforcement agencies in a timely manner and in a standardized format established
4 by the department of any ignition interlock device tampering, circumvention,
5 failure, bypass or violation resets, including all relevant data recorded in the device's
6 memory. ~~Upon receiving notice described in this subsection, the department shall~~
7 ~~immediately provide the notice and data to the assessment agency that is~~
8 ~~administering the violator's driver safety plan.~~

NOTE: This SECTION requires DOT to promulgate rules that require ignition interlock device providers operating in this state to do the following: (1) provide installation, service, and other requested reports to DOT and, as designated by the department, courts and law enforcement agencies; and (2) notify the department and, as designated by the department, courts and law enforcement agencies of any ignition interlock device, tampering, circumvention, failure, bypass, or violation resets, including all relevant data recorded in the device's memory in a standardized format established by DOT or an agency designated by DOT.

9 **SECTION 2.** 343.30 (1q) (b) 3. and 4. of the statutes are amended to read:

10 343.30 (1q) (b) 3. Except as provided in sub. (1r) or subd. 4m., if the number
11 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
12 number of other convictions, suspensions, and revocations counted under s. 343.307
13 (1) within a 10-year period, equals 2, the court shall revoke the person's operating
14 privilege for not less than one year nor more than 18 months. ~~After~~ Except as
15 provided in subd. 6., after the first 45 days of the revocation period has elapsed, the
16 person is eligible for an occupational license under s. 343.10 if he or she has
17 completed the assessment and is complying with the driver safety plan ordered
18 under par. (c).

19 4. Except as provided in sub. (1r) or subd. 4m., if the number of convictions
20 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
21 convictions, suspensions, and revocations counted under s. 343.307 (1), equals 3 or

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1 more, the court shall revoke the person's operating privilege for not less than 2 years
2 nor more than 3 years. After Except as provided in subd. 6., after the first 45 days
3 of the revocation period has elapsed, the person is eligible for an occupational license
4 under s. 343.10 if he or she has completed the assessment and is complying with the
5 driver safety plan ordered under par. (c).

6 **SECTION 3.** 343.30 (1q) (b) 6. of the statutes is created to read:

7 343.30 (1q) (b) 6. Subject to s. 343.10, if par. (em) applies, a person is eligible
8 for an occupational license on the date specified in an order issued under par. (em).

NOTE: SECTIONS 2 and 3 eliminate the 45-day minimum waiting period for occupational license eligibility that is applicable to second and subsequent OWI offenses, if the person is ordered or sentenced to comply with a county or tribal project that operates within the continuum from arrest to discharge from supervision and provides alternatives to prosecution, incarceration, or both, including suspended and deferred prosecution projects or community-based corrections. The SECTIONS also provide that the person is eligible for an occupational license on the date specified by a treatment court order, subject to the 15-day eligibility waiting period applicable to any occupational license applicant.

9 **SECTION 4.** 343.30 (1q) (em) of the statutes is created to read:

10 343.30 (1q) (em) If a person has 2 or more prior convictions, suspensions, or
11 revocations, as counted under s. 343.307 (1), and the person is ordered or sentenced
12 to comply with a county or tribal project that operates within the continuum from
13 arrest to discharge from supervision and provides alternatives to prosecution,
14 incarceration, or both, including suspended and deferred prosecution projects or
15 community-based corrections for criminal offenders, a court may order that the
16 person is not subject to the 45-day minimum ineligibility period for an occupational
17 license. No order may be entered under this paragraph unless the person has
18 completed an assessment and is complying with the driver safety plan ordered under
19 par. (c). If a court enters an order under this paragraph, the order shall specify the

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1 date, subject to s. 343.10 (2) (a), that the person becomes eligible for an occupational
2 license.

NOTE: This SECTION authorizes a court to order that a person who has two or more prior convictions, suspensions, or revocations, as counted under current law, is not subject to a 45-day minimum waiting period in order to be eligible for an occupational license, if the person is ordered or sentenced to comply with a county or tribal project that operates within the continuum from arrest to discharge from supervision and provides alternatives to prosecution, incarceration, or both, including suspended and deferred prosecution projects or community-based corrections (a treatment court participant). The person must also have completed the court-ordered assessment of his or her use of alcohol, controlled substances, or controlled substance analogs, and must be complying with the driver safety plan in order for the court to enter such an order. The court's order must specify the date that the person becomes eligible, subject to the eligibility requirements, that is applicable to any occupational license applicant, including the 15-day minimum waiting period.

3 **SECTION 5. Nonstatutory provisions.**

4 (1) PROPOSED PERMANENT RULES. The department of transportation shall
5 present the statement of scope of the rules required under section 110.10 of the
6 statutes to the governor for approval under section 227.135 (2) of the statutes no later
7 than the 90th day beginning after the effective date of this subsection. The
8 department shall submit in proposed form the rules required under section 110.10
9 of the statutes to the legislative council staff under section 227.15 (1) of the statutes
10 no later than the first day of the 16th month beginning after the secretary of
11 transportation approves the statement of scope for the rules.

NOTE: This SECTION requires DOT to present a scope of the rules it is required to promulgate regarding the ignition interlock device program, as amended by the bill, to the governor within 90 days after the effective date of the bill. This SECTION also requires DOT to submit a proposed form of these rules to the Legislative Council Rules Clearinghouse within 15 months after the DOT secretary approves the scope of the proposed rule. The intent of this SECTION is to make sure that the entire rule-making promulgation process occurs within a two-year period.

12

(END)