

IN THE SENATE

SENATE BILL NO. 1278

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO MOTOR VEHICLES; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE
2 A PROVISION REGARDING AN IGNITION INTERLOCK SYSTEM AND TO MAKE TECHNICAL
3 CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
4 DATE.
5

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

7 SECTION 1. That Section 18-8005, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
10 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
11 Code, for the first time is guilty of a misdemeanor; and, except as provided
12 in section 18-8004C, Idaho Code:

13 (a) May be sentenced to jail for a term not to exceed six (6) months;

14 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);

15 (c) Shall be advised by the court in writing at the time of sentencing
16 of the penalties that will be imposed for subsequent violations of the
17 provisions of section 18-8004, Idaho Code, which advice shall be signed
18 by the defendant, and a copy retained by the court and another copy re-
19 tained by the prosecuting attorney;

20 (d) Shall have his driving privileges suspended by the court for a pe-
21 riod of thirty (30) days, which shall not be reduced and during which
22 thirty (30) day period absolutely no driving privileges of any kind may
23 be granted. After the thirty (30) day period of absolute suspension of
24 driving privileges has passed, the defendant shall have driving privi-
25 leges suspended by the court for an additional period of at least sixty
26 (60) days, not to exceed one hundred fifty (150) days, during which
27 the defendant may request restricted driving privileges that the court
28 may allow, if the defendant shows by a preponderance of the evidence
29 that driving privileges are necessary for his employment or for family
30 health needs; and

31 (e) Unless an exception is granted pursuant to section 18-8002(12),
32 Idaho Code, shall within ten (10) days following the end of the
33 ~~mandatory suspension~~ period of absolute suspension have a state-ap-
34 proved ignition interlock system meeting the requirements of section
35 18-8008, Idaho Code, installed, at his expense, on all motor vehicles
36 operated by him for a period to end one (1) year following the end of the
37 suspension period. A court may determine that an offender is eligible
38 to utilize available funds from the court interlock device and elec-
39 tronic monitoring device fund, as outlined in section 18-8010, Idaho
40 Code, for the installation and operation of an ignition interlock de-
41 vice, based on evidence of financial hardship.

1 (2) Any person who pleads guilty to or is found guilty of a violation of
2 the provisions of section 18-8004(1) (b), Idaho Code, for the first time is
3 guilty of a misdemeanor and subject to:

4 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
5 tion; and

6 (b) The provisions of section 49-335, Idaho Code.

7 (3) Any person who pleads guilty to or is found guilty of a violation of
8 the provisions of section 18-8004(1) (c), Idaho Code, for the first time is
9 guilty of a misdemeanor and is subject to:

10 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
11 tion; and

12 (b) The provisions of section 49-335, Idaho Code.

13 (4) Any person who pleads guilty to or is found guilty of a violation of
14 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-
15 ously has been found guilty of or has pled guilty to a violation of the provi-
16 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially
17 conforming foreign criminal violation within ten (10) years, notwithstand-
18 ing the form of the judgment(s) or withheld judgment(s), and except as pro-
19 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
20 cept as provided in section 18-8004C, Idaho Code:

21 (a) Shall be sentenced to jail for a mandatory minimum period of ~~not~~ no
22 less than ten (10) days, the first forty-eight (48) hours of which must
23 be consecutive, and five (5) days of which must be served in jail, as re-
24 quired by 23 U.S.C. 164, and may be sentenced to ~~not~~ no more than one (1)
25 year, provided however, that in the discretion of the sentencing judge,
26 the judge may authorize the defendant to be assigned to a work detail
27 program within the custody of the county sheriff during the period of
28 incarceration;

29 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);

30 (c) Shall be advised by the court in writing at the time of sentencing
31 of the penalties that will be imposed for subsequent violations of the
32 provisions of section 18-8004, Idaho Code, which advice shall be signed
33 by the defendant, and a copy retained by the court and another copy re-
34 tained by the prosecuting attorney;

35 (d) Shall surrender his driver's license or permit to the court;

36 (e) Shall have his driving privileges suspended by the court for an
37 additional mandatory minimum period of one (1) year after release from
38 confinement, during which one (1) year period absolutely no driving
39 privileges of any kind may be granted; and

40 (f) Shall, while operating a motor vehicle, be required to drive only
41 a motor vehicle equipped with a functioning ignition interlock system,
42 as provided in section 18-8008, Idaho Code, following the one (1) year
43 mandatory license suspension period.

44 (5) If the person has pled guilty or was found guilty for the sec-
45 ond time within ten (10) years of a violation of the provisions of section
46 18-8004(1) (b) or (c), Idaho Code, then the provisions of section 49-335,
47 Idaho Code, shall apply.

48 (6) Except as provided in section 18-8004C, Idaho Code, any person who
49 pleads guilty to or is found guilty of a violation of the provisions of sec-
50 tion 18-8004(1) (a), (b) or (c), Idaho Code, who previously has been found

1 guilty of or has pled guilty to two (2) or more violations of the provisions
2 of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially con-
3 forming foreign criminal violation, or any combination thereof, or who has
4 completed a diversion program for driving under the influence, whether or
5 not the person has pled guilty or been found guilty, or any substantially
6 conforming foreign program, and has pled guilty or been found guilty of one
7 (1) or more violations of the provisions of section 18-8004(1) (a), (b), or
8 (c), Idaho Code, or any substantially conforming foreign criminal violation
9 within ten (10) years, notwithstanding the form of the judgment(s) or with-
10 held judgment(s), shall be guilty of a felony and:

11 (a) Shall be sentenced to the custody of the state board of correction
12 for not to exceed ten (10) years; provided that notwithstanding the pro-
13 visions of section 19-2601, Idaho Code, should the court impose any sen-
14 tence other than incarceration in the state penitentiary, the defendant
15 shall be sentenced to the county jail for a mandatory minimum period of
16 ~~not~~ no less than thirty (30) days, the first forty-eight (48) hours of
17 which must be consecutive, and ten (10) days of which must be served in
18 jail, as required by 23 U.S.C. 164; and further provided that notwith-
19 standing the provisions of section 18-111, Idaho Code, a conviction un-
20 der this section shall be deemed a felony;

21 (b) May be fined an amount not to exceed five thousand dollars (\$5,000);

22 (c) Shall surrender his driver's license or permit to the court;

23 (d) Shall have his driving privileges suspended by the court for a
24 mandatory minimum period of one (1) year after release from imprison-
25 ment, during which time he shall have absolutely no driving privileges
26 of any kind, and may have his driving privileges suspended by the court
27 for an additional period not to exceed four (4) years, during which
28 the defendant may request restricted driving privileges that the court
29 may allow if the defendant shows by a preponderance of the evidence
30 that driving privileges are necessary for his employment or for family
31 health needs; and

32 (e) Shall, while operating a motor vehicle, be required to drive only
33 a motor vehicle equipped with a functioning ignition interlock system,
34 as provided in section 18-8008, Idaho Code, following the mandatory one
35 (1) year license suspension period.

36 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
37 of this section, any person who is enrolled in and is a participant in good
38 standing in a drug court or mental health court approved by the supreme
39 court drug court and mental health court coordinating committee under the
40 provisions of chapter 56, title 19, Idaho Code, or other similar problem
41 solving court utilizing community-based sentencing alternatives shall be
42 eligible for restricted noncommercial driving privileges for the purpose
43 of getting to and from work, school or an alcohol treatment program, which
44 may be granted by the presiding judge of the drug court or mental health
45 court or other similar problem solving court, provided that the offender
46 has served a period of absolute suspension of driving privileges of at least
47 forty-five (45) days, that a state-approved ignition interlock system is
48 installed, at his expense, on any motor vehicles operated by the offender
49 for a period to end one (1) year following the end of the suspension period
50 and that the offender has shown proof of financial responsibility as defined

1 and in the amounts specified in section 49-117, Idaho Code, provided that
2 the restricted noncommercial driving privileges may be continued if the of-
3 fender successfully completes the drug court, mental health court or other
4 similar problem solving court, and that the court may revoke such privileges
5 for failure to comply with the terms of probation or with the terms and condi-
6 tions of the drug court, mental health court or other similar problem solving
7 court program.

8 (8) For the purpose of computation of the enhancement period in subsec-
9 tions (4), (6) and (9) of this section, the time that elapses between the date
10 of commission of the offense and the date the defendant pleads guilty or is
11 found guilty for the pending offense shall be excluded. If the determination
12 of guilt against the defendant is reversed upon appeal, the time that elapsed
13 between the date of the commission of the offense and the date the defendant
14 pleads guilty or is found guilty following the appeal shall also be excluded.

15 (9) Notwithstanding the provisions of subsections (4) and (6) of this
16 section, any person who has pled guilty to or has been found guilty of a
17 felony violation of the provisions of section 18-8004, Idaho Code, a felony
18 violation of the provisions of section 18-8004C, Idaho Code, a violation
19 of the provisions of section 18-8006, Idaho Code, a violation of the provi-
20 sions of section 18-4006 3. (b), Idaho Code, notwithstanding the form of the
21 judgment(s) or withheld judgment(s) or any substantially conforming foreign
22 criminal felony violation, notwithstanding the form of the judgment(s) or
23 withheld judgment(s), and within fifteen (15) years pleads guilty to or is
24 found guilty of a further violation of the provisions of section 18-8004,
25 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
26 subsection (6) of this section.

27 (10) For the purpose of subsections (4), (6) and (9) of this section and
28 the provisions of section 18-8004C, Idaho Code, a substantially conforming
29 foreign criminal violation exists when a person has pled guilty to or has
30 been found guilty of a violation of any federal law or law of another state,
31 or any valid county, city, or town ordinance of another state substantially
32 conforming to the provisions of section 18-8004, Idaho Code. The determina-
33 tion of whether a foreign criminal violation is substantially conforming is
34 a question of law to be determined by the court.

35 (11) Any person who pleads guilty to or is found guilty of a violation of
36 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall
37 undergo, at his own expense (or at county expense through the procedures set
38 forth in chapters 34 and 35, title 31, Idaho Code) and prior to the sentencing
39 date, an alcohol evaluation by a substance use disorders service provider
40 approved by the Idaho department of health and welfare; provided however, if
41 the defendant has no prior or pending charges with respect to the provisions
42 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the
43 records and information required under subsection (12) (a), (b) and (c) of
44 this section or possesses information from other reliable sources relating
45 to the defendant's use or nonuse of alcohol or drugs ~~which~~ that does not give
46 the court any reason to believe that the defendant regularly abuses alco-
47 hol or drugs and is in need of treatment, the court may, in its discretion,
48 waive the evaluation with respect to sentencing for a violation of section
49 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.
50 The court may also, in its discretion, waive the requirement of an alcohol

1 evaluation with respect to a defendant's first violation of the provisions
2 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence
3 the defendant if the court has a presentence investigation report, substance
4 use disorder assessment, criminogenic risk assessment, or other assessment
5 ~~which~~ that evaluates the defendant's degree of alcohol abuse and need for
6 alcohol treatment conducted within twelve (12) months preceding the date of
7 the defendant's sentencing. In the event an alcohol evaluation indicates
8 the need for alcohol treatment, the evaluation shall contain a recommenda-
9 tion by the evaluator as to the most appropriate treatment program, together
10 with the estimated cost thereof, and recommendations for other suitable
11 alternative treatment programs, together with the estimated costs thereof.
12 The person shall request that a copy of the completed evaluation be forwarded
13 to the court. The court shall take the evaluation into consideration in
14 determining an appropriate sentence. If a copy of the completed evaluation
15 has not been provided to the court, the court may proceed to sentence the
16 defendant; however, in such event, it shall be presumed that alcohol treat-
17 ment is required unless the defendant makes a showing by a preponderance of
18 evidence that treatment is not required. If the defendant has not made a good
19 faith effort to provide the completed copy of the evaluation to the court,
20 the court may consider the failure of the defendant to provide the report
21 as an aggravating circumstance in determining an appropriate sentence. If
22 treatment is ordered, in no event shall the person or facility doing the
23 evaluation be the person or facility that provides the treatment unless this
24 requirement is waived by the sentencing court, with the exception of fed-
25 erally recognized Indian tribes or federal military installations, where
26 diagnosis and treatment are appropriate and available. Nothing herein con-
27 tained shall preclude the use of funds authorized pursuant to the provisions
28 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
29 indigent defendants.

30 (12) At the time of sentencing, the court shall be provided with the fol-
31 lowing information:

32 (a) The results, if administered, of any evidentiary test for alcohol
33 and/or drugs;

34 (b) A computer or teletype or other acceptable copy of the person's
35 driving record;

36 (c) Information as to whether the defendant has pled guilty to or
37 been found guilty of a violation of the provisions of section 18-8004,
38 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
39 five (5) years, notwithstanding the form of the judgment(s) or withheld
40 judgment(s); and

41 (d) The alcohol evaluation required in subsection (11) of this section,
42 if any.

43 (13) A minor may be prosecuted for a violation of the provisions of sec-
44 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.
45 In addition to any other penalty, if a minor pleads guilty to or is found
46 guilty of a violation of the provisions of section 18-8004(1)(a), (b) or
47 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended
48 or denied for an additional one (1) year following the end of any period of
49 suspension or revocation existing at the time of the violation, or until
50 he reaches the age of twenty-one (21) years, whichever period is greater.

1 During the period of additional suspension or denial, absolutely no driving
2 privileges shall be allowed.

3 (14) In the event that the alcohol evaluation required in subsection
4 (11) of this section recommends alcohol treatment, the court shall order
5 the person to complete a treatment program in addition to any other sen-
6 tence ~~which~~ that may be imposed, unless the court determines that alcohol
7 treatment would be inappropriate or undesirable, in which event the court
8 shall enter findings articulating the reasons for such determination on
9 the record. The court shall order the defendant to complete the preferred
10 treatment program set forth in the evaluation, or a comparable alternative,
11 unless it appears that the defendant cannot reasonably obtain adequate fi-
12 nancial resources for such treatment. In that event, the court may order
13 the defendant to complete a less costly alternative set forth in the evalua-
14 tion, or a comparable program. Such treatment shall, to the greatest extent
15 possible, be at the expense of the defendant. In the event that funding is
16 provided for or on behalf of the defendant by an entity of state government,
17 restitution shall be ordered to such governmental entity in accordance with
18 the restitution procedure for crime victims, as specified under chapter
19 53, title 19, Idaho Code. Nothing contained herein shall be construed as
20 requiring a court to order that a governmental entity shall provide alcohol
21 treatment at government expense unless otherwise required by law.

22 (15) Any person who is disqualified, or whose driving privileges have
23 been suspended, revoked or canceled under the provisions of this chapter,
24 shall not be granted restricted driving privileges to operate a commercial
25 motor vehicle.

26 (16) As used in this section, "at his expense" includes the cost of ob-
27 taining, installing, using and maintaining an ignition interlock system.

28 SECTION 2. An emergency existing therefor, which emergency is hereby
29 declared to exist, this act shall be in full force and effect on and after
30 July 1, 2024.