

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 32

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 18-8005, IDAHO CODE, TO PROVIDE FOR SUBSTANCE USE DISORDERS SERVICE PROVIDERS AND SUBSTANCE USE DISORDER ASSESSMENTS AND TO MAKE TECHNICAL CORRECTIONS.

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

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

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

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

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

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

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

(e) Unless an exception is granted pursuant to section 18-8002(12), Idaho Code, shall within ten (10) days following the end of the mandatory suspension period have a state-approved ignition interlock system meeting the requirements of section 18-8008, Idaho Code, installed, at his expense, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period. A court may determine that an offender is eligible to utilize available funds from the court interlock device and electronic monitoring device fund, as outlined in section 18-8010, Idaho Code, for the installation and operation of an ignition interlock device, 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  
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 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, within ten  
4 (10) years, notwithstanding the form of the judgment(s) or withheld judg-  
5 ment(s), shall be guilty of a felony and:

6 (a) Shall be sentenced to the custody of the state board of correction  
7 for not to exceed ten (10) years; provided that notwithstanding the  
8 provisions of section 19-2601, Idaho Code, should the court impose any  
9 sentence other than incarceration in the state penitentiary, the de-  
10 fendant shall be sentenced to the county jail for a mandatory minimum  
11 period of not less than thirty (30) days, the first forty-eight (48)  
12 hours of which must be consecutive, and ten (10) days of which must be  
13 served in jail, as required by 23 U.S.C. 164; and further provided that  
14 notwithstanding the provisions of section 18-111, Idaho Code, a convic-  
15 tion under this section shall be deemed a felony;

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

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

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

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

31 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)  
32 of this section, any person who is enrolled in and is a participant in good  
33 standing in a drug court or mental health court approved by the supreme  
34 court drug court and mental health court coordinating committee under the  
35 provisions of chapter 56, title 19, Idaho Code, or other similar problem  
36 solving court utilizing community-based sentencing alternatives shall be  
37 eligible for restricted noncommercial driving privileges for the purpose  
38 of getting to and from work, school or an alcohol treatment program, which  
39 may be granted by the presiding judge of the drug court or mental health  
40 court or other similar problem solving court, provided that the offender  
41 has served a period of absolute suspension of driving privileges of at least  
42 forty-five (45) days, that a state-approved ignition interlock system is  
43 installed, at his expense, on any motor vehicles operated by the offender  
44 for a period to end one (1) year following the end of the suspension period  
45 and that the offender has shown proof of financial responsibility as defined  
46 and in the amounts specified in section 49-117, Idaho Code, provided that  
47 the restricted noncommercial driving privileges may be continued if the of-  
48 fender successfully completes the drug court, mental health court or other  
49 similar problem solving court, and that the court may revoke such privileges  
50 for failure to comply with the terms of probation or with the terms and condi-

1 tions of the drug court, mental health court or other similar problem solving  
2 court program.

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

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

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

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

1     fendant's degree of alcohol abuse and need for alcohol treatment conducted  
2     within twelve (12) months preceding the date of the defendant's sentencing.  
3     In the event an alcohol evaluation indicates the need for alcohol treatment,  
4     the evaluation shall contain a recommendation by the evaluator as to the most  
5     appropriate treatment program, together with the estimated cost thereof,  
6     and recommendations for other suitable alternative treatment programs,  
7     together with the estimated costs thereof. The person shall request that a  
8     copy of the completed evaluation be forwarded to the court. The court shall  
9     take the evaluation into consideration in determining an appropriate sen-  
10    tence. If a copy of the completed evaluation has not been provided to the  
11    court, the court may proceed to sentence the defendant; however, in such  
12    event, it shall be presumed that alcohol treatment is required unless the  
13    defendant makes a showing by a preponderance of evidence that treatment is  
14    not required. If the defendant has not made a good faith effort to provide  
15    the completed copy of the evaluation to the court, the court may consider  
16    the failure of the defendant to provide the report as an aggravating cir-  
17    cumstance in determining an appropriate sentence. If treatment is ordered,  
18    in no event shall the person or facility doing the evaluation be the person  
19    or facility that provides the treatment unless this requirement is waived  
20    by the sentencing court, with the exception of federally recognized Indian  
21    tribes or federal military installations, where diagnosis and treatment are  
22    appropriate and available. Nothing herein contained shall preclude the use  
23    of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho  
24    Code, for court-ordered alcohol treatment for indigent defendants.

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

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

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

31         (c) Information as to whether the defendant has pled guilty to or  
32         been found guilty of a violation of the provisions of section 18-8004,  
33         18-8004C or 18-8006, Idaho Code, or a similar offense within the past  
34         five (5) years, notwithstanding the form of the judgment (s) or withheld  
35         judgment (s); and

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

38         (13) A minor may be prosecuted for a violation of the provisions of sec-  
39    tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.  
40    In addition to any other penalty, if a minor pleads guilty to or is found  
41    guilty of a violation of the provisions of section 18-8004(1)(a), (b) or  
42    (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended  
43    or denied for an additional one (1) year following the end of any period of  
44    suspension or revocation existing at the time of the violation, or until  
45    he reaches the age of twenty-one (21) years, whichever period is greater.  
46    During the period of additional suspension or denial, absolutely no driving  
47    privileges shall be allowed.

48         (14) In the event that the alcohol evaluation required in subsection  
49    (11) of this section recommends alcohol treatment, the court shall order  
50    the person to complete a treatment program in addition to any other sentence

1 which may be imposed, unless the court determines that alcohol treatment  
2 would be inappropriate or undesirable, in which event the court shall enter  
3 findings articulating the reasons for such determination on the record. The  
4 court shall order the defendant to complete the preferred treatment program  
5 set forth in the evaluation, or a comparable alternative, unless it appears  
6 that the defendant cannot reasonably obtain adequate financial resources  
7 for such treatment. In that event, the court may order the defendant to com-  
8 plete a less costly alternative set forth in the evaluation, or a comparable  
9 program. Such treatment shall, to the greatest extent possible, be at the  
10 expense of the defendant. In the event that funding is provided for or on  
11 behalf of the defendant by an entity of state government, restitution shall  
12 be ordered to such governmental entity in accordance with the restitution  
13 procedure for crime victims, as specified under chapter 53, title 19, Idaho  
14 Code. Nothing contained herein shall be construed as requiring a court to  
15 order that a governmental entity shall provide alcohol treatment at govern-  
16 ment expense unless otherwise required by law.

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

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