

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 423

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 18-8002A, IDAHO CODE, TO  
REVISE PROVISIONS RELATING TO THE SUSPENSION OF A DRIVER'S LICENSE UPON  
FAILURE OF EVIDENTIARY TESTING IN THE STATE OF IDAHO.

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 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

1 authority 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  
9 refuses to submit to or fails to complete evidentiary testing, or if the  
10 person submits to and completes evidentiary testing and the test results  
11 indicate an alcohol concentration or the presence of drugs or other  
12 intoxicating substances in violation of section 18-8004, 18-8004C or  
13 18-8006, Idaho Code, the person shall be informed substantially as follows  
14 (but need not be informed verbatim):

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

17 (a) The peace officer will seize your driver's license and issue a  
18 notice of suspension and a temporary driving permit to you, but no peace  
19 officer will issue you a temporary driving permit if your driver's  
20 license or permit has already been and is suspended or revoked. No  
21 peace officer shall issue a temporary driving permit to a driver of a  
22 commercial vehicle who refuses to submit to or fails to complete and  
23 pass an evidentiary test;

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

28 (c) If you refused or failed to complete evidentiary testing and do not  
29 request a hearing before the court or do not prevail at the hearing, your  
30 driver's license will be suspended. The suspension will be for one (1)  
31 year if this is your first refusal. The suspension will be for two (2)  
32 years if this is your second refusal within ten (10) years. You will not  
33 be able to obtain a temporary restricted license during that period;

34 (d) If you complete evidentiary testing and fail the testing and  
35 do not request a hearing before the department or do not prevail  
36 at the hearing, your driver's license will be suspended. This  
37 suspension will be for ninety (90) days if this is your first failure  
38 of evidentiary testing in the state of Idaho, but you may request  
39 restricted noncommercial vehicle driving privileges after the first  
40 thirty (30) days. The suspension will be for one (1) year if this is your  
41 second failure of evidentiary testing in the state of Idaho within five  
42 (5) years. You will not be able to obtain a temporary restricted license  
43 during that period;

44 (e) If you become enrolled in and are a participant in good standing in  
45 a drug court approved by the supreme court drug court and mental health  
46 court coordinating committee under the provisions of chapter 56, title  
47 19, Idaho Code, you shall be eligible for restricted noncommercial  
48 driving privileges for the purpose of getting to and from work, school  
49 or an alcohol treatment program, which may be granted by the presiding  
50 judge of the drug court, provided that you have served a period of

1 absolute suspension of driving privileges of at least forty-five (45)  
2 days, that an ignition interlock device is installed on each of the  
3 motor vehicles owned or operated, or both, by you and that you have shown  
4 proof of financial responsibility; and

5 (f) After submitting to evidentiary testing you may, when practicable,  
6 at your own expense, have additional tests made by a person of your own  
7 choosing.

8 (3) Rulemaking authority of the Idaho state police. The Idaho state  
9 police may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

10 (a) What testing is required to complete evidentiary testing under this  
11 section; and

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

25 (4) Suspension.

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

35 (i) For a period of ninety (90) days for a first failure of  
36 evidentiary testing in the state of Idaho under the provisions  
37 of this section. The first thirty (30) days of the suspension  
38 shall be absolute and the person shall have absolutely no driving  
39 privileges of any kind. Restricted noncommercial vehicle driving  
40 privileges applicable during the remaining sixty (60) days of the  
41 suspension may be requested as provided in subsection (9) of this  
42 section.

43 (ii) For a period of one (1) year for a second and any subsequent  
44 failure of evidentiary testing in the state of Idaho under the  
45 provisions of this section within the immediately preceding five  
46 (5) years. No driving privileges of any kind shall be granted  
47 during the suspension imposed pursuant to this subsection.

48 The person may request an administrative hearing on the suspension as  
49 provided in subsection (7) of this section. Any right to contest the

1 suspension shall be waived if a hearing is not requested as therein  
2 provided.

3 (b) The suspension shall become effective thirty (30) days after  
4 service upon the person of the notice of suspension. The notice shall be  
5 in a form provided by the department and shall state:

6 (i) The reason and statutory grounds for the suspension;

7 (ii) The effective date of the suspension;

8 (iii) The suspension periods to which the person may be subject as  
9 provided in subsection (4) (a) of this section;

10 (iv) The procedures for obtaining restricted noncommercial  
11 vehicle driving privileges;

12 (v) The rights of the person to request an administrative hearing  
13 on the suspension and that if an administrative hearing is not  
14 requested within seven (7) days of service of the notice of  
15 suspension the right to contest the suspension shall be waived;

16 (vi) The procedures for obtaining an administrative hearing on  
17 the suspension;

18 (vii) The right to judicial review of the hearing officer's  
19 decision on the suspension and the procedures for seeking such  
20 review.

21 (c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)  
22 of this section, a person who is enrolled in and is a participant in  
23 good standing in a drug court approved by the supreme court drug court  
24 and mental health court coordinating committee under the provisions  
25 of chapter 56, title 19, Idaho Code, shall be eligible for restricted  
26 noncommercial driving privileges for the purpose of getting to and from  
27 work, school or an alcohol treatment program, which may be granted by  
28 the presiding judge of the drug court, provided that the offender has  
29 served a period of absolute suspension of driving privileges of at least  
30 forty-five (45) days, that an ignition interlock device is installed on  
31 each of the motor vehicles owned or operated, or both, by the offender  
32 and that the offender has shown proof of financial responsibility as  
33 defined and in the amounts specified in section 49-117, Idaho Code,  
34 provided that the restricted noncommercial driving privileges may be  
35 continued if the offender successfully completes the drug court, and  
36 that the court may revoke such privileges for failure to comply with the  
37 terms of probation or with the terms and conditions of the drug court  
38 program.

39 (5) Service of suspension by peace officer or the department. If the  
40 driver submits to evidentiary testing after the information in subsection  
41 (2) of this section has been provided and the results of the test indicate  
42 an alcohol concentration or the presence of drugs or other intoxicating  
43 substances in violation of the provisions of section 18-8004, 18-8004C or  
44 18-8006, Idaho Code:

45 (a) The peace officer shall take possession of the person's driver's  
46 license, shall issue a temporary permit which shall be valid for a  
47 period not to exceed thirty (30) days from the date of issuance, and,  
48 acting on behalf of the department, will serve the person with a notice  
49 of suspension in the form and containing the information required  
50 under subsection (4) of this section. The department may serve the

1 person with a notice of suspension if the peace officer failed to issue  
2 the notice of suspension or failed to include the date of service as  
3 provided in subsection (4) (b) of this section.

4 (b) Within five (5) business days following service of a notice of  
5 suspension the peace officer shall forward to the department a copy of  
6 the completed notice of suspension form upon which the date of service  
7 upon the driver shall be clearly indicated, a copy of any completed  
8 temporary permit form along with any confiscated driver's license, a  
9 certified copy or duplicate original of the results of all tests for  
10 alcohol concentration, as shown by analysis of breath administered  
11 at the direction of the peace officer, and a sworn statement of the  
12 officer, which may incorporate any arrest or incident reports relevant  
13 to the arrest and evidentiary testing setting forth:

14 (i) The identity of the person;

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

16 (iii) Stating the officer's legal cause to believe that the person  
17 had been driving or was in actual physical control of a motor  
18 vehicle while under the influence of alcohol, drugs or other  
19 intoxicating substances in violation of the provisions of section  
20 18-8004, 18-8004C or 18-8006, Idaho Code;

21 (iv) That the person was advised of the consequences of taking and  
22 failing the evidentiary test as provided in subsection (2) of this  
23 section;

24 (v) That the person was lawfully arrested;

25 (vi) That the person was tested for alcohol concentration, drugs  
26 or other intoxicating substances as provided in this chapter, and  
27 that the results of the test indicated an alcohol concentration  
28 or the presence of drugs or other intoxicating substances in  
29 violation of the provisions of section 18-8004, 18-8004C or  
30 18-8006, Idaho Code.

31 If an evidentiary test of blood or urine was administered rather than  
32 a breath test, the peace officer or the department shall serve the  
33 notice of suspension once the results are received. The sworn statement  
34 required in this subsection shall be made on forms in accordance with  
35 rules adopted by the department.

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

40 (6) Additional tests. After submitting to evidentiary testing at  
41 the request of the peace officer, the person may, when practicable, at  
42 his own expense, have additional tests for alcohol concentration or for  
43 the presence of drugs or other intoxicating substances made by a person of  
44 his own choosing. The person's failure or inability to obtain additional  
45 tests shall not preclude admission of the results of evidentiary tests  
46 administered at the direction of the peace officer unless additional testing  
47 was denied by the peace officer.

48 (7) Administrative hearing on suspension. A person who has been served  
49 with a notice of suspension after submitting to an evidentiary test may  
50 request an administrative hearing on the suspension before a hearing officer

1 designated by the department. The request for hearing shall be in writing  
2 and must be received by the department within seven (7) calendar days of  
3 the date of service upon the person of the notice of suspension, and shall  
4 include what issue or issues shall be raised at the hearing. The date on  
5 which the hearing request was received shall be noted on the face of the  
6 request.

7 If a hearing is requested, the hearing shall be held within twenty (20)  
8 days of the date the hearing request was received by the department unless  
9 this period is, for good cause shown, extended by the hearing officer for  
10 one ten (10) day period. Such extension shall not operate as a stay of the  
11 suspension and any temporary permit shall expire thirty (30) days after  
12 service of the notice of suspension, notwithstanding an extension of the  
13 hearing date beyond such thirty (30) day period. Written notice of the date  
14 and time of the hearing shall be sent to the party requesting the hearing at  
15 least seven (7) days prior to the scheduled hearing date. The department  
16 may conduct all hearings by telephone if each participant in the hearing has  
17 an opportunity to participate in the entire proceeding while it is taking  
18 place.

19 The hearing shall be recorded. The sworn statement of the arresting  
20 officer, and the copy of the notice of suspension and any temporary permit  
21 issued by the officer shall be admissible at the hearing without further  
22 evidentiary foundation. The results of any tests for alcohol concentration  
23 or the presence of drugs or other intoxicating substances by analysis of  
24 blood, urine or breath administered at the direction of the peace officer  
25 and the records relating to calibration, certification, approval or quality  
26 control pertaining to equipment utilized to perform the tests shall be  
27 admissible as provided in section 18-8004(4), Idaho Code. The arresting  
28 officer shall not be required to participate unless directed to do so by a  
29 subpoena issued by the hearing officer.

30 The burden of proof shall be on the person requesting the hearing.  
31 The hearing officer shall not vacate the suspension unless he finds, by a  
32 preponderance of the evidence, that:

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

34 (b) The officer did not have legal cause to believe the person had  
35 been driving or was in actual physical control of a vehicle while under  
36 the influence of alcohol, drugs or other intoxicating substances in  
37 violation of the provisions of section 18-8004, 18-8004C or 18-8006,  
38 Idaho Code; or

39 (c) The test results did not show an alcohol concentration or the  
40 presence of drugs or other intoxicating substances in violation of  
41 section 18-8004, 18-8004C or 18-8006, Idaho Code; or

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

47 (e) The person was not informed of the consequences of submitting to  
48 evidentiary testing as required in subsection (2) of this section.

49 If the hearing officer finds that the person has not met his burden of proof,  
50 he shall sustain the suspension. The hearing officer shall make findings of

1 fact and conclusions of law on each issue and shall enter an order vacating  
2 or sustaining the suspension. If the suspension is vacated, the person's  
3 driver's license, unless unavailable by reason of an existing suspension,  
4 revocation, cancellation, disqualification or denial shall be returned  
5 to him. The findings of fact, conclusions of law and order entered by the  
6 hearing officer shall be considered a final order pursuant to the provisions  
7 of chapter 52, title 67, Idaho Code, except that motions for reconsideration  
8 of such order shall be allowed and new evidence can be submitted.

9 The facts as found by the hearing officer shall be independent of  
10 the determination of the same or similar facts in the adjudication of any  
11 criminal charges arising out of the same occurrence. The disposition  
12 of those criminal charges shall not affect the suspension required to be  
13 imposed under the provisions of this section. If a license is suspended  
14 under this section and the person is also convicted on criminal charges  
15 arising out of the same occurrence for a violation of the provisions of  
16 section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension  
17 under this section and the suspension imposed pursuant to the provisions of  
18 section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of  
19 suspension shall run concurrently, with the total period of suspension not  
20 to exceed the longer of the applicable suspension periods, unless the court  
21 ordering the suspension in the criminal case orders to the contrary.

22 (8) Judicial review. A party aggrieved by the decision of the hearing  
23 officer may seek judicial review of the decision in the manner provided for  
24 judicial review of final agency action provided in chapter 52, title 67,  
25 Idaho Code.

26 (9) Restricted noncommercial vehicle driving privileges. A person  
27 served with a notice of suspension for ninety (90) days pursuant to this  
28 section may apply to the department for restricted noncommercial vehicle  
29 driving privileges, to become effective after the thirty (30) day absolute  
30 suspension has been completed. The request may be made at any time after  
31 service of the notice of suspension. Restricted noncommercial vehicle  
32 driving privileges will be issued for the person to travel to and from work  
33 and for work purposes not involving operation of a commercial vehicle,  
34 to attend an alternative high school, work on a GED, for postsecondary  
35 education, or to meet the medical needs of the person or his family if the  
36 person is eligible for restricted noncommercial vehicle driving privileges.  
37 Any person whose driving privileges are suspended under the provisions of  
38 this chapter may be granted privileges to drive a noncommercial vehicle but  
39 shall not be granted privileges to operate a commercial motor vehicle.

40 (10) Rules. The department may adopt rules under the provisions  
41 of chapter 52, title 67, Idaho Code, deemed necessary to implement the  
42 provisions of this section.