

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1694

Bill Subtitle: CONCERNING THE USE OF AN INTERLOCK DEVICE FOR PERSONS CHARGED WITH DRIVING WHILE INTOXICATED.

Basic Change :

Sponsors: Representative Gillam and Senator J. Woods

Current law for driving while intoxicated 2nd and 3rd offenses allows for the issuance of interlock restricted permit after 45 days. Also, current law authorizes the department, at its discretion, to extend the interlock restricted permit for one year after the person would otherwise be eligible for reinstatement. This bill would provide the option of an interlock restricted license (L Restriction) for 2nd and 3rd offenses immediately and would eliminate the 45 day waiting period. The Office of Driver Services (Driver Services) would no longer be required to issue interlock restricted permits. The bill also removes the extended 1 year interlock period from being administered by Driver Services and gives that authority to the courts to administer.

Revenue Impact :

None

Taxpayer Impact :

Taxpayers with 2nd and 3rd offenses for driving while intoxicated would no longer be issued restricted permits and would be able to drive immediately upon the installment of an interlock device in their vehicle and the issuance of an interlock restricted license.

Resources Required :

None

Time Required :

None

Procedural Changes :

Driver Services hearing officers would no longer be required to issue interlock restricted permits for driving while intoxicated 2nd and 3rd offenses.

Other Comments :

The bill does not contain an emergency clause or effective date.

Legal Analysis :

HB1694 amends the ignition interlock device restricted license provisions of § 5-65-104 for repeat DWI offenses. Under existing law, a person arrested for a repeat offense of DWI, i.e. DWI, 2nd Offense, or DWI, 3rd Offense, must have his or her driving privileges suspended for 45 days before the person is eligible to apply for an ignition interlock device restricted license. Also under existing law, if the person is granted an ignition interlock license by DFA, DFA must also restrict the person's driving to allow driving only for the following purposes: (1) employment; (2) school; (3) alcohol education; and (4) ignition interlock service.

Under HB1694, the 45-day wait period is repealed as well as the driving restrictions. In other words,

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DFA may issue an ignition interlock license without driving restrictions to a repeat DWI offender that is effective on the first day of the person's driver's license suspension period.

The change in Arkansas law proposed by HB1694 appears to be the result of amendments to the federal minimum penalties for repeat DWI offenders under 23 U.S.C. § 164, as amended by Pub.L. 112-141, § 1403(a)(3). This federal law provides federal funds to states that adopt the minimum federal requirements for repeat DWI offenders. In the federal amendment to 23 U.S.C. § 164, Congress repealed the 45-day wait period as well as the license restriction provisions.

One concern of HB1694 is that the bill does not state whether or not DFA should apply the bill retroactively to persons that have had their licenses suspended for a repeat DWI offense prior to when the bill becomes law. If HB1694 becomes law, DFA anticipates that thousands of repeat DWI offenders will apply to DFA to have their existing ignition interlock licenses modified pursuant to the new provisions of HB1694.

Pub.L. 112-141 became effective on October 1, 2012. Therefore, if the legislature intends that HB1694 applies retroactively to offenses that occurred before HB1694's effective date, HB1694 should clarify that the bill only applies to offenses that occurred after the effective date of Pub.L. 112-141, i.e., October 1, 2012.

Conversely, if the legislature intends that HB1694 should apply prospectively, then the bill should be amended to state that the bill applies only to offenses committed after the effective date of HB1694.

This bill does not have an emergency clause or effective date.