

2024 Regular Session

HOUSE BILL NO. 776

BY REPRESENTATIVES BRYANT, BACALA, BOYER, COX, HORTON, KNOX,
LAFLEUR, MOORE, VENTRELLA, VILLIO, AND WALTERS

DWI: Provides relative to operating a vehicle while intoxicated

1 AN ACT

2 To amend and reenact R.S. 14:32.1(A)(1) and (3) through (5), 32.8(A)(2)(a) and (c) through
3 (e), 39.1(A)(1) and (3), 39.2(A)(1) and (3), 98(A)(1)(introductory paragraph), (a),
4 and (c) and (2), (C)(1)(e) and (3), (E), and (F)(1) and (2), 98.1(Section heading),
5 98.2(Section heading), 98.3(Section heading), 98.4(Section heading), 98.5(B)(4),
6 98.6(A), and 98.7(A), to enact R.S. 14:98(A)(3), and to repeal R.S. 14:32.1(A)(6)
7 and (7), 32.8(A)(2)(f) and (g), 39.1(A)(4) and (5), 39.2(A)(4) and (5), and
8 98(A)(1)(d) and (e), relative to operating a vehicle while intoxicated; to provide
9 relative to changes in terminology; to provide for a definition; to provide relative to
10 elements of certain offenses involving a motor vehicle and the operator of a motor
11 vehicle; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 14:32.1(A)(1) and (3) through (5), 32.8(A)(2)(a) and (c) through (e),
14 39.1(A)(1) and (3), 39.2(A)(1) and (3), 98(A)(1)(introductory paragraph), (a), and (c) and
15 (2), (C)(1)(e) and (3), (E), and (F)(1) and (2), 98.1(Section heading), 98.2(Section heading),
16 98.3(Section heading), 98.4(Section heading), 98.5(B)(4), 98.6(A), and 98.7(A) are hereby
17 amended and reenacted and R.S. 14:98(A)(3) is hereby enacted to read as follows:

18 §32.1. Vehicular homicide

19 A. Vehicular homicide is the killing of a human being caused proximately
20 or caused directly by an offender engaged in the operation of, or in actual physical

1 control of, any motor vehicle, aircraft, watercraft, or other means of conveyance,
2 whether or not the offender had the intent to cause death or great bodily harm,
3 whenever any of the following conditions exists and such condition was a
4 contributing factor to the killing:

5 (1) The operator is ~~under the influence of~~ impaired by alcoholic beverages
6 as determined by chemical tests administered under the provisions of R.S. 32:662.

7 * * *

8 (3)(a) The operator is ~~under the influence of any controlled dangerous~~
9 ~~substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964~~ impaired
10 by any other drug, combination of drugs, or combination of alcohol and drugs.

11 (b) As used in this Section, the term "drug" means any substance or
12 combination of substances that, when taken into the human body, can impair the
13 ability of the person to operate a vehicle safely.

14 (4) The operator is ~~under the influence of~~ impaired by alcoholic beverages.

15 (5)(a) ~~The operator is under the influence of a combination of alcohol and~~
16 ~~one or more drugs which are not controlled dangerous substances and which are~~
17 ~~legally obtainable with or without a prescription.~~

18 (b) ~~It shall be an affirmative defense to any charge under this Paragraph~~
19 ~~pursuant to this Section that the label on the container of the prescription drug or the~~
20 ~~manufacturer's package of the drug does not contain a warning against combining~~
21 ~~the medication with alcohol.~~

22 (6) ~~The operator is under the influence of one or more drugs which are not~~
23 ~~controlled dangerous substances and which are legally obtainable with or without a~~
24 ~~prescription and the influence is caused by the operator knowingly consuming~~
25 ~~quantities of the drug or drugs which substantially exceed the dosage prescribed by~~
26 ~~the physician or the dosage recommended by the manufacturer of the drug.~~

27 (7) The operator's blood has any detectable amount of any controlled
28 dangerous substance listed in Schedule I, II, III, or IV as set forth in R.S. 40:964, or

1 a metabolite of such controlled dangerous substance, that has not been medically
2 ordered or prescribed for the individual.

3 * * *

4 §32.8. Third degree feticide

5 A. Third degree feticide is:

6 * * *

7 (2) The killing of an unborn child caused proximately or caused directly by
8 an offender engaged in the operation of, or in actual physical control of, any motor
9 vehicle, aircraft, vessel, or other means of conveyance whether or not the offender
10 had the intent to cause death or great bodily harm whenever any of the following
11 conditions exist and such condition was a contributing factor to the killing:

12 (a) The offender is ~~under the influence of~~ impaired by alcoholic beverages
13 as determined by chemical tests administered under the provisions of R.S. 32:662.

14 * * *

15 (c)(i) The offender is ~~under the influence of any controlled dangerous~~
16 ~~substance listed in Schedule I, H, III, IV, or V as set forth in R.S. 40:964~~ impaired
17 by any other drug, combination of drugs, or combination of alcohol and drugs.

18 (ii) As used in this Section, the term "drug" means any substance or
19 combination of substances that, when taken into the human body, can impair the
20 ability of the person to operate a vehicle safely.

21 (d) The offender is ~~under the influence of~~ impaired by alcoholic beverages.

22 (e)(i) ~~The offender is under the influence of a combination of alcohol and~~
23 ~~one or more drugs which are not controlled dangerous substances and which are~~
24 ~~legally obtainable with or without a prescription.~~

25 (ii) ~~It shall be an affirmative defense to any charge under this Subparagraph~~
26 ~~that the label on the container of the prescription drug or the manufacturer's package~~
27 ~~of the drug does not contain a warning against combining the medication with~~
28 ~~alcohol.~~

1 ~~(f) The offender is under the influence of one or more drugs which are not~~
2 ~~controlled dangerous substances and which are legally obtainable with or without a~~
3 ~~prescription and the influence is caused by the offender's knowingly consuming~~
4 ~~quantities of the drug or drugs which substantially exceed the dosage prescribed by~~
5 ~~the physician or the dosage recommended by the manufacturer of the drug.~~

6 (g) The operator's blood has any detectable amount of any controlled
7 dangerous substance listed in Schedule I, II, III, or IV as set forth in R.S. 40:964, or
8 a metabolite of such controlled dangerous substance, that has not been medically
9 ordered or prescribed for the individual.

10 * * *

11 §39.1. Vehicular negligent injuring

12 A. Vehicular negligent injuring is the inflicting of any injury upon the person
13 of a human being when caused proximately or caused directly by an offender
14 engaged in the operation of, or in actual physical control of, any motor vehicle,
15 aircraft, watercraft, or other means of conveyance whenever any of the following
16 conditions exists:

17 (1) The offender is ~~under the influence of~~ impaired by alcoholic beverages.

18 * * *

19 (3)(a) The offender is ~~under the influence of any controlled dangerous~~
20 ~~substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964~~ impaired
21 by any other drug, combination of drugs, or combination of alcohol and drugs.

22 (b) As used in this Section, the term "drug" means any substance or
23 combination of substances that, when taken into the human body, can impair the
24 ability of the person to operate a vehicle safely.

25 ~~(4)(a) The operator is under the influence of a combination of alcohol and~~
26 ~~one or more drugs which are not controlled dangerous substances and which are~~
27 ~~legally obtainable with or without a prescription.~~

28 (b) ~~It shall be an affirmative defense to any charge under this Paragraph~~
29 ~~pursuant to this Section that the label on the container of the prescription drug or the~~

1 ~~manufacturer's package of the drug does not contain a warning against combining~~
2 ~~the medication with alcohol.~~

3 (5) ~~The operator is under the influence of one or more drugs which are not~~
4 ~~controlled dangerous substances and which are legally obtainable with or without a~~
5 ~~prescription and the influence is caused by the operator knowingly consuming~~
6 ~~quantities of the drug or drugs which substantially exceed the dosage prescribed by~~
7 ~~the physician or the dosage recommended by the manufacturer of the drug.~~

8 * * *

9 §39.2. First degree vehicular negligent injuring

10 A. First degree vehicular negligent injuring is the inflicting of serious bodily
11 injury upon the person of a human being when caused proximately or caused directly
12 by an offender engaged in the operation of, or in actual physical control of, any
13 motor vehicle, aircraft, watercraft, or other means of conveyance whenever any of
14 the following conditions exists:

15 (1) The offender is ~~under the influence of~~ impaired by alcoholic beverages.

16 * * *

17 (3)(a) The offender is ~~under the influence of any controlled dangerous~~
18 ~~substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964, or any~~
19 ~~abused substance~~ impaired by any other drug, combination of drugs, or combination
20 of alcohol and drugs.

21 (b) As used in this Section, the term "drug" means any substance or
22 combination of substances that, when taken into the human body, can impair the
23 ability of the person to operate a vehicle safely.

24 (4)(a) ~~The operator is under the influence of a combination of alcohol and~~
25 ~~one or more drugs which are not controlled dangerous substances and which are~~
26 ~~legally obtainable with or without a prescription.~~

27 (b) ~~It shall be an affirmative defense to any charge under this Paragraph~~
28 ~~pursuant to this Section that the label on the container of the prescription drug or the~~

1 ~~manufacturer's package of the drug does not contain a warning against combining~~
2 ~~the medication with alcohol.~~

3 ~~(5) The operator is under the influence of one or more drugs which are not~~
4 ~~controlled dangerous substances and which are legally obtainable with or without a~~
5 ~~prescription and the influence is caused by the operator knowingly consuming~~
6 ~~quantities of the drug or drugs which substantially exceed the dosage prescribed by~~
7 ~~the physician or the dosage recommended by the manufacturer of the drug.~~

8 * * *

9 §98. Operating a vehicle while ~~intoxicated~~ impaired

10 A.(1) The crime of operating a vehicle while ~~intoxicated~~ impaired is the
11 operating of any motor vehicle, aircraft, watercraft, vessel, or other means of
12 conveyance when any of the following conditions exist:

13 (a) The operator is ~~under the influence of~~ impaired by alcoholic beverages.

14 * * *

15 (c) The operator is ~~under the influence of any controlled dangerous substance~~
16 ~~listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964~~ impaired by any other
17 ~~drug, combination of drugs, or combination of alcohol and drugs.~~

18 ~~(d)(i) The operator is under the influence of a combination of alcohol and~~
19 ~~one or more drugs that are not controlled dangerous substances and that are legally~~
20 ~~obtainable with or without a prescription.~~

21 ~~(ii) It shall be an affirmative defense to any charge under this Subparagraph~~
22 ~~that the label on the container of the prescription drug or the manufacturer's package~~
23 ~~of the drug does not contain a warning against combining the medication with~~
24 ~~alcohol.~~

25 ~~(e)(i) The operator is under the influence of one or more drugs that are not~~
26 ~~controlled dangerous substances and that are legally obtainable with or without a~~
27 ~~prescription.~~

28 ~~(ii) It shall be an affirmative defense to any charge under this Subparagraph~~
29 ~~that the operator did not knowingly consume quantities of the drug or drugs that~~

1 ~~substantially exceed the dosage prescribed by the physician or the dosage~~
2 ~~recommended by the manufacturer of the drug.~~

3 (2) A valid driver's license shall not be an element of the offense, and the
4 lack thereof shall not be a defense to a prosecution for operating a vehicle while
5 ~~intoxicated~~ impaired.

6 (3) As used in this Section, the term "drug" means any substance or
7 combination of substances that, when taken into the human body, can impair the
8 ability of the person to operate a vehicle safely.

9 * * *

10 C.(1) For purposes of determining whether a defendant has a prior
11 conviction for a violation of this Section, a conviction under any of the following
12 shall constitute a prior conviction:

13 * * *

14 (e) A law of any state or an ordinance of a municipality, town, or similar
15 political subdivision of another state that prohibits the operation of any motor
16 vehicle, aircraft, watercraft, vessel, or other means of conveyance ~~while intoxicated,~~
17 while impaired, or while under the influence of alcohol, drugs, or any controlled
18 dangerous substance, or as otherwise provided by R.S. 13:1894.1.

19 * * *

20 (3) For purposes of this Section, a prior conviction shall not include a
21 conviction for an offense under this Section, a conviction for an offense under R.S.
22 14:39.1, or a conviction under the laws of any state or an ordinance of a
23 municipality, town, or similar political subdivision of another state which prohibits
24 the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of
25 conveyance ~~while intoxicated,~~ while impaired, or while under the influence of
26 alcohol, drugs, or any controlled dangerous substance, or as otherwise provided by
27 R.S. 13:1894.1, if committed more than ten years prior to the commission of the
28 crime for which the defendant is being tried, and such conviction shall not be
29 considered in the assessment of penalties in this Section. However, periods of time

1 during which the offender was awaiting trial, under an order of attachment for failure
2 to appear, or on probation or parole for an offense described in this Paragraph, or
3 periods of time during which an offender was incarcerated in a penal institution in
4 this or any other state for any offense, including an offense described in Paragraph
5 (1) of this Subsection, shall be excluded in computing the ten-year period.

6 * * *

7 E. The legislature hereby finds and declares that conviction of a third or
8 subsequent offense of operating while ~~intoxicated~~ impaired is presumptive evidence
9 of the existence of a substance abuse disorder that poses a serious threat to the health
10 and safety of the public. Further, the legislature finds that there are successful
11 treatment methods available for treatment of addictive disorders.

12 F.(1) On a third or subsequent conviction of operating while ~~intoxicated~~
13 impaired pursuant to this Section, in addition to any other sentence, the court shall
14 order, upon motion of the prosecuting district attorney, that the vehicle being
15 operated by the offender at the time of the offense be seized and impounded, and be
16 sold at auction in the same manner and under the same conditions as executions of
17 writs of seizure and sale as provided in Book V, Title II, Chapter 4 of the Code of
18 Civil Procedure.

19 (2) The vehicle shall be exempt from sale if it was stolen, or if the driver of
20 the vehicle at the time of the violation was not the owner and the owner did not know
21 that the driver was operating the vehicle while ~~intoxicated~~ impaired. If this
22 exemption is applicable, the vehicle shall not be released from impoundment until
23 such time as towing and storage fees have been paid. In addition, the vehicle shall
24 be exempt from sale if all towing and storage fees are paid by a valid lienholder.

25 * * *

26 §98.1. Operating while ~~intoxicated~~ impaired; first offense; penalties

27 * * *

28 §98.2. Operating while ~~intoxicated~~ impaired; second offense; penalties

29 * * *

1 §98.3. Operating while ~~intoxicated~~ impaired; third offense; penalties

2 * * *

3 §98.4. Operating while ~~intoxicated~~ impaired; fourth offense; penalties

4 * * *

5 §98.5. Special provisions and definitions

6 * * *

7 B.

8 * * *

9 (4) An offender who has been convicted of any second violation of any state
10 or local law or ordinance prohibiting operating a vehicle while ~~intoxicated~~ impaired,
11 committed within five years of the commission of any prior operating while
12 ~~intoxicated~~ impaired violation, shall not be eligible for home incarceration until the
13 offender has first served a minimum of forty-eight consecutive hours of
14 imprisonment.

15 * * *

16 §98.6. Underage operating while ~~intoxicated~~ impaired

17 A. The crime of underage operating a vehicle while ~~intoxicated~~ impaired is
18 the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of
19 conveyance when the operator's blood alcohol concentration is 0.02 percent or more
20 by weight based on grams of alcohol per one hundred cubic centimeters of blood, if
21 the operator is under the age of twenty-one.

22 * * *

23 §98.7. Unlawful refusal to submit to chemical tests; arrests for driving while
24 ~~intoxicated~~ impaired

25 A. No person under arrest for a violation of R.S. 14:98, ~~98.1~~ 98.6, or any
26 other law or ordinance that prohibits operating a vehicle while ~~intoxicated~~ impaired,
27 may refuse to submit to a chemical test when requested to do so by a law
28 enforcement

1 officer if he has refused to submit to such test on two previous and separate
2 occasions of any such violation.

3 * * *

4 Section 2. R.S. 14:32.1(A)(6) and (7), 32.8(A)(2)(f) and (g), 39.1(A)(4) and (5),
5 39.2(A)(4) and (5), and 98(A)(1)(d) and (e) are hereby repealed in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 776 Engrossed

2024 Regular Session

Bryant

Abstract: Provides relative to the terminology and elements of particular offenses involving operation of a vehicle when the offender is intoxicated.

Present law provides for the offenses of vehicular homicide (R.S. 14:32.1), third degree feticide (R.S. 14:32.8), vehicular negligent injuring (R.S. 14:39.1), first degree vehicular negligent injuring (R.S. 14:39.2), and operating a vehicle while intoxicated (R.S. 14:98).

Proposed law retains present law in general but amends certain provisions of each present law as follows:

- (1) Changes terminology of "under the influence" to "impaired".
- (2) Defines the term "drug" to mean any substance or combination of substances that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.
- (3) Removes the element that the operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.
- (4) Removes an affirmative defense to any charge under present law that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.
- (5) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

Present law (R.S. 14:98, 98.1, 98.2, 98.3, 98.4, 98.5, 98.6) provides for the offenses of operating a vehicle while intoxicated.

Proposed law changes the terminology used in present law from "under the influence" to "impaired".

Present law (R.S. 14:98.7) provides for the unlawful refusal to submit to chemical tests during arrests for driving while intoxicated.

Proposed law changes the terminology used in present law from "under the influence" to "impaired".

(Amends R.S. 14:32.1(A)(1) and (3)-(5), 32.8(A)(2)(a) and (c)-(e), 39.1(A)(1) and (3), 39.2(A)(1) and (3), 98(A)(1)(intro. para.), (a), and (c) and (2), (C)(1)(e) and (3), (E), and (F)(1) and (2), 98.1(Section heading), 98.2(Section heading), 98.3(Section heading), 98.4(Section heading), 98.5(B)(4), 98.6(A), and 98.7(A); Adds R.S. 14:98(A)(3); Repeals R.S. 14:32.1(A)(6) and (7), 32.8(A)(2)(f) and (g), 39.1(A)(4) and (5), 39.2(A)(4) and (5), and 98(A)(1)(d) and (e))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Relative to the unlawful refusal to submit to chemical tests, change the present law reference from the first offense of operating a vehicle while intoxicated (R.S. 14:98.1) to underage operating a vehicle while intoxicated (R.S. 14:98.6).