

Regular Session, 2013

HOUSE BILL NO. 424

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DWI: Provides relative to operating a vehicle while intoxicated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

AN ACT

To amend and reenact R.S. 13:5304(O), R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a), and R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), (H)(3), and (I)(1)(a) and (b) and to enact R.S. 14:98(D)(4) and (E)(5), relative to operating a vehicle while intoxicated; to provide relative to the eligibility for participation in a drug division probation program by persons convicted of a third or subsequent offense of operating a vehicle while intoxicated; to provide relative to the sentencing of persons convicted of a third or subsequent offense of operating a vehicle while intoxicated; to provide relative to driver's licenses; to extend the time period within which to request an administrative hearing regarding a driver's license suspension after an arrest for operating a vehicle while intoxicated; to provide with respect to installation of ignition interlock devices in motor vehicles owned by certain persons; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:5304(O) is hereby amended and reenacted to read as follows:

§5304. The drug division probation program

* * *

O.(1) The provisions of Code of Criminal Procedure Article 893(A) and (D) which prohibit the court from suspending or deferring the imposition of sentences for violations of the Uniform Controlled Dangerous Substances Law or for violations

1 of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to
2 prosecutions in drug division probation programs as authorized by this Chapter.

3 (2) The minimum mandatory sentence provided for in R.S. 14:98(D)(1) and
4 (E)(1), which shall otherwise be imposed without benefit of probation, parole, or
5 suspension of sentence, may be suspended if the offender is prosecuted in a drug
6 division probation program pursuant to the provisions of this Chapter.

7 Section 2. R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a) are hereby amended and
8 reenacted and R.S. 14:98(D)(4) and (E)(5) are hereby enacted to read as follows:

9 §98. Operating a vehicle while intoxicated

10 * * *

11 D.(1)(a) On a conviction of a third offense, notwithstanding any other
12 provision of law to the contrary and regardless of whether the offense occurred
13 before or after an earlier conviction, the offender shall be imprisoned with or without
14 hard labor for not less than one year nor more than five years and shall be fined two
15 thousand dollars. ~~One~~ Except as provided in Paragraph (4) of this Subsection, one
16 year of the sentence of imprisonment shall be imposed without benefit of probation,
17 parole, or suspension of sentence. The court, in its discretion, may suspend all or
18 any part of the remainder of the sentence of imprisonment. If any portion of the
19 sentence is suspended, except for a suspension of sentence pursuant to the provisions
20 of Paragraph (4) of this Subsection, the offender shall be placed on supervised
21 probation with the Department of Public Safety and Corrections, division of
22 probation and parole, for a period of time equal to the remainder of the sentence of
23 imprisonment, which probation shall commence on the day after the offender's
24 release from custody.

25 * * *

26 (4) Notwithstanding the provisions of Subparagraph (1)(a) of this
27 Subsection, the one-year period described in Paragraph (1) of this Subsection which
28 shall otherwise be imposed without the benefit of probation, parole, or suspension
29 of sentence, may also be suspended if the offender is accepted into a drug division

1 probation program pursuant to R.S. 13:5301 et seq. The provisions of Paragraph (2)
 2 of this Subsection shall also be applicable to any offender whose sentence is served
 3 with the benefit of probation, parole, or suspension of sentence pursuant to the
 4 provisions of this Paragraph.

5 E.(1)(a) Except as otherwise provided in Subparagraph (4)(b) of this
 6 Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any
 7 other provision of law to the contrary and regardless of whether the fourth offense
 8 occurred before or after an earlier conviction, the offender shall be imprisoned with
 9 or without hard labor for not less than ten years nor more than thirty years and shall
 10 be fined five thousand dollars. ~~Two~~ Except as provided in Paragraph (5) of this
 11 Subsection, two years of the sentence of imprisonment shall be imposed without
 12 benefit of parole, probation, or suspension of sentence. The court, in its discretion,
 13 may suspend all or any part of the remainder of the sentence of imprisonment. If any
 14 portion of the sentence is suspended, except for a suspension of sentence pursuant
 15 to the provisions of Paragraph (5) of this Subsection, the offender shall be placed on
 16 supervised probation with the Department of Public Safety and Corrections, division
 17 of probation and parole, for a period of time not to exceed five years, which
 18 probation shall commence on the day after the offender's release from custody.

19 * * *

20 (5)(a) Notwithstanding the provisions of Subparagraph (1)(a) of this
 21 Subsection, the two-year period described in Paragraph (1) of this Subsection which
 22 shall otherwise be imposed without the benefit of parole, probation, or suspension
 23 of sentence may also be suspended if the offender is accepted into a drug division
 24 probation program pursuant to R.S. 13:5301 et seq. The provisions of Paragraph (2)
 25 of this Subsection shall also be applicable to any offender whose sentence is served
 26 with the benefit of probation, parole, or suspension of sentence pursuant to the
 27 provisions of this Subparagraph.

28 (b) If the offender has previously participated in a drug division probation
 29 program pursuant to the provisions of Paragraph (D)(4) of this Section, the offender

1 shall not be eligible to serve his sentence with the benefit of probation, parole, or
2 suspension of sentence pursuant to the provisions of Subparagraph (a) of this
3 Paragraph, but shall be imprisoned at hard labor for not less than ten nor more than
4 thirty years, and at least three years of the sentence shall be imposed without benefit
5 of suspension of sentence, probation, or parole.

6 * * *

7 K.

8 * * *

9 (3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection
10 and R.S. 32:414(D)(1)(b), upon conviction of a third or subsequent offense of the
11 provisions of this Section, any motor vehicle, while being operated by the offender,
12 shall be equipped with a functioning ignition interlock device in accordance with the
13 provisions of R.S. 15:306. The ignition interlock device shall remain installed and
14 operative until the offender has completed the requirements of substance abuse
15 treatment and home incarceration, or, if applicable, the requirements of the drug
16 division probation program provided in R.S. 13:5301 et seq., under pursuant to the
17 provisions of Subsections D and E of this Section.

18 * * *

19 Section 3. R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), (H)(3),
20 and (I)(1)(a) and (b) are hereby amended and reenacted to read as follows:

21 §667. Seizure of license; circumstances; temporary license

22 A. When a law enforcement officer places a person under arrest for a
23 violation of R.S. 14:98, R.S. 14:98.1, or a violation of a parish or municipal
24 ordinance that prohibits operating a vehicle while intoxicated, and the person either
25 refuses to submit to an approved chemical test for intoxication, or submits to such
26 test and such test results show a blood alcohol level of 0.08 percent or above by
27 weight or, if the person is under the age of twenty-one years, a blood alcohol level
28 of 0.02 percent or above by weight, the following procedures shall apply:

29 * * *

1 (2) The temporary receipt shall also provide and serve as notice to the person
2 that he has not more than ~~fifteen~~ thirty days from the date of arrest to make written
3 request to the Department of Public Safety and Corrections for an administrative
4 hearing in accordance with the provisions of R.S. 32:668.

5 (3) In a case where a person submits to an approved chemical test for
6 intoxication, but the results of the test are not immediately available, the law
7 enforcement officer shall comply with Paragraphs (1) and (2) of this Subsection, and
8 the person shall have ~~fifteen~~ thirty days from the date of arrest to make written
9 request for an administrative hearing. If after thirty days from the date of arrest the
10 test results have not been received or if the person was twenty-one years of age or
11 older on the date of arrest and the test results show a blood alcohol level of less than
12 0.08 percent by weight, then no hearing shall be held and the license shall be
13 returned without the payment of a reinstatement fee. If the person was under the age
14 of twenty-one years on the date of arrest and the test results show a blood alcohol
15 level of less than 0.02 percent by weight, then no hearing shall be held and the
16 license shall be returned without the payment of a reinstatement fee.

17 * * *

18 B. If such written request is not made by the end of the ~~fifteen-day~~ thirty-day
19 period, the person's license shall be suspended as follows:

20 * * *

21 D.(1) Upon receipt of a request for an administrative hearing, the
22 Department of Public Safety and Corrections shall issue a document extending the
23 temporary license, which shall remain in effect until the completion of administrative
24 suspension, revocation, or cancellation proceedings. The Department of Public
25 Safety and Corrections shall forward the record of the case to the division of
26 administrative law for a hearing within sixty days of the ~~date of arrest~~ receipt of the
27 written request for an administrative hearing.

28 * * *

1 H.

2 * * *

3 (3) Paragraph (1) of this Subsection shall not apply to a person who refuses
4 to submit to an approved chemical test upon a second or subsequent arrest for R.S.
5 14:98 or ~~14:98.1~~ 98.1, or a parish or municipal ordinance that prohibits driving a
6 motor vehicle while ~~operating a vehicle~~ intoxicated. However, this Paragraph shall
7 not apply if the second or subsequent arrest occurs more than ten years after the prior
8 arrest.

9 I.(1) In addition to any other provision of law, an ignition interlock device
10 shall be installed in any motor vehicle operated by any of the following persons
11 whose driver's license has been suspended in connection with the following
12 circumstances as a condition of the reinstatement of such person's driver's license:

13 (a) Any person who has refused to submit to an approved chemical test for
14 intoxication, after being requested to do so, for a second ~~violation~~ arrest of R.S.
15 14:98 or 98.1 or a parish or municipal ordinance that prohibits operating a vehicle
16 while intoxicated and whose driver's license has been suspended in accordance with
17 law.

18 (b) Any person who has submitted to an approved chemical test for
19 intoxication where the results indicate a blood alcohol level of 0.08 percent or above
20 and whose driver's license has been suspended in accordance with the law for a an
21 ~~violation~~ arrest occurring within five years of the first ~~violation~~ arrest.

22 * * *

23 Section 4. The Department of Public Safety and Corrections, public safety services,
24 may promulgate rules and regulations pursuant to the Administrative Procedure Act and
25 subject to the oversight of the House and Senate committees on transportation, highways,
26 and public works, as are necessary to implement the provisions of Section 3 of this Act.

27 Section 5. This Act shall become effective upon signature of the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without the
29 signature of the governor, as provided by Article III, Section 18 of the Constitution of

- 1 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
2 shall become effective on the day following such approval.
-

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)]

Lopinto

HB No. 424

Abstract: Provides that the minimum mandatory sentences for 3rd and subsequent DWI offenders may be suspended if the offender is accepted for participation in a drug division probation program and extends the time period within which to request an administrative hearing regarding a driver's license suspension after an arrest for operating a vehicle while intoxicated.

Present law (R.S. 14:98) provides for the following with respect to persons convicted of a third or subsequent offense of operating a vehicle while intoxicated:

- (1) On a conviction of a third offense, the offender shall be imprisoned for not less than one year nor more than five years and shall be fined \$2,000. One year of the sentence of imprisonment shall be imposed without benefit of parole, probation, or suspension of sentence.
- (2) On a conviction of a fourth or subsequent offense, the offender shall be imprisoned with or without hard labor for not less than 10 years nor more than 30 years and shall be fined \$5,000. Two years of the sentence of imprisonment shall be imposed without benefit of parole, probation, or suspension of sentence.

Present law (R.S. 13:5301, et seq.) allows each district court to establish a drug division probation program and authorizes alcohol- or drug-related offenders to participate in such programs when the offender meets certain criteria.

Proposed law amends present law, relative to the sentencing for a third or subsequent conviction of operating a vehicle while intoxicated, to authorize imposition of the minimum mandatory sentence with benefit of parole, probation, or suspension of sentence if the offender is accepted into a drug division probation program.

Proposed law further provides that if the offender has previously participated in a drug division probation program for a third offense of operating a vehicle while intoxicated, the offender shall not be eligible to serve his sentence with the benefit of parole, probation or suspension of sentence pursuant to the provisions of proposed law for a fourth or subsequent offense, but shall be imprisoned at hard labor for not less than 10 nor more than 30 years, and at least three years of the sentence shall be imposed without benefit of suspension of sentence, probation, or parole.

Present law provides for 15 days from the date of the arrest for operating a vehicle while intoxicated to request an administrative hearing following the issuance of a temporary receipt for a driver's license.

Proposed law extends the time within which to request an administrative hearing from 15 days to 30 days from the date of the arrest.

Present law requires the Dept. of Public Safety and Corrections to forward the record of the case to the division of administrative law for a hearing within 60 days of the date of the arrest.

Proposed law amends present law to require DPS&C to forward the record of the case to the division of administrative law for a hearing within 60 days of the date of receipt of the written request for an administrative hearing.

Present law requires the installation of an ignition interlock device on any motor vehicle operated by the following:

(1) Any person whose driver's license was suspended after such person refused to submit to a chemical test for intoxication for a second violation of operating a vehicle while intoxicated whose license was suspended in accordance with present law.

(2) Any person who submitted to a chemical test where the results indicated a 0.08 percent blood alcohol content level and whose license was suspended for a violation occurring within five years of the first violation.

Proposed law makes present law applicable to an arrest.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 13:5304(O), R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a), and R.S. 32:667(A)(2) and (3), (B)(intro. para.), (D)(1), (H)(3), and (I)(1)(a) and (b); Adds R.S. 14:98(D)(4) and (E)(5))

Summary of Amendments Adopted by House

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

1. Amended provisions requiring the installation of ignition interlock devices on vehicles operated by certain persons whose driver's license was suspended following an arrest for operating a vehicle while intoxicated.