

CONFERENCE COMMITTEE REPORT
House Bill No. 424 By Representative Lopinto

June 5, 2013

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 424 by Representative Lopinto, recommend the following concerning the Reengrossed bill:

1. That Senate Committee Amendments Nos. 1 through 3 proposed by the Senate Committee on Judiciary B and adopted by the Senate on May 29, 2013, be rejected.
2. That Senate Floor Amendments Nos. 1 through 5 proposed by Senator Claitor and adopted by the Senate on May 31, 2013, be rejected.
3. That Senate Floor Amendment No.1 proposed by Senator Martiny and adopted by the Senate on May 31, 2013, be rejected.
4. That the following amendments to the Reengrossed bill be adopted:

AMENDMENT NO. 1

On page 1, line 2, after "(K)(3)(a)," delete "and"

AMENDMENT NO. 2

On page 1, line 4, after "(b)" and before "and" insert "and 668(A)(introductory paragraph)"

AMENDMENT NO. 3

On page 1, line 12, after "persons;" and before "and" insert "to provide for procedures following revocation or denial of license;"

AMENDMENT NO. 4

On page 4, line 20, after "(b)" and before "are" insert "and 668(A)(introductory paragraph)"

AMENDMENT NO. 5

On page 6, between lines 22 and 23 insert the following:

"§668. Procedure following revocation or denial of license; hearing; court review; review of final order; restricted licenses

A. Upon suspending the license or permit to drive or nonresident operating privilege of any person or upon determining that the issuance of a license or permit shall be denied to the person, the Department of Public Safety and Corrections shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing based upon the department's records or other evidence admitted at the hearing, and in the same manner and under the same conditions as is provided in R.S. 32:414 for notification and hearings in the case of suspension of licenses, except that no law enforcement officer shall be compelled by such person to appear or testify at such hearing and there shall be a rebuttable presumption that any inconsistencies in evidence submitted by the department and admitted at the

hearing shall be strictly construed in favor of the person regarding the revocation, suspension, or denial of license. The scope of such a hearing for the purposes of this Part shall be limited to the following issues:

* * *

Respectfully submitted,

Representative Joseph P. Lopinto

Senator Daniel "Danny" Martiny

Representative Steven Pylant

Senator Dan Claitor

Representative Walt Leger III

Senator Jean-Paul J. Morrell

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)]

CONFERENCE COMMITTEE REPORT DIGEST

House Bill No. 424 by Representative Lopinto

Keyword and oneliner of the instrument as it left the House

DWI: Provides relative to operating a vehicle while intoxicated

Report rejects Senate amendments which would have:

1. Removed prohibition on compulsive attendance of law enforcement officers at license revocation hearings.
2. Removed provisions changing the deadline for certain administrative hearings to 60 days of the receipt of the written request for the hearing.

Report amends the bill to:

1. Provide that there shall be a rebuttable presumption that any inconsistencies in evidence admitted at a license revocation hearing shall be strictly construed in favor of the person.

Digest of the bill as proposed by the Conference Committee

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.

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.

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 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.

Present law requires DPS&C to notify in writing and afford an opportunity for a hearing, upon request, to persons whose driver's license or permit is suspended or who are denied driving privileges. Such hearing is based upon the department's records or other evidence admitted at the hearing, and in the same manner and under the same conditions as is provided in present law for notification and hearings in the case of suspension of licenses. Provides that the scope of the hearing is limited. Present law provides that no law enforcement officer shall be compelled by such person to appear or testify at such hearings.

Proposed law retains present law and further provides that there shall be a rebuttable presumption that any inconsistencies in evidence submitted by the department and admitted at a license revocation hearing shall be strictly construed in favor of the person regarding the revocation, suspension or denial of license.

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) and 668(A)(intro. para.); Adds R.S. 14:98(D)(4) and (E)(5))