

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.

1 AN ACT

2 To amend and reenact R.S. 13:5304(O), R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a), R.S.
3 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), (H)(3), and (I)(1)(a) and
4 (b) and 668(A)(introductory paragraph) and to enact R.S. 14:98(D)(4) and (E)(5),
5 relative to operating a vehicle while intoxicated; to provide relative to the eligibility
6 for participation in a drug division probation program by persons convicted of a third
7 or subsequent offense of operating a vehicle while intoxicated; to provide relative
8 to the sentencing of persons convicted of a third or subsequent offense of operating
9 a vehicle while intoxicated; to provide relative to driver's licenses; to extend the time
10 period within which to request an administrative hearing regarding a driver's license
11 suspension after an arrest for operating a vehicle while intoxicated; to provide with
12 respect to installation of ignition interlock devices in motor vehicles owned by
13 certain persons; to provide for procedures following revocation or denial of license;
14 and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

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

17 §5304. The drug division probation program

18 * * *

19 O.(1) The provisions of Code of Criminal Procedure Article 893(A) and (D)
20 which prohibit the court from suspending or deferring the imposition of sentences
21 for violations of the Uniform Controlled Dangerous Substances Law or for violations
22 of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to
23 prosecutions in drug division probation programs as authorized by this Chapter.

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

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

7 §98. Operating a vehicle while intoxicated

8 * * *

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

23 * * *

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

1 with the benefit of probation, parole, or suspension of sentence pursuant to the
 2 provisions of this Paragraph.

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

17 * * *

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

26 (b) If the offender has previously participated in a drug division probation
 27 program pursuant to the provisions of Paragraph (D)(4) of this Section, the offender
 28 shall not be eligible to serve his sentence with the benefit of probation, parole, or
 29 suspension of sentence pursuant to the provisions of Subparagraph (a) of this
 30 Paragraph, but shall be imprisoned at hard labor for not less than ten nor more than

1 thirty years, and at least three years of the sentence shall be imposed without benefit
2 of suspension of sentence, probation, or parole.

3 * * *

4 K.

5 * * *

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

15 * * *

16 Section 3. R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), (H)(3),
17 and (I)(1)(a) and (b) and 668(A)(introductory paragraph) are hereby amended and reenacted
18 to read as follows:

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

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

27 * * *

28 (2) The temporary receipt shall also provide and serve as notice to the person
29 that he has not more than ~~fifteen~~ thirty days from the date of arrest to make written

1 request to the Department of Public Safety and Corrections for an administrative
2 hearing in accordance with the provisions of R.S. 32:668.

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

15 * * *

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

18 * * *

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

26 H.

27 * * *

28 (3) Paragraph (1) of this Subsection shall not apply to a person who refuses
29 to submit to an approved chemical test upon a second or subsequent arrest for R.S.
30 14:98 or ~~14:98.1~~ 98.1, or a parish or municipal ordinance that prohibits driving a

1 motor vehicle while ~~operating a vehicle~~ intoxicated. However, this Paragraph shall
2 not apply if the second or subsequent arrest occurs more than ten years after the prior
3 arrest.

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

8 (a) Any person who has refused to submit to an approved chemical test for
9 intoxication, after being requested to do so, for a second ~~violation~~ arrest of R.S.
10 14:98 or 98.1 or a parish or municipal ordinance that prohibits operating a vehicle
11 while intoxicated and whose driver's license has been suspended in accordance with
12 law.

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

17 * * *

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

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

