

HOUSE BILL 4213

By Odom

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 50, relative to providing for the immediate seizure of the driver license of a person driving under the influence of an intoxicant or for refusing a test to determine alcohol and/or drug content and for the administrative review and revocation of such license.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 50, is amended by adding the following language as a new part 9:

§55-50-901. Short Title

This act shall be known and may be cited as the "Tennessee Administrative License Revocation Act of 2008".

§55-50-902. Legislative Findings

The general assembly finds and declares that enactment of this part is necessary:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be safety hazards by driving with any intoxicant, marijuana, narcotic drug, drug producing stimulating effects on the central nervous system, or an excessive concentration of alcohol in their bodies or who refuse to submit to a test or tests for the purpose of determining the drug or alcohol content of such person's blood; and

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of revocation, and an opportunity for a full hearing as quickly as possible.

§55-50-903. Definitions

As used in this part unless the context clearly requires otherwise:

(1) "Alcohol concentration" means either:

(A) grams of alcohol per one hundred (100) milliliters of blood; or;

(B) grams of alcohol per two hundred ten (210) liters of breath

(2) "Alcohol or drug-related enforcement contacts" means any revocation under this part, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs, as shown on the department's records;

(3) "Certificate for Driving" means a certificate issued by the department to an individual who does not satisfy the requirements of §55-50-321(c)(1)(C)(i) or (c)(1)(C)(ii);

(4) "Department" means the Tennessee department of safety;

(5) "Driver license" means any physical document issued to a person authorizing them to operate a motor vehicle in Tennessee, including:

(A) A Driver License;

(B) A Temporary Driver License;

(C) A Certificate for Driving;

(D) A Learner Permit or Intermediate License; or,

(E) Any valid driver license issued by another state or country.

(6) "Driving Privilege" means the privilege of a person to operate a motor vehicle within the state of Tennessee, including any nonresident's operating privilege as defined herein, regardless of whether or not the person has ever been issued a driver license by this or any other State.

(7) "Drugs" includes, but is not limited to, any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system.

(8) "Drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

(9) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;

(10) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(11) "Revocation" means the termination by formal action of the department of a person's privilege to operate a motor vehicle on the highways, which terminated privilege shall not be subject to renewal or restoration except that an application for a new driver license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this part.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada, or another country.

(13) "Temporary Driver License" means a driver license issued by the department to an individual which authorizes the individual to operate a motor vehicle on

the highways for the individual's authorized period of stay in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year.

§55-50-904. Serving Notice

(a) If the breathalyzer test results for a person who is being charged with a violation of §55-10-401(a)(2), §55-10-415, §55-50-405, §39-13-106, §39-13-213(a)(2) or §39-13-218 show an alcohol concentration of eight-hundredths of one percent (.08%) or more for a person age twenty-one (21) or older, two hundredths of one percent (.02%) or more for a person under the age of twenty-one (21), or four hundredths of one percent (.04%) or more for a person operating or having actual physical control of a commercial motor vehicle, the officer, acting on behalf of the department, shall serve the notice of proposed revocation and request for hearing form personally on the person.

(b) If a chemical blood test to detect the presence of alcohol or drugs is performed on a person who is being charged with a violation of §55-10-401(a)(2), §55-10-415, §55-50-405, §39-13-106, §39-13-213(a)(2) or §39-13-218 and the blood sample is submitted to the Tennessee bureau of investigation for testing, the officer, acting on behalf of the department, shall take possession of any driver license issued by a state held by the person and issue an interim permit in compliance with subsection (e).

(c) If a person who is being charged with a violation of §55-10-401(a)(2), §55-10-415, §55-50-405, §39-13-106, §39-13-213(a)(2) or §39-13-218 refuses a test to determine alcohol or drug content, the officer, acting on behalf of the department, shall serve the notice of proposed revocation and request for hearing form personally on the person.

(d) When the law enforcement officer serves the notice of proposed revocation and request for hearing forms the officer shall take possession of any driver license issued by a state which is held by the person.

(e) When the officer takes possession of a valid driver license issued by a state, the officer, acting on behalf of the department, shall issue an interim permit which is valid for up to ninety (90) days after its date of issuance, or until the department revokes the driver's driving privilege, whichever comes first.

(f) Any Tennessee resident who receives an interim permit is authorized to apply for an interim photo identification card which shall be valid for the same period of time as the interim permit. The fee for such interim photo identification card will be the same fee charged for a photo identification card.

(g) Notwithstanding any other provisions of this part, if the department has not made a determination on a person's driving privilege, or if an appeal before an administrative law judge has not been completed prior to the expiration date of the interim permit, the department may issue another interim permit valid for a time to be determined by the department in order for the determination and any hearing to be completed, but in any case for not more than one hundred eighty (180) days.

(h) Only members of the Tennessee highway patrol, law enforcement officers certified by the peace officer standards and training (P.O.S.T.) commission, and state law enforcement officers who have satisfactorily completed a P.O.S.T. approved recruit training program may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license or certificate for driving and issuing a temporary permit as authorized by this section.

§55-50-905 Transmission of Information to the Department

(a) A law enforcement officer who charges any person for a violation of §55-10-401(a)(2), §55-10-415, §55-50-405, §39-13-106, §39-13-213(a)(2) or §39-13-218 or if such person refuses a chemical test to determine the alcohol or drug content in their blood pursuant

to § 55-10-406, shall within five (5) working days, forward to the department a report of all information relevant to the enforcement action, including the following:

(1) a copy of the implied consent form,

(2) a copy of the completed notice of proposed revocation form,

(3) a copy of any completed interim permit form,

(4) any driver license, temporary license or certificate for driving, taken into possession,

(b) The failure of the officer to transmit at least one of the items in (a)(1) through (a)(4) of this section within five (5) working days shall result in the case being dismissed and the driver license being returned to the person.

(c) The failure of the officer to transmit all of items required by this section within five (5) working days shall not prevent or prohibit the department from beginning the revocation processes. If a missing item is not received within five (5) working days after the department notifies the officer that an item is missing, the department shall dismiss the case and return the driver license to the person.

(d)(i) If the results of the chemical blood test taken in § 55-50-904(b) show the presence of drugs in the person's system, or an alcohol concentration of (.08%) or more for a person age twenty-one (21) or older, two hundredths of one percent (.02%) or more for a person under the age of twenty-one (21), or four hundredths of one percent (.04%) or more for a person operating or having actual physical control of a commercial motor vehicle, the officer, acting on behalf of the department, shall within five (5) working days of receiving the results, send a copy of the results to the department by mail. Upon receipt of the results, the department shall send a notice of proposed revocation and request for hearing form to the driver.

(ii) If the chemical blood test shows there was less than the above stated percentages of alcohol and no drugs in the person's blood, the officer shall send a copy of the results by mail to

the to the department. Upon receipt of the results, the department shall immediately return the license to the driver.

(e)(1) The department shall supply the following forms:

- (i) A request for hearing form;
- (ii) A notice of proposed revocation form; and
- (iii) The interim permit form.

(2) The forms in (e)(1) supplied by the department shall be the only acceptable versions of those forms for revocations under this part. Agencies may use their own versions of other required forms unless otherwise required by state law.

(f) The forms listed in subsection (a) shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part.

§55-50-906. Determination and Administrative Review

(a) Upon receipt of the information required under Tenn. Code Ann. § 55-50-905(a), the department shall make a determination based upon an administrative review of the facts contained in the information as to whether or not the person's driving privilege shall be revoked pursuant to the criteria in subsection (c). This determination shall be the final determination of the department and, unless a hearing has been timely requested under §55-50-907, shall not be subject to further agency review.

(b) The department shall make the determination based upon the administrative review of the facts at least five (5) days prior to the effective date of the revocation order. If the department is unable to make a determination within the time limit specified, the department shall stay the revocation pending such determination.

(c) The department shall revoke the driving privilege of any person upon its determination that by a preponderance of all available evidence the person drove or was in actual physical control of a motor vehicle while:

(i) the alcohol concentration in the person's blood or breath was:

(1) eight hundredths of one percent (.08%) or more, for a person age twenty-one (21) or older; or,

(2) two hundredths of one percent (.02%) or more, for a person under the age of twenty-one (21); or,

(3) four hundredths of one percent (.04%) or more for a person operating or having actual physical control of a commercial motor vehicle; or,

(ii) the person's blood contained the presence of drugs.

(d) The department shall revoke the driving privilege of any person upon its determination that the person refused a test to determine alcohol or drug concentration in a person's blood as provided in §55-10-406.

(e) If the evidence does not support a decision to revoke the driving privilege, the department shall immediately return the driver license to the person.

(f) The department shall send the written determination to any person whose driving privilege is revoked after the administrative determination. The written determination shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, and any procedure to petition for judicial review. If no hearing has been timely requested under § 55-50-907, the written determination shall be considered a final order for the purposes of § 4-5-322, and no further agency review shall be allowed.

(g) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. A conviction in any criminal case arising out of the same circumstance is not required for the department to revoke a driving privilege under this part. The determination of the department shall not be used as evidence in any criminal charges arising out of the same occurrence.

§55-50-907. Request For Hearing

(a) Any person who has received a notice of proposed revocation and request for hearing forms, either from the officer or from the department, may, within ten (10) calendar days of receipt of notice, make a written request for a hearing. If the person's driver license has not been previously surrendered, it must be surrendered at the time the request for hearing is made.

(b) A request for a hearing submitted within ten (10) calendar days of the receipt of the notice of proposed revocation will stay the effective date of the revocation of the person's driving privilege until all administrative appeals are exhausted under the uniform administrative procedures act in title 4, chapter 5.

(c) Failure of a person to request a hearing within ten (10) calendar days of the receipt of the notice of proposed revocation shall waive the person's right to a hearing under § 55-50-908.

(d) For the purposes of this section, a request for a hearing will be considered timely submitted if the date of postmark on the envelope is within ten (10) calendar days of the date the person received the notice of proposed revocation.

§55-50-908 Hearing

(a) Within fifteen (15) days of the request for a hearing being received by the Department, the Department shall establish a hearing date and set the case on the docket. Nothing in this section shall be construed as requiring the hearing to be conducted within the fifteen (15) day period. The hearing shall be held at a place designated by the department, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing via first class mail to the party requesting the hearing at their last known address and the address specified on the request for hearing form, if different from their last known address. The notice shall be sent at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement. The commissioner shall have the

sole discretion to determine whether such hearing will be conducted either in person, telephonically, or by video conferencing.

(b) The commissioner shall have the authority to designate either an administrative law judge employed by the secretary of state's office or any other authorized representative to conduct such hearings. The administrative law judge or hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to issue a final order on the issue. All discovery shall be limited to matters being heard in the hearing, as set forth in subsection (c).

(c) The sole issue at the hearing shall be whether by a preponderance of the evidence:

(i) the person drove or was in actual physical control of a motor vehicle while:

(1) having an alcohol concentration of eight-hundredths of one percent

(.08%) or more; or,

(2) such person was under twenty-one (21) and had an alcohol concentration of (.02%) or more; or,

(3) such person was operating or had actual physical control of a commercial motor vehicle and had an alcohol concentration of (.04%) or more; or,

(ii) such person had drugs present in their blood sample; or,

(iii) the person refused a chemical analysis test.

If the presiding hearing officer finds the affirmative of this issue, the written determination shall be sustained. If the presiding hearing officer finds the negative of the issue, the written determination shall be rescinded.

(d) The reasonableness of the stop or any questions regarding whether or not the officer had probable cause to stop the driver shall not be considered in the hearing in front of the administrative law judge or hearing officer.

(e) The hearing shall be recorded or transcribed. The decision of the administrative law judge or hearing officer shall be rendered in writing, and a copy of the decision shall be provided to the person who requested the hearing. Notwithstanding the provisions of Tenn. Code Ann. § 4-5-314(b), the decision of the administrative law judge or hearing officer shall be the final order of the department and not subject to further agency review.

(f) The administrative law judge or hearing officer shall issue the written order within thirty (30) days after close of the hearing.

(g) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and a default hearing shall be conducted without the person's participation. The information used by the department to make its written determination shall be entered into the record at the default hearing.

(h) If the officer fails to appear at a hearing without just cause, the presiding hearing officer shall dismiss the matter and return the driver license or certificate for driving.

(i) The department shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this part, when the department subpoenas the governmental agency's representative. Funds for such payments shall be paid from the expendable receipts collected by the department under §55-12-129.

§55-50-909. Judicial Review

(a) Within sixty (60) days of the issuance of the final order of the department following a hearing pursuant to §55-50-908, a person aggrieved by the order shall have the right to file a petition in the chancery court in Davidson County for judicial review. The filing of a petition for judicial review in the chancery court shall not stay the effective date of the revocation order.

(b) Such review shall be conducted under the provisions contained in § 4-5-322.

§55-50-910. Revocation Periods

(a) The revocation of a person's driving privilege shall become effective thirty (30) days after the person has received the notice of proposed revocation and request for hearing forms, unless stayed by action of the department.

(b) The period of license revocation under this section shall be as follows:

(1) Three (3) months if the person's driving record shows no prior alcohol or drug-related enforcement contacts during the immediately preceding ten (10) years.

(2) One (1) year if the person's driving record shows one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding ten (10) years.

(c) If a driving privilege is revoked pursuant to this part, and at the time of the violation specified in §55-50-904(a), (b), or (c), the person was driving the motor vehicle while such person's privilege to do so had been cancelled, suspended or revoked for any reason, the period of revocation imposed pursuant to this part shall be in addition to the period of cancellation, suspension or revocation in effect at the time of the violation specified in §55-50-904(a), (b), or (c).

(d) If a driving privilege is revoked pursuant to this part, and the person is also convicted on criminal charges arising out of the same occurrence for a violation of §55-10-401(a)(1) or (2), §55-10-415, §55-50-405, or §39-13-106, or §39-13-213(a)(2) or found to be in violation of §55-10-406, both the revocation under this section and the revocation under §55-10-403, §55-10-406, §55-50-405, §55-10-415, §39-13-106, or §39-13-213(a)(2) shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed the longer of the two (2) revocation periods.

(e) Notwithstanding any other provision of this part, if a driver is acquitted on criminal charges for a violation of §55-10-401(a)(2), §55-10-415, §55-50-405, §39-13-106, §39-13-213(a)(2) or §39-13-218 arising out of the same occurrence for which their driving privilege has been suspended under this part, the driver may request the suspension be removed from their driving record by sending a letter of request to the department along with a certified copy of the court document showing the acquittal. Provided, however, that no acquittal on criminal charges shall allow for the return of a commercial driver license, pursuant to 49 C.F.R. § 383.51.

(i) For the purposes of this section, an acquittal means a not guilty verdict entered after a trial either before a judge sitting as the trier of fact or before a jury.

(ii) A suspension imposed under this part shall not be removed based on a dismissal of the criminal charges, the entry of a nolle prosequi, or the entry of a defendant's guilty plea to any lesser charge based on the same occurrence for which their driving privilege has been suspended under this part.

§55-50-911. Restricted Licenses

(a) No restricted driver license shall be issued during the revocation period, except as provided in subsection (b); provided, however, if any criminal charges arising out of the same incident have had final determination rendered by a court, the court may order a restricted driver license under the provisions of §55-10-403.

(b) Persons who have no prior recorded alcohol or drug related enforcement contacts during the immediately preceding ten (10) years and who submitted to a chemical test in accordance with the provisions of §55-10-406, shall, after a minimum revocation period of thirty (30) days, be eligible for a restricted driver license in the same manner as provided in §55-10-403.

(c) Persons who have one (1) or more prior alcohol or drug- related enforcement contacts during the immediately preceding ten (10) years shall not be eligible for a restricted driver license during their period of revocation under this act.

(d) If a driving privilege is revoked pursuant to this part, and at the time of the violation specified in §55-50-904(a), (b), or (c), the person was driving the motor vehicle while such person's privilege to do so had been cancelled, suspended or revoked for any reason, such person shall not be eligible for a restricted driver license during both such periods.

§55-50-912 Reinstatements

(a) No driving privilege shall be reinstated under any circumstances during the revocation period.

(b) No driving privilege may be restored as a result of a revocation under this act until such person:

- (1) makes application for a driver license upon the correct form,
- (2) provides evidence of financial responsibility, including compliance with the provisions of § 55-12-129(a). For purposes of this part, the following shall be the only acceptable proof of financial responsibility:
 - (i) an SR-22 form filed by an insurance carrier duly authorized to do business in this state, certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility; or,
 - (ii) The deposit of cash with the commissioner of no less than the amount specified in § 55-12-102; or,
 - (iii) The execution and filing of a bond with the commissioner of no less than the amount specified in § 55-12-102.
- (3) pays all driver license issuance fees,

- (4) pays a one hundred dollar (\$100.00) restoration fee, and,
- (5) pays a one hundred dollar (\$100.00) administrative processing fee.

(c) All persons reinstated under this part shall maintain proof of insurance for the period of time required by § 55-12-126. Failure to maintain proof of insurance shall subject the person to the suspension provisions contained in § 55-12-126.

(d) A person whose driving privilege is revoked pursuant to this part and is also revoked due to a conviction on criminal charges arising out of the same occurrence for a violation of §55-10-401(a)(1) or (2), §55-10-415, §55-50-405, or §39-13-106, or §39-13-213(a)(2) and who does not seek reinstatement of their driving privilege until both periods of revocation have been completed shall only be required to pay one set of reinstatement fees under this section.

§55-50-913. Applicability of the Uniform Administrative Procedures Act

Except as provided in this part, the Tennessee uniform administrative procedures act compiled in title 4, chapter 5, shall govern the administrative hearing and judicial review provided in this part. In cases where this part and the Tennessee uniform administrative procedures act conflict, this part shall govern.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to that end, the provisions of this act are declared to be severable.

SECTION 3. For the purposes of employing necessary staff, securing office space, preparing forms and other acts necessary to implement the provisions of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, including the administrative revocation of licenses, this act shall take effect on July 1, 2009, the public welfare requiring it.

