

SENATE BILL 744  
By Gilbert

AN ACT 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 an excessive concentration of alcohol in their bodies and to provide for administrative review and administrative hearings

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

SECTION 1. The general assembly finds and declares that enactment of this act 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 an excessive concentration of alcohol in their bodies; and

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for judicial review prior to the effective date of the revocation.

SECTION 2.

(a) It shall be a civil offense (1) for any person to drive a motor vehicle in the State of Tennessee while the alcohol concentration in the person's blood or breath is one-tenth of one percent (0.10%) or more or (2) for any person arrested for violation of Tennessee Code Annotated, Section 55-10-401, to refuse to take a test to determine alcohol concentration in the person's blood or breath.

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(b) The general sessions court for the county where a person is arrested pursuant to Tennessee Code Annotated, Section 55-10-401 shall order the revocation of such driver's license upon a determination (1) that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was one-tenth of one percent (O. 10%) or more or (2) that the person refused to take a test to determine alcohol concentration in the person's blood or breath at the time of the person's arrest for a violation of Tennessee Code Annotated, Section 55-10-401. For purposes of this act, alcohol concentration shall mean either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(c) Such court shall make a determination of these facts on the basis of the information provided by the law enforcement officer required by Section 3, unless a hearing is requested by the defendant pursuant to Section 5 of this act, in which case the court shall determine these issues at the time of the hearing. Such a determination shall be final unless an appeal is taken under Section 9.

(d) Except as provided in Section 7(d), the determination of these facts by the court is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence.

### SECTION 3.

(a)(1) When a person has been arrested for a violation of Tennessee Code Annotated, Section 55-10-401 and has committed a civil offense under this section, the arresting officer shall, within five (5) working days or as soon as possible after receipt of the results of any chemical tests but not later than twenty (20) days, forward to the court a sworn civil warrant which shall include (1) information that adequately identifies the arrested person, (2) a statement of the officer's grounds for belief that the person violated this section, (3) a report of the results of any chemical tests which were

conducted and that the breathalyzer, if used, was properly calibrated at the time of use or that the arrested person refused to consent to a test and (4) the date, time and place of a hearing (initial appearance, preliminary examination or trial) to be held before the court not later than thirty (30) days after the date of the arrest. The law enforcement officer who arrests any person for violation of this section shall seize the driver license and shall attach such license to the original warrant submitted to the court.

(2) Only law enforcement officers who have satisfactorily completed a recruit training program, approved by the Tennessee peace officers standards and training commission, may take possession of a driver license as authorized under this section.

(b) Any person whose driver license has been seized pursuant to this section shall, prior to such person's release, be given a Notice of Proposed License Revocation. Such Notice shall state that the person's driver license has been seized and is subject to revocation; that the person has a right to a hearing on the proposed revocation at the time of the general sessions court hearing on the underlying offense(s) charged pursuant to Tennessee Code Annotated, Section 55-10-401; that the person must request the hearing on the proposed revocation by notifying the court in writing either at the initial appearance on the underlying criminal charges held pursuant to Tennessee Rules of Criminal Procedures 5 or at any time within five (5) calendar days of the date of arrest; that if the person requests such a hearing and does not prevail on the issue of the driver license revocation, then the person must pay the costs of the hearing not to exceed seventy-five dollars (\$75); that if a hearing is not requested in accordance with this section then such hearing is deemed waived; that if the person does not request or waives a hearing, then the court will determine the issue of license revocation based solely upon the arresting officer's sworn warrant; and that if the person requests a hearing, then the court will issue a temporary license valid through the earlier of the date of the hearing or thirty (30) days.

(c) Any person whose driver license is seized pursuant to this section may request a hearing on the proposed license revocation, provided that such hearing is requested in writing either at the initial appearance on the underlying offenses charged pursuant to Tennessee Code Annotated, Section 55-10-401, held pursuant to Tennessee Rules of Criminal Procedures 5, or at any time within five (5) calendar days of the arrest. If a hearing is not requested within the time specified herein, it is deemed waived and the court shall determine the issue of license revocation based solely on the sworn warrant filed by the arresting officer.

(d) If a hearing is not requested in accordance with subdivision (c) of Section 3, it is the intent of the General Assembly that the court determine the issue of license revocation as soon as possible and within seven (7) days from the date upon which such hearing is waived. If the court determines, based upon the arresting officer's sworn warrant, that the person's driver license should be revoked under this section, then the court shall order that the license be revoked and shall notify the department of safety immediately.

A copy of the order of revocation shall be mailed to the defendant by the court at the defendant's address as ascertained at the time of the defendant's arrest. However, the failure of a defendant to receive a copy of the order shall have no effect on the revocation or on the deadline for filing on appeal under Section 9.

(e) The clerk of the court shall assign one (1) identifying case file number to the offense(s) charged pursuant to Tennessee Code Annotated, Section 55-10-401 to include any civil license revocation proceeding brought under this section. The clerk of the court shall file the warrant and retain the driver license submitted by the law enforcement officer until the court orders a revocation under this act, at which time the license shall be sent with the abstract to the Department of Safety, or until the court

orders that the license be returned to the arrested person. Such abstract shall be supplied by the Department of Safety.

(f) The warrant and the Notice of Proposed Revocation required by this act shall be made on forms designed to include the information required and shall be supplied by the Department of Safety to any law enforcement agency of the state.

SECTION 4. The sworn warrant required by this act shall be accepted as evidence in all hearings authorized by this act and shall be considered self-proving unless controverted by the defendant. If the defendant requests a hearing and then does not appear at such hearing at the time scheduled, the court may render a decision on the sworn warrant alone as if such hearing were waived under Section 3 of this act.

SECTION 5.

(a) If a hearing is requested pursuant to subdivision (c) of Section 3 of this act, then the hearing shall be conducted at the same time as the first full hearing in general sessions court (the preliminary examination or trial) on the underlying offenses charged pursuant to Tennessee Code Annotated, Section 55-10-401. In the event that the general sessions court proceedings on the underlying offense(s) under Section 55-10-401 are waived to criminal court, then a hearing on the issue of license revocation which has been properly requested under Section 3 of this act shall be held at the time that the preliminary examination would have been conducted on such underlying offenses pursuant to Tennessee Rules of Criminal Procedure 5.1.

(b) If the defendant requests a hearing and does not prevail, such defendant shall pay the court costs associated with the determination of the issues at the hearing, not to exceed seventy-five dollars (\$75.00), in addition to the other fees which may apply.

(c) The sole issue at the hearing on the revocation shall be whether the defendant drove or was in actual physical control of a motor vehicle while having an

alcohol concentration of one-tenth of one percent (0.10%) or more or whether the defendant refused a chemical analysis test. The standard of proof shall be the preponderance of the evidence. If the judge finds the affirmative of this issue, the judge shall order a revocation of the defendant's driver license in accordance with Section 7. If the judge finds the negative of the issue, the judge shall order reinstatement of the defendant's driver license without costs to the defendant. It shall not be a defense to the charge of failing to consent to a test to determine alcohol concentration in the defendant's blood or breath pursuant to this act that the defendant was not advised of the consequences of refusing the test prior to such refusal.

(d) The hearing shall be recorded. The decision of the judge shall be rendered in writing and a copy of the order shall be provided to the defendant. If the court orders the revocation of the defendant's license then the Department of Safety shall be notified immediately.

#### SECTION 6.

(a) Any person whose driver license is seized pursuant to this section and who requests a hearing on the proposed license revocation in a timely manner under Section 3(c) may apply to the court for a temporary license. The Department of Safety shall include a "temporary license" section in the Notice of Proposed License Revocation form which it creates pursuant to Section 3(f). The court may execute the temporary license by appropriately filling out the temporary license section of the Notice of Proposed Revocation form referred to in Section 3(b). The temporary license shall be valid only through a date certain set by the court, which shall be either (1) the date upon which the revocation hearing is set or (2) thirty (30) days after such application is made, whichever time period is shorter.

(b) If the defendant's hearing date on the revocation has not been conducted by the court under the provisions of Section 5 within thirty (30) days of the issuance of the

temporary license, and such hearing has not been conducted through no fault of the defendant, the defendant may apply to the court for extension of the temporary driver license issued pursuant to this Section and the temporary license shall be amended to be valid through the date of the hearing. A temporary driver license shall not be issued to any person who is under an outstanding suspension, revocation or cancellation at the time of the arrest.

#### SECTION 7.

(a) The license revocation shall become effective on the date it is ordered by the court.

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

(1) The period shall be three (3) months if the person's driving record shows no prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(2) The period of revocation shall be 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 five (5) years.

(3) For purposes of this act, "alcohol or drug-related enforcement contacts" shall include any revocation under this act, any suspension or revocation entered in this or any other state for refusal to submit to chemical test 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.

(4) A person who has no prior record of alcohol or drug-related contacts and who submits to a chemical test in accordance with Section 55-10-406, shall be eligible for a restricted driver license as provided in Section 55-50-502, after a

minimum revocation period of thirty (30) days. A person who refuses to submit to a test shall not be eligible for a restricted driver license as provided in Section 55-50-502, during the three (3) month revocation period.

(5) A person who has one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years shall not be eligible for a restricted license during the person's revocation period.

(c) Where a license is revoked under this act and the person is also convicted on criminal charges arising out of the same occurrence for a violation of Section 55-10-401, both the revocation under this act and the revocation under Section 55-10-401, shall be imposed, but the periods of revocation shall not exceed the longer of the two (2) revocation periods.

(d) If a person is acquitted of charges under Section 55-10-401, if a nolle prosequi is taken, or if such charges are reduced or otherwise disposed of in favor of the defendant, the court shall immediately order the reinstatement of the driver license and shall notify the department of safety immediately.

#### SECTION 8.

(a) The periods of revocation specified in this act are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstance and no restricted driver license shall be issued except as specified in this act during the revocation period. Provided, however, if any criminal charges arising out of the same incident have had final determination rendered by the court, the court may order a restricted license under the provisions of Section 55-10-403(d).

(b) No driving privilege may be restored until all applicable court costs and reinstatement fees have been paid and all requirements of Tennessee Code Annotated, Title 55, Chapter 12, have been satisfied. Any person whose license is suspended

pursuant to this act shall be required to pay the Department of Safety an administrative processing fee of ten dollars (\$10.00).

(c) Any person who has received a warrant and/or a notice of proposed license revocation under this act shall, prior to the return of any driver license taken pursuant to this act, be required to pay to the clerk of the sessions court a fee of twenty-five dollars (\$25), which shall be in addition to other fees allowed to the court clerk by law, to be assessed by the court upon a finding that the driver license should be revoked under the terms of this act. The person seeking reinstatement shall provide the department of safety with a certification from the court clerk that all applicable court costs have been paid prior to reinstatement of the driver license.

#### SECTION 9.

(a) Within thirty (30) days of the issuance of an order of revocation by the court under this act, a person aggrieved by the determination shall have the right to file a petition for review in the court having jurisdiction of appeals of criminal cases from the general sessions court in such county where the offense occurred. The filing of the petition for review shall not stay the revocation order. The clerk of the court shall file a certified copy of the record with the court having jurisdiction of the appeal within ten (10) days after having received notice that such an appeal has been filed.

(b) The review shall be on the record, without taking additional testimony. The standard to be used by the court having jurisdiction of the appeal in deciding whether the general sessions court's determination should be affirmed or reversed is whether there is or is not a preponderance of evidence to support such determination.

SECTION 10. As used in this act unless the context clearly requires otherwise:

(1) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(2) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(C) Any nonresident's operating privilege as defined herein;

(3) "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;

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

(5) "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.

(6) "Court" shall mean the general sessions court of the county where the alleged offense occurred.

SECTION 11. The implementation and effectiveness of this act shall be subject to a mandatory review not later than two (2) years after it becomes a law. The review shall be conducted by the department of safety and shall include a survey of license revocations, citizen complaints, law enforcement personnel opinions, and an estimate of the effect of this act on reducing driving while intoxicated and accidents resulting therefrom. Such review shall be

presented to the transportation and judiciary committees of the House of Representatives and the Senate.

SECTION 12. 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 13. This act shall take effect on January 1, 1998, the public welfare requiring it.