

HOUSE BILL 1542  
By Scroggs

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, relative to habitual motor vehicle offenders.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-603(2)(A), is amended by deleting the word "or" at the end of subdivision (xi), deleting the word "and" and substituting instead the word "or" at the end of subdivision (xii), and adding the following new subdivision:

( ) A violation of §39-13-218, relative to aggravated vehicular homicide; and

SECTION 2. Tennessee Code Annotated, Section 55-10-605, is amended by deleting the section in its entirety and substituting instead the following:

(a) Records of convictions of offenses within the purview of this part, which are kept by the department of safety, and certified copies thereof, are admissible in evidence in proceedings under this part. Such records create a rebuttable presumption of the truth of the entries on such records. The admissibility of such records does not limit the admissibility of other evidence.

(b) The department shall classify individuals as motor vehicle habitual offenders when the records of the department show that an individual has accumulated convictions to warrant such classification under this part. The convictions used to classify an individual shall be limited to: voluntary manslaughter resulting from the operation of a motor vehicle; vehicular homicide as defined in §39-13-213; involuntary manslaughter resulting from the operation of a motor vehicle; vehicular assault as defined in §39-13-

106; violations of §55-10-401, prohibiting intoxicated or drugged persons from driving; or aggravated vehicular homicide as defined in §39-13-218. The determination by the department shall be made without a hearing. Upon determining that an individual is a motor vehicle habitual offender, the commissioner shall revoke the individual's operators license and shall by certified mail notify the individual at the address shown on the individual's operator's license that:

(1) the individual is a motor vehicle habitual offender;

(2) the individual's operator's license or licenses are revoked for three (3) years from the date of conviction of the triggering offense;

(3) the individual shall surrender to the department of safety all licenses to operate a motor vehicle upon the highways of this state;

(4) the individual shall not operate a motor vehicle on the highways of this state for a period of three (3) years;

(5) it is a Class E felony to operate a vehicle on the highways of this state from the date of the conviction of the triggering offense for three (3) years;

SECTION 3. Tennessee Code Annotated, Section 55-10-606, is amended by deleting the existing language and substituting instead the following:

(a) Any person having been classified by the department as a motor vehicle habitual offender shall, within sixty (60) days of being so classified, have a right to petition the circuit court of such person's county of residence for determination of any disputed issue of fact that would invalidate the department's classification. As to any fact disputed, the petitioner shall have the burden of proof by a preponderance of the evidence.

(b) The clerk of the court shall furnish a copy of the petition to the department of safety and to the district attorney general who shall represent the department.

SECTION 4. Tennessee Code Annotated, Section 55-10-607, is amended by deleting the existing language and substituting instead the following:

With regard to records of prior convictions, a matching date of birth or a matching number of an operator's license on a record or prior conviction of an individual of the same name as the defendant shall create a rebuttable presumption that the defendant charged and the individual against whom the prior conviction was rendered are one and the same individual.

SECTION 5. Tennessee Code Annotated, Section 55-10-608, is amended by deleting the existing language and substituting instead the following:

(a) If the petition is denied, the court shall take any operator's license or licenses of the petitioner. The clerk shall forthwith transmit a copy of the court's order to the department of safety together with any license or licenses surrendered to the court.

(b) If an underlying conviction or adjudication of an offense specified in §55-10-603(2) is invalidated and nullifies the department's classification of the person as a motor vehicle habitual offender, the department, upon receipt of a certified copy of such final order shall timely reinstate any driving privileges that were revoked or denied because of the department's determination.

SECTION 6. Tennessee Code Annotated, Section 55-10-609, is amended by deleting the existing language and substituting instead the following:

(a) The petitioner may appeal any final action or judgment entered under the provisions of this part, in the same manner and form as appeals in criminal matters are heard.

(b) Pending the determination of any appeal, the classification by the department shall remain in effect.

SECTION 7. Tennessee Code Annotated, Section 55-10-610, is amended by deleting the existing language and substituting instead the following:

(a) In no event shall a license to operate motor vehicles in this state be issued to a habitual offender for a period of three (3) years from the entry date of the order of

conviction of the triggering offense that causes any person to become classified by the department as a motor vehicle habitual offender as defined in this chapter. In no event shall a license to operate a motor vehicle in this state be issued to a habitual offender until such habitual offender has met all requirements which the provisions of the financial responsibility law may impose.

(b) At the expiration of three (3) years from the date that any person has been classified by the department as a habitual motor vehicle offender under the provisions of this part, such person may apply to the department for reinstatement of the privilege to operate a motor vehicle in this state provided that such person has met all requirements which provisions of the financial responsibility law may impose and subject to any other provisions of law relating to the issuance of operator's licenses.

SECTION 8. Tennessee Code Annotated, Section 55-10-611, is amended by deleting the existing language and substituting instead the following:

(a) It is unlawful for any person to operate any motor vehicle in this state after becoming a habitual offender as defined in this chapter until that person's driving privileges have been restored by the department of safety.

(b) Any person declared by the court or classified by the department of safety as a habitual offender as defined under the provisions of this part who for three (3) years thereafter operates a motor vehicle commits a Class E felony.

(c) The court shall have no power to suspend any such sentence or fine, except that in cases where such operation is necessitated in situations of apparent extreme emergency which required such operation to save life or limb, the sentence or any part thereof or fine or any part thereof may be suspended by the court, in its discretion.

SECTION 9. Tennessee Code Annotated, Section 55-10-612, is amended by deleting the existing language and substituting instead the following:

The provisions of this part are supplementary to existing law. Nothing in this part shall be construed to amend or repeal any existing law of this state unless otherwise specified in this part or any existing ordinance of any political subdivision relating to the operation of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof, or shall be construed so as to preclude the exercise of the regulatory powers of any division, agency, department or political subdivision of this state.

SECTION 10. Tennessee Code Annotated, Section 55-10-613, is amended by deleting the existing language and substituting instead the following:

(a) As an alternative to the administrative classification of a person as a motor vehicle habitual offender as set out in §§55-10-601 - 55-10-609, the district attorney general may use the procedure set out in this section; provided, that at least one (1) of the convictions required by §55-10-603 of this part occurs on or after July 1, 1995.

(b) If the district attorney general believes that a defendant should be declared to be a motor vehicle habitual offender in addition to the sentence for the habitual offender triggering offense, the district attorney general shall file a statement thereof with the court and defense counsel not less than ten (10) days before trial or acceptance of a guilty plea; provided, that notice may be waived by the defendant in writing with the consent of the district attorney general and the court accepting the plea. Such statement, which shall not be made known to the jury determining the guilt or innocence of the defendant on the primary offense, must set forth the nature of the prior applicable convictions, the dates of the convictions and the identity of the courts of the convictions. The original or certified copy of the court record of any prior conviction, bearing the same name as that by which the defendant is charged in the primary offense, is prima facie evidence that the defendant named therein is the same as the defendant before the court, and is prima facie evidence of the facts set out therein.

(c) If the court finds that the defendant meets the criteria of §55-10-603(2), the court shall find the defendant to be a motor vehicle habitual offender and, in addition to the sentence imposed for the habitual offender triggering offense, shall declare the person to be a motor vehicle habitual offender.

(d) Upon finding that an individual is a motor vehicle habitual offender, the court shall revoke the individual's operator's license for not less than three (3) years and shall advise the individual that it is a Class E felony to operate a vehicle on the highways of this state for at least three (3) years and until the individual's driving privileges have been reinstated by the department of safety.

(e) The court shall take possession of any operator's license issued previously by the department and require the clerk of the court to forward any license surrendered, together with a certified copy of the order of the court, to the department of safety.

(f) The provisions of §55-10-611, shall apply to a person declared a motor vehicle habitual offender pursuant to this section.

(g) A defendant declared a motor vehicle habitual offender pursuant to this section may appeal such finding within the same time and in the same manner as other appeals in criminal cases. If the defendant appeals any part of the habitual offender triggering offense, an appeal of a finding that such defendant is a motor vehicle habitual offender shall be made a part of and consolidated with such appeal.

SECTION 11. Tennessee Code Annotated, Sections 55-10-614, 55-10-615, 55-10-616, 55-10-617, and 55-10-618 , each are deleted in their entirety.

SECTION 12. This act shall take effect January 1, 2000, the public welfare requiring it.