

HOUSE BILL 2517

By Faulkner

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 55, relative to driving under the influence
of an intoxicant.

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. This act shall be known and may be cited as the "Tennessee Administrative License Revocation Act of 2010".

§ 55-50-902. 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 an excessive alcohol concentration in their bodies or who refuse to submit to a test or tests for the purpose of determining the 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. 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, or 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 both, 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 department of safety;

(5) "Driver license" means any physical document issued to a person authorizing the person 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 in subdivision (8), regardless of whether or not the person has ever been issued a driver license by this or any other state;

(7) "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 (POST) commission;

(8) "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;

(9) "Notice" means a method of transmitting a document to the recipient in such a manner that will provide proof of delivery or attempted delivery, including, but not limited to:

- (A) Certified mail, return receipt requested;
- (B) Registered mail;
- (C) Package courier service; or
- (D) Personal service;

(10) "Revocation" means the termination by formal action of the department of a person's privilege to operate a motor vehicle, 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;

(11) "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; and

(12) "Temporary driver license" means a driver license issued by the department to an individual which authorizes the individual to operate a motor vehicle 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.

(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 twenty-one (21) years of age or older, two hundredths of one percent (.02%) or more for a person under twenty-one (21) years of age, or four hundredths of one percent (.04%) or more for a person operating or having actual physical control of a commercial motor vehicle, the law enforcement 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 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 law enforcement 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). The chemical blood test shall be performed and conducted in accordance with § 55-10-410.

(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 concentration, the law enforcement 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 form pursuant to subsections (a) and (c), the law enforcement officer shall also take possession of any driver license issued by a state which is held by the person.

(e) When the law enforcement officer takes possession of any driver license issued by a state, the law enforcement officer, acting on behalf of the department, shall

issue an interim permit which is valid for up to ninety (90) calendar days after its date of issuance, or until the department revokes the person'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 final determination on a person's driving privilege, or if a hearing before an administrative law judge or hearing officer has not been completed prior to the expiration date of the interim permit, the department may issue another interim permit valid for ninety (90) calendar days, if the person is otherwise eligible for a license under this title. In no event will a person's driving privilege be revoked under this part until such time as the department's determination has been issued, or, if a hearing has been timely requested, until the decision of the administrative law judge or hearing officer has been issued.

(h) Only members of the Tennessee highway patrol, law enforcement officers, and state law enforcement officers may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license, and issuing a temporary permit as authorized by this section.

§ 55-50-905.

(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 concentration in their blood pursuant to § 55-10-406, shall within five (5) business 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; and
- (4) Any driver license taken into possession by law enforcement.

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

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

(d)

(1) If the results of the chemical blood test taken in § 55-50-904(b) show an alcohol concentration of (.08%) or more for a person twenty-one (21) years of age or older, two hundredths of one percent (.02%) or more for a person under twenty-one (21) years of age, or four hundredths of one percent (.04%) or more for a person operating or having actual physical control of a commercial motor vehicle, the law enforcement officer, acting on behalf of the department, shall within five (5) business days of receiving the results, send a copy of the results to the department. Upon receipt of the results, the department shall send a Notice

of Proposed Revocation and Request for Hearing form to the driver at the address listed on the person's record with the department.

(2) If the chemical blood test shows there was less than the above stated percentages of alcohol in the person's blood, the law enforcement officer shall within five (5) business days of receiving the results, send a copy of the results to the department. Upon receipt of the results, the department shall immediately return the driver license to the person.

(e)

(1) The department shall supply the following forms:

- (A) A request for hearing form;
- (B) A notice of proposed revocation form; and
- (C) An interim permit form.

(2) The forms in subdivision (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, unless challenged in writing at least ten (10) business days prior to the hearing.

§ 55-50-906.

(a) Upon receipt of the information required under § 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 final determination based upon the administrative review of the facts at least five (5) business 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 a person's driving privilege upon the department's determination that by a preponderance of the evidence, the results of the breathalyzer test or the chemical blood test show that the person drove or was in actual physical control of a motor vehicle with an alcohol concentration:

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

(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.

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

(e) If the evidence does not support a decision to revoke the person's 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 shall be subject to the provisions of § 55-50-908(h).

(g)

(1) A person's driving privilege may be revoked under this part prior to the conclusion of any criminal charges arising out of the same circumstances.

(2) The decision on whether or not to revoke a person's driving privilege, made by the department or by an administrative law judge or hearing officer following a hearing, shall not be used as evidence in any criminal charges arising out of the same occurrence.

§ 55-50-907.

(a) Any person who has received a notice of proposed revocation and request for hearing form, either from a law enforcement officer or from the department, may, within fifteen (15) 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 fifteen (15) 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, compiled in title 4, chapter 5.

(c) Failure of a person to request a hearing within fifteen (15) 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 that the request is mailed in is within fifteen (15) calendar days of the date the person received the notice of proposed revocation.

§ 55-50-908.

(a) Within fifteen (15) calendar 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) calendar 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 to the person requesting the hearing at the person's last known address and the address specified on the Request for Hearing form, if different from the person's last known address. The notice shall be sent at least ten (10) business 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 issues considered in the hearing, as set forth in subsection (c).

(c) The only issues which may be considered at the hearing are:

(1) Whether the law enforcement officer had reasonable grounds to believe that the person was driving or in physical control of a motor vehicle while under the influence of an intoxicant;

(2) Whether the person received adequate notice of the proposed revocation;

(3) Whether, by a preponderance of the evidence:

(A) The person refused a chemical or breathalyzer test; or

(B) If a test was performed, the results of the breathalyzer test or chemical blood tests show that the person drove or was in actual physical control of a motor vehicle while such person:

(i) Had an alcohol concentration of eight-hundredths of one percent (.08%) or more;

(ii) Was under twenty-one (21) years of age and had an alcohol concentration of (.02%) or more; or

(iii) Was operating or had actual physical control of a commercial motor vehicle and had an alcohol concentration of (.04%) or more;

(4) Whether the breathalyzer test was conducted according to applicable state standards or the drawing of blood for a chemical blood test was conducted by a person authorized to do so in § 55-10-406(a)(2).

(d) The presiding hearing officer must, at minimum, make an affirmative finding on subdivisions (c)(3)(A) or (c)(3)(B) in order for the written determination to be upheld. If the presiding hearing officer finds that the department has not proven the requirements of subdivisions (c)(3)(A) or (c)(3)(B), or that (c)(1), (c)(2) or (c)(4), if contested, have not

been met, then the written determination shall be rescinded and the driver license returned to the driver.

(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 § 4-5-314(b), the decision of the administrative law judge or hearing officer shall be the final order of the department.

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

(g) The party aggrieved by the written order of the administrative law judge or hearing officer may petition the administrative law judge or hearing officer for a reconsideration of the order under § 4-5-317 or for a stay of the order under § 4-5-316.

(h) 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.

(i) If the law enforcement officer fails to appear at a hearing without just cause, the presiding hearing officer shall dismiss the matter and immediately return the driver license to the person.

(j) 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.

(a) Within sixty (60) calendar 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 does not itself stay the effective date of the revocation order.

(b) A person aggrieved by a revocation order under this part may apply to the administrative law judge or hearing officer for a stay of the order pursuant to § 4-5-316 and to the chancery court pursuant to § 4-5-322(c).

(c) Such review shall be conducted under the provisions contained in § 4-5-322. § 55-50-910.

(a) The revocation of a person's driving privilege shall become effective:

(1) Thirty (30) calendar days after the person has received the notice of proposed revocation and request for hearing forms, unless stayed by action of the department; or

(2) Ten (10) calendar days after the entry of a final order by the administrative law judge or hearing officer's order, if a hearing was timely requested, unless a stay is granted.

(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; or

(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, § 55-10-403, § 55-50-405, § 39-13-106, § 39-13-213(a)(2) or § 55-10-406, both the revocation under this section and the revocation under § 55-10-401(a)(1) or (2), § 55-10-415, § 55-10-403, § 55-50-405, § 39-13-106, § 39-13-213(a)(2) or § 55-10-406, 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)

(1) Notwithstanding any other provision of this part, a person whose driving privilege has been revoked under this part may request the revocation be removed from their record and the license and any fees paid to the department under this part returned, if, in the criminal case arising out of the same occurrence as the revocation:

(A) The driver is acquitted;

(B) The criminal charges have been dismissed;

(C) An order of nolle prosequi has been entered; or

(D) Pursuant to a negotiated plea agreement, the person has entered a plea of guilty or nolo contendere to an offense that does not

have as an essential element the person being in physical control of a motor vehicle while under the influence of an intoxicant.

(2) A request to have the revocation be removed from a driving record shall be submitted in writing to the department, and shall include a copy of the court document showing that the criminal charges were resolved as required by subdivision (e)(1).

(3) The department reserves the right to verify the authenticity of any document presented prior to removing such revocation from a person's driving record, provided the department does so within ten (10) business days of the presentation of the document.

(4) The return of a commercial driver license under this section shall be subject to the provisions of 49 C.F.R. § 383.51.

(f) Further, notwithstanding any other provision of this part, if the law enforcement officer who commenced the administrative revocation process under this part fails to charge the person with a violation of § 55-10-401(a)(2), § 55-40-415, or § 55-50-405 within ninety (90) calendar days or fails to charge the person with a violation of § 39-13-106, § 39-13-213(a)(2) or § 39-13-218 within one hundred twenty (120) calendar days of the occurrence of the events upon which the revocation is commenced, the person may file a request with the department to have the administrative revocation process cease or the revocation removed from the record and their license returned. Upon receipt of such a request, the department shall, within ten (10) business days, contact the law enforcement officer or the appropriate criminal court, or both, to determine if no charges have been filed. The department shall inform the person and the law enforcement officer of the results of the verification and any action taken.

§ 55-50-911.

(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 a 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) calendar 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 driving privilege had been cancelled, suspended or revoked for any reason, such person shall not be eligible for a restricted driver license during both such periods.

(e) Fees paid to the department of safety pursuant to this part shall be expendable receipts to be used by the commissioner of safety toward the cost of administering this part.

§ 55-50-912.

(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:

(A) A 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;

(B) The deposit of cash with the commissioner of no less than the amount specified in § 55-12-102; or

(C) 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.

(e) 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)(2), § 39-13-106, § 39-13-213(a)(2), § 39-13-218, or § 55-50-405(a)(1)(A), shall not have his or her driving privilege fully restored until such person has operated a motor vehicle that is equipped with a functioning ignition interlock device for a period of up to six (6) months after the person's license is no longer suspended. For the purpose of this section, "ignition interlock device" means a device that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

§ 55-50-913. Except as provided in this part, the 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 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 law, the public welfare requiring it. For all other purposes, including the administrative revocation of licenses, this act shall take effect on July 1, 2010, the public welfare requiring it.