ENROLLED

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.

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§5304. The drug division probation program

* * *

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

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

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

§98. Operating a vehicle while intoxicated

* * *

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

* * *

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

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

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

* * *

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

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

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

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K.

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

* * *

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

§667. Seizure of license; circumstances; temporary license

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

* * *

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

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

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

* * *

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

* * *

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

H.

* * *

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

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

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

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

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

* * *

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

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

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suspension, or denial of license. The scope of such a hearing for the purposes of this Part shall be limited to the following issues:

* * *

Section 4. The Department of Public Safety and Corrections, public safety services, may promulgate rules and regulations pursuant to the Administrative Procedure Act and subject to the oversight of the House and Senate committees on transportation, highways, and public works, as are necessary to implement the provisions of Section 3 of this Act.

Section 5. This Act shall become effective upon signature of the governor or, if not signed by the governor, upon expiration of the time for bills to become law without the signature of the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
PRESIDENT OF THE SENATE

_____
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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