

Regular Session, 2011

SENATE BILL NO. 190

BY SENATOR ERDEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DWI. Creates the crime of first degree vehicular homicide and provides penalties upon conviction. (8/15/11)

1 AN ACT

2 To enact R.S. 14:32.2, relative to the crime of first degree vehicular homicide; to provide for
3 the elements of the crime; to provide penalties for conviction of the crime; and to
4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 14:32.2 is hereby enacted to read as follows:

7 **§32.2. First degree vehicular homicide**

8 **A. First degree vehicular homicide is the killing of two or more human**
9 **beings in a single incident caused proximately or caused directly by an offender**
10 **engaged in the operation of, or in the actual physical control of, any motor**
11 **vehicle, aircraft, water craft, or other means of conveyance, whether or not the**
12 **offender had the intent to cause death or great bodily harm, whenever any of**
13 **the following conditions exist and such condition was a contributing factor to**
14 **the killing:**

15 **(1) The operator is under the influence of alcoholic beverages, as**
16 **determined by chemical tests administered under R.S. 32:662.**

17 **(2) The operator's blood alcohol concentration is eight one-hundredths**

1 of one percent or more by weight based upon grams of alcohol per one hundred
2 cubic centimeters of blood.

3 (3) The operator is under the influence of any controlled dangerous
4 substance listed in Schedules I, II, III, IV, or V as set forth in R.S. 40:964.

5 (4) The operator is under the influence of alcoholic beverages.

6 (5)(a) The operator is under the influence of a combination of alcohol
7 and one or more drugs which are not controlled dangerous substances and
8 which are legally obtainable without a prescription.

9 (b) It shall be an affirmative defense to any charge under this Paragraph
10 that the label on the container of the drug or the manufacturer's package of the
11 drug does not contain a warning against combining the medication with alcohol.

12 (6) The operator is under the influence of one or more drugs which are
13 not controlled dangerous substances and which are legally obtainable with or
14 without a prescription and the influence is caused by the operator knowingly
15 consuming quantities of the drug or drugs which substantially exceed the dosage
16 prescribed by a physician or the dosage recommended by the manufacturer of
17 the drug.

18 B.(1) Whoever commits the crime of first degree vehicular homicide shall
19 be fined not less than two thousand dollars nor more than fifteen thousand
20 dollars and shall be imprisoned at hard labor for not less than ten years nor
21 more than forty years. At least six years of the sentence of imprisonment shall
22 be imposed without benefit of probation, parole, or suspension of sentence.

23 (2) If the operator's blood alcohol concentration is fifteen hundredths of
24 one percent or more by weight based upon grams of alcohol per one hundred
25 cubic centimeters of blood or if the offender has a previous conviction for a
26 violation of R.S. 14:98, then at least ten years of the sentence of imprisonment
27 imposed under this Subsection shall be imposed without benefit of parole,
28 probation, or suspension of sentence. If any part of the sentence of
29 imprisonment is suspended, the court shall require the offender to participate

- 1 **in a court-approved substance abuse program and may require that the**
2 **offender participate in a court-approved driver improvement program which**
3 **program shall include instruction on railroad grade crossing safety.**
-

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

DIGEST

Proposed law creates the crime of first degree vehicular homicide as the killing of two or more human beings in a single incident caused proximately or caused directly by an offender engaged in the operation of, or in the actual physical control of, any motor vehicle, aircraft, water craft, or other means of conveyance, whether or not the offender had the intent to cause death or great bodily harm, whenever any of the following conditions exist and such condition was a contributing factor to the killing:

- (1) The operator is under the influence of alcoholic beverages.
- (2) The operator's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per 100 cc. of blood.
- (3) The operator is under the influence of any controlled dangerous substance listed in Schedules I, II, III, IV, or V of the controlled dangerous substance law.
- (4) The operator is under the influence of alcoholic beverages.
- (5) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable without a prescription. Provides an affirmative defense that the label on the container of the drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.
- (6) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by a physician or the dosage recommended by the manufacturer of the drug.

Provides the following penalties for conviction of first degree vehicular homicide:

- (1) Fine not less than \$2,000 nor more than \$15,000 and imprisonment at hard labor for not less than 10 years nor more than 40 years. Requires that at least six years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.
- (2) If the operator's blood alcohol concentration is 0.15 percent or more by weight based upon grams of alcohol per 100 cc of blood or if the offender has a previous conviction for driving under the influence, then at least 10 years of the sentence of imprisonment shall be imposed without benefit of parole, probation, or suspension of sentence.

Proposed law requires that if any part of a sentence of imprisonment is suspended, the court is to require the offender to participate in a court-approved substance abuse program and it may require that the offender participate in a court-approved driver improvement program which program is to include instruction on railroad grade crossing safety.

Effective August 15, 2011.

(Adds R.S. 14:32.2)