

HOUSE BILL 2450

By Whitson

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13; Title 40, Chapter 7, Part 1 and Title 55, Chapter 10, Part 4, relative to driving under the influence of drugs and alcohol.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-406(a), is amended by deleting the subsection and substituting instead the following:

A law enforcement officer who has probable cause to believe that the operator of a motor vehicle is driving while under the influence of any intoxicant, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof as prohibited by § 55-10-401, or committing the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, may request that the operator of the vehicle submit to breath or blood tests, or both tests, for the purpose of determining the alcohol or drug content, or both, of that operator's blood.

SECTION 2. Tennessee Code Annotated, Section 55-10-406(b), is amended by deleting the subsection and substituting instead the following:

Breath or blood tests may be administered under the following circumstances:

- (1) The operator's implied consent to submit to breath or blood tests pursuant to subdivision (d)(1);
- (2) The operator's consent to submit to breath or blood tests;
- (3) A search warrant;

(4) Breath tests incident to a lawful arrest for any of the offenses set out in subsection (a);

(5) Blood tests without the consent of the operator of the vehicle if exigent circumstances to the search warrant requirements exist; or

(6) When blood tests are required to be administered pursuant to subsection (c), by search warrant, or if exigent circumstances exist.

SECTION 3. Tennessee Code Annotated, Section 55-10-406(c)(1), is amended by deleting the language "A law enforcement officer shall administer a breath test" and substituting instead the language "A law enforcement officer shall cause to be administered blood tests".

SECTION 4. Tennessee Code Annotated, Section 55-10-406(c)(1)(A), is amended by deleting the language "an accident" and substituting instead the language "a collision".

SECTION 5. Tennessee Code Annotated, Section 55-10-406(c)(1)(B), is amended by deleting the language "sixteen (16) years of age" and substituting instead the language "eighteen (18) years of age".

SECTION 6. Tennessee Code Annotated, Section 55-10-406(c)(1)(C), is amended by deleting the subdivision and substituting instead the following:

Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401 and has a prior conviction of a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401, or an offense committed in another state that would constitute the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), aggravated vehicular homicide under § 39-13-218, or driving under the influence of an intoxicant under § 55-10-401, if committed in this state.

SECTION 7. Tennessee Code Annotated, Section 55-10-406(c)(2), is amended by deleting the subdivision and substituting instead the following:

The blood tests shall be performed in accordance with the procedure set forth in this section and § 55-10-408, and shall be performed, when required by subdivision

(c)(1), pursuant to a search warrant as described in subdivision (b)(3), or, if exigent circumstances to the search warrant requirements exist, as described in subdivision (b)(5), regardless of whether the operator consents to the tests.

SECTION 8. Tennessee Code Annotated, Section 55-10-406(c)(3), is amended by deleting the language "a breath test that is" and substituting instead the language "blood tests that are".

SECTION 9. Tennessee Code Annotated, Section 55-10-406(d)(1), is amended by deleting the subdivision and substituting instead the following:

The operator of a motor vehicle in this state is deemed to have given implied consent to breath or blood tests, or both tests, for the purpose of determining the alcohol or drug content, or both, of the operator's blood. However, no such tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the operator was in violation of one (1) of the offenses set out in subsection (a).

SECTION 10. Tennessee Code Annotated, Section 55-10-406(d)(2), is amended by deleting the language "a breath test" and substituting instead the language "breath or blood tests, or both tests,"; and by deleting the language "submit to the breath test:" and substituting instead the language "submit to the breath or blood tests:".

SECTION 11. Tennessee Code Annotated, Section 55-10-406(d)(2)(B), is amended by adding the language "and meets the requirements of § 55-10-405" immediately after the language "a violation of § 55-10-401".

SECTION 12. Tennessee Code Annotated, Section 55-10-406(d)(3), is amended by deleting the language "a breath test" and substituting instead the language "breath or blood tests, or both tests,".

SECTION 13. Tennessee Code Annotated, Section 55-10-406(d)(4), is amended by deleting the language

a breath test, advised of the consequences for refusing to do so, and refuses to submit, the test to which the operator refused shall not be given, and the

and substituting instead the language

breath or blood tests, or both tests, advised of the consequences for refusing to do so, and refuses to submit, the

SECTION 14. Tennessee Code Annotated, Section 55-10-406(d)(4), is amended by deleting subdivisions (d)(4)(A)-(C) and substituting instead the following:

(A) At the same time and by the same court as the court disposing of the offense for which the operator was placed under arrest, upon oral or written motion of the state; or

(B) At the operator's first appearance or preliminary hearing in the general sessions court, but no later than the case being bound over to the grand jury, if the state does not make a motion pursuant to subdivision (d)(4)(A).

SECTION 15. Tennessee Code Annotated, Section 55-10-406, is amended by deleting subsections (e)-(n) and substituting instead the following:

(e)

(1)

(A) If blood tests of the operator of a motor vehicle are authorized pursuant to this section, a qualified practitioner who, acting at the written request of a law enforcement officer, withdraws blood from an operator for the purpose of conducting tests to determine the alcohol or drug content in an operator's blood, shall not incur any civil or criminal liability

as a result of the withdrawing of the blood, except for any damages that may result from the negligence of the person so withdrawing.

(B) Neither the hospital nor other employer of a qualified practitioner listed in subdivision (e)(2) shall incur any civil or criminal liability as a result of the act of withdrawing blood from any operator, except in the case of negligence.

(2) For purposes of this section, a "qualified practitioner" is a:

(A) Physician;

(B) Registered nurse;

(C) Licensed practical nurse;

(D) Clinical laboratory technician;

(E) Licensed paramedic;

(F) Licensed emergency medical technician approved to establish intravenous catheters;

(G) Technologist; or

(H) A trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood.

(f) Any operator who is unconscious as a result of a collision or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering the operator incapable of refusal, shall not be subjected to a blood test unless law enforcement has obtained a search warrant or exigent circumstance exceptions to a search warrant apply.

(g) Provided probable cause exists for criminal prosecution for any of the offenses specified in subsection (a), nothing in this section shall affect the admissibility

into evidence in a criminal prosecution of any chemical analysis of the alcohol or drug content of the defendant's blood that was not compelled by law enforcement but was obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

(h) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions for assault or homicide by the use of a motor vehicle only, of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained in accordance with this section and tested according to § 55-10-408.

(i) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions, of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained by consent and tested according to § 55-10-408.

(j) The results of blood or breath tests authorized and conducted in accordance with this section and § 55-10-408:

(1) Shall be reported in writing by the person making the test, shall have noted on the report the time at which the sample analyzed was obtained from the operator, and shall be made available to the operator upon request; and

(2) Shall be admissible in evidence at the trial of any person charged with an offense specified in subsection (a).

(k) The fact that a law enforcement officer failed to request that the operator charged with an offense specified in subsection (a) submit to a blood or breath test is admissible as evidence at the trial of the charged offense.

SECTION 16. Tennessee Code Annotated, Section 55-10-407(a), is amended by deleting the language "except as otherwise provided in this section,".

SECTION 17. Tennessee Code Annotated, Section 55-10-407(a), is amended by deleting the language "an accident" wherever it appears and substituting instead the language "a collision".

SECTION 18. Tennessee Code Annotated, Section 55-10-407, is amended by deleting subsection (b).

SECTION 19. Tennessee Code Annotated, Section 55-10-408(a), is amended by deleting the language "§ 55-10-406(h)(2)" and substituting instead the language "§ 55-10-406(e)(2)".

SECTION 20. This act shall take effect July 1, 2018, the public welfare requiring it.