

HOUSE BILL 2768

By Shipley

AN ACT to amend Tennessee Code Annotated, Title 7; Title 29; Title 37; Title 38; Title 39; Title 40; Title 41; Title 49; Title 55; Title 68 and Title 71, relative to alcohol related traffic offenses.

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

SECTION 1. Tennessee Code Annotated, Section 40-33-211(c)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3)

(A) If a court of competent jurisdiction orders a person to operate only a motor vehicle that is equipped with a functioning ignition interlock device and the judge makes a specific finding that the person is indigent, all costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4 shall be paid exclusively from the interlock assistance fund established pursuant to § 55-10-421.

(B) Notwithstanding any other provision of title 55, chapter 10, no funds from the alcohol and drug addiction treatment fund administered by the department of mental health and developmental disabilities shall be used for the lease, purchase, installation, removal or maintenance of such device or for any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4.

SECTION 2. Tennessee Code Annotated, Section 40-33-211(f)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3)

(A) If a court of competent jurisdiction orders a person to operate only a motor vehicle that is equipped with a functioning ignition interlock device and the judge makes a specific finding that the person is indigent, all costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4 shall be paid exclusively from the interlock assistance fund established pursuant to § 55-10-421.

(B) Notwithstanding any other provision of title 55, chapter 10, part 4, no funds from the alcohol and drug addiction treatment fund administered by the department of mental health and developmental disabilities shall be used for the lease, purchase, installation, removal or maintenance of such device or for any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4.

SECTION 3. Tennessee Code Annotated, Section 55-10-403(a)(1)(A)(iii), is amended by deleting the subdivision in its entirety and substituting instead the following:

(iii) In addition to the other penalties set out for a person convicted of a first offense violation of § 55-10-401, if the person applies for and the court orders the issuance of a restricted motor vehicle operator's license pursuant to subsection(d), the court shall also order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, if at the time of the offense, the defendant:

- (a) Has a blood or breath alcohol concentration of fifteen hundredths of one percent (.15%) or higher;
- (b) Is accompanied by a person under eighteen (18) years of age; or
- (c) Violates the implied consent provisions set out in § 55-10-406(a).

SECTION 4. Tennessee Code Annotated, Section 55-10-403(a)(1)(A), is amended by adding the following new subdivision (viii):

(viii) Subdivisions (a)(1)(A)(i) - (iii) constitute an enhanced sentence, not a new offense.

SECTION 5. Tennessee Code Annotated, Section 55-10-403(c)(1)(A)(iii), is amended by deleting the language “(c)(4)” and substituting instead the language “(c)(2)”.

SECTION 6. Tennessee Code Annotated, Section 55-10-403(c), is amended by adding the following new subdivision (4):

(4) If an offender’s sentence is enhanced pursuant to subdivision (a)(1)(A)(iii), the court shall order that if the offender applies for and the court orders the issuance of a restricted motor vehicle operator’s license pursuant to subsection(d), the court shall also order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, unless the requirements of § 55-10-412(m) are met. The restriction set out in this subdivision (c)(4) shall be a condition of such offender’s probation.

SECTION 7. Tennessee Code Annotated, Section 55-10-406(a)(3), is amended by deleting the subsection in its entirety and substituting instead the following:

(3) Any law enforcement officer who requests that the driver of a motor vehicle submit to either or both tests authorized pursuant to this section, for the purpose of determining the alcohol or drug content, or both, of the driver's blood, shall, prior to conducting either test or tests, advise the driver that refusal to submit to the test or tests will result in the suspension by the court of the driver's operator's license; if the driver is driving on a license that is cancelled, suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218, or driving under the influence of an intoxicant

under § 55-10-401, that the refusal to submit to the test or tests will, in addition, result in a fine and mandatory jail or workhouse sentence; and if the driver is convicted of a violation of § 55-10-401 that the refusal to submit to the test or tests will, in addition, result in the requirement that the person be required to operate only a motor vehicle equipped with a functioning ignition interlock device. The court having jurisdiction of the offense for which the driver was placed under arrest shall not have the authority to suspend the license of a driver or require the driver to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-403(a)(1)(A)(iii)(c), who refused to submit to either or both tests, if the driver was not advised of the consequences of the refusal.

SECTION 8. Tennessee Code Annotated, Section 55-10-412, is amended by deleting the section in its entirety and substituting instead the following:

(a) For the purpose of this part:

(1) "Functioning 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; and

(2) "Ignition interlock provider" means an entity that has been approved and certified by the department of safety to provide the installation, monitoring and removal of functioning ignition interlock devices in this state.

(b)

(1) In addition to the penalties authorized for violations of § 55-10-401, a court may, in its discretion, upon finding a person guilty of violating § 55-10-401, order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, and this restriction may continue for a period

of up to one (1) year after the person's license is no longer suspended or restricted under § 55-10-403.

(2) Subdivision (b)(l) shall only apply if the court is not otherwise required by law to order a person found guilty of violating § 55-10-401 to operate only a motor vehicle that is equipped with a functioning ignition interlock device.

(c) If a person is ordered to drive only a motor vehicle with a functioning ignition interlock device installed on such vehicle pursuant to § 55-10-403(c)(4), § 55-10-403(d)(4)(B) or subsection (b) or (l), such restriction shall be a condition of the person's probation or court supervision provided such person is subject to probation or supervision for the entire period of such restriction.

(d) Upon ordering a functioning ignition interlock device pursuant to § 55-10-403(c)(4), § 55-10-403(d)(4)(B) or § 55-10-412(b), the ignition interlock provider shall establish a specific calibration setting two-hundredths of one percent (.02%) blood alcohol concentration at which the functioning ignition interlock device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction.

(e) Upon ordering the use of a functioning ignition interlock device pursuant to § 55-10-403(c)(4), § 55-10-403(d)(4)(B) or subsection (b) or (l), the court shall:

(1) State on the record the requirement for and the period of use of the device and so notify the department of safety;

(2) Notify the board of probation and parole or any other agency, department, program, group, private entity or association that is responsible for the supervision of the person ordered to drive only a motor vehicle with a functioning ignition interlock device;

(3) Direct that the records of the department reflect:

(A) That the person may not operate a motor vehicle that is not equipped with a functioning ignition interlock device; and

(B) Whether the court has expressly permitted the person to operate a motor vehicle without a functioning ignition interlock device for employment purposes under subsection (m); and

(4) Direct the department to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device.

(f) Upon the court ordering a person to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-403(c)(4), § 55-10-403(d)(4)(B) or subsection (b) or (l), the court, the board of probation and parole or any other agency, department, program, group, private entity or association that is responsible for the supervision of such person shall:

(1) Require proof of the installation of the functioning ignition interlock device;

(2) Require periodic reporting by the person for verification of the proper operation of the functioning ignition interlock device;

(3) Require the person to have the system monitored for proper use and accuracy by an entity approved by the department of safety at least every thirty (30) days or more frequently as the circumstances may require; and

(4) Notify the court of any of the person's violations of this part.

(g) A person prohibited under this part from operating a motor vehicle that is not equipped with a functioning ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device. Except as provided in subsection (k), a violation of this subsection (g) is a Class A misdemeanor.

(h) A person may not attempt to start or start a motor vehicle equipped with a functioning ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with a functioning ignition interlock device. Except as provided in subsection (k), a violation of this subsection (h) is a Class A misdemeanor.

(i) A person may not tamper with, or in any way attempt to circumvent, the operation of a functioning ignition interlock device that has been installed in a motor vehicle. Except as provided in subsection (k), a violation of this subsection (i) is a Class A misdemeanor.

(j) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with a functioning ignition interlock device. Except as provided in subsection (k), a violation of this subsection (j) is a Class A misdemeanor.

(k) A person who violates subsections (g), (h), (i) or (j) commits a Class A misdemeanor unless:

(1) The starting of a motor vehicle, or the request to start a motor vehicle, equipped with a functioning ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not operate the vehicle; or

(2) The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment, the requirements set out in subsection (m) are met, the vehicle is owned by the employer, and the vehicle is being operated by the person during regular working hours for the purposes of employment.

(l)

(1) If a person convicted of a violation of § 55-10-401 has a prior conviction for a violation of § 55-10-401 within the past five (5) years, the court shall order the person to operate only a motor vehicle, after the license revocation period, which is equipped with a functioning interlock device. The court shall also order the device to be installed on all vehicles owned or leased by the person for a period of six (6).

(2) A judge ordering the use of a functioning ignition interlock device pursuant to subdivision (l)(1) shall follow the same procedures set out in subsections (d) and (e), and subsections (g)-(k) shall apply to an interlock device ordered pursuant to this subsection (l).

(m)

(1) Any person ordered to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-403(c)(4), § 55-10-403(d)(4)(B) or subsection (b) or (l) may, solely in the course of employment, operate a motor vehicle, which is owned or provided by such person's employer, without installation of a functioning ignition interlock device, if:

(A) The court expressly permits such operation;

(B) The employer has been notified of such driving privilege restriction; and

(C) Proof of the notification set out in subdivision (m)(1)(B) is within the vehicle, provided to the court and provided to the person's probation officer or the person responsible for the supervision of the defendant.



(2) If a court permits a person to operate a vehicle pursuant to subdivision (m)(1), the court may also place additional driving restrictions on such person that the court deems necessary to ensure compliance with this section.

(3) Subdivision (m)(1) shall not apply if such employer is an entity wholly or partially owned or controlled by the person subject to this section. If such employer is an entity wholly or partially owned or controlled by the person subject to the provisions of this section, the person shall be required to drive only a motor vehicle with a functioning ignition interlock device and no such employer exemption shall be available to such person.

SECTION 9. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following language as new sections thereto:

**§ 55-10-420.**

Any licensed ignition interlock provider providing a functioning ignition interlock device to a person pursuant to this part shall report to the board of probation and parole, or any other agency, department, program, group, private entity or association that is responsible for the supervision of a person who is ordered to drive only a motor vehicle with a functioning ignition interlock device installed on such vehicle as a condition of such person's probation any evidence of such person's:

(1) Altering, tampering with, bypassing, or removing a functioning ignition interlock device;

(2) Failing to abide by the terms or conditions ordered by the court, including but not limited to, failing to appear for scheduled monitoring visits; and

(3) Attempting to start the motor vehicle while under the influence of alcohol.

**§ 55-10-421.**

(a)

(1) There is created in the state treasury a fund to be known as the interlock assistance fund. Except as provided in subsection (f), all money in such fund shall be used to pay for the costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4 of persons deemed by the court to be indigent. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in subsection (f).

(2) Interest accruing on investments and deposits of the interlock assistance fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(3) Moneys in the interlock assistance fund account shall be invested by the state treasurer in accordance with § 9-4-603.

(b) The costs incurred in order to comply with the ignition interlock requirements shall be paid by the person ordered to install a functioning ignition interlock device, unless the court finds such person to be indigent. If a court determines that a person is indigent, the court shall order such person to pay any portion of the costs which the person has the ability to pay, as determined by the court. Any portion of the costs the person is unable to pay shall come from the interlock assistance fund established pursuant to this section.

(c) Whenever a person ordered to install a device pursuant to § 55-10-403(c)(4), § 55-10-403(d)(4)(B), § 55-10-412(b) or § 55-10-412(l) asserts to the court that the person is indigent and financially unable to pay for a functioning ignition interlock device,

it shall be the duty of the court to conduct a full and complete hearing as to the financial ability of the person to pay for such device and, thereafter, make a finding as to the indigency of such person.

(d) A person is indigent and financially unable to pay for a functioning ignition interlock device if the person is:

(1) Receiving any type of public assistance distributed by the United States government, the state, or any county or municipality of the state; or

(2) Receiving an annual income, after taxes, of one hundred fifty percent (150%) or less of the poverty level income guidelines compiled and published by the United States department of labor.

(e) Every person who informs the court that the person is financially unable to pay for a functioning ignition interlock device shall be required to complete a uniform affidavit of indigency. If the person intentionally misrepresents, falsifies or withholds any information required by the affidavit of indigency, such person commits perjury as set out in § 39-16-702.

(f)

(1) A person ordered to install a functioning ignition interlock device pursuant to this part shall pay a thirty dollar (\$30.00) ignition interlock administrative fee each month that the person is ordered to have such device installed, unless the court has determined such person to be indigent pursuant to this section. The fee shall be in addition to any cost for leasing, purchasing, installing, monitoring, removing or maintaining the device. The fee shall be collected by the ignition interlock provider installing the device. The ignition interlock provider shall remit the fees monthly to the state treasurer who shall allocate such fees as follows:

(A) Twenty-two dollars (\$22.00) to the interlock assistance fund for the purpose of paying for the all costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4 for persons found to be indigent by the court;

(B) Four dollars (\$4.00) to the Tennessee hospital association for the sole purposes of making grants to hospitals that have been designated as critical access hospitals under the medicare rural flexibility program for the purposes of purchasing medical equipment, enhancing high technology efforts and expanding healthcare services in underserved areas;

(C) One dollar (\$1.00) to the department of mental health and developmental disabilities to be placed in the alcohol and drug addiction treatment fund;

(D) One dollar (\$1.00) to the department of finance and administration, office of criminal justice programs, for the sole purpose of funding grant awards to local law enforcement agencies for purposes of obtaining and maintaining equipment and personnel needed in the enforcement of alcohol related traffic offenses;

(E) One dollar (\$1.00) to the department of safety to be used to defray the expenses of administering this act; and

(F) One dollar (\$1.00) to the department of probation and parole for the sole purpose of funding grant awards to department certified halfway houses whose primary focus is to assist drug and alcohol

offenders. In order for a halfway house to qualify for such grant awards it shall provide:

(i) No less than sixty (60) residential beds monthly with occupancy at no less than ninety-seven percent (97%) per month, or if a halfway house with nonresidential day reporting services, it shall serve no less than two hundred (200) adults monthly;

(ii) Safe and secure treatment facilities, and treatment to include moral reconnection therapy, GED course work, anger management therapy, and domestic and family counseling; and

(iii) Transportation to and from work, mental health or medical appointments for each of its residents.

(2)

(A) Beginning in fiscal year 2013-2014 any surplus in the interlock assistance fund shall be allocated as follows:

(i) Sixty percent (60%) of such surplus shall be used by the Tennessee hospital association for the sole purposes of making grants to hospitals that have been designated as critical access hospitals under the medicare rural flexibility program for the purposes of purchasing medical equipment, enhancing high technology efforts and expanding healthcare services in underserved areas;

(ii) Twenty percent (20%) of such surplus shall be transmitted to the department of mental health and developmental disabilities and placed in the alcohol and drug addiction treatment fund; and

(iii) Twenty percent (20%) of such surplus shall be used by the department of finance and administration, office of criminal justice programs, to provide grants to local law enforcement agencies for purposes of obtaining and maintaining equipment or personnel needed in the enforcement of alcohol related traffic offenses.

(B) For purposes of this subsection (f), "surplus" means any amount in the interlock assistance fund that exceeds one and one-half (1.5) times the amount used from the fund in the previous fiscal year to pay for the costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4 for persons found to be indigent by the court, as determined by the treasurer.

(C) Beginning on October 1, 2012, and annually thereafter, the treasurer shall report the amount of any surplus in the interlock assistance fund to the commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51. The general assembly shall appropriate such surplus in accordance with the purposes provided in subdivision (f)(2)(A).

(g) If at anytime after the effective date of this act there are no funds in the ignition interlock indigency fund or the fund is depleted, any indigent person required to have a functioning ignition interlock device who is ordered to have such pursuant to:

(1) § 55-10-403(c)(4) or § 55-10-403(d)(4)(B) shall be ineligible for a restricted license; or

(2) § 55-10-412(l) or § 55-10-412(b) shall be ineligible to have such person's license reinstated until such person is able to afford the functioning ignition interlock device.

**§ 55-10-422.**

(a) The Tennessee bureau of investigation, beginning February 1, 2012, and thereafter annually, on or before February 1, shall report in writing to the judiciary committees of the senate and the house of representatives the number of times the offense of driving under the influence, set out in § 55-10-401, was charged at the time of arrest and the number of times such charge resulted in a conviction of:

(A) Driving under the influence, set out in § 55-10-401;

(B) Reckless driving, set out in § 55-10-205; or

(C) Any other offense not requiring a person to operate only a motor vehicle that is equipped with a functioning ignition interlock device.

(b) The department of safety, beginning February 1, 2012, and thereafter annually, on or before February 1, shall report in writing to the judiciary committees of the senate and the house of representatives the number of offenders who have, in the previous year, had installed on their motor vehicles functioning ignition interlock devices and whether the installation of each device was pursuant to the requirement set out in:

(1) § 55-10-403(c)(4);

(2) § 55-10-403(d)(4)(B);

(3) § 55-10-412(b); or

(4) § 55-10-412(l).

(c) For purposes of this section, "previous year" means from January 1 to December 31 of the year immediately preceding the February 1 reporting date.

SECTION 10. Tennessee Code Annotated, Section 55-50-504, is amended by adding the following new subsection (k) thereto:

(k) Notwithstanding subdivision (a)(1), a person who drives a motor vehicle without a functioning ignition interlock device installed on such vehicle within the entire width between the boundary lines of every way publicly maintained that is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person was required by law to drive only a motor vehicle equipped with a functioning ignition interlock device commits a Class B misdemeanor and shall be punished by confinement for not less than seven (7) days nor more than six (6) months, and there may be imposed, in addition, a fine of not more than one thousand dollars (\$1,000).

SECTION 11. The administrative office of the courts shall develop and provide training to judges with jurisdiction over violations of § 55-10-401 to provide such judges with adequate knowledge to perform their duties under this act.

SECTION 12. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the General Appropriations Act.

SECTION 13. 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 14. For the purpose of promulgating rules and regulations necessary to effectuate this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2011, the public welfare requiring it,



and shall apply to offenses of driving under the influence occurring on or after the effective date of this act.