



State of Tennessee

PUBLIC CHAPTER NO. 964

SENATE BILL NO. 2434

By Johnson, Stevens

Substituted for: House Bill No. 2184

By Lamberth, Gant, Garrett, Ogles

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, Part 4, relative to driving under the influence.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-409(b)(2)(B)(iv), is amended by adding the following as new subdivisions:

() Reckless endangerment under § 39-13-103, if the charged offense was driving under the influence under § 55-10-401;

() Driving under the influence under § 55-10-401;

SECTION 2. Tennessee Code Annotated, Section 55-10-409(c)(1), is amended by adding the following as a new subdivision:

() Medical treatment of the person or an immediate family member or provision of care for the person or an immediate family member suffering from a serious illness.

SECTION 3. Tennessee Code Annotated, Section 55-10-409(d)(2)(A), is amended by deleting "and for a period of six (6) months after the license revocation period has expired if required by § 55-10-417(k)".

SECTION 4. Tennessee Code Annotated, Section 55-10-417(a)(3), is amended by deleting the subdivision and substituting:

(3) If a person is ordered to install and use the device due to the requirements of § 55-10-409 or subdivision (a)(1) or (a)(2) due to a violation of either § 55-10-401 or § 55-10-406, then the restriction must be a condition of probation or supervision for the entire period of the restriction.

SECTION 5. Tennessee Code Annotated, Section 55-10-417(b), is amended by deleting the subsection and substituting:

(b) Upon ordering a functioning ignition interlock device pursuant to § 55-10-409 or subdivision (a)(1) or (a)(2), the court must establish a specific calibration setting of two-hundredths of one percent (0.02%) blood alcohol concentration at which the functioning ignition interlock device will prevent the motor vehicle from being started.

SECTION 6. Tennessee Code Annotated, Section 55-10-417(c), is amended by deleting the language "Upon ordering the use of a functioning ignition interlock device pursuant to § 55-10-409 or subdivision (a)(1), subdivision (a)(2), or subsection (k) the court shall:" and substituting:

Upon ordering the use of a functioning ignition interlock device pursuant to § 55-10-409 or subdivision (a)(1) or (a)(2), the court must:

SECTION 7. Tennessee Code Annotated, Section 55-10-417(d), is amended by deleting "§ 55-10-409, subdivision (a)(1) or subsection (k)" and substituting instead "§ 55-10-409 or subdivision (a)(1)".

SECTION 8. Tennessee Code Annotated, Section 55-10-417(k), is amended by deleting the subsection and substituting:

(k) A person who was required under this subsection (k), as it existed on June 30, 2022, to install and use an ignition interlock device on a motor vehicle for six (6) months following reinstatement of the person's driver license after two (2) or more convictions for § 55-10-401 within five (5) years, may petition the department for reinstatement of the person's driver license. If the person is in compliance with all other requirements for reinstatement and has no other revocations or suspensions on the person's driving record, then the department must reinstate the driver license.

SECTION 9. Tennessee Code Annotated, Section 55-10-417(l), is amended by deleting the subsection and substituting:

(l) If a person is required by a court order issued pursuant to this section, by statutory requirement, in the court's discretion, or at the defendant's request, to operate only a motor vehicle that is equipped with a functioning ignition interlock device, and the offense for which the ignition interlock device is ordered occurs on or after July 1, 2016, then the compliance-based provisions of § 55-10-425 must govern the required periods of continuous operation, default interlock orders, authorized removal of the device, and other enforcement aspects of the ignition interlock requirements set out in § 55-10-425.

SECTION 10. Tennessee Code Annotated, Section 55-10-417(m), is amended by deleting "§ 55-10-409 or subdivision (a)(1), subdivision (a)(2), or subsection (k)" and substituting "§ 55-10-409 or subdivision (a)(1) or (a)(2)".

SECTION 11. Tennessee Code Annotated, Section 55-10-425(a), is amended by deleting the subsection and substituting:

(a)(1) Effective July 1, 2016, the authorized removal of any functioning ignition interlock device that is required by a court order, by statutory requirement, in the court's discretion, or at the defendant's request, must be compliance-based in accordance with this section.

(2) As used in this section:

(A) "Ignition interlock provider" means a provider that is licensed by the department pursuant to SECTION 26 of this act;

(B) "Ignition interlock usage period" means a three-hundred-sixty-five-consecutive-day period or the entire period of the person's driver license revocation, whichever is longer; and

(C) "In writing" means either electronically or by regular mail.

SECTION 12. Tennessee Code Annotated, Section 55-10-425(b)(1), is amended by deleting the subdivision and substituting:

(1) Except as provided in subdivision (b)(2), upon application by a person who is not otherwise prohibited from having a restricted license, the court must order the installation and use of a functioning ignition interlock device for the ignition interlock usage period. The consecutive-day requirement must be considered to commence on the date of interlock installation, provided that the person applies for the person's restricted license within ten (10) days of the issuance of a court order authorizing a restricted license. If the person does not have a court order or does not apply within ten (10) days, then the ignition interlock usage period must commence on the date of issuance of the driver license with interlock restrictions under subdivision (b)(2).

SECTION 13. Tennessee Code Annotated, Section 55-10-425(b)(2), is amended by deleting the subdivision and substituting:

(A) If a functioning ignition interlock device is required, ordered, or requested to be installed and used pursuant to subdivision (a)(1), then the ignition interlock usage period required by subdivision (b)(1) and the final one-hundred-twenty-day period of violation-free use required by subdivision (d)(1) are applicable regardless of whether the person applies for a restricted license during the revocation period.

(B) The department shall not reinstate a driver license to a person who did not apply for a restricted driver license during the period of license revocation, regardless of whether the person had an ignition interlock device installed, until the person shows the department

proof of a current ignition interlock installation. Upon proof being shown and the driver license reinstated with interlock restrictions, the ignition interlock usage period must commence on the date the license is reinstated and must continue for the full ignition interlock usage period that matches the person's license revocation period until compliance has been established as required in this section.

(C) The department shall not accept a court order waiving any ignition interlock requirements if the court order is not in compliance with this part.

SECTION 14. Tennessee Code Annotated, Section 55-10-425(b)(4)(A), is amended by deleting "a three hundred sixty-five consecutive day period or for the entire period of the driver license revocation period, whichever is longer" and substituting "the ignition interlock usage period".

SECTION 15. Tennessee Code Annotated, Section 55-10-425(c), is amended by deleting the subsection and substituting:

(c)(1) A person required to install and use only a functioning ignition interlock device pursuant to this section is prohibited from:

(A) Removing or causing to be removed the ignition interlock device from the motor vehicle;

(B) Failing to appear at the ignition interlock device provider when required for calibration, monitoring, or inspection of the device; and

(C) Tampering with or circumventing the ignition interlock device.

(2) Unless as otherwise provided in subsection (h), the person must maintain the device in working order for the ignition interlock usage period.

(3) Failure to comply with the requirements of this subsection (c) will result in the ignition interlock usage period starting over.

SECTION 16. Tennessee Code Annotated, Section 55-10-425(d), is amended by deleting the subsection and substituting:

(d)(1) During the final one-hundred-twenty-day period of an ignition interlock usage period, the person shall not:

(A) Tamper with, circumvent, or attempt to start the motor vehicle with a breath alcohol concentration in excess of the two-hundredths of one percent (0.02%) blood alcohol concentration calibration setting required by § 55-10-417(b); provided, however, that a person is not in violation of this subdivision (d)(1)(A) for attempting to start the motor vehicle, if a subsequent retest within ten (10) minutes shows a breath alcohol concentration of two-hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same person performed both tests;

(B) Fail to take or skip a rolling retest when required by the ignition interlock device; provided, however, that a person is not in violation of this subdivision (d)(1)(B) for failing to take or skipping a rolling retest if a review of the digital images associated with the test confirms that the motor vehicle was not occupied by the driver at the time of the retest;

(C) Fail a rolling test required by the ignition interlock device with a breath alcohol concentration in excess of two-hundredths of one percent (0.02%); provided, however, that a person is not in violation of this subdivision (d)(1)(C) for failing a rolling test, if a subsequent retest within ten (10) minutes shows a breath alcohol concentration of two-hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same person performed both tests; or

(D) Remove the ignition interlock device from the motor vehicle, except for necessary maintenance, replacement, or repair as determined by the department, or as allowed by subsection (h).

(2)(A) Failure to comply with subdivisions (d)(1)(A)–(d)(1)(C) must result in the extension of the ignition interlock usage period by one hundred twenty (120) days during which the person must remain in compliance with subdivisions (d)(1)(A)–(d)(1)(C) in order to avoid additional extension.

(B) Failure to comply with subdivision (d)(1)(D) must result in the restart of the full ignition interlock usage period as prescribed in subdivision (c)(3).

(3) The requirement to have an interlock device shall not be removed from the person's driver license unless the requirements of this subsection (d) have been met.

SECTION 17. Tennessee Code Annotated, Section 55-10-425(e), is amended by deleting the subsection and substituting:

(e)(1) If at any time during the ignition interlock usage period, the department determines that the person has committed a violation of subsection (c), then the ignition interlock usage period must start again from the date compliance was reestablished.

(2) Notwithstanding subdivision (e)(1), if at any time during the final one hundred twenty (120) days of the ignition interlock usage period, the department determines that the person has committed a violation of subsection (d), then the one-hundred-twenty-day period must start again from the date of the violation.

SECTION 18. Tennessee Code Annotated, Section 55-10-425(f), is amended by deleting the subsection and substituting instead:

(1)(A) Upon completion of the ignition interlock usage period, the person must take the motor vehicle to an ignition interlock provider for a final download of the person's data file and a determination as to whether the person has successfully completed the ignition interlock usage period without violations of subsection (c) and whether the final one-hundred-twenty-day period was completed without violations of subsection (d).

(B) The ignition interlock provider must send the data file from the person's final download to the department within two (2) business days.

(C) If the person has successfully completed the ignition interlock usage period without violations of subsection (c) and the final one-hundred-twenty-day period was completed without violations of subsection (d), then the ignition interlock provider must issue a compliance determination form to the person. If the person has not successfully completed the ignition interlock usage period without violations of subsection (c), or the final one-hundred-twenty-day period was not completed without violations of subsection (d), then the ignition interlock provider must notify the person of noncompliance and the resulting extension of the ignition interlock requirement on the compliance determination form. The ignition interlock provider must use the compliance determination form published by the department.

(D) If the ignition interlock provider issues a certificate of compliance, then the ignition interlock division within the department must issue an interlock removal form authorizing the removal of the ignition interlock restrictions from the person's driver license and the removal of the ignition interlock device from the person's motor vehicle; provided, that the department's review of the person's records indicates the person has been in compliance during the ignition interlock usage period.

(E) The person may take the interlock removal form to a driver services center and apply for the removal of the ignition interlock requirements and reinstatement of the person's driver license or the issuance of a photo identification license. If the person meets all requirements for driver license reinstatement and pays all reinstatement fees, then the department must reinstate the driver license.

(F) If the ignition interlock provider notifies the person that the provider's records indicate the person has not complied with the conditions in subsection (c) or (d) during the required periods, then the person may either accept the extension of the ignition interlock requirement or request that the provider reconsider the finding of noncompliance and consider evidence of compliance provided by the person. If the provider confirms the finding of noncompliance, then the person may either accept the extension of the ignition interlock requirement or request an administrative compliance review by the department pursuant to subdivision (f)(2).

(2)(A) A person who has had the person's ignition interlock usage period extended by a provider may request, in writing, an administrative compliance review by the department. Any evidence of compliance the person intends to present to the department must be included with the written request.

(B) The department shall review the request, including any evidence provided by the person and the records provided by the provider, within thirty (30) days of receiving the request. Following the department's review, the department shall notify the person and the provider of the department's determination in writing.

(C) If the department determines that the person was in compliance with subsections (c) and (d), then the department shall issue an interlock removal form.

(D) If the department determines that the person was not in compliance for the required periods, then the department shall inform the person of the determination in writing. The person may seek judicial review of the department's administrative compliance review determination as provided by § 4-5-322.

(3) When removing an ignition interlock device on or after July 1, 2016, a certified ignition interlock provider may in good faith rely on a person's interlock removal form that removal of the ignition interlock device is lawful.

SECTION 19. Tennessee Code Annotated, Section 55-10-425(g), is amended by deleting the subsection and substituting:

(g) This section applies to offenses committed on or after July 1, 2016, for which a person is required by a court order, a statutory requirement, in the court's discretion, or at the defendant's request, to operate only a motor vehicle that is equipped with a functioning ignition interlock device. To the extent not inconsistent with this section, the procedural provisions and geographic restrictions of §§ 55-10-409 and 55-10-417, the provider fees of § 55-10-418, and the electronic monitoring indigency fund and indigency provisions of § 55-10-419 must, if applicable, continue to apply. If any provision of those sections is in conflict with this section, this section must apply.

SECTION 20. Tennessee Code Annotated, Section 55-10-425, is amended by adding the following as a new subsection:

() (1) If a person is unable to produce enough breath volume to operate an ignition interlock device, then the person may apply to the department for a waiver of the ignition interlock requirement.

(2) An application for a waiver must be on a form developed by the department, and the following documents must be submitted with the application:

(A) A statement by an ignition interlock provider, dated within sixty (60) days of the application, that an ignition interlock device cannot be adjusted to allow the person to use the device and register the person's breath alcohol level; and

(B) Statements from at least two (2) licensed physicians who have examined the person at an in-office appointment, dated within sixty (60) days of the application, indicating that the person has a medical condition that renders the person unable to provide a deep lung breath sample for analysis by an ignition interlock device.

(3) A person who fails to submit the documents required in subdivision () (2) at the time of application must be provided an additional thirty (30) days to submit the documents before the department may deny the waiver for the failure to submit the required documents.

(4) Within sixty (60) days after receipt of a waiver application and all required documents, the department shall review the application and the statements from the interlock provider and the physicians, and determine if a person is unable to operate an ignition interlock device and the failure to grant an interlock waiver would constitute a hardship based on the person's work or medical needs.

(5) Upon determining that a person is unable to operate an ignition interlock device and the failure to grant a waiver would constitute a hardship under subdivision () (4), the department may issue a waiver of the person's ignition interlock requirement. The waiver form issued by the department must specify the necessary times and places of permissible operation of a motor vehicle for the limited purposes of going to and from:

(A) Work at the person's regular place of employment;

(B) The office of the person's probation officer or other similar location for the sole purpose of attending a regularly scheduled meeting or other function with the probation officer by a route to be designated by the probation officer;

(C) A court-ordered alcohol safety program;

(D) A college or university in the case of a student enrolled full time in the college or university;

(E) A court-ordered outpatient alcohol and drug treatment program;

(F) The person's regular place of worship for regularly scheduled religious services conducted by a bona fide religious institution as defined in § 48-101-502(c); and

(G) Medical treatment of the person or an immediate family member or provision of care for the person or an immediate family member suffering from a serious illness.

(6)(A) The time and geographic restrictions must be required for the entire period of license revocation, or the entire period an ignition interlock device was required based on the law at the time of the person's conviction.

(B) A person who receives a waiver must carry the waiver form at all times while the person is operating a motor vehicle. A person who does not have the waiver form while operating a motor vehicle is considered to be driving on a revoked license.

(7) A person who has been granted a waiver form by the department must take the form, accompanied by a fee of sixty-five dollars (\$65.00), to a driver services center to apply for a restricted driver license.

(8) The denial of a waiver under this subsection () may be appealed in accordance with the rules and procedures for appeals through the department's driver improvement division. The department shall not issue a license without an ignition interlock restriction during the pendency of the appeal.

SECTION 21. Tennessee Code Annotated, Section 55-10-425, is amended by adding the following as a new subsection:

() (1) A nonresident, as defined in § 55-50-102, who is required to install and maintain an ignition interlock device pursuant to this part may request a waiver developed by the department to be completed by the nonresident's home state. Upon acceptance of the completed waiver by the department, the ignition interlock installation requirement must be waived.

(2) If at any time the nonresident becomes a resident, as defined in § 55-50-102, of this state, then the resident must comply with the requirements of this section and the ignition interlock usage period will commence on the date of driver license issuance with proof that an ignition interlock device has been installed on the motor vehicle.

SECTION 22. Tennessee Code Annotated, Section 55-10-425, is amended by adding the following as a new subsection:

() A person required to have a functioning ignition interlock device pursuant to this part shall not operate a motor vehicle without a functioning ignition interlock device.

SECTION 23. Tennessee Code Annotated, Section 55-10-425, is amended by adding the following as a new subsection:

() A person who is subject to § 55-10-409 or this section may petition a court with proper jurisdiction for reinstatement of the person's driver license under this part regardless of the date when the person first became subject to those limitations. If the person is in compliance with all other requirements for reinstatement and has no other revocations or suspensions on the person's driving record, then the court may order reinstatement. Upon receipt of the court order, if the person is in compliance with all other requirements for reinstatement and has no other revocations or suspensions on the person's driving record, then the department shall reinstate the license.

SECTION 24. Tennessee Code Annotated, Section 55-10-417(h)(2), is amended by adding the language "or required by statute" immediately after the language "court".

SECTION 25. Tennessee Code Annotated, Section 55-10-417(j), is amended by deleting the subsection and substituting instead the following:

(1) Except as provided in subdivision (j)(5), a person who violates subsection (f), (g), (h), or (i) commits a Class A misdemeanor.

(2) If the violation is the person's first violation, the person shall be sentenced to a minimum of forty-eight (48) hours of incarceration.

(3) If the violation is the person's second violation, the person shall be sentenced to a minimum of seventy-two (72) hours of incarceration.

(4) If the violation is the person's third or subsequent violation, the person shall be sentenced to a minimum of seven (7) consecutive days of incarceration.

(5) The penalty provisions of this subsection (j) shall not apply if the starting of a motor vehicle equipped with a functioning ignition interlock device, 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.

(6) A person who is convicted for a violation of subdivision (h)(2) shall be required to complete an additional consecutive three-hundred-sixty-five-day ignition interlock usage period as provided in § 55-10-425, regardless of whether the person has already completed an ignition interlock usage period for the underlying violation of § 55-10-401.

SECTION 26. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following as a new section:

(a) As used in this section:

(1) "In writing" means either by written electronic communication or by written physical communication;

(2) "Manufacturer" means an individual or entity responsible for the design, construction, or production of an ignition interlock device that has been approved by the ignition interlock program as meeting all of the minimum requirements set forth in the ignition interlock device program rules;

(3) "Permanent revocation" means the indefinite revocation of an entity's or individual's license or ability to perform the actions authorized under this section;

(4) "Service center" means an entity designated by the manufacturer and approved by the ignition interlock program to provide services, including, but not limited to, installation, inspection, maintenance, and removal of an ignition interlock device within this state;

(5) "Subcontractor" means an individual or entity, other than a service center or technician, seeking to provide intermediary services for a manufacturer, including, but not limited to, opening and managing service centers and installing and monitoring ignition interlock devices;

(6) "Technician" means a person affiliated with a service center and engaged in the installation, inspection, maintenance, and removal of ignition interlock devices in this state; and

(7) "Temporary suspension" means the partial or full removal of an entity's or individual's license or ability to perform the actions authorized in this section, for a period of not more than one (1) year.

(b) A manufacturer, service center, technician, or subcontractor must be licensed by the department of safety in order to provide compliance-based ignition interlock services under this section.

(c)(1) The department shall establish the requirements for each license category by rule pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A manufacturer, service center, technician, or subcontractor must apply to

the department for a license to operate in this state. The application must be on a form published by the department and must be accompanied by the fee set by the department under subdivision (c)(2).

(2) The department may impose an initial application fee not to exceed two hundred fifty dollars (\$250) and a renewal application fee not to exceed one hundred fifty dollars (\$150). Fees paid under this subsection (c) must only be used to fund the ignition interlock program within the department. Fee amounts must be established by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) If an applicant meets the requirements for the license type for which the applicant applied, then the department must issue the applicant a license valid for one (1) year.

(e)(1) If a licensee's renewal application is received by the department at least sixty (60) days prior to the expiration of the licensee's current license, then the licensee is authorized to continue to perform new installations of ignition interlock devices after the expiration date of the license so long as the department has not issued a denial of a renewal.

(2) If a licensee's renewal application is received by the department less than sixty (60) days prior to the expiration date of the licensee's current license, then the licensee is not authorized to perform new installations of ignition interlock devices after the expiration date of the license until a renewal has been issued by the department. In addition to the renewal fee, the licensee is subject to a late fee not to exceed one hundred dollars (\$100).

(3) The department must inform the licensee in writing of the date the renewal application was received by the department.

(f) A former licensee who has not held an active license for more than (1) year from the date of expiration of the previous license is not eligible for renewal and must apply as an initial applicant.

(g)(1) The department may temporarily suspend or permanently revoke a license, either in whole or in part, of a licensee who violates this section or rules promulgated by the department. Temporary suspension or permanent revocation may include, but is not limited to:

(A) Ceasing the licensee's ability to perform new installations of ignition interlock devices; and

(B) Ceasing the licensee's ability to open any new service centers.

(2) If a license is permanently revoked, then the department may require the licensee to pay for the licensee's existing customers to transition to a new ignition interlock device, regardless of manufacturer.

(h)(1) An individual or entity may seek administrative review of the department's denial of an initial application, denial of a renewal application, temporary suspension, or permanent revocation.

(2) In order to seek administrative review under this subsection (h), the individual or entity must submit the request for review in writing to the ignition interlock division. The request for review under this subsection (h) must include the individual's or entity's reasoning for the request and supporting documentation. The ignition interlock division shall forward the request to the colonel of the highway patrol or the colonel's designee for review and a final determination.

(3) The colonel or the colonel's designee shall review the department's records regarding the individual or entity and the supporting documentation provided by the individual or entity, and render a determination in writing within thirty (30) business days of the division's receipt of the request.

(4) Following the determination, the individual or entity may seek judicial review of the decision of the colonel or the colonel's designee as provided by § 4-5-322.

(i) The department may promulgate rules pursuant to the Uniform Administrative Procedures Act in order to carry out this section; provided, that the rules shall not exceed the

authority granted in this section. All licenses and licensees are subject to rules promulgated pursuant to this section.

SECTION 27. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

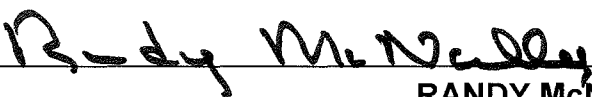
SECTION 28. For the purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes:

(1) Sections 2 through 10 and Sections 19 through 24 take effect July 1, 2022, the public welfare requiring it, and apply to violations occurring on or after that date; and

(2) The remaining sections take effect January 1, 2023, the public welfare requiring it, and apply to violations occurring on or after that date.

SENATE BILL NO. 2434

PASSED: April 14, 2022




RANDY McNALLY
SPEAKER OF THE SENATE



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 2nd day of May 2022



BILL LEE, GOVERNOR