State of Tennessee

PUBLIC CHAPTER NO. 888

HOUSE BILL NO. 1843

By Representatives Lamberth, Hardaway, Van Huss, Goins, Weaver, Casada, Kevin Brooks, Howell, Matthew Hill, Alexander, McManus, Dawn White, Timothy Hill, Carr, Butt, Moody, Powers, Farmer, Hawk, Zachary, Powell, Beck, Ramsey, Travis, Ragan, Hulsey, Towns, Dunlap, Kumar, Sargent, Smith, Todd, Akbari, Camper

Substituted for: Senate Bill No. 2065

By Senators Stevens, Bailey, Bowling

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10 and Title 55, Chapter 50, relative to certain alcohol-related offenses.

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

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following as a new section:

55-10-425.

(a) Effective July 1, 2016, the authorized removal of any functioning ignition interlock device that is required by the department of safety pursuant to § 55-10-417(l) or by court order, whether issued due to statutory requirement, in the court's discretion, or at the defendant's request, shall be compliance-based in accordance with this section.

(b)

(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 shall order the installation and use of a functioning ignition interlock device for a three hundred sixty-five (365) consecutive day period or for the entire period of the person's driver license revocation, whichever is longer. The consecutive day requirement shall commence on the date of the ignition interlock installation. For persons who are required to use ignition interlock upon reinstatement pursuant to § 55-10-417(l), the six-month period shall commence on the date of license reinstatement, and shall, for the purposes of authorizing removal of the interlock device, be considered the same as the three hundred sixty-five consecutive day requirement.

(2) If a functioning ignition interlock device is required, ordered, or requested to be installed and used pursuant to subsection (a), the minimum three hundred sixty-five (365) consecutive day period required by subdivision (b)(1) and the final one hundred twenty (120) day period of violation-free use required by subdivision (c)(2) are applicable regardless of whether the person applies for a restricted license. If the person elects not to operate a motor vehicle during the period of license revocation and applies for reinstatement of the license at the end of the revocation period, the department shall not reinstate the license until the person shows the department proof of ignition interlock installation. Upon proof being shown and the driver license reinstated, the three hundred sixty-five (365) consecutive days of usage period shall commence on the date the license is reinstated.

(3) If the court determines that installation and use of a functioning ignition interlock device is not required by the provisions of § 55-10-409(b)(2)(B), the court shall make specific findings of fact on a form

provided by the department that the factors listed in § 55-10-409(b)(2)(B) do not exist in the instant case. The findings of fact shall include the following:

(A) The person's actual blood or breath alcohol concentration (BAC) demonstrating that the person did not have a blood or breath alcohol concentration of eight-hundredths of one percent (0.08%) or higher, or a combination of alcohol in any amount and marijuana, a controlled substance, controlled substance analogue, drug, or any substance affecting the central nervous system;

(B) There was no person in the vehicle with the person who was under eighteen (18) years of age;

(C) The person was not involved in an accident, or the accident did not require a report under § 55-10-107, or the accident was not the proximate result of the person's intoxication; and

(D) The person is not charged with violating the implied consent law or, if the person is so charged, the person did not have a conviction or juvenile delinquency adjudication for a violation that occurred within five (5) years of the instant implied consent violation, for any of the offenses set out in § 55-10-409(b)(2)(B)(iv).

(4)

(A) If the court fails to make a specific finding that § 55-10-409(b)(2)(B) is not applicable in the instant case, if the finding made by the court is incomplete, or if the finding does not contain adequate information for the department to determine the applicability of § 55-10-409(b)(2)(B), the person shall be required by default to install and use a functioning ignition interlock device for a three hundred sixty-five (365) consecutive day period or for the entire period of the driver license revocation period, whichever is longer.

(B) If the court orders that a restricted license be issued without an ignition interlock device required, and the court's findings of fact demonstrate that installation and use of a functioning ignition interlock device is not required by § 55-10-409(b)(2)(B), the restricted driver license shall be subject to the geographic restrictions of § 55-10-409(c).

(c)

(1) A person required to install and use only a functioning ignition interlock device pursuant to this section is prohibited from removing or causing to be removed the ignition interlock device from the vehicle for which it was ordered and the person shall be required to maintain the device in working order for a three hundred sixty-five (365) consecutive day period or for the entire period of the driver license revocation period, whichever is longer.

(2) In addition to the minimum three hundred sixty-five (365) consecutive day period during which the ignition interlock device shall be attached, functioning, and maintained on the motor vehicle for which it is ordered, the ignition interlock device cannot be lawfully removed from the vehicle, except for necessary maintenance, replacement, or repair as determined by the department, unless the person has operated the ignition interlock equipped vehicle without violation, as described in

subsection (d), for the last one hundred twenty (120) days of the period for which it is required.

(d)

(1) During the final one hundred twenty (120) day period for which the ignition interlock device is required, the person shall not violate any of the following conditions:

(A) Tampering with, circumventing, or attempting to start the 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(c); provided, however, that a person shall not be in violation of this subdivision (d)(1)(A) for attempting to start the 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) Failing to take or skipping a rolling retest when required by the ignition interlock device; provided, however, that a person shall not be 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 vehicle was not occupied by the driver at the time of the retest;

(C) Failing 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 shall not be 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;

(D) Removing or causing to be removed the ignition interlock device at any time during the three hundred sixty-five (365) consecutive day period; and

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

(2)

(A) Upon completion of the period for which the person is required to use an ignition interlock device, the person shall request that the ignition interlock provider certify that the person has complied with the conditions in subdivision (d)(1) for the required periods. The provider shall determine whether the person has been compliant with the conditions for the required periods and either issue a certificate of compliance to the person or notify the person of noncompliance and the resulting extension of the ignition interlock requirement.

(B) If the ignition interlock provider issues a certificate of compliance, the person may present the certificate to the department of safety, which shall remove the ignition interlock restrictions from the person's driver license.

(C) If the ignition interlock provider notifies the person that the provider's records indicate the person has not complied with

the conditions in subdivision (d)(1) during the required periods, the person may either accept the extension of the ignition interlock requirement or request that the provider reconsider the finding of noncompliance, which may be based on evidence of compliance provided by the person. If the provider confirms the finding of noncompliance, the person may either accept the extension of the ignition interlock requirement or request an administrative compliance review by the department, pursuant to subdivision (d)(2)(D).

(D) A person may request, in writing, an administrative compliance review by the department, and the person shall include in the request any evidence of compliance. The department shall review any evidence provided by the person and the records provided by the provider within thirty (30) days of receiving the request and shall notify the person and the provider of the department's determination by mail. If the department determines that the person has been compliant for the required periods, the provider shall issue a certificate of compliance to the person. If the department determines that the person was not in compliance for the required periods, the person may seek judicial review of the department's administrative compliance review determination as provided by § 4-5-322.

(e)

(1) If at any time during the three hundred sixty-five (365) consecutive day period, the department determines that the person removes or causes to be removed the ignition interlock device, the device shall be reinstalled and the three hundred sixty-five (365) consecutive day period shall start again from the date of the reinstallation.

(2) If at any time during the final one hundred twenty (120) days of the time period the person is required to use a functioning ignition interlock device, the department determines that the person has committed a violation of subsection (d), the one hundred twenty (120) day period shall start again from the date of the violation.

(f)

(1) If the person has successfully completed the three hundred sixty-five (365) consecutive day period the ignition interlock device is required to be installed on the motor vehicle, and the final one hundred twenty (120) day period was completed without violation, the person shall take the vehicle to a certified ignition interlock provider for a final download of the offender's data file and shall send the data file to the department.

(2) If the data file from the final download and other relevant information shows that the person has been ignition interlock compliant for the requisite periods of time, the department shall inform the person on a compliance form developed by the department that the person may apply for driver license reinstatement and that the ignition interlock device may be lawfully removed. The person may take the form to the installing ignition interlock service provider for removal.

(3) The person may take the compliance form to the department and apply for reinstatement of the person's driver license. If the person meets all requirements for license reinstatement and pays all reinstatement fees, the department shall reinstate the driver license.

(4) 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 compliance form that removal of the ignition interlock device is lawful.

(g) This section shall apply to offenses committed on or after July 1, 2016, for which a person is required by the department of safety pursuant to § 55-10-417(l) or by court order, whether issued due to 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 in § 55-10-418, and the DUI monitoring fund and indigency provisions of § 55-10-419 shall, if applicable, continue to apply. If any provision of those sections is in conflict with this section, this section shall apply.

SECTION 2. Tennessee Code Annotated, Section 55-10-409, is amended by adding the following new subsection (e):

(e) If a person is required by court order issued pursuant to this section, whether issued due to 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, the compliance-based provisions of § 55-10-425 shall govern the required periods of continuous operation, default interlock orders, authorized removal of the device, and other enforcement aspects of the court's order set out in § 55-10-425.

SECTION 3. Tennessee Code Annotated, Section 55-10-417, is amended by adding the following new subsection:

(m) If a person is required by the department of safety pursuant to subsection (l) or by court order issued pursuant to this section, whether issued due to 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, the compliance-based provisions of § 55-10-425 shall govern the required periods of continuous operation, default interlock orders, authorized removal of the device, and other enforcement aspects of the court's order set out in § 55-10-425.

SECTION 4. Tennessee Code Annotated, Section 55-10-417, is further amended by deleting subsection (i) and substituting instead the following:

(i) No person shall:

(1) 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;

(2) Operate a motor vehicle that is not equipped with a functioning ignition interlock device when the person has been ordered by the court to only operate a vehicle equipped with such an interlock device; or

(3) Operate a motor vehicle outside the geographic limitations or during restricted times when geographic or time restrictions are ordered by the court.

SECTION 5. Tennessee Code Annotated, Section 55-10-418, is amended by adding the following as a new subsection:

An ignition interlock provider shall charge an annual administrative fee of twelve dollars and fifty cents ($12.50) from each ignition interlock user. The proceeds of the fee shall be transmitted to the department of safety and shall be used to fund the administrative costs of implementing compliance-based ignition interlock use, pursuant to § 55-10-425.

SECTION 6. For purposes of the department preparing forms required by this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on July 1, 2016, the public welfare requiring it.

HOUSE BILL NO. 1843

PASSED: April 19, 2016

BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 27th day of April 2016

BILL HASLAM, GOVERNOR