

2020 Regular Session

SENATE BILL NO. 322

BY SENATOR SMITH

DWI. Provides relative to tests for suspected drunken drivers. (gov sig)

1 AN ACT
2 To amend and reenact R.S. 14:98.7(A) and R.S. 32:661(C)(1)(d) and (e), 666(A)(1)(a)(i) and
3 (3), the introductory paragraph of 667(A), (C), (H)(3), and (I)(1)(a), (c), and (d), and
4 (2), the introductory paragraph of 667.1(A), and 669(A), to enact R.S. 32:661(D),
5 and to repeal R.S. 32:661(C)(1)(f), relative to tests for suspected drunken drivers; to
6 provide relative to chemical tests for intoxication required to be given to persons
7 suspected of operating a motor vehicle while intoxicated; to provide relative to
8 suspension of a driver's license for failure to submit to a chemical test for
9 intoxication; to provide relative to required notice to certain driver's suspected of
10 operating a motor vehicle while intoxicated; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:98.7(A) is hereby amended and reenacted to read as follows:
13 §98.7. Unlawful refusal to submit to chemical tests; arrests for driving while
14 intoxicated

15 A. No person under arrest for a violation of R.S. 14:98, ~~or 98.6~~ **98.1**, or any
16 other law or ordinance that prohibits operating a vehicle while intoxicated, may
17 refuse to submit to a chemical test when requested to do so by a law enforcement

1 officer if he has refused to submit to such test on two previous and separate
2 occasions of any such violation.

3 * * *

4 Section 2. R.S. 32:661(C)(1)(d) and (e), 666(A)(1)(a)(i) and (3), the introductory
5 paragraph of 667(A), (C), (H)(3), and (I)(1)(a), (c), and (d) and (2), the introductory
6 paragraph of 667.1(A), and 669(A) are hereby amended and reenacted and R.S. 32:661(D)
7 is hereby enacted to read as follows:

8 §661. Operating a vehicle under the influence of alcoholic beverages or illegal
9 substance or controlled dangerous substances; implied consent to
10 chemical tests; administering of test and presumptions

11 * * *

12 C.(1) When a law enforcement officer requests that a person submit to a
13 chemical test as provided for above, he shall first read to the person a standardized
14 form approved by the Department of Public Safety and Corrections. The department
15 is authorized to use such language in the form as it, in its sole discretion, deems
16 proper, provided that the form does inform the person of the following:

17 * * *

18 (d) That his driving privileges can be suspended if he submits to the chemical
19 test and the test results show a positive reading indicating the presence of any
20 controlled dangerous substance listed in R.S. 40:964. **The department may exclude**
21 **this warning from the form required by this Paragraph until such time as a**
22 **suspension for a test results show a positive reading indicating the presence of**
23 **any controlled dangerous substance listed in R.S. 40:964 is enacted by the**
24 **legislature.**

25 (e) ~~The name and employing agency of all law enforcement officers involved~~
26 ~~in the stop, detention, investigation, or arrest of the person.~~

27 (f) That refusal to submit to a chemical test after an arrest for an offense of
28 driving while intoxicated if he has refused to submit to such test on two previous and
29 separate occasions of any previous such violation is a crime under the provisions of

1 R.S. ~~14:98.2~~ 14:98.7 and the penalties for such crime are the same as the penalties
2 for first conviction of driving while intoxicated.

3 * * *

4 **D. The notice issued to the person tested pursuant to R.S. 32:667 shall**
5 **include the name and employing agency of all law enforcement officers actively**
6 **participating in the stop, detention, investigation, or arrest of the person.**

7 * * *

8 §666. Refusal to submit to chemical test; submission to chemical tests; exception;
9 effects of

10 A.(1)(a)(i) When a law enforcement officer has probable cause to believe
11 that a person has violated R.S. 14:98, ~~98.1~~ 98.6, or any other law or ordinance that
12 prohibits operating a vehicle while intoxicated, that person may not refuse to submit
13 to a chemical test or tests if he has refused to submit to such test or tests on two
14 previous and separate occasions of any previous such violation or in any case
15 wherein a fatality has occurred or a person has sustained serious bodily injury in a
16 crash involving a motor vehicle, aircraft, watercraft, vessel, or other means of
17 conveyance. Serious bodily injury means bodily injury which involves
18 unconsciousness, protracted and obvious disfigurement, or protracted loss or
19 impairment of the function of a bodily member, organ, or mental faculty, or a
20 substantial risk of death. The law enforcement officer shall direct that a chemical
21 test or tests be conducted of a person's blood, urine, or other bodily substance, or
22 perform a chemical test of such person's breath, for the purpose of determining the
23 alcoholic content of his blood and the presence of any abused substance or controlled
24 substance as set forth in R.S. 40:964 in his blood in such circumstances. The officer
25 may direct a person to submit to a breath test, and if indicated, an additional blood
26 test for the purpose of testing for the presence of alcohol, abused substances, and
27 controlled dangerous substances. A refusal of any such test or tests shall result in the
28 suspension of driving privileges as provided by the provisions of this Part. A
29 physician, physician assistant, registered nurse, licensed practical nurse, emergency

1 medical technician, chemist, nurse practitioner, or other qualified technician shall
2 perform a chemical test in accordance with the provisions of R.S. 32:664 when
3 directed to do so by a law enforcement officer.

4 * * *

5 (3) In all cases where a person is under arrest for a violation of R.S. 14:98,
6 ~~98.† 98.6~~, or other law or ordinance that prohibits operating a vehicle while
7 intoxicated who refuses to submit to a chemical test or tests if he has refused to
8 submit to a chemical test on two previous and separate occasions of any previous
9 such violation shall be advised that the consequences of such refusal shall be subject
10 to criminal penalties under the provisions of R.S. ~~14:98.2~~ **14:98.7**.

11 * * *

12 §667. Seizure of license; circumstances; temporary license

13 A. When a law enforcement officer places a person under arrest for a
14 violation of R.S. 14:98 or ~~98.† 98.6~~, or a violation of a parish or municipal ordinance
15 that prohibits operating a vehicle while intoxicated, and the person either refuses to
16 submit to an approved chemical test for intoxication, or submits to the test and the
17 test results show a blood alcohol level of 0.08 percent or above by weight or, if the
18 person is under the age of twenty-one, a blood alcohol level of 0.02 percent or above
19 by weight, the following procedures shall apply:

20 * * *

21 C. The department shall develop a uniform statewide form for temporary
22 receipt of licenses which shall be used by all state and local law enforcement
23 officials. ~~The~~ **This form, or a separate form,** shall be issued ~~in duplicate~~ to the
24 person arrested to provide a means for him to request an administrative hearing.

25 * * *

26 H.(1) * * *

27 (3) Paragraph (1) of this Subsection shall not apply to a person who refuses
28 to submit to an approved chemical test upon a second or subsequent arrest for R.S.
29 14:98 or ~~98.† 98.6~~, or a parish or municipal ordinance that prohibits driving a motor

1 vehicle while intoxicated. However, this Paragraph shall not apply if the second or
 2 subsequent arrest occurs more than ten years after the prior arrest. The department's
 3 records of arrests made for operating a vehicle while intoxicated, as certified by the
 4 arresting officer pursuant to R.S. 32:666(B), shall be used to determine the
 5 application of the provisions of this Paragraph. In the event the suspension arising
 6 out of such arrest has been reversed or recalled including any reversal or recall as a
 7 result of an administrative hearing or judicial review, then that arrest related to that
 8 suspension shall not be used to determine if this Paragraph applies to a driver's
 9 license reinstatement.

10 I.(1) In addition to any other provision of law, an ignition interlock device
 11 shall be installed in any motor vehicle operated by any of the following persons
 12 whose driver's license has been suspended in connection with the following
 13 circumstances as a condition of the reinstatement of such person's driver's license:

14 (a) Any person who has refused to submit to an approved chemical test for
 15 intoxication, after being requested to do so, for a second arrest of R.S. 14:98 or ~~98.1~~
 16 **98.6** or a parish or municipal ordinance that prohibits operating a vehicle while
 17 intoxicated and whose driver's license has been suspended in accordance with law.

18 * * *

19 (c) Any person who is arrested for a violation of R.S. 14:98, ~~R.S. 14:98.1~~
 20 **98.6**, or a parish or municipal ordinance that prohibits operating a vehicle while
 21 intoxicated and is involved, as a driver, in a traffic crash which involves moderate
 22 bodily injury or serious bodily injury as defined in R.S. 32:666(A).

23 (d) Any person who is arrested for a violation of R.S. 14:98, ~~R.S. 14:98.1~~
 24 **98.6**, or a parish or municipal ordinance that prohibits operating a vehicle while
 25 intoxicated and a minor child twelve years of age or younger was a passenger in the
 26 motor vehicle at the time of the commission of the offense.

27 (2) As to any person enumerated in Paragraph (1) of this Subsection, the
 28 ignition interlock device shall remain on the motor vehicle for a period of not less
 29 than six months. The ignition interlock device may be installed either prior to the

1 reinstatement of the driver's license, if the person has lawfully obtained a restricted
 2 driver's license, or as a condition of the reinstatement of the driver's license. When
 3 the driver's license is suspended as described in this Subsection, the ignition interlock
 4 device shall remain on the motor vehicle for the same period as the suspension, with
 5 credit for time when the interlock device was installed and functioning as part of a
 6 restricted driver's license, **or with credit for time when the ignition interlock**
 7 **device is monitored in accordance with R.S. 32:378.2(M).**

* * *

9 §667.1. Seizure of license upon arrest for vehicular homicide; issuance of
 10 temporary license; suspension

11 A. When a law enforcement officer places a person under arrest for a
 12 violation of R.S. 14:32.1 (vehicular homicide), **and a certificate of arrest has not**
 13 **already been submitted to the office of motor vehicles pursuant to R.S.**
 14 **32:666(B) for a submission or refusal to submit to the chemical test,** the
 15 following procedure shall apply:

* * *

17 §669. Suspension of nonresident's operating privilege; notification to state of
 18 residence

19 A. When a nonresident driver **submits to the chemical test, or** refuses to
 20 take an approved chemical test as provided for in R.S. ~~32:666~~ **32:661 et seq.**, the
 21 arresting officer or agency shall notify the department, which shall give information,
 22 in writing, to the motor vehicle administrator of the state of the person's residence
 23 and of any state in which he has a license.

* * *

25 Section 3. R.S. 32:661(C)(1)(f) is hereby repealed in its entirety.

26 Section 4. This Act shall become effective upon signature by the governor or, if not
 27 signed by the governor, upon expiration of the time for bills to become law without signature
 28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 322 Original 2020 Regular Session Smith

Present law provides that when a law enforcement officer requests that a person submit to a chemical test as provided for by present law he must first read to the person a standardized form approved by the Dept. of Public Safety and Corrections. Present law further provides that the department is authorized to use such language in the form as it deems proper, provided that the form inform the person of the following:

- (1) His constitutional rights under Miranda v. Arizona.
- (2) That his driving privileges can be suspended for refusing to submit to the chemical test.
- (3) That his driving privileges can be suspended if he submits to the chemical test and such test results show a blood alcohol level of 0.08 % or above or, if he is under the age of 21 years, a blood alcohol level of 0.02 % or above.
- (4) That his driving privileges can be suspended if he submits to the chemical test and the test results show a positive reading indicating the presence of any controlled dangerous substance listed in present law (Schedules I - V of the Uniform Controlled Dangerous Substances Law).
- (5) The name and employing agency of all law enforcement officers involved in the stop, detention, investigation, or arrest of the person.
- (6) That refusal to submit to a chemical test after an arrest for an offense of driving while intoxicated if he has refused to submit to such test on two previous occasions of any such violation is a crime under present law and the penalties for such crime are the same as the penalties for first conviction of driving while intoxicated.

Proposed law retains present law and adds that the department may exclude the warning listed in Item (4), above, until such time as the legislature enacts a suspension for test results showing a positive reading indicating the presence of any controlled dangerous substance listed in present law.

Present law provides that when a law enforcement officer places a person under arrest for operating while intoxicated or similar parish or municipal ordinance, and the person either refuses to submit to an approved chemical test or submits to the test and the test results show a blood alcohol level of 0.08% or above by weight or, if the person is under the age of 21 years, a blood alcohol level of 0.02% or above by weight, the officer is to seize the driver's license of the person under arrest and issue in its place a temporary receipt of license. Present law further provides that this temporary receipt serves as notice to the person that he has 30 days from the date of arrest to make written request to the department for an administrative hearing.

Proposed law retains present law and adds that the notice issued to the person must include the name and employing agency of all law enforcement officers actively participating or involved in the traffic stop, detention, investigation, or arrest of the person.

Present law provides that in addition to any other penalty, an ignition interlock device is to be installed in any motor vehicle operated by a person whose driver's license has been

suspended for failure to submit to a chemical test for intoxication as provided for in present law. Present law further provides that when the driver's license is suspended for failure to submit to a chemical test, the ignition interlock device must remain on the motor vehicle for the same period as the suspension, with credit for time when the interlock device was installed and functioning as part of a restricted driver's license.

Proposed law retains present law and adds that the person is entitled to credit for time when the ignition interlock device is monitored in accordance with present law that provides that the person is entitled to credit when either the installation and monitoring of the ignition interlock device is reported to the department by the manufacturer of the device pursuant to present law, or when the person whose driving privilege is restricted appears at an office of motor vehicles field office and is issued a renewed or duplicate driver's license that contains a restriction code indicating that any vehicle operated by the individual must be equipped with an ignition interlock device.

Present law provides that when a law enforcement officer places a person under arrest for the crime of vehicular homicide, the officer is to seize the driver's license of a person under arrest and issue in its place a temporary receipt of license on a form approved by the department.

Proposed law retains present law and adds that present law applies when a certificate of arrest has not already been submitted to the office of motor vehicles pursuant to present law for a submission or for a refusal to submit to a chemical test for intoxication.

Present law provides that when a nonresident driver refuses to take an approved chemical test as provided for in present law, the arresting officer or agency is to notify the department, which will give information, in writing, to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

Proposed law makes present law applicable when the nonresident driver submits to the chemical test as well as when the nonresident driver refuses to take the test. Proposed law otherwise retains present law.

Proposed law makes technical changes to take into account recent changes to present law relative to operating while intoxicated.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:98.7(A) and R.S. 32:661(C)(1)(d) and (e), 666(A)(1)(a)(i) and (3), 667(A)(intro para), (C), (H)(3), and (I)(1)(a), (c), and (d) and (2), 667.1(A)(intro para), and 669(A); adds R.S. 32:661(D); repeals R.S. 32:661(C)(1)(f))