

HOUSE BILL 39

By Goins

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13; Title 40, Chapter 7, Part 1 and Title 55, Chapter 10, Part 4, relative to tests to determine alcoholic or drug content of a person's blood.

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 55-10-420:

(a) A law enforcement officer who has probable cause to believe that the operator of a motor vehicle is in violation of § 55-10-401, § 39-13-106, § 39-13-115, § 39-13-213(a)(2), or § 39-13-218, may request that the operator of the vehicle consent to a test or tests for the purpose of determining the alcoholic content of that person's blood, a test or tests for the purpose of determining the drug content of the person's blood, or both tests. Whether any or all of the tests requested are administered shall be governed by this section and § 55-10-406.

(b) A breath test for the purpose of determining the alcoholic or drug content of that person's blood, may, in all cases, be administered:

(1) With the consent of the operator of the vehicle; or

(2) Without the consent of the operator of the vehicle if the test is administered incident to a lawful arrest for one (1) of the offenses specified in subsection (a).

(c) A blood test for the purpose of determining the alcoholic or drug content of that person's blood shall only be administered:

(1) With the consent of the operator of the vehicle after executing the waiver set out in subsection (e); or

(2) With a search warrant issued in accordance with title 40, chapter 6, part 1, and Rule 41 of the Tennessee rules of criminal procedure.

(d)

(1) The implied consent given by the operator of a motor vehicle pursuant to § 55-10-406, is not sufficient to comply with the consent required to administer a blood test pursuant to subdivision (c)(1). Unless the operator signs the waiver form provided in this section, a properly executed search warrant is required to obtain blood from the operator.

(2) Notwithstanding § 55-10-407(b), an operator who is requested to submit to a breath test to determine the alcoholic or drug content of the operator's blood incident to a lawful arrest for an offense specified in subsection (a) and refuses to submit, is in violation of § 55-10-406 and subject only to the civil penalties provided in that section for an implied consent violation.

(e) If the operator of a motor vehicle wishes to consent to the administration of a blood test to determine the alcoholic or drug content of the operator's blood in the absence of a search warrant authorizing a blood test, the operator shall sign the following waiver. If the operator cannot read the waiver for any reason, the officer shall read the waiver to the operator. If the waiver is read to the operator, no presumption of the operator's impairment or intoxication is created and it is not admissible in court against the operator that the waiver was read to the operator. The operator shall sign and date the waiver and the law enforcement officer shall initial the waiver.

**Waiver of Warrant Requirement and Consent to Blood Alcohol or Drug
Concentration Test**

**I knowingly and voluntarily consent to have my blood tested by law
enforcement or medical personnel in the manner provided by the laws of**

that person's blood. No breath test may be administered pursuant to this section unless conducted pursuant to § 55-10-420(b).

SECTION 3. Tennessee Code Annotated, Section 55-10-406(b)(1), is amended by deleting the following language:

The following persons who, acting at the written request of a law enforcement officer, withdraw blood from a person for the purpose of conducting either or both tests, shall not incur any civil or criminal liability

and substituting instead the following new language:

The following persons who, acting at the written request of a law enforcement officer and pursuant to a search warrant or with the consent of the operator of the vehicle pursuant to § 55-10-420(c), withdraw blood from a person for the purpose of conducting a test or tests designed to determine the alcoholic or drug content of blood, or both tests, shall not incur any civil or criminal liability

SECTION 4. Tennessee Code Annotated, Section 55-10-406(c), is amended by deleting the subsection and substituting instead the following:

(c) Any law enforcement officer who requests that the driver of a motor vehicle submit to a breath test authorized pursuant to § 55-10-420(b), for the purpose of determining the alcoholic or drug content of the driver's blood, shall, prior to conducting the breath test, advise the driver that refusal to submit to the breath test will result in the suspension by the court of the driver's operator's license; and, if the driver is convicted of a violation of § 55-10-401, that the refusal to submit to the breath test, depending on the person's prior criminal history, may result in the person being 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 § 55-10-417 for refusing to submit to the breath test, if the driver was not advised of the consequences of the refusal.

SECTION 5. Tennessee Code Annotated, Section 55-10-406(d)(1), is amended by deleting the subdivision and substituting instead the following:

(1)

(A) If the person is placed under arrest, requested by a law enforcement officer to submit to a breath test authorized by § 55-10-420(b), advised of the consequences for refusing to do so, and refuses to submit, the breath test shall not be given, and the person shall be in violation of subsection (a).

(B)

(i) Upon motion of the state, the determination of whether the driver violated subsection (a) may be made at the same time and by the same court as the court disposing of the offense for which the driver was placed under arrest.

(ii) If no motion is made by the state, the determination shall be made at the driver's first appearance or preliminary hearing in the general sessions court, but no later than the case being bound over to the grand jury.

SECTION 6. Tennessee Code Annotated, Section 55-10-406(d)(2), is amended by deleting the subdivision and substituting instead the following:

(2) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension, or otherwise in a condition rendering that person incapable of refusal, shall be subjected to the breath test in accordance with § 55-10-420(b). The person may be subjected to a blood test if a search warrant or consent is

obtained for the blood test pursuant to § 55-10-420(c). The results of the breath test shall not be used in evidence against that person in any court or before any regulatory body without the consent of the person so tested. Refusal of release of the evidence so obtained from a breath test shall result in a violation of subsection (a), thus affording the person the same rights of hearing and determinations as provided for conscious and capable persons in this section.

SECTION 7. Tennessee Code Annotated, Section 55-10-406(d)(5), is amended by inserting the following at the end of the last sentence of subdivisions (A), (B), and (C) immediately preceding the period (.) in each subdivision:

; provided, that any blood test shall be conducted pursuant to § 55-10-420(c)

SECTION 8. Tennessee Code Annotated, Section 55-10-408(a), is amended by inserting the following between the language "of the blood" and "shall be considered valid":

, authorized to be taken pursuant to § 55-10-420(c),

SECTION 9. This act shall take effect July 1, 2017, the public welfare requiring it.