

HOUSE BILL 761

By Garrett

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 driving under the influence.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-406(a), is amended by deleting the language "breath test, blood test, or both tests" and substituting instead "test or tests".

SECTION 2. Tennessee Code Annotated, Section 55-10-406, is amended by deleting subdivision (a)(2).

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

(b)

(1) Breath tests may be administered under the following circumstances:

(A) The operator's implied consent to submit to breath tests pursuant to subdivision (d)(1);

(B) The operator's consent to submit to breath tests;

(C) A search warrant;

(D) Incident to a lawful arrest for any of the offenses set out in subsection (a); or

(E) When breath tests are required to be administered pursuant to subdivision (c)(1).

(2) Blood tests may be administered under the following circumstances:

(A) The operator's implied consent to submit to blood tests pursuant to subdivision (d)(1);

(B) The operator's consent to submit to blood tests;

(C) A search warrant;

(D) Without the consent of the operator if exigent circumstances to the search warrant requirement exist; or

(E) When blood tests are required to be administered pursuant to subdivision (c)(2) and with a search warrant or without a warrant, if exigent circumstances to the search warrant requirement exist.

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

(1)

(A) A law enforcement officer shall administer or cause to be administered breath tests for the purpose of determining the alcohol content of the operator's blood if the officer has appropriate testing equipment available and has probable cause to believe that one (1) or more of the events in subdivision (c)(2)(A) have occurred;

(B) A law enforcement officer shall administer or cause to be administered blood tests for the purpose of determining the alcohol or drug content of the operator's blood if one (1) or more of the requirements for blood tests set out in subdivision (b)(2) are present and the officer has probable cause to believe that one (1) or more of the events in subdivision (c)(2)(A) have occurred; and

(C) A law enforcement officer administering breath or blood tests shall decide whether to administer or cause to be administered breath tests, blood tests, or both tests, for determining the alcohol or drug content of the operator's blood.

(2)

(A) A law enforcement officer shall administer or cause to be administered breath tests, blood tests, or both tests, pursuant to subdivision (c)(1) if the operator:

(i) Has been involved in a collision resulting in the injury or death of another and the operator of the vehicle has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;

(ii) Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401; and a passenger in the motor vehicle is a child under eighteen (18) years of age; or

(iii) Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401; and has a prior conviction of a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401; or an offense committed in another state or territory that, if committed in this state, would constitute the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), aggravated vehicular homicide under § 39-13-218, or driving under the influence of an intoxicant under § 55-10-401.

(B) The blood tests required to be administered under subdivision (c)(1)(B) shall be performed in accordance with the procedure set forth in this section and § 55-10-408, and shall be performed, pursuant to a search warrant as described in subdivision (b)(2)(C) or if exigent

circumstances to the search warrant requirement exist as described in subdivision (b)(2)(D), regardless of whether the operator consents to the tests.

(C) The results of breath or blood tests required by subdivision (c)(2)(A) may be offered as evidence by either the state or the operator of the vehicle in any court, administrative hearing, or official proceeding relating to the collision or offense, subject to the Tennessee Rules of Evidence.

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

(1) The operator of a motor vehicle in this state is deemed to have given implied consent to breath tests, blood tests, or both tests, for the purpose of determining the alcohol or drug content of that operator's blood. However, no such tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the operator was in violation of one (1) or more of the offenses set out in subsection (a) and the operator signs a standardized waiver developed by the department of safety and made available to law enforcement agencies.

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

(2) Any law enforcement officer who requests that the operator of a motor vehicle submit to breath tests, blood tests, or both tests, authorized pursuant to subsection (a), shall, prior to conducting the test, advise the operator that refusal to submit to the tests:

(A) Will result in the suspension by the court of the operator's driver license; and

(B) May result, depending on the operator's prior criminal history, in the operator being required to operate only a motor vehicle equipped with a functioning ignition interlock device, if the operator is convicted of a violation of § 55-10-401, as described in § 55-10-405.

SECTION 7. Tennessee Code Annotated, Section 55-10-406(d)(3), is amended by deleting the language "a breath test" and substituting instead the language "breath tests, blood tests, or both tests".

SECTION 8. Tennessee Code Annotated, Section 55-10-406(d)(4), is amended by deleting the subdivision and substituting instead the following:

(4) Except as may be required by a search warrant or other court order, if the operator is placed under arrest, requested by a law enforcement officer to submit to breath tests, blood tests, or both tests, advised of the consequences for refusing to do so, and refuses to submit, the operator shall be charged with violating subdivision (d)(1).

The determination as to whether an operator violated subdivision (d)(1) shall be made:

(A) At the same time and by the same court as the court disposing of the offense for which the operator was placed under arrest, upon an oral or written motion of the state; or

(B) At the operator's first appearance or preliminary hearing in the general sessions court, but no later than the case being bound over to the grand jury, if the state does not make a motion pursuant to subdivision (d)(4)(A).

SECTION 9. Tennessee Code Annotated, Section 55-10-406, is amended by deleting subsections (e)-(n) and substituting instead the following:

(e)

(1)

(A) If blood tests of the operator of a motor vehicle are authorized pursuant to this section, a qualified practitioner who, acting at the written request of a law enforcement officer, withdraws blood from an operator for the purpose of conducting tests to determine the alcohol or drug content in an operator's blood, will not incur any civil or criminal liability as a result of the withdrawing of the blood, except for any damages that may result from the negligence of the person so withdrawing.

(B) Neither the hospital nor other employer of a qualified practitioner listed in subdivision (e)(2) will incur any civil or criminal liability as a result of the act of withdrawing blood from any operator, except in the case of negligence.

(2) For purposes of this section, a "qualified practitioner" is a:

(A) Physician;

(B) Registered nurse;

(C) Licensed practical nurse;

(D) Clinical laboratory technician;

(E) Licensed paramedic;

(F) Licensed emergency medical technician approved to establish intravenous catheters;

(G) Technologist; or

(H) A trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational

entity providing such training, or has been properly trained by a current or former employer to draw blood.

(f) Any operator who is unconscious as a result of a collision, is unconscious at the time of arrest or apprehension, or is otherwise in a condition rendering the operator incapable of refusal, shall not be subjected to blood tests unless law enforcement has obtained a search warrant or exigent circumstance exceptions to a search warrant apply.

(g) Provided probable cause exists for criminal prosecution for any of the offenses specified in subsection (a), nothing in this section affects the admissibility into evidence in a criminal prosecution of any analysis of the alcohol or drug content of the defendant's blood that was not compelled by law enforcement but was obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

(h) Nothing in this section affects the admissibility in evidence, in criminal prosecutions for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213(a)(2), aggravated vehicular assault under § 39-13-115, or aggravated vehicular homicide under § 39-13-218, of any analysis of the alcohol or drug content of the defendant's blood that has been obtained in accordance with this section and tested according to § 55-10-408.

(i) Nothing in this section affects the admissibility in evidence, in criminal prosecutions for any of the offenses set out in subsection (a), of any analysis of the alcohol or drug content of the defendant's blood that has been obtained by consent and tested according to § 55-10-408.

(j) The results of blood tests or breath tests authorized and conducted in accordance with this section and § 55-10-408:

(1) Shall be reported in writing by the person making the analysis, shall have noted on the report the time at which the sample analyzed was obtained from the operator, and shall be made available to the operator, upon request; and

(2) Shall be admissible in evidence at the trial of any person charged with an offense specified in subsection (a).

(k) The fact that a law enforcement officer failed to request that the operator charged with an offense specified in subsection (a) submit to blood or breath tests is admissible as evidence at the trial of the charged offense.

(l) As used in this section, "operator" means any person driving or in physical control of any automobile or other motor-driven vehicle as described and prohibited by § 55-10-401.

SECTION 10. Tennessee Code Annotated, Section 55-10-407, is amended by deleting the section and substituting instead the following:

(a) If the court finds that the driver violated § 55-10-406, the driver is not considered as having committed a criminal offense; provided, however, that the court shall revoke the license of the driver for a period of:

(1) One (1) year, if the person does not have a prior conviction as defined in subsection (e);

(2) Two (2) years, if the person does have a prior conviction as defined in subsection (e);

(3) Two (2) years, if the court finds that the driver involved in a collision, in which one (1) or more persons suffered serious bodily injury, violated § 55-10-406 by refusing to submit to such a test or tests; and

(4) Five (5) years, if the court finds that the driver involved in a collision in which one (1) or more persons are killed, violated § 55-10-406 by refusing to submit to such a test or tests.

(b) If a person's driver license is suspended for a violation of § 55-10-406 prior to the time the offense for which the driver was arrested is disposed of, the court disposing of such offense may order the department of safety to reinstate the license if:

(1) The person's driver license is currently suspended for an implied consent violation and the offense for which the driver was arrested resulted from the same incident; and

(2) The offense for which the person was arrested is dismissed by the court upon a finding that the law enforcement officer lacked sufficient cause to make the initial stop of the driver's vehicle.

(c) The period of license suspension for a violation of § 55-10-406 runs consecutive to the period of license suspension imposed following a conviction for § 55-10-401 if:

(1) The general sessions court or trial court judge determines that the driver violated § 55-10-406; and

(2) The judge determining the violation of § 55-10-406 finds that the driver has a conviction or juvenile delinquency adjudication for a violation that occurred within five (5) years of the violation of § 55-10-406 for:

(A) Implied consent under § 55-10-406;

(B) Underage driving while impaired under § 55-10-415;

(C) The open container law under § 55-10-416; or

(D) Reckless driving under § 55-10-205, if the charged offense was § 55-10-401.

(d) Any person who violates § 55-10-406 by refusing to submit to either test or both tests, pursuant to § 55-10-406(d)(4), shall be charged by a separate warrant or citation that does not include any charge of violating § 55-10-401 that may arise from the same occurrence.

(e)

(1) For the purpose of determining the license suspension period under subsection (a), a person who is convicted of a violation of § 55-10-401 is not to be considered a repeat or multiple offender and subject to the penalties prescribed in subsection (a) if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 55-10-401 that resulted in a conviction for such offense. If, however, the date of a person's violation of § 55-10-401 is within ten (10) years of the date of the present violation, then the person shall be considered a multiple offender and is subject to the penalties imposed upon multiple offenders by this part. If a person is considered a multiple offender under this part, then every violation of § 55-10-401 that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation is considered in determining the number of prior offenses. However, a violation occurring more than twenty (20) years from the date of the instant violation is never considered a prior offense for that purpose.

(2) For the purpose of determining the license suspension period under subsection (a), the state shall use a conviction for the offense of driving under the influence of an intoxicant, vehicular homicide involving an intoxicant, vehicular assault involving an intoxicant, aggravated vehicular homicide involving an

intoxicant, or aggravated vehicular assault involving an intoxicant that occurred in another state or territory, as defined in § 55-10-405.

(3) For the purpose of determining the license suspension period under subsection (a), a prior conviction for the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218 is treated the same as a prior conviction for a violation of driving under the influence of an intoxicant under § 55-10-401.

SECTION 11. Tennessee Code Annotated, Section 55-10-408(a), is amended by deleting the language "§ 55-10-406(h)(2)" and substituting instead the language "§ 55-10-406(e)(2)".

SECTION 12. This act shall take effect July 1, 2019, the public welfare requiring it, and shall apply to violations occurring on or after that date.