

SENATE BILL 1318

By McNally

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40; Title 50 and Title 55, relative to alcohol-
related traffic offenses.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-416, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section:

(1) "Alcoholic beverage" means any alcoholic beverage or wine as defined in § 57-4-102, or beer as defined in § 57-5-101;

(2) "Driving" means operating or being in physical control of a motor vehicle;

(3) "Open alcoholic beverage container" means any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and that is open, has a broken seal, or the contents of which are partially removed; and

(4) "Passenger area":

(A) Means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passengers while in their seating positions, including, but not limited to, an unlocked glove compartment; and

(B) Does not include a locked glove compartment, the area behind the last upright seat, or an area not normally occupied by the driver or passenger in a motor vehicle without a trunk.

(b)

(1) It is an offense for the driver of a motor vehicle while driving a vehicle on a public highway or on the right-of-way of a public highway to:

(A) Consume an alcoholic beverage; or

(B) Knowingly possess an open alcoholic beverage container.

(2) For purposes of subdivision (b)(1):

(A) The driver does not possess an open alcoholic beverage container if the driver does not have knowledge of its presence or cannot, while driving the motor vehicle, access an open alcoholic beverage container in the passenger area of the vehicle; and

(B) "Motor vehicle" includes a motor vehicle used primarily for the transportation of persons for compensation or a motor vehicle used for noncommercial purposes.

(c)

(1) Except as otherwise provided in subdivision (c)(2), it is an offense for a person who is a passenger in a motor vehicle that is being driven on a public highway or on the right-of-way of a public highway to:

(A) Consume an alcoholic beverage; or

(B) Knowingly possess an open alcoholic beverage container within the passenger area of a motor vehicle.

(2) Subdivision (c)(1) does not apply to:

(A) A motor vehicle being used primarily for the transportation of persons for compensation;

(B) Passengers in the living quarters of a motor home, truck camper, house trailer, or other similar recreational vehicle primarily designed as temporary living quarters for recreational camping or travel; or

(C) A vehicle operated by a chauffeur in the chauffeur's for-hire capacity.

(d) A violation of subsection (b) or subsection (c) is a Class C misdemeanor, punishable by a fine only of fifty dollars (\$50.00).

SECTION 2. Tennessee Code Annotated, Title 55, Chapter 50, is amended by adding the following language as a new part:

55-50-901. This part shall be known and may be cited as the "Tennessee Administrative License Revocation Act."

55-50-902. The general assembly finds and declares that enactment of this part is necessary:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of persons who have shown themselves to be safety hazards by driving with excessive concentrations of alcohol in their bodies or who refuse to submit to a test for the purpose of determining the alcohol content of such persons' blood; and

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of revocation, and an opportunity for a full hearing as quickly as possible.

55-50-903. As used in this part:

(1) "Alcohol concentration" means either:

(A) Grams of alcohol per one hundred (100) milliliters of blood; or

(B) Grams of alcohol per two hundred ten (210) liters of breath;

(2) "Alcohol- or drug-related enforcement contacts" means any revocation under this part, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or

any other state for a violation that involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or both alcohol and drugs, as shown on the department's records;

(3) "Certificate for driving" means a certificate issued by the department to an individual who does not satisfy § 55-50-321(c)(1)(C);

(4) "Department" means the department of safety;

(5) "Driver license" means any physical document issued to a person authorizing them to operate a motor vehicle in this state, including:

(A) A driver license;

(B) A temporary driver license;

(C) A certificate for driving;

(D) A learner permit or intermediate license; or

(E) Any valid driver license issued by another state or country;

(6) "Driving privilege" means the privilege of a person to operate a motor vehicle within this state, including any nonresident's operating privilege, regardless of whether the person has ever been issued a driver license by this or any other state or country;

(7) "Law enforcement officer" means any law enforcement officer who has satisfactorily completed a recruit training program approved by the peace officer standards and training (POST) commission;

(8) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this state;

(9) "Notice" means a method of transmitting a document to the recipient in such a manner that will provide proof of delivery or attempted delivery, including, but not limited to:

- (A) Certified mail, return receipt requested;
- (B) Registered mail;
- (C) Package courier service; or
- (D) Personal service;

(10) "Revocation" means the termination by formal action of the department of a person's driving privilege, which terminated privilege shall not be subject to renewal or restoration, except that an application for a new driver license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this part;

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a province or territory of Canada, or another country; and

(12) "Temporary driver license" means a driver license issued by the department to an individual that authorizes the individual to operate a motor vehicle on the highways for the individual's authorized period of stay in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year.

55-50-904.

(a) If the breathalyzer test results for a person who is being charged with a violation of § 55-10-401, § 55-10-415, § 55-50-405, § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 show an alcohol concentration of eight-hundredths of one percent (0.08%) or more for a person twenty-one (21) years of age or older, two-hundredths of one percent (0.02%) or more for a person under twenty-one (21) years of age, or four-hundredths of one percent (0.04%) or more for a person operating or having actual physical control of a commercial motor vehicle, the law enforcement officer, acting on behalf of the

department, shall serve “notice of proposed revocation” and “request for hearing” forms personally on the person.

(b) If a chemical blood test to detect the presence of alcohol is performed on a person who is being charged with a violation of § 55-10-401(2), § 55-10-415, § 55-50-405, § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, and the blood sample is submitted to the Tennessee bureau of investigation for testing, the law enforcement officer, acting on behalf of the department, shall take possession of any driver license issued by this state or another state held by the person and issue an interim permit in compliance with subsection (e). The chemical blood test shall be performed and conducted in accordance with § 55-10-408.

(c) If a person who is being charged with a violation of § 55-10-401(2), § 55-10-415, § 55-50-405, § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 refuses a test to determine alcohol content, the law enforcement officer, acting on behalf of the department, shall serve the “notice of proposed revocation” and “request for hearing” forms personally on the person.

(d) When the law enforcement officer serves the “notice of proposed revocation” and “request for hearing” forms pursuant to subsection (a) or subsection (c), the law enforcement officer shall also take possession of any driver license issued by this state or another state that is held by the person.

(e) When the law enforcement officer takes possession of a valid driver license issued by this state or another state, the law enforcement officer, acting on behalf of the department, shall issue an interim permit that is valid for up to ninety (90) days after its date of issuance, or until the department revokes the driver’s driving privilege, whichever comes first.

(f) Any Tennessee resident who receives an interim permit is authorized to apply for an interim photo identification card that shall be valid for the same period of time as the interim permit. The fee for the interim photo identification card shall be the same fee charged for a photo identification card.

(g) Notwithstanding any other provisions of this part, if the department has not made a determination on a person's driving privilege, or if a hearing before an administrative law judge or hearing officer has not been completed prior to the expiration date of the interim permit, the department may issue another interim permit valid for ninety (90) days, if the person is otherwise eligible for a license under this title. In no event shall a person's driving privilege be revoked under this part until such time as the department's determination has been issued, or, if a hearing has been timely requested, until the decision of the administrative law judge or hearing officer has been issued.

(h) Only members of the Tennessee highway patrol, law enforcement officers certified by the peace officer standards and training (POST) commission, and state law enforcement officers who have satisfactorily completed a POST-approved recruit training program may act on behalf of the department by serving the "notice of proposed revocation" form, taking possession of a driver license or certificate for driving, and issuing a temporary permit as authorized by this section.

55-50-905.

(a) A law enforcement officer who charges any person for a violation of § 55-10-401(2), § 55-10-415, § 55-50-405, § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, or if such person refuses a chemical test to determine the alcohol content in their blood pursuant to § 55-10-406, shall immediately forward to the department a report of all information relevant to the enforcement action, including the following by fax or e-mail:

- (1) A copy of the implied consent form;

- (2) A copy of the completed “notice of proposed revocation” form;
- (3) A copy of any completed “interim permit” form; and
- (4) Any copy of a driver license, temporary license, or certificate for driving taken into possession.

(b)

(1) If the results of the chemical blood test taken pursuant to § 55-50-904(b) show an alcohol concentration of eight-hundredths of one percent (0.08%) or more for a person twenty-one (21) years of age or older, two-hundredths of one percent (0.02%) or more for a person under twenty-one (21) years of age, or four-hundredths of one percent (0.04%) or more for a person operating or having actual physical control of a commercial motor vehicle, the law enforcement officer, acting on behalf of the department, shall within five (5) business days of receiving the results, send a copy of the results to the department. Upon receipt of the results, the department shall send the “notice of proposed revocation” and “request for hearing” forms to the driver at the address listed on the driver’s record with the department.

(2) If the chemical blood test shows there were less than the percentages of alcohol in the person’s blood as provided in subdivision (b)(1), the law enforcement officer shall send a copy of the results to the department. Upon receipt of the results, the department shall immediately return the license to the driver.

(c)

(1) The department shall supply the following necessary forms upon request of any persons eligible:

- (A) A “request for hearing” form;

(B) A “notice of proposed revocation” form; and

(C) The “interim permit” form.

(2) The forms described in subdivision (c)(1) shall be the only acceptable versions of those forms for revocations under this part. Agencies may use their own versions of other required forms, unless otherwise required by state law.

(d) The forms listed in subsection (a) shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part, unless challenged in writing at least ten (10) business days prior to the hearing.

55-50-906.

(a) Upon receipt of the information required under § 55-50-905(a), an independent review team in the department shall make a determination based upon an administrative review of the facts contained in the information as to whether the person’s driving privilege shall be revoked pursuant to the criteria in subsection (c). This determination shall be the final determination of the department and, unless a hearing has been timely requested under § 55-50-907, shall not be subject to further agency review.

(b) The department shall make the determination based upon the administrative review of the facts within one (1) hour of receipt of the information required under § 55-50-905(a). If the department is unable to make a determination within the time limit specified, the department shall stay the revocation pending the determination.

(c) The department shall revoke the driving privilege of any person upon its determination that by a preponderance of the evidence the results of the breathalyzer test or the chemical blood test show that the person operated or was in actual physical control of a motor vehicle while the alcohol concentration in the person’s blood or breath was:

(1) Eight-hundredths of one percent (0.08%) or more, for a person twenty-one (21) years of age or older;

(2) Two-hundredths of one percent (0.02%) or more, for a person under twenty-one (21) years of age; or

(3) Four-hundredths of one percent (0.04%) or more for a person operating or having actual physical control of a commercial motor vehicle.

(d) The department shall revoke the driving privilege of any person upon its determination that the person refused a test to determine the alcohol concentration in a person's blood as provided in § 55-10-406.

(e) If the evidence does not support a decision to revoke the driving privilege, the department shall immediately return the driver license to the person.

(f) The department shall send the written determination to any person whose driving privilege is revoked after the administrative determination. The written determination shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, and any procedure to petition for judicial review. If no hearing has been timely requested under § 55-50-907, the written determination shall be considered a final order for the purposes of § 4-5-322, and shall be subject to § 55-50-908(g).

(g)

(1) A person's driving privilege may be revoked under this part prior to the conclusion of any criminal charges arising out of the same circumstances.

(2) The decision on whether to revoke a person's driving privilege, made by the department or by an administrative law judge or hearing officer following a hearing, shall not be used as evidence in any criminal charges arising out of the same occurrence.

55-50-907.

(a) Any person who has received a “notice of proposed revocation” and “request for hearing” forms, either from the law enforcement officer or from the department, may, within fifteen (15) calendar days of receipt of notice, make a written request for a hearing. If the person’s driver license has not been previously surrendered, the license shall be surrendered at the time the request for hearing is made.

(b) A request for a hearing submitted within fifteen (15) calendar days of the receipt of the “notice of proposed revocation” form shall stay the effective date of the revocation of the person’s driving privilege until all administrative appeals are exhausted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Failure of a person to request a hearing within fifteen (15) calendar days of the receipt of the “notice of proposed revocation” form shall waive the person’s right to a hearing under § 55-50-908.

(d) For the purposes of this section, a request for a hearing will be considered timely submitted if the date of postmark on the envelope in which the request is mailed is within fifteen (15) calendar days of the date the person received the “notice of proposed revocation” form.

55-50-908.

(a) Within fifteen (15) calendar days of the request for a hearing being received by the department, the department shall establish a hearing date and set the case on the docket. Nothing in this section shall be construed as requiring the hearing to be conducted within the fifteen-day period. The hearing shall be held at a place designated by the department, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at the party’s last known address and the address specified on the “request for

hearing” form, if different from the party’s last known address. The notice shall be sent at least ten (10) business days prior to the scheduled hearing, unless the parties agree to waive this requirement. The commissioner of safety shall have the sole discretion to determine whether the hearing will be conducted in person, telephonically, or by video conferencing.

(b) The commissioner shall have the authority to designate either an administrative law judge or hearing officer employed by the office of the secretary of state. The administrative law judge or hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, or to cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to issue a final order on the issue. All discovery shall be limited to matters being heard in the hearing, as set forth in subsection (c).

(c) The only issues that may be considered at the hearing are:

(1) Whether the law enforcement officer had reasonable grounds to believe the person was operating or in physical control of a motor vehicle while under the influence of alcohol;

(2) Whether the person received adequate notice of the proposed revocation;

(3) Whether, by a preponderance of the evidence:

(A) The person refused a chemical or breathalyzer test; or

(B) If a test was performed, the results of the breathalyzer test or chemical blood tests show the person operated or was in actual physical control of a motor vehicle while the person:

(i) Had an alcohol concentration of eight-hundredths of one percent (0.08%) or more;

(ii) Was under twenty-one (21) years of age and had an alcohol concentration of two-hundredths of one percent (0.02%) or more; or

(iii) Was operating or had actual physical control of a commercial motor vehicle and had an alcohol concentration of four-hundredths of one percent (0.04%) or more; and

(4) Whether the breathalyzer test was conducted according to applicable state standards or the drawing of blood for a chemical blood test was conducted by a person authorized to do so in § 55-10-406(b).

(d) The presiding hearing officer shall, at minimum, make an affirmative finding on subdivision (c)(3)(A) or (c)(3)(B) for the written determination to be upheld. If the presiding hearing officer finds that the department has not proven the requirements of subdivision (c)(3)(A) or (c)(3)(B), or that subdivision (c)(1), (c)(2), or (c)(4), if contested, has not been met, then the written determination shall be rescinded and the license returned to the driver.

(e) The hearing shall be recorded or transcribed. The decision of the administrative law judge or hearing officer shall be rendered in writing, and a copy of the decision shall be provided to the person who requested the hearing. Notwithstanding § 4-5-314(b), the decision of the administrative law judge or hearing officer shall be the final order of the department.

(f) The administrative law judge or hearing officer shall issue the written order within thirty (30) days after close of the hearing.

(g) The party aggrieved by the written order of the administrative law judge or hearing officer may petition the administrative law judge or hearing officer for reconsideration of the order under § 4-5-317 or for a stay of the order under § 4-5-316.

(h) If the person who requested the hearing fails to appear without just cause, the right to appear at the hearing shall be waived, and a default hearing shall be conducted. The information used by the department to make its written determination shall be entered into the record at the default hearing.

(i) If the law enforcement officer fails to appear at a hearing without just cause, the presiding hearing officer shall dismiss the matter and return the driver license or certificate for driving.

55-50-909.

(a) Within sixty (60) days of the issuance of the final order of the department following a hearing pursuant to § 55-50-908, a person aggrieved by the order shall have the right to file a petition in the chancery court in Davidson County for judicial review. The filing of a petition for judicial review in the chancery court does not itself stay the effective date of the revocation order.

(b) A person aggrieved by a revocation order under this part may apply to the administrative law judge or hearing officer for a stay of the order pursuant to § 4-5-316 and to the chancery court pursuant to § 4-5-322(c).

(c) Review pursuant to subsection (b) shall be pursuant to § 4-5-322.

55-50-910.

(a) The revocation of a person's driving privilege shall become effective:

(1) Thirty (30) days after the person has received the "notice of proposed revocation" and "request for hearing" forms, unless stayed by action of the department; or

(2) Ten (10) business days after the entry of a final order by the administrative law judge or hearing officer's order, if a hearing was timely requested, unless a stay is granted.

(b) The period of license revocation under this section shall be as follows:

(1) Three (3) months, if the person's driving record shows no prior alcohol- or drug-related enforcement contacts during the immediately preceding ten (10) years; or

(2) One (1) year, if the person's driving record shows one (1) or more prior alcohol- or drug-related enforcement contacts during the immediately preceding ten (10) years.

(c) If a driving privilege is revoked pursuant to this part, and at the time of the violation specified in § 55-50-904(a), (b), or (c), the person was driving the motor vehicle while the person's privilege to do so had been canceled, suspended, or revoked for any reason, the period of revocation imposed pursuant to this part shall be in addition to the period of cancellation, suspension, or revocation in effect at the time of the violation specified in § 55-50-904(a), (b), or (c).

(d) If a driving privilege is revoked pursuant to this part, and the person is also convicted on criminal charges arising out of the same occurrence for a violation of § 55-10-401(1), § 55-10-401(2), § 55-10-415, § 55-50-405, § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, or found to be in violation of § 55-10-406, both the revocation under this section and the revocation, suspension, or cancellation under § 55-10-404, § 55-10-407, § 55-50-405, § 55-10-415, § 39-13-106, § 39-13-213, or § 39-13-218 shall be imposed, but the periods of revocation, suspension, or cancellation shall run concurrently, and the total period of revocation, suspension, or cancellation shall not exceed the longer of the two (2) periods.

(e)

(1) Notwithstanding any other provision of this part, a driver whose driving privilege has been revoked under this part may request the revocation be removed from the person's record and the license and any fees paid to the department under this part returned, if, in the criminal case arising out of the same occurrence as the revocation:

(A) The driver is acquitted;

(B) The criminal charges have been dismissed;

(C) An order of nolle prosequi has been entered; or

(D) Pursuant to a negotiated plea agreement, the driver has entered a plea of guilty or nolo contendere to an offense that does not have as an essential element the person being in physical control of a motor vehicle while under the influence of an intoxicant.

(2) A request to have the revocation removed from a driving record shall be submitted in writing to the department, and shall include a copy of the court document showing that the criminal charges were resolved as required by subdivision (e)(1).

(3) The department reserves the right to verify the authenticity of any document presented prior to removing the revocation from a person's driving record; provided, that the department does so within ten (10) business days of the presentation of the document.

(4) The return of a commercial driver license under this section shall be subject to 49 CFR § 383.51.

(f) Notwithstanding any other provision of this part, if the law enforcement officer who commenced the administrative revocation process under this part fails to charge the

driver with a violation of § 55-10-401(2), § 55-10-415, or § 55-50-405 within ninety (90) days, or fails to charge the driver with a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 within one hundred twenty (120) days, of the occurrence of the events upon which the revocation is commenced, the driver may file a request with the department to have the administrative revocation process cease or the revocation removed from the record and the driver license returned. Upon receipt of such a request, the department shall, within ten (10) business days, contact the law enforcement officer and the appropriate criminal court to determine if no charges have been filed. The department shall inform the driver and the law enforcement officer of the results of the verification and any action taken.

55-50-911.

(a) No restricted driver license shall be issued during the revocation period, except as provided in subsection (b); provided, however, that if any criminal charges arising out of the same incident have had final determination rendered by a court, the court may order a restricted driver license pursuant to § 55-10-409.

(b) Persons who have no prior recorded alcohol or drug related enforcement contacts during the immediately preceding ten (10) years and who submitted to a chemical test in accordance with § 55-10-406 shall, after a minimum revocation period of thirty (30) days, be eligible for a restricted driver license in the same manner as is provided in § 55-10-409.

(c) Persons who have one (1) or more prior alcohol- or drug-related enforcement contacts during the immediately preceding ten (10) years shall not be eligible for a restricted driver license during the person's period of revocation under this part.

(d) If a driving privilege is revoked pursuant to this part, and at the time of the violation specified in § 55-50-904(a), (b), or (c), the person was driving the motor vehicle

while the person's privilege to do so had been canceled, suspended, or revoked for any reason, the person shall not be eligible for a restricted driver license during both such periods.

(e) Fees paid to the department pursuant to this part shall be expendable receipts to be used by the department toward the cost of administering this part.

55-50-912.

(a) No driving privilege shall be reinstated under any circumstances during the revocation period.

(b) No driving privilege may be restored as a result of a revocation under this part until the person:

(1) Makes application for a driver license upon the correct form;

(2) Provides evidence of financial responsibility, including compliance with § 55-12-129(a). For purposes of this part, the following shall be the only acceptable proof of financial responsibility:

(A) An SR-22 form filed by an insurance carrier duly authorized to do business in this state, certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility;

(B) The deposit of cash with the commissioner of no less than the amount specified in § 55-12-102; or

(C) The execution and filing of a bond with the commissioner of no less than the amount specified in § 55-12-102;

(3) Pays all driver license issuance fees;

(4) Pays a restoration fee of one hundred dollars (\$100); and

(5) Pays an administrative process fee of one hundred dollars (\$100).

(c) All persons reinstated under this part shall maintain proof of financial responsibility for the period of time required by § 55-12-126. Failure to maintain proof of insurance shall subject the person to the suspension provisions contained in § 55-12-126.

(d) A person whose driving privilege is revoked pursuant to this part and is also revoked due to a conviction on criminal charges arising out of the same occurrence for a violation of § 55-10-401(1), § 55-10-401(2), § 55-10-415, § 55-50-405, § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, and who does not seek reinstatement of the person's driving privilege until both periods of revocation have been completed shall only be required to pay reinstatement fees under this section.

55-50-913. Except as provided in this part, the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall govern the administrative hearing and judicial review provided in this part. In cases where this part and the Uniform Administrative Procedures Act conflict, this part shall govern.

SECTION 3. The commissioner is authorized to promulgate rules to effectuate the purposes of this act. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall 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 5. This act shall take effect October 1, 2015, the public welfare requiring it.