

State DUI Laws: Louisiana

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

LOUISIANA REVISED STATUTES

14:§ 98 Operating a vehicle while intoxicated

A. (1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when:

(a) The operator is under the influence of alcoholic beverages; or

(b) The operator's blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood; or

(c) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964; or

(d)(i) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.

(ii) It shall be an affirmative defense to any charge under this Subparagraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(e) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

(2) A valid driver's license shall not be an element of the offense, and the lack thereof shall not be a defense to a prosecution for operating a vehicle while intoxicated.

B. (1) On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months. Imposition or execution of sentence shall not be suspended unless:

(a) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program; or

(b) The offender is placed on probation with a minimum condition that he perform four eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender, who participates in a litter abatement or collection program pursuant to this Subparagraph, shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation in the program, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.

(2)(a) If the offender had a blood alcohol concentration of 0.15 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, at least forty-eight hours of the sentence imposed pursuant to Paragraph B(1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph B(1)(a) or (b) of this Subsection.

(b) If the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars and at least forty-eight hours of the sentence imposed pursuant to Paragraph B(1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph B(1)(a) or (b) of this Subsection.

C. (1) On a conviction of a second offense, notwithstanding any other provision of law to the contrary except as provided in Paragraph (3) of this Subsection, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than seven hundred fifty dollars, nor more than one thousand dollars, and shall be imprisoned for not less than thirty days nor more than six months. At least forty-eight hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Nothing herein shall prohibit a court from sentencing a defendant to home incarceration, if otherwise allowed under the provisions of Article 894.2 of the Code of Criminal Procedure. Imposition or execution of the remainder of the sentence shall not be suspended unless:

(a) The offender is placed on probation with a minimum condition that he serve fifteen days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program; or

(b) The offender is placed on probation with a minimum condition that he perform thirty eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, and participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender, who participates in a litter abatement or collection program pursuant to this Subparagraph, shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation therein, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.

(2)(a) If the offender had a blood alcohol concentration of 0.15 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph (1)(a) or (b) of this Subsection.

(b) If the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the offender shall be fined one thousand dollars and at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph (1)(a) or (b) of this Subsection.

(3) Notwithstanding the provisions of Paragraph (1) of this Subsection, on a conviction of a second offense when the first offense was for the crime of vehicular homicide in violation of R.S. 14:32.1, or first degree vehicular negligent injuring in violation of R.S. 14:39.2, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years, and shall be fined two thousand dollars. At least six months of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the provisions of Subparagraph (1)(a) or (b) of this Subsection are complied with.

D. (1)(a) On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two thousand dollars. Thirty days of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. The remainder of the sentence of imprisonment shall be suspended and the offender shall be required to undergo an evaluation to determine the nature and extent of the offender's substance abuse disorder.

(b) The treatment professional performing the evaluation shall recommend appropriate treatment modalities which shall include substance abuse treatment at an inpatient facility recommended by the Department of Health and Hospitals, office for addictive disorders and approved by the Department of Public Safety and Corrections for a period of not less than four weeks nor more than six weeks.

(c) The offender may be sentenced to additional outpatient substance abuse treatment services to meet the offender's needs if determined to be necessary by the offender's treating physician, for a period not to exceed twelve months. The follow-up treatment shall be provided in a manner to gradually decrease the intensity of treatment services.

(d) Upon successful completion of the inpatient substance abuse treatment required by this Paragraph, the offender shall be sentenced to home incarceration for not less than the period of time remaining on the offender's suspended sentence as provided in Paragraph (3) of this Subsection.

(e) If the offender fails to complete the substance abuse treatment required by the provisions of this Paragraph or violates any condition of home incarceration, he shall be imprisoned for the original term of his suspended sentence with no credit for time served under home incarceration.

(2)(a) In addition, the court shall order that the vehicle being driven by the offender at the time of the offense shall be

seized and impounded, and sold at auction in the same manner and under the same conditions as executions of writ of seizures and sale as provided in Book V, Title II, Chapter 4 of the Code of Civil Procedure.

(b) The vehicle shall be exempt from sale if it was stolen, or if the driver of the vehicle at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. If this exemption is applicable, the vehicle shall not be released from impoundment until such time as towing and storage fees have been paid.

(c) In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder.

(d) The proceeds of the sale shall first be used to pay court costs and towing and storage costs, and the remainder shall be forwarded to the Council on Automobile Insurance Rates and Enforcement for its use in studying other ways to reduce drunk driving and insurance rates.

(3)(a) An offender sentenced to home incarceration shall be supervised and shall be subject to any of the conditions of probation. The court shall specify the conditions of home incarceration which shall include but shall not be limited to the following:

(i) Electronic monitoring.

(ii) Curfew restrictions.

(iii) Home visitation at least once per month by the Department of Public Safety and Corrections.

(b) The court shall also require the offender to obtain employment and to participate in a court-approved driver improvement program at his expense. The activities of the offender outside of his home shall be limited to traveling to and from work, church services, Alcoholics Anonymous meetings, or a court-approved driver improvement program.

(c) Offenders sentenced to home incarceration required under the provisions of this Section shall be subject to all other applicable provisions of Code of Criminal Procedure Article 894.2.

E. (1)(a) Except as otherwise provided in Subparagraph (4)(b) of this Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any other provision of law to the contrary and regardless of whether the fourth offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than ten years nor more than thirty years and shall be fined five thousand dollars. Sixty days of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. The remainder of the sentence of imprisonment shall be suspended and the offender shall be required to undergo an evaluation to determine the nature and extent of the offender's substance abuse disorder.

(b) The treatment professional performing the evaluation shall recommend appropriate treatment modalities, which shall include substance abuse treatment at an inpatient facility recommended by the Department of Health and Hospitals, office for addictive disorders and approved by the Department of Public Safety and Corrections for a period of not less than four weeks nor more than six weeks.

(c) The offender may be sentenced to additional follow-up substance abuse treatment services to meet the offender's needs if determined to be necessary by the offender's treating physician, for a period not to exceed twelve months. The

follow-up treatment shall be provided in a manner to gradually decrease the intensity of treatment services.

(d) Upon successful completion of the inpatient substance abuse treatment required by this Paragraph, the offender shall be sentenced to home incarceration for not less than one nor more than five years in accordance with Paragraph (3) of this Subsection and shall be fined five thousand dollars.

(e) If the offender fails to complete the substance abuse treatment required by the provisions of this Paragraph or violates any condition of home incarceration, he shall be imprisoned for the original term of his suspended sentence with no credit for time served under home incarceration.

(2)(a) In addition, the court shall order that the vehicle being driven by the offender at the time of the offense be seized and impounded, and be sold at auction in the same manner and under the same conditions as executions of writ of seizure and sale as provided in Book V, Title II, Chapter 4 of the Code of Civil Procedure.

(b) The vehicle shall be exempt from sale if it was stolen, or if the driver of the vehicle at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. If this exemption is applicable, the vehicle shall not be released from impoundment until such time as towing and storage fees have been paid.

(c) In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder.

(d) The proceeds of the sale shall first be used to pay court costs and towing and storage costs, and the remainder shall be forwarded to the Council on Automobile Insurance Rates and Enforcement for its use in studying other ways to reduce drunk driving and insurance rates.

(3)(a) An offender sentenced to home incarceration shall be supervised and shall be subject to any of the conditions of probation. The court shall specify the conditions of home incarceration which shall include but shall not be limited to the following:

(i) Electronic monitoring.

(ii) Curfew restrictions.

(iii) Home visitation at least once per month by the Department of Public Safety and Corrections.

(b) The court shall also require the offender to obtain employment and to participate in a court-approved driver improvement program at his expense. The activities of the offender outside of his home shall be limited to traveling to and from work, church services, Alcoholics Anonymous meetings, or a court-approved driver improvement program.

(c) Offenders sentenced to home incarceration required under the provisions of this Section shall be subject to all other applicable provisions of Code of Criminal Procedure Article 894.2.

(4)(a) If the offender has previously been required to participate in substance abuse treatment and home incarceration pursuant to Subsection D of this Section, the offender shall not be sentenced to substance abuse treatment and home incarceration for a fourth or subsequent offense, but shall be imprisoned at hard labor for not less than ten nor more than thirty years, and at least three years of the sentence shall be imposed without benefit of suspension of sentence,

probation, or parole.

(b) If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth offender, no part of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

F. (1) For purposes of determining whether a defendant has a prior conviction for violation of this Section, a conviction under either R.S. 14:32.1, vehicular homicide, R.S. 14:39.1, vehicular negligent injuring, or R.S. 14:39.2, first degree vehicular negligent injuring, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state, which prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance shall constitute a prior conviction. This determination shall be made by the court as a matter of law.

(2) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section or R.S. 14:32.1 or R.S. 14:39.1 or under a comparable statute or ordinance of another jurisdiction, as described in Paragraph (1) of this Subsection, if committed more than ten years prior to the commission of the crime for which the defendant is being tried and such conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was incarcerated in a penal institution in this or any other state shall be excluded in computing the ten-year period. Subsections B and C shall include a screening procedure to determine the portions of the program which may be applicable and appropriate for individual offenders.

G. The legislature hereby finds and declares that conviction of a third or subsequent DWI offense is presumptive evidence of the existence of a substance abuse disorder in the offender posing a serious threat to the health and safety of the public. Further, the legislature finds that there are successful treatment methods available for treatment of addictive disorders. Court-approved substance abuse programs provided for in Subsections B, C, and D of this Section shall include a screening procedure to determine the portions of the program which may be applicable and appropriate for individual offenders and shall assess the offender's degree of alcohol abuse.

H. "Community service activities" as used in this Section may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

I. An offender ordered to participate in a substance abuse program required by the provisions of this Section shall pay the cost incurred in participating in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay. If the court determines that the offender is unable to pay, the state shall pay for the cost of the substance abuse treatment required by this Section. An offender sentenced to home incarceration and to participate in a driver improvement program shall pay the cost incurred in participating in home incarceration and a driver improvement program unless the court determines that the offender is unable to pay.

J. This Subsection shall be cited as the "Child Endangerment Law". When the state proves in addition to the elements of the crime as set forth in Subsection A of this Section that a minor child twelve years of age or younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance at the time of the commission of the offense, of the sentence imposed by the court, the execution of the minimum mandatory sentence

provided by Subsection B or C of this Section, as appropriate, shall not be suspended. If imprisonment is imposed pursuant to the provisions of Subsection D, the execution of the minimum mandatory sentence shall not be suspended. If imprisonment is imposed pursuant to the provisions of Subsection E, at least two years of the sentence shall be imposed without benefit of suspension of sentence.

K. (1) In addition to any penalties imposed under this Section, upon conviction of a first offense if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood the driver's license of the offender shall be suspended for two years. Such offender may apply for a restricted license to be in effect during the entire period of suspension upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 32:378.2. The ignition interlock device shall remain installed and operative on his vehicle during the first twelve-month period of suspension of his driver's license following the date of conviction.

(2)(a) In addition to any penalties imposed under this Section, upon conviction of a second offense, any vehicle, while being operated by the offender, shall be equipped with a functioning ignition interlock device in accordance with the provisions of R.S. 15:306. This requirement shall remain in effect for a period of not less than six months. In addition, the device shall remain installed and operative during any period that the offender's operator's license is suspended under law and for any additional period as determined by the court.

(b) In addition to any penalties imposed under this Section and notwithstanding the provisions of Subparagraph (2)(a) of this Subsection, upon conviction of a second offense if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the driver's license of the offender shall be suspended for four years. The offender may apply for a restricted license to be in effect during the period of suspension upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 32:378.2. The ignition interlock device shall remain installed and operative on his vehicle during the first three years of the four-year period of the suspension of his driver's license.

(3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection and R.S. 32:414(D)(1)(b), upon conviction of a third or subsequent offense of the provisions of this Section, any motor vehicle, while being operated by the offender, shall be equipped with a functioning ignition interlock device in accordance with the provisions of R.S. 15:306. The ignition interlock device shall remain installed and operative until the offender has completed the requirements of substance abuse treatment and home incarceration under the provisions of Subsections D and E of this Section.

(b) Any offender convicted of a third or subsequent offense of the provisions of this Section shall, after one year of the suspension required by R.S. 32:414(D)(1)(a), upon proof of the Department of Public Safety and Corrections that the motor vehicles being operated by the offender are equipped with functioning interlock devices, be issued a restricted driver's license. The restricted license shall be effective for the period of time that the offender's driver's license is suspended. The restricted license shall entitle the offender to operate the vehicles equipped with a functioning interlock device in order to earn a livelihood and to travel to and from the places designated in Paragraphs (D)(3) and (E)(3) of this Section.

(4) The provisions of this Subsection shall not require installation of an ignition interlock device in any vehicle described in R.S. 32:378.2(I).

14: § 98.1 Underage driving under the influence

A. The crime of underage operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's blood alcohol concentration is 0.02 percent or more by weight if the operator is under the age of twenty-one based on grams of alcohol per one hundred cubic centimeters of blood.

B. Any underage person whose blood alcohol concentration is found to be in violation of R.S. 14:98(A)(1)(b) shall be charged under its provisions rather than under this Section.

C. On a first conviction, the offender shall be fined not less than one hundred nor more than two hundred fifty dollars, and participate in a court-approved substance abuse and driver improvement program.

D. On a second or subsequent conviction, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than one hundred fifty dollars nor more than five hundred dollars, and imprisoned for not less than ten days nor more than three months. Imposition or execution of sentence shall not be suspended unless:

(1) The offender is placed on probation with a minimum condition that he serve forty-eight hours in jail and participate in a court-approved substance abuse and driver improvement program; or

(2) The offender is placed on probation with a minimum condition that he perform ten eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program and participate in a court-approved substance and driver improvement program.

E. Court programs regarding substance abuse provided for in Subsections C and D shall include a screening procedure to determine the portions of the program which may be applicable and appropriate for individual offenders.

F. An offender ordered to participate in a substance abuse program shall pay the cost incurred in participating in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay.

14: § 98.2 Unlawful refusal to submit to chemical tests; arrests for driving while intoxicated

A. No person under arrest for a violation of R.S. 14:98, 98.1, or any other law or ordinance which prohibits operating a vehicle while intoxicated may refuse to submit to a chemical test when requested to do so by a law enforcement officer if he has refused to submit to such test on two previous and separate occasions of any previous such violation.

B. (1) Whoever violates the provisions of this Section shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months.

(2) Imposition or execution of sentence shall not be suspended unless one of the following circumstances occurs:

(a) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program.

(b) The offender is placed on probation with a minimum condition that he perform four eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender who participates in a litter abatement or collection program pursuant to this Subparagraph shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation in the program, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.

32: § 378.2 Ignition interlock devices; condition of probation for certain DWI offenders; restricted license

A. In addition to any other provisions of law and except as otherwise provided in Subsection I of this Section, the court may require that any person who is placed on probation as provided in R.S. 14:98(B), and the court shall require that any person who is placed on probation as provided by R.S. 14:98(C) not operate a motor vehicle during the period of probation unless the vehicle is equipped with a functioning ignition interlock device as provided in this Section.

B. (1) Any person who has had his driver's license suspended, revoked, or canceled under any of the following conditions shall, upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device as provided in this Section, be issued a restricted driver's license:

(a)(i) Upon first or second conviction, or entry of a plea of guilty or nolo contendere and sentence thereupon or the forfeiture of bail, for the offense of operating a motor vehicle while under the influence of alcoholic beverages.

(ii) However, if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood the following restrictions shall apply:

(aa) Upon first offense, if the offender had a blood alcohol concentration of 0.20 percent or greater, he shall be issued a restricted driver's license during the entire period of the two-year driver's license suspension imposed under the provisions of R.S. 14:98(K)(1) and shall be required to have a functioning ignition interlock device installed on his vehicle during the first twelve-month period of the suspension.

(bb) Upon second offense, if the offender has a blood alcohol concentration of 0.20 percent or greater, he shall be eligible for a restricted driver's license for the period of suspension as imposed under the provisions of R.S. 14:98(K)(2)(b). The offender may be issued a restricted license during the entire four years on his suspension and shall be required to have a functioning ignition interlock device installed on his vehicle during the first three years of the four-year suspension.

(b) For the offense of driving while under suspension if the suspension was the result of a conviction, or entry of a plea of guilty or nolo contendere and sentence thereupon or the forfeiture of bail, for a first or second offense of operating a motor vehicle while under the influence of alcoholic beverages.

(c) For the refusal to submit to a chemical test for the purpose of determining the alcoholic content of his blood when arrested for a first or second offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while believed to be under the influence of alcoholic beverages.

(d) For submitting to a chemical test to determine the alcohol content of blood where the test results showed over 0.08 percent by weight of alcohol in the blood, or where the results showed under 0.08 percent by weight of alcohol in the blood but the person was nevertheless convicted for a first or second offense of a law or ordinance which prohibits operating a vehicle while intoxicated.

(2) The restricted license shall be designated as such by a large red "R" and shall be effective for the remaining period of suspension or as long as the functioning ignition interlock device is in place, whichever period is longer.

(3) The department shall designate in writing, and upon application of the person, amend as necessary, the routes over which and the times during which the restricted licensee shall be permitted to operate designated motor vehicles in order to earn his livelihood, which written restrictions shall be attached to the restricted license and kept with it at all times.

(4) Any person granted a restricted driver's license under the provisions of this Subsection who tampers with, circumvents the operation of, or removes the ignition interlock device during the period for which the restricted license is granted shall have his driving privileges suspended for a period of time not to exceed one year and may be punished by imprisonment of twenty days, such punishment to be in addition to other penalties provided by law for related offenses.

C. No person whose driving privilege has been restricted under a condition of probation as provided in this Section shall:

(1) Rent, lease, or borrow a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device.

(2) Request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

D. No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to another person whose driving privilege is restricted.

E. No person shall tamper with or circumvent the operation of an ignition interlock device.

F. Any person convicted of a violation of this Section shall be punished by imprisonment for not more than six months or a fine of not more than five hundred dollars, or both.

G. If the court imposes the use of an ignition interlock device as a term of probation on a person whose driving privilege is not suspended or revoked, the court shall require the person to provide proof of compliance to the court or the probation officer within thirty days. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered into the court record, the court shall revoke the person's probation.

H. The person whose driving privilege is restricted pursuant to this Section shall have the system monitored by the manufacturer, at the manufacturer's expense, for proper use at least semiannually, and more frequently as the court may order, on the operation of each interlocking ignition device in the person's vehicles. A report of such monitoring shall be issued by the manufacturer to the court and the department within fourteen days after the system is monitored.

I. If a person is required to operate a motor vehicle in the course and scope of his employment which does not have an approved ignition interlock device, and if the vehicle is owned by the employer, the court may allow the person who is

prohibited from operating a motor vehicle without such a device to operate the employer's vehicle while actually in the course and scope of employment, if the employer has been notified by the person that the person's driving privilege has been restricted and if the person has proof of that notification and evidence of court approval in his possession or the notice, or a facsimile copy thereof, is with this vehicle. The exemption provided by this Subsection shall not apply to any motor vehicle owned by a business entity which is all or partly owned or controlled by a person otherwise subject to this Subsection.

J. (1) The secretary of the Department of Public Safety and Corrections shall certify, or cause to be certified, ignition interlock devices required by this Section, and publish a list of approved devices. All reasonable costs of certification shall be borne by the manufacturer. The manufacturer of the system shall be responsible for the installation or the training of installers, and shall educate users and service and maintain the system.

(2) The secretary shall formulate and promulgate a set of standards for the proper use of ignition interlock devices in full compliance with this Section. The standards shall include, but not be limited to, requirements that the devices or systems:

- (a) Do not impede the safe operation of the vehicle.
- (b) Have features that make circumventing difficult and that do not interfere with the normal use of the vehicle.
- (c) Correlate well with established measures of alcohol impairment.
- (d) Work accurately and reliably in an unsupervised environment.
- (e) Resist tampering and give evidence if tampering is attempted.
- (f) Are difficult to circumvent, and require premeditation to do so.
- (g) Minimize inconvenience to a sober user.
- (h) Require a proper, deep lung breath sample or other accurate measure of blood alcohol content equivalence.
- (i) Operate reliably over the range of automobile environments.
- (j) Are manufactured by a party who will provide product liability insurance.

K. The Department of Public Safety and Corrections may, in its discretion, and consistent with this Section, adopt in whole or relevant part, the guidelines, rules, regulations, studies, or independent laboratory tests performed on and relied upon in the certification or approval of ignition interlock devices by other states, their agencies or commissions.

L. The secretary shall design and adopt by regulation a warning label which shall be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability.

M. As used in this Section, "ignition interlock device" means a constant monitoring device that prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol level of the operator through the

taking of a breath sample for testing. The system shall be calibrated so that the motor vehicle may not be started if the blood alcohol level of the operator, as measured by the test, reaches a level established by the court, consistent with the rules promulgated by the Department of Public Safety and Corrections.

15: § 306 Operating a vehicle while intoxicated; additional conditions of probation; ignition interlock devices

A. (1) As an additional condition of probation, the court shall require that any person convicted of a second or subsequent violation of R.S. 14:98 and placed on probation in accordance with that Section shall not operate a motor vehicle during the period of probation unless any vehicle, while being operated by that person, is equipped with a functioning ignition interlock device as provided in R.S. 15:307.

(2) However, nothing in this Section shall be construed as granting a superior right to a restricted license than that provided in R.S. 32:378.2 with regard to any period of preliminary disqualification.

B. When the court imposes the use of an ignition interlock device as a condition of probation upon a person whose driving privileges are not suspended or revoked, the court shall require the person to provide proof of installation of such a device to the court or a probation officer within thirty days. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered into the court record, the court shall revoke the person's probation.

C. The person whose driving privileges are restricted pursuant to this Section shall have the system on his vehicle monitored by the manufacturer for proper use at least semiannually or more frequently as the court may order. A report of any monitoring shall be issued by the manufacturer to the court within fourteen days after the monitoring.

D. If a person is required in the course and scope of his employment to operate a motor vehicle which does not have an approved ignition interlock device, and if the vehicle is owned by the employer, the court may allow the person to operate the employer's vehicle. Any person authorized to operate an employer's vehicle without an ignition interlock device shall be required to obtain and present to the court written permission from the employer for the employee to operate a specific vehicle or vehicles. Such permission shall be in the possession of such person when he operates the employer's vehicle. A motor vehicle owned by a business entity which is in whole or in part owned or controlled by a person otherwise subject to this Section is not a motor vehicle owned by the employer.

§ 15:307. Ignition interlock devices; installation and certification

A. As used in R.S. 15:306, "ignition interlock device" means a constant monitoring device that prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol level of the operator through the taking of a breath sample for testing. The system shall be calibrated so that the motor vehicle may not be started if the blood alcohol level of the operator, as measured by the test, reaches a level established by the court and consistent with the rules promulgated by the secretary of the Department of Public Safety and Corrections, hereafter referred to as the "secretary".

B. (1) The secretary shall certify or cause to be certified ignition interlock devices required by R.S. 15:306 and shall publish a list of approved devices. All reasonable costs of certification shall be borne by the manufacturer. The manufacturer of the system shall be responsible for the installation or the training of installers and shall educate users and service and maintain the system.

(2) The ignition interlock device shall be installed, calibrated, and monitored directly by trained technicians who shall train the offender for whom the device is being installed in the proper use of the device.

C. The secretary shall formulate and promulgate a set of rules and regulations for the proper approval, installation, and use of ignition interlock devices in full compliance with this Section and R.S. 15:306. The standards shall include but not be limited to requirements that the devices or systems:

- (1) Do not impede the safe operation of the vehicle.
- (2) Correlate with established measures of alcohol impairment.
- (3) Work accurately and reliably in an unsupervised environment.
- (4) Resist tampering and give evidence if tampering is attempted.
- (5) Are difficult to circumvent.
- (6) Minimize inconvenience to a sober user.
- (7) Require a proper, deep lung breath sample or other accurate measure of blood alcohol content equivalence.
- (8) Operate reliably over the range of automobile environments.
- (9) Are manufactured by a party who will provide product liability insurance and a bond against malfunction of the device.

D. The secretary may adopt in whole or relevant part the guidelines, rules, regulations, studies, or independent laboratory tests performed or relied upon by other states, their agencies or commissions.

E. The secretary shall design and adopt by regulation a warning label which shall be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person tampering with, defeating, or otherwise circumventing the device is guilty of a criminal offense and subject to criminal penalty and civil liability.

32: § 414 Suspension, revocation, renewal, and cancellation of licenses; judicial review

A. (1)(a) The department shall suspend the license of any person for a period of ninety days upon receiving, from any district, city, or municipal court, of this state or of any other state, having traffic jurisdiction, or from any federal court or magistrate having traffic jurisdiction, satisfactory evidence of the conviction or of the entry of a plea of guilty or nolo contendere and sentence thereupon or of the forfeiture of bail of any such person charged with the first offense for vehicular negligent injuring, R.S. 14:39.1, or for operating a motor vehicle while under the influence of beverages of high alcoholic content, of low alcoholic content, of narcotic drugs, or of central nervous system stimulants. However, if the offender was under the age of twenty-one years at the time of the offense, the suspension provided for in this Subsection shall be in effect for one hundred eighty days from the date of suspension. The department shall promptly investigate an allegation made by such licensee that the suspension of his driving privileges will deprive him or his family of the necessities of life, or will prevent him from earning a livelihood. If the department so finds, it may reinstate the license of

such licensee; however, such suspension and reinstatement shall be considered as a first suspension and grant of restricted driving privileges for the purposes of R.S. 32:415.1, and the driving privileges of the licensee shall be restricted as provided in R.S. 32:415.1 for a period of ninety days from the date of conviction or the entry of a plea of guilty or nolo contendere and sentence thereupon or of the forfeiture of bail. Notice of the restriction shall be attached to the license.

(b) Any licensee who has had his driver's license suspended for operating a motor vehicle while under the influence of alcoholic beverages under the provisions of this Subsection shall, upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device, be issued a restricted driver's license. In the event that the department fails or refuses to issue the restricted driver's license, the district court for the parish in which the licensee resides may issue an order directing the department to issue the restricted license either by ex parte order or after contradictory hearing.

(c) Notwithstanding the provisions of Subparagraphs (a) and (b) of this Paragraph, upon first or second conviction, or a plea of guilty or nolo contendere and sentence thereupon or forfeiture of bail of any person charged with the offense of driving while intoxicated when the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the following restrictions on suspension and issuance of a restricted driver's license shall apply:

(i) Upon first offense, if the offender had a blood alcohol concentration of 0.20 percent or greater, his driver's license shall be suspended for two years and he shall be issued a restricted driver's license for the entire period of the suspension after he has provided proof to the department that his motor vehicle is equipped with a functioning ignition interlock device. A functioning ignition interlock device shall remain installed on his vehicle during the first twelve-month period of the suspension of his driver's license.

(ii) Upon second offense, if the offender has a blood alcohol concentration of 0.20 percent or greater, his driver's license shall be suspended for four years. The offender shall be eligible for a restricted license during the entire four-year period of the suspension after he has provided proof to the department that his motor vehicle is equipped with a functioning ignition interlock device. A functioning ignition interlock device shall remain installed on his vehicle during the first three-year period of the four-year period of the suspension of his driver's license.

(2) The department shall suspend the license of any person for a period of thirty days upon a first conviction; sixty days upon a second conviction; and, one year upon a third conviction for violation of R.S. 32:80(A)(1) relative to a failure to stop or passing a school bus which is stopped for loading or unloading children.

(3)(a) The department shall forthwith suspend the license of any person thirty days upon third violation, and sixty days upon fourth and any subsequent violation of R.S. 30:2531(A) or 2531.1 relative to litter violations.

(b) When a person in violation of the provisions of R.S. 30:2531(A) or 2531.1 has failed to pay any penalty assessed in any previous violation of such Sections, his driver's license shall be suspended sixty days upon third violation and one hundred twenty days upon fourth and subsequent violation.

(c) The department shall promptly investigate an allegation made by such licensee that the suspension of his driving privileges will deprive him or his family of the necessities of life or will prevent him from earning a livelihood. If the department so finds, it may reinstate the license of such licensee; however, such suspension and reinstatement shall be considered as a first suspension and grant of restricted driving privileges for the purposes of R.S. 32:415.1. However, nothing contained in this Paragraph (3) shall be construed as limiting or prohibiting a district court from granting a

hardship or restricted driver's license for the full period of the suspension.

B. The department shall forthwith suspend the license of any person, for a period of twelve months, upon receiving satisfactory evidence of the conviction or of the entry of a plea of guilty and sentence thereupon or of the forfeiture of bail of any such person charged with any of the following crimes:

(1) Manslaughter, vehicular homicide, or negligent homicide resulting from the operation of a motor vehicle.

(2)(a) Conviction or the entry of a plea of guilty and sentence thereupon, or of the forfeiture of bail of any such person on the second offense for vehicular negligent injuring or for operating or being in actual physical control of a motor vehicle while under the influence of intoxicating beverages, of central nervous system stimulants or depressants, or of narcotic drugs or any other drug or substance to a degree which renders him incapable of safely operating a motor vehicle, when any or all of the offenses were the result of violations of a state law, a municipal ordinance, a federal law, or any combination of them; however, any offense for vehicular negligent injuring or for operating or being in actual physical control of a motor vehicle while under the influence of alcoholic beverages which was committed more than five years prior to the commission of a subsequent such offense of operating or being in actual physical control of a motor vehicle while under the influence of alcoholic beverages shall not be considered in determining the number of such offenses of operating or controlling a motor vehicle while under the influence of alcoholic beverages which the person has committed.

(b) Any licensee who has had his license suspended for operating a motor vehicle while under the influence of alcoholic beverages under the provisions of this Subsection shall, upon proof that his motor vehicle has been equipped with a functioning ignition interlock device, be issued a restricted driver's license. In the event that the department fails or refuses to issue the restricted driver's license the district court for the parish in which the licensee resides may issue an order directing the department to issue the restricted license by ex parte order or after contradictory hearing.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

(5) Conviction of forfeiture of bail upon three charges of reckless driving committed within a period of twelve months.

C. The department shall forthwith suspend the license of any person upon receipt of evidence satisfactory to the department of such person's violation of any of the provisions of R.S. 32:414.1 constituting an unlawful use of a driver's license. The suspension for a first violation shall be for a period of ninety days. The suspension for a second or subsequent violation shall be for a period of twelve months. On a first offense violation, the department is hereby authorized to issue a hardship driver's license to any person who has violated the provisions of R.S. 32:414.1.

D. (1)(a) The department shall suspend the license of any person for a period of twenty-four months upon receiving satisfactory evidence of conviction, plea of guilty, or plea of nolo contendere, and sentence thereon, or of the forfeiture of bail of any such person as determined by any court of jurisdiction as set forth in this Section, with regard to a third or subsequent offense for vehicular negligent injuring or for operating a motor vehicle while under the influence of beverages of alcoholic content, of narcotic drugs, or of central nervous system stimulants. Third or subsequent offenses for purposes of this Subsection does not refer to the criminal charge but rather to the number of offenses resulting in conviction, guilty pleas, nolo contendere pleas, or bond forfeitures within five years from date of first offense to the date

of third offense.

(b) Any licensee who has had his license suspended for operating a motor vehicle while under the influence of alcoholic beverages under the provisions of this Subsection shall be eligible to apply for a restricted driver's license after a period of twelve months upon proof that his motor vehicle has been equipped with a functioning ignition interlock device. The ignition interlock device shall remain on the motor vehicle for not less than six months from the date the restricted driver's license is granted. In the event that the department fails or refuses to issue the restricted driver's license, the district court for the parish in which the licensee resides may issue an order directing the department to issue the restricted license either by ex parte order or after contradictory hearing.

(2) Upon termination of the twenty-four month suspension set forth in this Subsection, the person whose license has been suspended shall be reinstated, provided no other suspension of license is outstanding and upon satisfaction of any financial responsibility law requirements and upon payment of a reinstatement fee as required by this Section.

E. The department may conduct an investigation to determine whether the license shall be suspended, cancelled, or revoked upon a showing by its records or other sufficient evidence that the licensee:

- (1) Has committed an offense for which mandatory revocation of license is required.
- (2) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage.
- (3) Has been convicted of or has forfeited bail for traffic offenses involving movement of vehicles with such frequency as to indicate a disrespect for traffic laws and a disregard for the safety of others.
- (4) Is a habitually reckless or negligent driver of a motor vehicle.
- (5) Is incompetent to drive a motor vehicle.
- (6) Has permitted an unlawful or fraudulent use of such license.
- (7) Has committed an offense in another state or federal jurisdiction which if committed in this state would be grounds for suspension or revocation.
- (8) Is afflicted with such mental or physical infirmities or disabilities as would constitute grounds for refusal of a license.

F. (1) Upon the conclusion of such investigation, the person holding such investigation shall prepare findings based upon the evidence received and considered. If the findings are to the effect that the person referred to herein is incompetent or is unfit to operate a motor vehicle upon any grounds upon which license may be refused as stated in this Chapter, the department upon a review of such findings shall have authority to forthwith revoke the license of such person, or if the findings are to the effect that the person therein referred to has by reason of negligence or reckless driving endangered life, limb, or property or has thereby caused loss of life or injury to person or property, the department upon a review of such findings shall have power to suspend the license of such person for a period not to exceed six months or may revoke such license and in either event shall require that such license be surrendered to the department.

(2) For cause satisfactory to the department, it is hereby authorized to suspend, cancel, or revoke the license of any person for a period of not more than one year.

(3) Any person whose license has been suspended, cancelled, or revoked by the department shall be notified of such suspension, cancellation, or revocation in writing by the department. This notice shall be sent by certified mail to the last address furnished by such person, and the person within five days shall return his or her license to the department. The notice shall also advise such person that he or she may obtain a special identification card from the driver's license division of the Department of Public Safety and Corrections pursuant to R.S. 40:1321.

(4) The failure on the part of any person to comply with this provision shall be punishable as herein provided. Any person denied a license or whose license has been suspended, cancelled, or revoked shall have the right to file an application within thirty days thereafter for a hearing before the district court of the parish in which the applicant resides. That court is vested with jurisdiction to set the matter for hearing in open court upon ten days' written notice to the department and thereupon to determine whether the person is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this Chapter. Appeal from the decision of the district court may be taken to any court of competent appellate jurisdiction.

G. Any period of suspension or revocation under this Chapter shall begin upon receipt by the department of the operator's license or proof of its loss, upon the expiration of the operator's license, or thirty days after the date the notice of suspension is mailed to the licensee by the department, whichever occurs first.

H. Except as provided in Subsections I and J of this Section, upon the expiration of the period of the suspension or revocation of any license, the department shall return the license to the licensee or in its discretion may issue him a new license but only after a reinstatement fee of sixty dollars has been paid to the department and the requirements of R.S. 32:896 relative to proof of financial responsibility have been satisfied. Ten dollars of this fee shall be appropriated annually by the legislature for emergency medical services (EMS) needs and expenses. The collecting agency shall make a monthly report of the EMS funds collected under this provision to the state treasurer. The legislature shall appropriate the total as follows: fifty percent to the Department of Health and Hospitals for the operation of emergency medical services, forty-five percent to the governing authority of the parish or municipality of origin to be used for the governing authority's emergency medical services and public safety needs, and five percent to the Department of Public Safety and Corrections for expenses incurred in the administration of these fees.

I. (1) The reinstatement fee for a license of a person who has been convicted of or forfeited bond on or entered a plea of guilty or nolo contendere to a charge of operating a motor vehicle while under the influence of beverages of high alcoholic content, of low alcoholic content, of narcotic drugs, or of central nervous system stimulants shall be one hundred dollars if one conviction appears listed on his record prior to application for reinstatement; two hundred dollars if two such convictions appear on his record prior to application for reinstatement; and three hundred dollars for each conviction on his record after the second conviction prior to application for reinstatement, and the requirements of R.S. 32:896 relative to proof of financial responsibility have been satisfied.

(2) After deposit in the Bond Security and Redemption Fund under the provisions of Article VII, Section 9 of the Constitution of Louisiana, an amount equal to forty dollars of each reinstatement fee for a single conviction and ninety dollars of each reinstatement fee for two or more convictions is hereby dedicated to the Department of Public Safety and Corrections, public safety services, for traffic control and DWI programs and shall be appropriated by the legislature each year for that purpose.

(3) Ten dollars of the fee levied under the provisions of this Subsection shall be paid into the state general fund to be appropriated annually by the legislature for emergency medical services (EMS) needs and expenses. The collecting agency shall make a monthly report of the EMS funds collected under this provision to the state treasurer. The legislature shall appropriate the total as follows: fifty percent to the Department of Health and Hospitals for the operation of emergency medical services, forty-five percent to the governing authority of the parish or municipality of origin to be used for the governing authority's emergency medical services and public safety needs, and five percent to the Department of Public Safety and Corrections for expenses incurred in the administration of these fees.

J. If the suspension or revocation was due to mental or physical infirmities or disabilities, when such physical infirmities or disabilities are not the result of alcohol or drug abuse, upon the expiration of the period of the revocation of the license, the department shall return the license to the licensee or in its discretion may issue him a new license but only after a reinstatement fee in an amount equal to the issuance fees provided in R.S. 32:412 has been paid to the department.

K. (1) When any person's driver's license has been seized, suspended, or revoked, and the seizure, suspension, or revocation is connected to a charge or charges of violation of a criminal law, and the charge or charges do not result in a conviction, plea of guilty, or bond forfeiture, the person charged shall not be required to pay any reinstatement fee if at the time for reinstatement of driver's license, it can be shown that the criminal charges have been dismissed or that there has been a permanent refusal to charge a crime by the appropriate prosecutor or there has been an acquittal. If however, at the time for reinstatement, the licensee has pending against him criminal charges arising from the arrest which led to his suspension or revocation of driver's license, the reinstatement fee shall be collected. Upon subsequent proof of final dismissal or acquittal, other than under Articles 893 or 894 of the Code of Criminal Procedure, the licensee shall be entitled to a reimbursement of the reinstatement fee previously paid. In no event shall exemption from this reinstatement fee or reimbursement of a reinstatement fee affect the validity of the underlying suspension or revocation.

(2) If a licensee qualifies for the exemption from the reinstatement fee or for a reimbursement of the reinstatement fee as provided in Paragraph (1), the licensee shall receive credit for the unexpired portion of the license which was seized, and shall be exempt from the payment of, or shall receive reimbursement for the payment of, the duplicate license fee and the handling fee with regard to the license which was seized.

L. The department shall forthwith suspend the license of any person, for a period of ninety days, upon receiving satisfactory evidence of conviction, plea of guilty, or nolo contendere of any person charged with a violation of R.S. 14:333, if the court has ordered, as part of the sentence, the suspension of such person's driving privileges.

M. (1) The department shall forthwith suspend the driving privileges of and confiscate any driver's license held by any person who is convicted of violating any law or rule while operating any commercial vehicle without holding the commercial driver's license which is required for the operation of that vehicle. The offender's driving privileges shall be suspended for sixty days on a first conviction, for one hundred eighty days on a second conviction, and for one year on a third or subsequent conviction.

(2) Any person whose license is suspended pursuant to the provisions of this Subsection shall be eligible to apply for and receive a hardship license in accordance with the provisions of R.S. 32:415.1.

N. The department may suspend the driving and motor vehicle registration privileges of any person who pays taxes or fees to the office of motor vehicles with a check which is subsequently dishonored for insufficient funds, if the person fails to redeem the check within thirty days after the date notice of suspension is mailed to the licensee by the department.

The period of suspension shall begin thirty days after the date the notice of suspension is mailed to the licensee by the department. Any license so suspended shall remain suspended until all pending assessments against the person, including a reinstatement fee provided for in Subsection H of this Section, have been paid in cash. No economic hardship license shall be issued when a person's driving and motor vehicle registration privileges have been suspended under the provisions of this Subsection.

O. The department shall suspend the driver's license of any person upon receiving satisfactory evidence of conviction, plea of guilty, or nolo contendere of any person charged with a violation of R.S. 14:67.17.

P. The department shall suspend the driver's license of any person, for a period of six months, if it has received satisfactory evidence of conviction, plea of guilty, or nolo contendere of any person charged with a violation of R.S. 14:100(C)(2).

Q. In accordance with Article 885.1 of the Code of Criminal Procedure, the department shall suspend the driving privileges of the person upon receiving notification from the court and sending the required notice to the person informing him of the suspension.

R. (1) The secretary of the Department of Public Safety and Corrections shall suspend and deny the renewal of a taxpayer's driver's license when notified by the Department of Revenue that the department has an assessment or judgment against the individual that has become final and nonappealable.

(2) The reinstatement and renewal of a taxpayer's driver's license shall be denied until such time as the individual has paid or made arrangements to pay the delinquent tax, interest, penalty, and all costs and the Department of Revenue notifies the Department of Public Safety and Corrections, office of motor vehicles, of the payment or arrangement to pay.

(3) The Department of Public Safety and Corrections, office of motor vehicles, shall not issue an economic hardship license when an individual's driver's license is suspended and has not been renewed under the provisions of this Section.

§ 32:661. Operating a vehicle under the influence of alcoholic beverages or illegal substance or controlled dangerous substances; implied consent to chemical tests; administering of test and presumptions

A. (1) Any person, regardless of age, who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of R.S. 32:662, to a chemical test or tests of his blood, breath, urine, or other bodily substance for the purpose of determining the alcoholic content of his blood, and the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 in his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while believed to be under the influence of alcoholic beverages or any abused substance or controlled dangerous substance as set forth in R.S. 40:964.

(2) (a) The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person, regardless of age, to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of either alcoholic beverages or any abused substance or controlled dangerous substance as set forth in R.S. 40:964. The law enforcement agency by which such officer is employed shall designate in writing and under what conditions which of the aforesaid tests shall be administered.

(b) In the case of all traffic fatalities, the coroner, or his designee, shall perform or cause to be performed a

toxicology screen on the victim or victims of all traffic fatalities for determining evidence of any alcoholic content of the blood and the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 which shall include the extracting of all bodily substance samples necessary for such toxicology screen. The coroner, or his designee, shall be responsible for ensuring the body is not removed from his custody until such time as the bodily substance samples are extracted. The coroner's report shall be made available to the investigating law enforcement agency and may be admissible in any court of competent jurisdiction as evidence of the alcoholic content of the blood and the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 at the time of the fatality. The coroner, or his designee, shall determine, by the most current and accepted scientific method available, whether the presence of alcoholic content in the blood of the deceased is the result of pre-death ingestion of alcoholic beverages or the postmortem synthesis of ethanol. Nothing herein shall be construed to limit the authority of the investigating law enforcement agency from conducting an investigation of the accident scene concurrently with the coroner or his designee.

(3) If the person is under twenty-one years of age, the test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state after having consumed alcoholic beverages. The law enforcement agency by which the officer is employed shall designate in writing and under what conditions which of the tests shall be administered.

B. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by Subsection A of this section, and the test or tests may be administered subject to the provisions of R.S. 32:662.

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

(a) His constitutional rights under *Miranda v. Arizona*.

(b) That his driving privileges can be suspended for refusing to submit to the chemical test.

(c) 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 percent or above or, if he is under the age of twenty-one years, a blood alcohol level of 0.02 percent or above.

(d) 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 R.S. 40:964.

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

(f) 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 and separate occasions of any previous such violation is a crime under the provisions of R.S. 14:98.2 and the penalties for such crime are the same as the penalties for first conviction of driving while intoxicated.

(2) In addition, the arresting officer shall, after reading said form, request the arrested person to sign the form. If the person is unable or unwilling to sign, the officer shall certify that the arrestee was advised of the information contained in the form and that the person was unable to sign or refused to sign.

§ 32:662. Administering chemical tests; use of results as evidence

A. The chemical test or tests as provided for by this Part shall be subject to the following rules and shall be administered as provided for hereafter:

(1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcoholic beverages the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

(a) Except as provided in Subparagraph (d), if the person had a blood alcohol concentration at that time 0.05 percent or less by weight, it shall be presumed that the person was not under the influence of alcoholic beverages.

(b) Except as provided in Subparagraph (d), if the person had a blood alcohol concentration at that time in excess of 0.05 percent but less than 0.08 percent by weight, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages.

(c) If the person had a blood alcohol concentration at that time of 0.08 percent or more by weight, it shall be presumed that the person was under the influence of alcoholic beverages.

(d) If the person was under the age of twenty-one years at the time of the test and had a blood alcohol concentration at that time of 0.02 percent or more by weight, it shall be presumed that the person was under the influence of alcoholic beverages.

(2) The blood alcohol concentration or level shall be based upon grams of alcohol per one hundred cubic centimeters of blood. Individuals measured through breath shall be afforded the timely option of the administration of a blood test for alcohol content.

B. The provisions of Subsection A of this Section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcoholic beverages or any abused substance or controlled dangerous substance as set forth in R.S. 40:964.

C. Except as provided in Paragraph A(2) of this Section, this Section has no application to a civil action or proceeding.

§ 32:662.1. Admissibility

In all criminal cases where intoxication is an issue, any certificate or writing made in accordance with the provisions of R.S. 32:663, including but not limited to intoxilyzer machine recertification forms, and other certificates or writings made with respect to the chemical analyses of a person's blood, urine, breath, or other bodily substance, shall be admissible as evidence.

§ 32:664. Persons qualified to make test

A. When a person submits to a blood test at the request of a law enforcement officer under the provisions of this Part, only a physician, registered nurse, qualified technician, or chemist may withdraw blood for the purpose of determining the alcoholic content or presence of any abused or illegal controlled dangerous substances therein. No law enforcement officer who is not otherwise qualified as a physician, registered nurse, qualified technician, or chemist may withdraw blood for the purpose of determining, or of having determined, the alcoholic content or presence of any abused or illegal controlled dangerous substances therein. This limitation shall not apply to the taking of breath specimens. Only procedures approved and promulgated by the Department of Public Safety and Corrections may be used in the analysis of blood, urine, breath, or other bodily substance.

B. After submitting to the chemical test, the person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The cost of any such additional test shall be at the expense of the tested person. After being advised of this right as provided in R.S. 32:661(C), he shall be given the opportunity to telephone and request a qualified person to administer such test. The failure or inability of the person to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer, unless said person was denied rights guaranteed to him by law.

C. No person who administers any such test upon the request of a law enforcement officer as herein defined, no hospital in or with which such person is employed or otherwise associated or in which such test is administered, and no other person, firm, or corporation by whom or which such person is employed or is in any way associated, shall be in any wise criminally liable for the administration of such test, or civilly liable in damages to the person tested.

§ 32:665. Furnishing of information to person tested

Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, results concerning the test or tests shall be made available to him or his attorney.

§ 32:666. Refusal to submit to chemical test; submission to chemical tests; exception; effects of

A. (1) (a) (i) When a law enforcement officer has probable cause to believe that a person has violated R.S. 14:98, R.S. 14:98.1, or any other law or ordinance that prohibits operating a vehicle while intoxicated, that person may not refuse to submit to a chemical test if he has refused to submit to such test on two previous and separate occasions of any previous such violation or in any case wherein a fatality has occurred or a person has sustained serious bodily injury in a crash involving a motor vehicle, aircraft, watercraft, vessel, or other means of conveyance. Serious bodily injury means bodily injury which involves unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death. The law enforcement officer shall direct that a chemical test be conducted of a person's blood, urine, or other bodily substance, or perform a chemical test of such person's breath, for the purpose of determining the alcoholic content of his blood and the presence of any abused substance or controlled substance as set forth in R.S. 40:964 in his blood in such circumstances. A physician, registered nurse, qualified technician, or chemist shall perform a chemical test in accordance with the provisions of R.S. 32:664 when directed to do so by a law enforcement officer.

(ii) As used in this Section "law enforcement officer" shall include but not be limited to any commissioned local or state police officer, wildlife enforcement agent, sheriff, deputy sheriff, marshal, deputy marshal, or state park warden.

(b) The law enforcement officer shall inform the person who is required to submit to such testing of the consequences of a refusal to submit to any testing as required by this Paragraph.

(c) Any person who refuses to submit to a chemical test as required by the provisions of this Paragraph shall be fined not less than three hundred dollars nor more than one thousand dollars and imprisoned for not less than ten days nor more than six months. Imposition or execution of sentence shall not be suspended unless:

(i) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program; or

(ii) The offender is placed on probation with a minimum condition that he perform four eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender who participates in a litter abatement or collection program pursuant to this Subparagraph shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation in the program, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.

(2) In all cases other than those in Paragraph (1) of this Subsection, a person under arrest for a violation of R.S. 14:98, R.S. 14:98.1, or other law or ordinance that prohibits operating a vehicle while intoxicated may refuse to submit to such chemical test, after being advised of the consequences of such refusal as provided for in R.S. 32:661(C), subject to the following:

(a) His license shall be seized under the circumstances provided in R.S. 32:667.

(b) If he is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny the issuance of a license or permit to such person for a period of six months after the date of the alleged violation.

(c) Evidence of his refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person, regardless of age, was driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages or any abused substance or controlled dangerous substance as set forth in R.S. 40:964. Additionally, evidence of his refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person under twenty-one years of age was driving or in actual physical control of a motor vehicle upon the public highways of this state after having consumed alcoholic beverages. However, such evidence shall not be admissible in a civil action or proceeding other than to suspend, revoke, or cancel his driving privileges.

(3) In all cases where a person is under arrest for a violation of R.S. 14:98, R.S. 14:98.1, or other law or ordinance that prohibits operating a vehicle while intoxicated who refuses to submit to a chemical test if he has refused to submit to a chemical test on two previous and separate occasions of any previous such violation shall be advised that the consequences of such refusal shall be subject to criminal penalties under the provisions of R.S. 14:98.2.

B. In each instance that a person submits or refuses to submit to a chemical test, after being advised of the

consequences of such refusal or submission as provided for in R.S. 32:661(C), the officer shall submit a sworn report in a form approved by the secretary that he had reasonable grounds to believe that the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages or any abused or illegal controlled dangerous substance as set forth in R.S. 40:964, that he had followed the procedure in informing such person of his rights under R.S. 32:661(C), and that such person had submitted to the test or refused to submit to the test upon the request of the officer. In the case of a submission to the test, the officer shall provide complete information regarding the test as may be available at the time the sworn report is completed.

C. Notwithstanding any law to the contrary, any law enforcement officer appointed as an ex officio notary public may exercise the function of a notary public to administer the oath required by this Section.

§ 32:667. Seizure of license; circumstances; temporary license

A. When a law enforcement officer places a person under arrest for a violation of R.S. 14:98, R.S. 14:98.1, or a violation of a parish or municipal ordinance that prohibits operating a vehicle while intoxicated, and the person either refuses to submit to an approved chemical test for intoxication, or submits to such test and such test results show a blood alcohol level of 0.08 percent or above by weight or, if the person is under the age of twenty-one years, a blood alcohol level of 0.02 percent or above by weight, the following procedures shall apply:

(1) The officer shall seize the driver's license of the person under arrest and shall issue in its place a temporary receipt of license on a form approved by the Department of Public Safety and Corrections. Such temporary receipt shall authorize the person to whom it has been issued to operate a motor vehicle upon the public highways of this state for a period not to exceed thirty days from the date of arrest or as otherwise provided herein.

(2) The temporary receipt shall also provide and serve as notice to the person that he has not more than fifteen days from the date of arrest to make written request to the Department of Public Safety and Corrections for an administrative hearing in accordance with the provisions of R.S. 32:668.

(3) In a case where a person submits to an approved chemical test for intoxication, but the results of the test are not immediately available, the law enforcement officer shall comply with Paragraphs (1) and (2) of this Subsection, and the person shall have fifteen days from the date of arrest to make written request for an administrative hearing. If after thirty days from the date of arrest the test results have not been received or if the person was twenty-one years of age or older on the date of arrest and the test results show a blood alcohol level of less than 0.08 percent by weight, then no hearing shall be held and the license shall be returned without the payment of a reinstatement fee. If the person was under the age of twenty-one years on the date of arrest and the test results show a blood alcohol level of less than 0.02 percent by weight, then no hearing shall be held and the license shall be returned without the payment of a reinstatement fee.

(4) If the vehicle is operable and a passenger in the vehicle who is not under the influence of alcohol has a valid driver's license, the officer shall allow the passenger to take control of the vehicle and shall not order or procure towing services for the vehicle. If the vehicle does not create a hazard or obstruction to traffic and the motoring public, and if there is no passenger in the vehicle who possesses a valid driver's license and who is not under the influence of alcohol, the officer, before ordering or procuring towing services, shall allow the arrestee a reasonable time and opportunity to contact another person to take possession or control of the vehicle on behalf of the arrestee. Reasonable time to notify and take possession of the vehicle shall be in the sole discretion of the officer. However, the law enforcement agency, the law enforcement officer, the state, and the political subdivision shall not be liable for damages, injuries, or deaths

occasioned by the vehicle not being towed immediately or by another person taking possession or control of the vehicle on behalf of the arrestee. If a law enforcement officer violates the provisions of this Paragraph, his employing agency rather than the arrestee shall be responsible for the payment of any towing charges incurred.

B. If such written request is not made by the end of the fifteen-day period, the person's license shall be suspended as follows:

(1) (a) Until September 30, 2003, if the person submitted to the test and the test results show a blood alcohol level of 0.10 percent or above by weight, his driving privileges shall be suspended for ninety days from the date of suspension on first offense violation, without eligibility for a hardship license for the first thirty days, and for three hundred sixty-five days from the date of suspension, without eligibility for a hardship license, on second and subsequent violations occurring within five years of the first offense. If the person was under the age of twenty-one years on the date of the test and the test results show a blood alcohol level of 0.02 percent or above by weight, his driving privileges shall be suspended for one hundred eighty days from the date of suspension.

(b) On or after September 30, 2003, if the person submitted to the test and the test results show a blood alcohol level of 0.08 percent or above by weight, his driving privileges shall be suspended for ninety days from the date of suspension on first offense violation, without eligibility for a hardship license for the first thirty days, and for three hundred sixty-five days from the date of suspension, without eligibility for a hardship license, on second and subsequent violations occurring within five years of the first offense. If the person was under the age of twenty-one years on the date of the test and the test results show a blood alcohol level of 0.02 percent or above by weight, his driving privileges shall be suspended for one hundred eighty days from the date of suspension.

(c) If the person submitted to the test and the test results show a blood alcohol level of 0.20 percent or above by weight, his driving privileges shall be suspended for two years from the date of suspension on first offense violation and for four years from the date of suspension for second offense violation.

(2) If the person had refused to submit to the test, his driving privileges shall be suspended for one hundred eighty days from the date of suspension on first refusal and five hundred forty-five days from the date of suspension without benefit of eligibility for a hardship license on the second and subsequent refusals occurring within five years of the first refusal. However, if the person was under the age of twenty-one years at the time of first refusal, his driver's license shall be suspended one hundred eighty days from the date of suspension.

(3) (a) However, any licensee who has had his license suspended for a first or second offense of operating a motor vehicle while under the influence of alcoholic beverages under the provisions of this Subsection and who either refused to submit to the test or who submitted to the test and the test showed a blood alcohol level of less than 0.20 percent shall, upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device, be immediately eligible for and shall be granted a restricted license. In the event that the department fails or refuses to issue the restricted driver's license, the district court for the parish in which the licensee resides may issue an order directing the department to issue the restricted license either by ex parte order or after contradictory hearing.

(b) If the person submitted to the test as a result of a first violation and the test results show a blood alcohol level of 0.20 percent or above by weight, he shall be eligible for a hardship license during the entire period of the imposed two-year suspension after he has provided proof that his motor vehicle has been equipped with an ignition interlock device. A functioning ignition interlock device shall remain installed on his motor vehicle during the first twelve-month period of his

driver's license suspension.

(c) If the person submitted to the test as a result of a second violation and the test results show a blood alcohol level of 0.20 percent or above by weight, he shall be eligible for a hardship license during the entire four-year period of the suspension after he has provided proof that his motor vehicle has been equipped with an ignition interlock device. A functioning ignition interlock device shall remain installed on his motor vehicle during the first three-years of the four-year period of his driver's license suspension.

(4) Notwithstanding the provisions of R.S. 32:666(A), if the person had refused to submit to the test in any case wherein a fatality occurred or a person sustained serious bodily injury as a result of an accident, his driving privileges shall be suspended for five hundred forty-five days from the date of suspension without benefit of eligibility for a hardship license.

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

D. (1) Upon receipt of a request for an administrative hearing, the department shall issue a document extending the temporary license, which shall remain in effect until the completion of administrative suspension, revocation, or cancellation proceedings. The department shall promptly schedule such request for hearing.

(2) (a) No delay of the hearing shall be granted by the department, unless requested in writing at least three days prior to such hearing, and upon a showing of good cause for the delay. However, in the case of an unforeseen emergency the secretary or his designee may waive the requirement for a written request to be submitted three days prior to the hearing in order to grant a delay.

(b) A hearing granted by the department may be rescheduled only once by the person seeking such hearing and in no event shall a hearing be rescheduled for a date later than ninety days from the date of the arrest.

(3) Oversight review of rules and regulations promulgated by the secretary under the provisions of this Part shall be conducted by the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works.

E. The department shall provide for a hearing to determine suspension or revocation of driving privileges , and said hearing shall be held within ninety days of the date of arrest in all cases, unless continued at the request of the driver.1

1As appears in enrolled bill.

F. When a license has been suspended under the provisions of this Section and the person is also convicted of or pleads guilty to an offense arising out of the same occurrence, any suspension of license imposed for such offense shall run concurrently with the suspension provided by this Section and the total period of suspension shall not exceed the longer of the two periods.

G. Notwithstanding the provisions of any other law, any person whose license has been suspended under the provisions of this Section, shall, after completion of the period of suspension, be required to pay a reinstatement fee of fifty dollars to the department for the return of his license.

H. (1) When any person's driver's license has been seized, suspended, or revoked, and the seizure, suspension, or revocation is connected to a charge or charges of violation of a criminal law, and the charge or charges do not result in a conviction, plea of guilty, or bond forfeiture, the person charged shall have his license immediately reinstated and shall not be required to pay any reinstatement fee if at the time for reinstatement of driver's license, it can be shown that the criminal charges have been dismissed or that there has been a permanent refusal to charge a crime by the appropriate prosecutor or there has been an acquittal. If, however, at the time for reinstatement, the licensee has pending against him criminal charges arising from the arrest which led to his suspension or revocation of driver's license, the reinstatement fee shall be collected. Upon subsequent proof of final dismissal or acquittal, other than under Article 893 or 894 of the Code of Criminal Procedure, the licensee shall be entitled to a reimbursement of the reinstatement fee previously paid. In no event shall exemption from this reinstatement fee or reimbursement of a reinstatement fee affect the validity of the underlying suspension or revocation.

(2) If a licensee qualifies for the exemption from the reinstatement fee or for a reimbursement of the reinstatement fee as provided in Paragraph (1) of this Subsection, the licensee shall receive credit for the unexpired portion of the license which was seized, and shall be exempt from the payment of, or shall receive reimbursement for the payment of, the duplicate license fee and the handling fee with regard to the license which was seized.

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

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

(b) Any person who has submitted to an approved chemical test for intoxication where the results indicate a blood alcohol level of 0.08 percent or above and whose driver's license has been suspended in accordance with the provisions of this Section for a second or subsequent violation occurring within five years of the first violation.

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

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

(2) As to any person enumerated in Paragraph (1) of this Subsection, the ignition interlock device shall remain on the motor vehicle for a period of not less than six months. The ignition interlock device may be installed either prior to the reinstatement of the driver's license, if the person has lawfully obtained a restricted driver's license, or as a condition of the reinstatement of the driver's license.

(3) The provisions of this Subsection shall not abrogate any other provision of law regarding the installation and maintenance of ignition interlock devices.

§ 32:668. Procedure following revocation or denial of license; hearing; court review; review of final order; restricted licenses

A. Upon suspending the license or permit to drive or nonresident operating privilege of any person or upon determining that the issuance of a license or permit shall be denied to the person, the Department of Public Safety and Corrections shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing based upon the department's records or other evidence admitted at the hearing, and in the same manner and under the same conditions as is provided in R.S. 32:414 for notification and hearings in the case of suspension of licenses, except that the scope of such a hearing for the purposes of this Part shall cover the following issues:

(1) Whether a law enforcement officer had reasonable grounds to believe the person, regardless of age, had been driving or was in actual physical control of a motor vehicle upon the public highways of this state, or had been driving or was in actual physical control of a motor-powered watercraft upon the public navigable waterways of this state, while under the influence of either alcoholic beverages or any abused substance or controlled dangerous substance as set forth in R.S. 40:964.

(2) Whether the person was placed under arrest.

(3) Whether he was advised by the officer as provided in R.S. 32:661.

(4) Whether he voluntarily submitted to an approved chemical test and whether the test resulted in a blood alcohol reading of 0.08 percent or above by weight, or of 0.02 percent or above if he was under the age of twenty-one years on the date of the test.

(5) Whether he refused to submit to the test upon the request of the officer.

(6) Such additional matters as may relate to the legal rights of the person, including compliance with regulations promulgated by the Department of Public Safety and Corrections and rights afforded to the person by law or jurisprudence.

B. (1) (a) In a case of first refusal or first submission to a test for intoxication and when there has been no prior suspension of the driver's license, if suspension is otherwise proper, upon a showing of proof satisfactory to the department that the suspension of driving privileges would prevent the person from earning a livelihood, the department may:

(i) Require the licensee to surrender his regular license and issue in its stead at a cost to the person of fifty dollars plus the cost of the license a special restricted operator's license designated as such by a large red R printed on the face of the license, to be effective for the remaining period of suspension.

(ii) Designate in writing, and upon application of the person to amend as necessary, the routes over which and the times during which the restricted licensee shall be permitted to operate designated motor vehicles in order to earn his livelihood, which written restrictions shall be attached to the restricted license and kept with it at all times.

(b) No person who has refused a chemical test for intoxication is eligible for a restricted license for the first ninety days of the suspension. When a person submits to a chemical test and the results show a blood alcohol level of 0.08 percent or above by weight, or of 0.02 percent or above if the person was under the age of twenty-one years on the date

of the test, he is not eligible for a restricted license for the first thirty days of the suspension.

(c) However, any licensee who has had his license suspended for a first or second offense of operating a motor vehicle while under the influence of alcoholic beverages under the provisions of this Subsection, shall, upon proof to the Department of Public Safety and Corrections, be immediately eligible for and shall be issued a restricted license. In the event that the department fails or refuses to issue the restricted driver's license, the district court for the parish in which the licensee resides may issue an order directing the department to issue the restricted license either by ex parte order or after contradictory hearing.

(2) However, the department shall immediately cancel and seize the restricted license upon receiving satisfactory evidence of violation of the restrictions, and no person shall have driving privileges of any kind for a period of six months from the receipt by the department of the cancelled restricted license.

C. After a person has exhausted his remedies with the department, he shall have the right to file a petition in the appropriate court for a review of the final order of suspension or denial by the Department of Public Safety and Corrections in the same manner and under the same conditions as is provided in R.S. 32:414 in the cases of suspension, revocation, and cancellation of licenses. The court in its review of the final order of suspension or denial by the Department of Public Safety and Corrections may exercise any action it deems necessary under the law including ordering the department to grant the person restricted driving privileges where appropriate as provided in Subsection B of this Section.

§ 32:670. Test results for persons under the age of twenty-one; exclusion from official driving record

The submission to a chemical test by any person under the age of twenty-one which indicates a blood alcohol level of at least 0.02 but less than 0.08 percent shall not be included on his official driving record. However, this provision shall not prohibit the use of those results for administrative purposes or for obtaining a conviction, or the use of a conviction obtained based on those results for any purpose allowed by law.

§ 14:32.1. Vehicular homicide

A. Vehicular homicide is the killing of a human being caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance, whether or not the offender had the intent to cause death or great bodily harm, whenever any of the following conditions exists:

(1) The operator is under the influence of alcoholic beverages as determined by chemical tests administered under the provisions of R.S. 32:662.

(2) The operator's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.

(4) The operator is under the influence of alcoholic beverages and has fled the scene of the accident.

(5) (a) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.

(b) It shall be an affirmative defense to any charge under this Paragraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(6) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

B. Whoever commits the crime of vehicular homicide shall be fined not less than two thousand dollars nor more than fifteen thousand dollars and shall be imprisoned with or without hard labor for not less than two years nor more than thirty years. At least one year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. If the operator's blood alcohol concentration is 0.15 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, then at least five years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. If the offender was previously convicted of a violation of R.S. 14:98, then at least five years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. The court shall require the offender to participate in a court-approved substance abuse program and may require the offender to participate in a court-approved driver improvement program. All driver improvement courses required under this Section shall include instruction on railroad grade crossing safety.

§ 14:39.1. Vehicular negligent injuring

A. Vehicular negligent injuring is the inflicting of any injury upon the person of a human being when caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance whenever any of the following conditions exists:

(1) The offender is under the influence of alcoholic beverages.

(2) The offender's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) The offender is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.

(4) (a) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.

(b) It shall be an affirmative defense to any charge under this Paragraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(5) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming

quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of negligence as set forth in Subsection A.

C. Whoever commits the crime of vehicular negligent injuring shall be fined not more than one thousand dollars or imprisoned for not more than six months, or both.

§ 14:39.2. First degree vehicular negligent injuring

A. First degree vehicular negligent injuring is the inflicting of serious bodily injury upon the person of a human being when caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance whenever any of the following conditions exists:

(1) The offender is under the influence of alcoholic beverages.

(2) The offender's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) The offender is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964, or any abused substance.

(4) (a) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.

(b) It shall be an affirmative defense to any charge under this Paragraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(5) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription and the influence is caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of negligence as set forth in Subsection A.

C. For purposes of this Section, "serious bodily injury" means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ or a mental faculty, or a substantial risk of death.

D. Whoever commits the crime of first degree vehicular negligent injuring shall be fined not more than two thousand dollars or imprisoned with or without hard labor for not more than five years, or both.