HLS 13RS-607 ORIGINAL

Regular Session, 2013

HOUSE BILL NO. 424

1

## BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

DWI: Provides relative to operating a vehicle while intoxicated

2	To amend and reenact R.S. 13:5304(O), R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a), and
3	R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), and (H)(3) and to
4	enact R.S. 14:98(D)(4) and (E)(5), relative to operating a vehicle while intoxicated;
5	to provide relative to the eligibility for participation in a drug division probation
6	program by persons convicted of a third or subsequent offense of operating a vehicle
7	while intoxicated; to provide relative to the sentencing of persons convicted of a
8	third or subsequent offense of operating a vehicle while intoxicated; to provide
9	relative to driver's licenses; to extend the time period within which to request an
10	administrative hearing regarding a driver's license suspension after an arrest for
11	operating a vehicle while intoxicated; and to provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 13:5304(O) is hereby amended and reenacted to read as follows:
14	§5304. The drug division probation program
15	* * *
16	O.(1) The provisions of Code of Criminal Procedure Article 893(A) and (D)
17	which prohibit the court from suspending or deferring the imposition of sentences
18	for violations of the Uniform Controlled Dangerous Substances Law or for violations
19	of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to
20	prosecutions in drug division probation programs as authorized by this Chapter.

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29

1	(2) The minimum mandatory sentence provided for in R.S. 14:98(D)(1) and
2	(E)(1), which shall otherwise be imposed without benefit of parole, probation, or
3	suspension of sentence, may be suspended if the offender is prosecuted in a drug
4	division probation program pursuant to the provisions of this Chapter.
5	Section 2. R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a) are hereby amended and
6	reenacted and R.S. 14:98(D)(4) and (E)(5) are hereby enacted to read as follows:
7	§98. Operating a vehicle while intoxicated
8	* * *
9	D.(1)(a) On a conviction of a third offense, notwithstanding any other
10	provision of law to the contrary and regardless of whether the offense occurred
11	before or after an earlier conviction, the offender shall be imprisoned with or without
12	hard labor for not less than one year nor more than five years and shall be fined two
13	thousand dollars. One Except as provided in Paragraph (4) of this Subsection, one
14	year of the sentence of imprisonment shall be imposed without benefit of probation,
15	parole, or suspension of sentence. The court, in its discretion, may suspend all or
16	any part of the remainder of the sentence of imprisonment. If any portion of the
17	sentence is suspended, except for a suspension of sentence pursuant to the provisions
18	of Paragraph (4) of this Subsection, the offender shall be placed on supervised
19	probation with the Department of Public Safety and Corrections, division of
20	probation and parole, for a period of time equal to the remainder of the sentence of
21	imprisonment, which probation shall commence on the day after the offender's
22	release from custody.
23	* * *
24	(4) Notwithstanding the provisions of Subparagraph (1)(a) of this
25	Subsection, the one-year period described in Paragraph (1) of this Subsection which
26	shall otherwise be imposed without the benefit of parole, probation, or suspension
27	of sentence, may also be suspended if the offender is accepted into a drug division
28	probation program pursuant to R.S. 13:5301 et seq. The provisions of Paragraph (2)

of this Subsection shall also be applicable to any offender whose sentence is served

with the benefit of parole, probation, or suspension of sentence pursuant to the provisions of this Paragraph.

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. Two Except as provided in Paragraph (5) of this Subsection, two years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment. If any portion of the sentence is suspended, except for a suspension of sentence pursuant to the provisions of Paragraph (5) of this Subsection, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of time not to exceed five years, which probation shall commence on the day after the offender's release from custody.

\* \* \*

(5)(a) Notwithstanding the provisions of Subparagraph (1)(a) of this Subsection, the two-year period described in Paragraph (1) of this Subsection which shall otherwise be imposed without the benefit of parole, probation, or suspension of sentence may also be suspended if the offender is accepted into a drug division probation program pursuant to R.S. 13:5301 et seq. The provisions of Paragraph (2) of this Subsection shall also be applicable to any offender whose sentence is served with the benefit of parole, probation, or suspension of sentence pursuant to the provisions of this Subparagraph.

(b) If the offender has previously participated in a drug division probation program pursuant to the provisions of Paragraph (D)(4) of this Section, the offender shall not be eligible to serve his sentence with the benefit of parole, probation, or suspension of sentence pursuant to the provisions of Subparagraph (a) of this

1	Paragraph, but shall be imprisoned at hard labor for not less than ten nor more than
2	thirty years, and at least three years of the sentence shall be imposed without benefit
3	of suspension of sentence, probation, or parole.
4	* * *
5	K.
6	* * *
7	(3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection
8	and R.S. 32:414(D)(1)(b), upon conviction of a third or subsequent offense of the
9	provisions of this Section, any motor vehicle, while being operated by the offender,
10	shall be equipped with a functioning ignition interlock device in accordance with the
11	provisions of R.S. 15:306. The ignition interlock device shall remain installed and
12	operative until the offender has completed the requirements of substance abuse
13	treatment and home incarceration, or, if applicable, the requirements of the drug
14	division probation program provided in R.S. 13:5301, et seq., under pursuant to the
15	provisions of Subsections D and E of this Section.
16	* * *
17	Section 3. R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), and
18	(H)(3) are hereby amended and reenacted to read as follows:
19	§667. Seizure of license; circumstances; temporary license
20	A. When a law enforcement officer places a person under arrest for a
21	violation of R.S. 14:98, R.S. 14:98.1, or a violation of a parish or municipal
22	ordinance that prohibits operating a vehicle while intoxicated, and the person either
23	refuses to submit to an approved chemical test for intoxication, or submits to such
24	test and such test results show a blood alcohol level of 0.08 percent or above by
25	weight or, if the person is under the age of twenty-one years, a blood alcohol level
26	of 0.02 percent or above by weight, the following procedures shall apply:
27	* * *
28	(2) The temporary receipt shall also provide and serve as notice to the person
29	that he has not more than fifteen thirty 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 thirty 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.

\* \* \*

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

18 \* \* \*

D.(1) Upon receipt of a request for an administrative hearing, the Department of Public Safety and Corrections 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 of Public Safety and Corrections shall forward the record of the case to the division of administrative law for a hearing within sixty days of the date of arrest receipt of the written request for an administrative hearing.

26 \* \* \*

27 H.

28 \* \* \*

1 (3) Paragraph (1) of this Subsection shall not apply to a person who refuses 2 to submit to an approved chemical test upon a second or subsequent arrest for R.S. 3 14:98 or 14:98.1 98.1, or a parish or municipal ordinance that prohibits driving a 4 motor vehicle while operating a vehicle intoxicated. However, this Paragraph shall 5 not apply if the second or subsequent arrest occurs more than ten years after the prior 6 arrest. 7 8 Section 4. The Department of Public Safety and Corrections, public safety services, 9 may promulgate rules and regulations pursuant to the Administrative Procedure Act and 10 subject to the oversight of the House and Senate committees on transportation, highways, 11 and public works, as are necessary to implement the provisions of Section 3 of this Act. 12 Section 5. This Act shall become effective upon signature of the governor or, if not 13 signed by the governor, upon expiration of the time for bills to become law without the 14 signature of the governor, as provided by Article III, Section 18 of the Constitution of 15 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act 16 shall become effective on the day following such approval.

## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lopinto HB No. 424

**Abstract:** Provides that the minimum mandatory sentences for 3rd and subsequent DWI offenders may be suspended if the offender is accepted for participation in a drug division probation program and extends the time period within which to request an administrative hearing regarding a driver's license suspension after an arrest for operating a vehicle while intoxicated.

<u>Present law</u> (R.S. 14:98) provides for the following with respect to persons convicted of a third or subsequent offense of operating a vehicle while intoxicated:

- (1) On a conviction of a third offense, the offender shall be imprisoned for not less than one year nor more than five years and shall be fined \$2,000. One year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.
- (2) On a conviction of a fourth or subsequent offense, the offender shall be imprisoned with or without hard labor for not less than 10 years nor more than 30 years and shall

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be fined \$5,000. Two years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

<u>Present law</u> (R.S. 13:5301, et seq.) allows each district court to establish a drug division probation program and authorizes alcohol- or drug-related offenders to participate in such programs when the offender meets certain criteria.

<u>Proposed law</u> amends <u>present law</u>, relative to the sentencing for a third or subsequent conviction of operating a vehicle while intoxicated, to authorize imposition of the minimum mandatory sentence with benefit of parole, probation, or suspension of sentence if the offender is accepted into a drug division probation program.

<u>Proposed law</u> further provides that if the offender has previously participated in a drug division probation program for a third offense of operating a vehicle while intoxicated, the offender shall not be eligible to serve his sentence with the benefit of parole, probation or suspension of sentence pursuant to the provisions of <u>proposed law</u> for a fourth or subsequent offense, but shall be imprisoned at hard labor for not less than 10 nor more than 30 years, and at least three years of the sentence shall be imposed without benefit of suspension of sentence, probation, or parole.

<u>Present law</u> provides for 15 days from the date of the arrest for operating a vehicle while intoxicated to request an administrative hearing following the issuance of a temporary receipt for a driver's license.

<u>Proposed law</u> extends the time within which to request an administrative hearing <u>from</u> 15 days <u>to</u> 30 days from the date of the arrest.

<u>Present law</u> requires DPS&C to forward the record of the case to the division of administrative law for a hearing within 60 days of the date of the arrest.

<u>Proposed law</u> amends <u>present law</u> to require DPS&C to forward the record of the case to the division of administrative law for a hearing within 60 days of the date of receipt of the written request for an administrative hearing.

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

(Amends R.S. 13:5304(O), R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a), and R.S. 32:667(A)(2) and (3), (B)(intro. para.), (D)(1), and (H)(3); Adds R.S. 14:98(D)(4) and (E)(5))