

Document: Tenn. Code Ann. § 55-10-425

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TN - Tennessee Code Annotated Title 55 Motor and Other Vehicles Chapter 10 Accidents, Crimes and Penalties Part 4 Alcohol and Drug Related Offenses

55-10-425. Compliance-based removal of ignition interlock device. [Effective on January 1, 2023. See version effective until January 1, 2023, and see Compiler's Notes.]

(a)

(1) Effective July 1, 2016, the authorized removal of any functioning ignition interlock device that is required by a court order, by statutory requirement, in the court's discretion, or at the defendant's request, must be compliance-based in accordance with this section.

(2) As used in this section:

(A) "Ignition interlock provider" means a provider that is licensed by the department pursuant to § 55-10-420;

(B) "Ignition interlock usage period" means a three-hundred-sixty-five-consecutive-day period or the entire period of the person's driver license revocation, whichever is longer; and

(C) "In writing" means either electronically or by regular mail.

(b)

(1) Except as provided in subdivision (b)(2), upon application by a person who is not otherwise prohibited from having a restricted license, the court must order the installation and use of a functioning ignition interlock device for the ignition interlock usage period. The consecutive-day requirement must be considered to commence on the date of interlock installation, provided that the person applies for the person's restricted license within ten (10) days of the issuance of a court order authorizing a restricted license. If the person does not have a court order or does not apply within ten (10) days, then the ignition interlock usage period must commence on the date of issuance of the driver license with interlock restrictions under subdivision (b)(2).

(2)

(A) If a functioning ignition interlock device is required, ordered, or requested to be installed and used pursuant to subdivision (a)(1), then the ignition interlock usage period required by subdivision (b)(1) and the final one-hundred-twenty-day period of violation-free use required by subdivision (d)(1) are applicable regardless of whether the person applies for a restricted license during the revocation period.

(B) The department shall not reinstate a driver license to a person who did not apply for a restricted driver license during the period of license revocation, regardless of whether the person had an ignition interlock device installed, until the person shows the department proof of a current ignition interlock installation. Upon proof being shown and the driver license reinstated with interlock restrictions, the ignition interlock usage period must commence on the date the license is reinstated and must continue for the full ignition interlock usage period that matches the person's license revocation period until compliance has been established as required in this section.

(C) The department shall not accept a court order waiving any ignition interlock requirements if the court order is not in compliance with this part.

(3) If the court determines that installation and use of a functioning ignition interlock device is not required by § 55-10-409(b)(2)(B), the court shall make specific findings of fact on a form provided by the department that the factors listed in § 55-10-409(b)(2)(B) do not exist in the instant case. The findings of fact shall include the following:

(A) The person's actual blood or breath alcohol concentration (BAC) demonstrating that the person did not have a blood or breath alcohol concentration of eight-hundredths of one percent (0.08%) or higher, or a combination of alcohol in any amount and marijuana, a controlled substance, controlled substance analogue, drug, or any substance affecting the central nervous system;

(B) There was no person in the vehicle with the person who was under eighteen (18) years of age;

(C) The person was not involved in an accident, or the accident did not require a report under § 55-10-107, or the accident was not the proximate result of the person's intoxication; and

(D) The person is not charged with violating the implied consent law or, if the person is so charged, the person did not have a conviction or juvenile delinquency adjudication for a violation that occurred within five (5) years of the instant implied consent violation, for any of the offenses set out in § 55-10-409(b)(2)(B)(iv).

(4)

(A) If the court fails to make a specific finding that § 55-10-409(b)(2)(B) is not applicable in the instant case, if the finding made by the court is incomplete, or if the finding does not contain adequate information for the department to determine the applicability of § 55-10-409(b)(2)(B), the person shall be required by default to install and use a functioning ignition interlock device for the ignition interlock usage period.

(B) If the court orders that a restricted license be issued without an ignition interlock device required, and the court's findings of fact demonstrate that installation and use of a functioning ignition interlock device is not required by § 55-10-409(b)(2)(B), the restricted driver license shall be subject to the geographic restrictions of § 55-10-409(c).

(c)

(1) A person required to install and use only a functioning ignition interlock device pursuant to this section is prohibited from:

(A) Removing or causing to be removed the ignition interlock device from the motor vehicle;

(B) Failing to appear at the ignition interlock device provider when required for calibration, monitoring, or inspection of the device; and

(C) Tampering with or circumventing the ignition interlock device.

(2) Unless as otherwise provided in subsection (h), the person must maintain the device in working order for the ignition interlock usage period.

(3) Failure to comply with the requirements of this subsection (c) will result in the ignition interlock usage period starting over.

(d)

(1) During the final one-hundred-twenty-day period of an ignition interlock usage period, the person shall not:

(A) Tamper with, circumvent, or attempt to start the motor vehicle with a breath alcohol concentration in excess of the two-hundredths of one percent (0.02%) blood alcohol concentration calibration setting required by § 55-10-417(b); provided, however, that a person is not in violation of this subdivision (d)(1)(A) for attempting to start the motor vehicle, if a subsequent retest within ten (10) minutes shows a breath alcohol concentration of two-hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same person performed both tests;

(B) Fail to take or skip a rolling retest when required by the ignition interlock device; provided, however, that a person is not in violation of this subdivision (d)(1)(B) for failing to take or skipping a rolling retest if a review of the digital images associated with the test confirms that the motor vehicle was not occupied by the driver at the time of the retest;

(C) Fail a rolling test required by the ignition interlock device with a breath alcohol concentration in excess of two-hundredths of one percent (0.02%); provided, however, that a person is not in violation of this subdivision (d)(1)(C) for failing a rolling test, if a subsequent retest within ten (10) minutes shows a breath alcohol concentration of two-hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same person performed both tests; or

(D) Remove the ignition interlock device from the motor vehicle, except for necessary maintenance, replacement, or repair as determined by the department, or as allowed by subsection (h).

(2)

(A) Failure to comply with subdivisions (d)(1)(A)-(C) must result in the extension of the ignition interlock usage period by one hundred twenty (120) days during which the person must remain in compliance with subdivisions (d)(1)(A)-(C) in order to avoid additional extension.

(B) Failure to comply with subdivision (d)(1)(D) must result in the restart of the full ignition interlock usage period as prescribed in subdivision (c)(3).

(3) The requirement to have an interlock device shall not be removed from the person's driver license unless the requirements of this subsection (d) have been met.

(e)

(1) If at any time during the ignition interlock usage period, the department determines that the person has committed a violation of subsection (c), then the ignition interlock usage period must start again from the date compliance was reestablished.

(2) Notwithstanding subdivision (e)(1), if at any time during the final one hundred twenty (120) days of the ignition interlock usage period, the department determines that the person has committed a violation of subsection (d), then the one-hundred-twenty-day period must start again from the date of the violation.

(f)**(1)**

(A) Upon completion of the ignition interlock usage period, the person must take the motor vehicle to an ignition interlock provider for a final download of the person's data file and a determination as to whether the person has successfully completed the ignition interlock usage period without violations of subsection (c) and whether the final one-hundred-twenty-day period was completed without violations of subsection (d).

(B) The ignition interlock provider must send the data file from the person's final download to the department within two (2) business days.

(C) If the person has successfully completed the ignition interlock usage period without violations of subsection (c) and the final one-hundred-twenty-day period was completed without violations of subsection (d), then the ignition interlock provider must issue a compliance determination form to the person. If the person has not successfully completed the ignition interlock usage period without violations of subsection (c), or the final one-hundred-twenty-day period was not completed without violations of subsection (d), then the ignition interlock provider must notify the person of noncompliance and the resulting extension of the ignition interlock requirement on the compliance determination form. The ignition interlock provider must use the compliance determination form published by the department.

(D) If the ignition interlock provider issues a certificate of compliance, then the ignition interlock division within the department must issue an interlock removal form authorizing the removal of the ignition interlock restrictions from the person's driver license and the removal of the ignition interlock device from the person's motor vehicle; provided, that the department's review of the person's records indicates the person has been in compliance during the ignition interlock usage period.

(E) The person may take the interlock removal form to a driver services center and apply for the removal of the ignition interlock requirements and reinstatement of the person's driver license or the issuance of a photo identification license. If the person meets all requirements for driver license reinstatement and pays all reinstatement fees, then the department must reinstate the driver license.

(F) If the ignition interlock provider notifies the person that the provider's records indicate the person has not complied with the conditions in subsection (c) or (d) during the required periods, then the person may either accept the extension of the ignition interlock requirement or request that the provider reconsider the finding of noncompliance and consider evidence of compliance provided by the person. If

the provider confirms the finding of noncompliance, then the person may either accept the extension of the ignition interlock requirement or request an administrative compliance review by the department pursuant to subdivision (f)(2).

(2)

(A) A person who has had the person's ignition interlock usage period extended by a provider may request, in writing, an administrative compliance review by the department. Any evidence of compliance the person intends to present to the department must be included with the written request.

(B) The department shall review the request, including any evidence provided by the person and the records provided by the provider, within thirty (30) days of receiving the request. Following the department's review, the department shall notify the person and the provider of the department's determination in writing.

(C) If the department determines that the person was in compliance with subsections (c) and (d), then the department shall issue an interlock removal form.

(D) If the department determines that the person was not in compliance for the required periods, then the department shall inform the person of the determination in writing. The person may seek judicial review of the department's administrative compliance review determination as provided by § 4-5-322.

(3) When removing an ignition interlock device on or after July 1, 2016, a certified ignition interlock provider may in good faith rely on a person's interlock removal form that removal of the ignition interlock device is lawful.

(g) This section applies to offenses committed on or after July 1, 2016, for which a person is required by a court order, a statutory requirement, in the court's discretion, or at the defendant's request, to operate only a motor vehicle that is equipped with a functioning ignition interlock device. To the extent not inconsistent with this section, the procedural provisions and geographic restrictions of §§ 55-10-409 and 55-10-417, the provider fees of § 55-10-418, and the electronic monitoring indigency fund and indigency provisions of § 55-10-419 must, if applicable, continue to apply. If any provision of those sections is in conflict with this section, this section must apply.

(h)

(1) This subsection (h) applies to persons required to have an ignition interlock device installed on their vehicle under subsection (c) when that vehicle is unable to be operated due to:

(A) Damage from an accident or other uncontrollable circumstance where the person's intoxication was not a proximate cause; or

(B) Repairs based on normal wear and tear of a vehicle or due to a recall.

(2) A person whose vehicle is unable to be operated under subdivision (h)(1) may request the department toll the required consecutive three-hundred-sixty-five-day period, beginning on the date of the incident that led to the vehicle being unable to be operated, by submitting proof to the ignition interlock provider that the vehicle was involved in a traffic crash, the vehicle is being repaired, or other uncontrollable circumstance through no fault of the person required to have ignition interlock.

(3)

(A) If the vehicle was in an accident and a law enforcement agency issued a crash report, the crash report must be submitted.

(B) Other proof may consist of, but is not limited to:

(i) A written statement from the insurance company regarding repairs;

(ii) A written statement from a repair shop showing the damage being repaired and the estimated time of completion for repairs; or

(iii) Other documentation acceptable to the department.

(4) The ignition interlock provider shall forward the request and documentation to the department within five (5) business days of receipt.

(5) The department shall notify the person and the ignition interlock provider in writing, or by electronic transmission, if the tolling period has been granted or denied, and, if denied, the reason for the denial.

(6) If granted, a toll period shall be for thirty (30) days. At the end of the thirty-day period, if the vehicle is still unable to be operated and the person cannot have an ignition interlock device installed on a different vehicle, the person shall submit additional proof, as specified in subdivision (h)(3), to the department showing the vehicle is still undergoing repairs or other acceptable reason that the ignition interlock device cannot be installed on a different vehicle. The department shall notify the person and the ignition interlock provider in writing, or by electronic transmission, if any additional toll period has been granted or denied, and, if denied, the reason for the denial.

(7) At the end of any thirty-day period, if no new request has been submitted and granted, then the three-hundred-sixty-five-day period shall resume with the person being required to maintain an ignition interlock device for the period of time that was remaining on the day the tolling period began.

(8) The tolling period in this subsection (h) does not relieve a person from the requirement to only operate a vehicle that is equipped with an ignition interlock device.

(9)

(A) A person aggrieved by the denial of their request to have the three-hundred-sixty-five-day period tolled under this subsection (h) may, within ten (10) business days of the date of the denial, request a review by the commissioner or the commissioner's designee. The request for review shall include copies of the proof submitted to the department, the denial letter from the department, and any information showing why the person believes the denial was incorrect.

(B) The commissioner or the commissioner's designee shall, within ten (10) business days of receiving the request for review, make a determination in writing, based on information in the department's records and the information provided by the person requesting the review, whether or not the thirty-day toll period should be granted.

(C) The request for review will stay the continuation of the three-hundred-sixty-five-day period until the commissioner or commissioner's designee's ruling is issued.

(D) A person may appeal the commissioner or commissioner's designee's ruling pursuant to § 4-5-322.

(i)

(1) If a person is unable to produce enough breath volume to operate an ignition interlock device, then the person may apply to the department for a waiver of the ignition interlock requirement.

(2) An application for a waiver must be on a form developed by the department, and the following documents must be submitted with the application:

(A) A statement by an ignition interlock provider, dated within sixty (60) days of the application, that an ignition interlock device cannot be adjusted to allow the person to use the device and register the person's breath alcohol level; and

(B) Statements from at least two (2) licensed physicians who have examined the person at an in-office appointment, dated within sixty (60) days of the application, indicating that the person has a medical condition that renders the person unable to provide a deep lung breath sample for analysis by an ignition interlock device.

(3) A person who fails to submit the documents required in subdivision (i)(2) at the time of application must be provided an additional thirty (30) days to submit the documents before the department may deny the waiver for the failure to submit the required documents.

(4) Within sixty (60) days after receipt of a waiver application and all required documents, the department shall review the application and the statements from the interlock provider and the physicians, and determine if a person is unable to operate an ignition interlock device and the failure to grant an interlock waiver would constitute a hardship based on the person's work or medical needs.

(5) Upon determining that a person is unable to operate an ignition interlock device and the failure to grant a waiver would constitute a hardship under subdivision (i)(4), the department may issue a waiver of the person's ignition interlock requirement. The waiver form issued by the department must specify the necessary times and places of permissible operation of a motor vehicle for the limited purposes of going to and from:

(A) Work at the person's regular place of employment;

(B) The office of the person's probation officer or other similar location for the sole purpose of attending a regularly scheduled meeting or other function with the probation officer by a route to be designated by the probation officer;

(C) A court-ordered alcohol safety program;

(D) A college or university in the case of a student enrolled full time in the college or university;

(E) A court-ordered outpatient alcohol and drug treatment program;

(F) The person's regular place of worship for regularly scheduled religious services conducted by a bona fide religious institution as defined in § 48-101-502(c); and

(G) Medical treatment of the person or an immediate family member or provision of care for the person or an immediate family member suffering from a serious illness.

(6)

(A) The time and geographic restrictions must be required for the entire period of license revocation, or the entire period an ignition interlock device was required based on the law at the time of the person's conviction.

(B) A person who receives a waiver must carry the waiver form at all times while the person is operating a motor vehicle. A person who does not have the waiver form while operating a motor vehicle is considered to be driving on a revoked license.

(7) A person who has been granted a waiver form by the department must take the form, accompanied by a fee of sixty-five dollars (\$65.00), to a driver services center to apply for a restricted driver license.

(8) The denial of a waiver under this subsection (i) may be appealed in accordance with the rules and procedures for appeals through the department's driver improvement division. The department shall not issue a license without an ignition interlock restriction during the pendency of the appeal.

(j)

(1) A nonresident, as defined in § 55-50-102, who is required to install and maintain an ignition interlock device pursuant to this part may request a waiver developed by the department to be completed by the nonresident's home state. Upon acceptance of the completed waiver by the department, the ignition interlock installation requirement must be waived.

(2) If at any time the nonresident becomes a resident, as defined in § 55-50-102, of this state, then the resident must comply with the requirements of this section and the ignition interlock usage period will commence on the date of driver license issuance with proof that an ignition interlock device has been installed on the motor vehicle.

(k) A person required to have a functioning ignition interlock device pursuant to this part shall not operate a motor vehicle without a functioning ignition interlock device.

(l) A person who is subject to § 55-10-409 or this section may petition a court with proper jurisdiction for reinstatement of the person's driver license under this part regardless of the date when the person first became subject to those limitations. If the person is in compliance with all other requirements for reinstatement and has no other revocations or suspensions on the person's driving record, then the court may order reinstatement. Upon receipt of the court order, if the person is in compliance with all other requirements for reinstatement and has no other revocations or suspensions on the person's driving record, then the department shall reinstate the license.

History

Acts 2016, ch. 888, § 1; 2018, ch. 577, § 3; 2018, ch. 1046, § 4; 2022, ch. 964, §§ 11-23.

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