

SENATE BILL NO. 47

BY SENATOR PERRY

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

DWI. Provides technical changes to current law relative to the crime of driving while intoxicated. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 13:1894.1, relative to the crime of driving while intoxicated; to

3 provide technical changes to current law relative to prosecutions and penalties for

4 driving while intoxicated; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 13:1894.1 is hereby amended and reenacted to read as follows:

7 §1894.1. Driving while intoxicated, prosecutions for violation required to be filed

8 under general state law; city and municipal courts, New Orleans

9 excepted

10 A. Notwithstanding any other provision of law to the contrary, including the

11 provisions of R.S. 13:1871, ~~on and after July 29, 1970~~; prosecutions in any city,

12 parish, or municipal court, the city, municipal and traffic courts of the city of New

13 Orleans excepted, based on or arising out of the operation of a vehicle by a person

14 while intoxicated may be charged and prosecuted under the provisions of R.S. 14:98

15 or under any applicable city, parish, or municipal ordinance ~~which~~ **that** incorporates

16 the standards, elements, and sentences of the offense of driving while intoxicated

17 contained in R.S. 14:98. Any conviction for a first or second offense or the entry of

1 a plea of guilty and sentence based on such plea or the forfeiture of bail of any  
2 person having been charged with a first or second violation of R.S. 14:98 in any such  
3 city, parish, or municipal court shall be punishable in accordance with the provisions  
4 of ~~R.S. 14:98(B) or (C)~~ **R.S. 14:98(D)(1) or (D)(2)**, whichever is applicable. Any  
5 conviction for a first or second offense or the entry of a plea of guilty and sentence  
6 based on such plea or the forfeiture of bail of any person having been charged with  
7 a first or second violation of the applicable city, parish, or municipal ordinance in  
8 any such city, parish, or municipal court shall be punishable in accordance with the  
9 provisions of the ordinance and shall constitute a conviction under R.S. 14:98 for  
10 purposes of determining the number of prior convictions in a proceeding under R.S.  
11 14:98.

12 B. For purposes of this Section all city, parish, and municipal courts shall  
13 have concurrent jurisdiction with the district courts over violations otherwise subject  
14 to their jurisdiction provided for by R.S. 14:98, except in those cases wherein the  
15 person or defendant is charged as a third or subsequent offender under the provisions  
16 of ~~R.S. 14:98(D) and (E)~~ **R.S. 14:98(D)(3) or (D)(4)**, **whichever is applicable**. If the  
17 charge is for a third or subsequent offense, the prosecution shall be had only in the  
18 district court and the defendant shall have the right to a trial by jury. However,  
19 mayors' courts shall have no jurisdiction whatsoever over violations as provided for  
20 by R.S. 14:98, nor to the trial of offenses against municipal ordinances relative to  
21 prosecutions on charges of driving while intoxicated.

22 C.(1) Notwithstanding the provisions of R.S. 13:1898 or any other law to the  
23 contrary, and except as provided in R.S. 13:1894.1(C)(2), all fines, forfeitures, and  
24 penalties, exclusive of costs, collected in city, parish, and municipal courts for  
25 violations of R.S. 14:98 shall be paid into the city treasury or as otherwise provided  
26 by law when the prosecution is filed under said Section for a violation occurring  
27 within the territorial limits of the city or municipality; however, in the event a  
28 violation of R.S. 14:98 is charged and such violation occurred within the territorial  
29 limits of a municipality not having a city court, all said fines, forfeitures, and

1 penalties collected by the district court wherein said prosecution is actually brought  
 2 shall be distributed and disbursed by said court to the governing authority of the  
 3 municipality within whose boundaries said violation occurred. When such  
 4 prosecution is brought for a violation occurring outside of the territorial limits of said  
 5 city or municipality, then said collections shall be payable to the governing authority  
 6 of the parish or as otherwise provided by law; however, in the case of all such  
 7 charges filed in a parish court, said funds shall be payable to the parish or as  
 8 otherwise provided by law. All such charges filed under the provisions of this  
 9 Section shall be on affidavit and such charges shall be filed and prosecuted by the  
 10 city attorney or the city prosecutor when said charges are filed because of violations  
 11 of any city, parish, or municipal ordinance occurring within the territorial limits of  
 12 the city or municipality and by the district attorney or his representative when said  
 13 charges are filed because of violations of R.S. 14:98 occurring in or outside of such  
 14 territorial limits of the city or municipality.

15 (2) Notwithstanding R.S. 13:1894.1(C)(1), the fines levied pursuant to R.S.  
 16 ~~14:98(J)~~ **14:98(B)** and collected in Caldwell, Catahoula, Concordia, Franklin,  
 17 LaSalle, and Tensas parishes shall be remitted to the Northeast Louisiana Substance  
 18 Abuse Center.

19 Section 2. This Act shall become effective upon signature by the governor or, if not  
 20 signed by the governor, upon expiration of the time for bills to become law without signature  
 21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 22 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 23 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Alden A. Clement, Jr.

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DIGEST

SB 47 Original 2015 Regular Session Perry

Present law provides that prosecutions in any city, parish, or municipal court (except for the city, municipal and traffic courts of the city of New Orleans) that arise out of the operation of a vehicle by a person while intoxicated may be charged and prosecuted under the provisions of present law relative to DWI, or under any applicable city, parish, or municipal ordinance that incorporates the standards, elements, and sentences of the offense of driving

while intoxicated contained in present law. Present law further provides that any conviction for a first or second offense, or the entry of a plea of guilty and sentence based on such plea or the forfeiture of bail of any person having been charged with a first or second violation of present law relative to DWI in any such city, parish, or municipal court, is to be punished in accordance with the penalty provisions of present law relative to DWI.

Proposed law retains present law.

Present law provides that any conviction for a first or second offense of DWI, or the entry of a plea of guilty and sentence based on such plea or the forfeiture of bail of any person having been charged with a first or second violation of the applicable city, parish, or municipal ordinance in any such city, parish, or municipal court, is to be punished in accordance with the provisions of the ordinance and constitutes a conviction under present law relative to DWI for purposes of determining the number of prior convictions for DWI in a proceeding under present law.

Proposed law makes technical changes to citations in present law in order to conform to the provisions of present law enacted by Act No. 385 of the 2014 Regular Session.

Proposed law otherwise retains present law.

Present law provides that all city, parish, and municipal courts have concurrent jurisdiction with the district courts over violations otherwise subject to their jurisdiction provided for by present law relative to DWI, except in those cases in which the person or defendant is charged as a third or subsequent offender under the provisions of present law. Present law further provides that if the charge is for a third or subsequent offense of DWI, the prosecution is to be had only in the district court and the defendant has the right to a trial by jury. Present law further provides that mayors' courts have no jurisdiction whatsoever over violations of present law relative to DWI, nor to the trial of offenses against municipal ordinances relative to prosecutions on charges of DWI.

Proposed law makes technical changes to citations in present law in order to conform to the provisions of present law enacted by Act No. 385 of the 2014 Regular Session.

Proposed law otherwise retains present law.

Present law provides that DWI fines levied pursuant to the "Child Endangerment Law" relative to the presence of a child under 12 years of age in a motor vehicle at the time of the commission of the DWI offense, when such fines are collected in Caldwell, Catahoula, Concordia, Franklin, LaSalle, and Tensas parishes, are to be remitted to the Northeast Louisiana Substance Abuse Center.

Proposed law makes technical changes to citations in present law in order to conform to the provisions of present law enacted by Act No. 385 of the 2014 Regular Session.

Proposed law otherwise retains present law.

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

(Amends R.S. 13:1894.1)