

Proposed Rules  
of the  
Department of Safety  
Driver Control Division

Chapter 1340-01-04  
Tennessee Driver Improvement Program

Presented herein are proposed amendments of the Driver Control Division, Tennessee Department of Safety submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Safety to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department of Safety, 1150 Foster Avenue, Nashville, TN 37249, and in the Department of State, 8<sup>th</sup> Floor, Tennessee Tower, William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Gerry Crownover, Staff Attorney, Tennessee Department of Safety, 1150 Foster Avenue, Nashville, TN, 37249-1000, 615-251-5277.

The text of the proposed amendments is as follows:

Amendment

Paragraph (1) of Rule 1340-01-04-.01 Purpose is amended by deleting the language in its entirety and substituting new language, so that, as amended the paragraph shall read:

- (1) To establish a uniform system for conducting a Driver Improvement Program whereby the Department is authorized to evaluate driver records based on accidents and/or convictions for moving traffic violations and to establish and assign point values according to the seriousness of the accidents or convictions for moving traffic violations, and whereby a driver may, after notice and the opportunity for a hearing to contest the records of the Department of Safety, be required to enter into a rehabilitation procedure and/or have the driver's driving privileges suspended when the records of the Department indicate that the driver has contributed to the occurrence of accidents and/or has been convicted of moving traffic violations and has accumulated sufficient points, or when the Department has reason to believe that the driver is unable to safely operate a motor vehicle due to physical or mental disability.

Authority: T.C.A. §§ 4-5-202 and 55-50-505.

Amendment

Subparagraph (s) of paragraph (1) of Rule 1340-01-04-.03 Schedule of Points is amended by the deleting the language in its entirety and substituting new language, so that, as amended, the subparagraph shall read:

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| (s) Operating without being licensed or without license<br>required for type of vehicle operated | 3 |
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Authority: T.C.A. §§ 4-5-202 and 55-50-505.

Amendment

Subparagraph (t) of paragraph (1) of Rule 1340-01-04-.03 Schedule of Points is amended by the deleting the language in its entirety and substituting new language, so that, as amended, the subparagraph shall read:

- (t) Operating while license required for type of vehicle operated is under suspension, revocation or cancellation 8

Authority: T.C.A. §§ 4-5-202 and 55-50-505.

Amendment

Subparagraph (s) of paragraph (6) of Rule 1340-01-04-.03 Schedule of Points is amended by the deleting the number "6" and substituting the number "8", so that, as amended, the subparagraph shall read:

- (s) Passing stopped school, church or youth bus taking on or discharging passengers 8

Authority: T.C.A. §§ 4-5-202 and 55-50-505.

Amendment

Paragraph (7) of Rule 1340-01-04-.03 Schedule of Points is amended by adding a subparagraph (w) that shall read:

- (w) Operating without being licensed or without license required for type of vehicle operated 8

Authority: T.C.A. §§ 4-5-202 and 55-50-505.

Amendment

Rule 1340-01-04-.04 Revocation or Suspension of Driver License or Certificate for Driving for Moving Violation Convictions or Contributing to the Occurrence of a Traffic Crash is amended by deleting the phrase "Certificate for Driving" and substituting the phrase "Temporary Driver License", so that, as amended, the Rule shall read:

1340-01-04-.04 Revocation or Suspension of Driver License or Temporary Driver License for Moving Violation Convictions or Contributing to the Occurrence of a Traffic Crash.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Subparagraph (f) of paragraph (7) of Rule 1340-01-04-.04 is amended by the deleting the phrase "certificate for driving" where it occurs in the subparagraph and substituting the phrase "temporary driver license", so that, as amended, the subparagraph shall read:

- (f) A driver has ninety (90) days from the date of the letter assigning the driver to attend a defensive driving course or ninety (90) days from the date of the driver's hearing to attend a defensive driving course. Failure to complete an assigned defensive driving course shall result in the suspension of the driver license or temporary driver license for six (6) months. A driver may request an extension of time to attend the defensive driving course, provided that the request shall be made in writing at least ten (10) days before the expiration of the ninety (90) day period to attend a defensive driving course. The Department may grant an extension of time to attend the defensive driving course if the driver shows good cause. Good cause for and the length of such extension shall be determined by the Department. The Department shall notify the driver in writing of its decision.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Subparagraph (i) of paragraph (7) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”, and by deleting the word “insure” where it occurs in the subparagraph and substituting the word “ensure”, so that, as amended, the subparagraph shall read:

- (i) At the discretion of the Department, a driver under Driver Improvement Program suspension may be issued a restricted driver license or temporary driver license. The Department may place conditions on the driver license or temporary driver license as the Department may determine to be appropriate to ensure the safe operation of a motor vehicle by the driver. To obtain a restricted driver license or temporary driver license, the driver must complete an application, furnish proof of SR22, pay the restricted driver license or temporary driver license fee and pass the driver examination. A driver may be issued only one (1) restricted driver license or temporary driver license in a five (5) year period.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Subparagraph (j) of paragraph (7) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”, so that, as amended, the subparagraph shall read:

- (j) Administrative Probation - For good cause or in extreme circumstances (to be determined by the Department), the Department may place a first offender driver on administrative probation in lieu of suspension. In this event, no suspension of the driver license or temporary driver license shall occur, the probationary period shall be for twelve (12) months, and the driver shall carry all posted points during this time. Good cause or extreme circumstances may include, but not be limited to, drivers temporarily out of the state or country due to the military, employment or education or serious illness.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Subparagraph (c) of paragraph (8) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”, so that, as amended, the subparagraph shall read:

- (c) A driver entering the Driver Improvement Program for a second or subsequent time who has previously attended a defensive driving course in lieu of suspension within the previous five (5) year period, and who is currently undergoing, or has previously undergone within the five (5) year period, Driver Improvement Program suspension of a driver license or temporary driver license, shall have driving privileges suspended for twelve (12) months.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Subparagraph (f) of paragraph (8) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”, so that, as amended, the subparagraph shall read:

- (f) Failure to complete an assigned defensive driving course shall result in the suspension of the driver license or temporary driver license for six (6) or twelve (12) months, depending on

whether the driver has previously attended a defensive driving course. A driver may request an extension of time to attend the defensive driving course, provided that the request shall be made in writing at least ten (10) days before the expiration of the ninety (90) day period to attend a defensive driving course. The Department may grant an extension of time to attend the defensive driving course if the driver shows good cause. Good cause for and the length of such extension shall be determined by the Department. The Department shall notify the driver in writing of its decision.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

#### Amendment

Paragraph (10) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the paragraph and substituting the phrase “temporary driver license”, so that, as amended, the paragraph shall read:

- (10) In any administrative hearing pursuant to T.C.A. §§ 55-12-105, 55-12-129, 55-50-502 or 55-50-505, when any driver who fails to appear at the hearing after receiving proper notice, such driver shall be defaulted. Upon default by a party, the hearing officer may enter either an initial default order or an order for an uncontested proceeding. The driver’s case shall be dismissed and the driver’s driver license or temporary driver license shall be revoked or suspended pursuant to the applicable statute. A default order must be in writing, with reasons given and appeal rights stated.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

#### Amendment

Paragraph (11) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the paragraph and substituting the phrase “temporary driver license”, so that, as amended, the paragraph shall read:

- (11) Any driver whose driver license or temporary driver license is suspended under the Driver Improvement Program by the hearing officer is eligible to appeal the suspension through the appeals process contained in the Uniform Administrative Procedures Act (T.C.A. §4-5-101 et seq.).

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

#### Amendment

Subparagraph (a) of paragraph (12) of Rule 1340-01-04-.04 is amended by the deleting the phrase “filed proof of SR22 and passed the driver examination.” where it occurs in the subparagraph and substituting the phrase “and filed the required proof of financial responsibility.”, so that, as amended, the subparagraph shall read:

- (a) Provided there is no other revocation, suspension, or cancellation action in effect, a driver will be eligible to regain driving privileges once the driver has served the period of suspension, paid a restoration fee, and filed the required proof of financial responsibility.

Authority: T.C.A. §§ 4-5-202, 55-50-505.

#### Amendment

Subparagraph (a) of paragraph (13) of Rule 1340-01-04-.04 is amended by deleting the phrase “three (3) or more points within a twelve (12) month period to warrant a proposed suspension notice.” where it occurs

in the subparagraph and substituting the phrase “sufficient points within a twelve month period to warrant a warning letter or a proposed suspension notice.”; and by deleting Part 2. in its entirety, so that, as amended, the subparagraph shall read:

- (a) Each time a crash or violation is posted to the driver’s record, the computer shall scan back for a period of twenty-four (24) months from the posted date to determine whether the driver has accumulated sufficient points within a twelve (12) month period to warrant a warning letter or a proposed suspension notice.
  - 1. Any crash or violation with an event date prior to the date of the completion of the defensive driving course shall be posted as points calculated as set forth in subparagraph (a).

Authority: T.C.A. §§ 4-5-202, 55-50-505.

#### Amendment

Paragraph (13) of Rule 1340-01-04-.04 is amended by changing the existing subparagraph (d) to subparagraph (b) and re-arranging it accordingly, by deleting the phrase “three (3)” and substituting the phrase “six (6)” and by adding the sentence “The letter shall inform the driver of the point system and advise the driver of the points that the driver has accumulated and the consequences of accumulating more points.” at the end of the subparagraph, so that, as amended, the new subparagraph (b) shall read:

- (b) Any driver who has accumulated fewer than six (6) points for any crash or violation shall receive a warning letter from the Department, with a copy sent to the driver’s parent/guardian. The letter shall inform the driver of the point system and advise the driver of the points that the driver has accumulated and the consequences of accumulating more points.

Authority: T.C.A. §§ 4-5-202, 55-50-505.

#### Amendment

Paragraph (13) of Rule 1340-01-04-.04 is amended by changing the existing subparagraph (b) to subparagraph (d) and re-arranging it accordingly; by deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”; by deleting the phrase “seven (7)” in the first sentence and substituting the phrase “ten (10)”; and by deleting the phrase “six (6) months” in the next to last sentence and substituting the phrase “either three (3) or six (6) months, depending on the driver’s driving record,” so that, as amended, the new subparagraph (d) shall read:

- (d) A notice of proposed suspension shall be sent to first offender drivers who accumulate ten (10) or more points within a twelve (12) month period as calculated pursuant to subparagraph (a). The twelve (12) month period shall be calculated retroactively from the date each crash or violation posted in accordance with subparagraph (a). The notice shall advise the driver and the driver’s parent/guardian that the driver has accumulated sufficient points in a twelve (12) month period to be placed in the Driver Improvement Program and that the driver and the driver’s parent/guardian shall be required to appear at an administrative hearing to contest the proposed suspension. The Department shall provide the driver a hearing before a hearing officer on the date and at the time specified in the notice. If the hearing officer upholds the determination of the Department, the driver license or temporary driver license shall be suspended for a period of either three (3) or six (6) months, depending on the driver’s driving record, and such driver shall be required to attend a defensive driving course before such driver shall be eligible to reinstate such driver license or temporary driver license. However, if a driver fails to appear for the scheduled hearing or request in writing that the hearing be rescheduled, the driver license or temporary driver license shall be suspended for a period of six (6) months and the driver shall be required to attend a defensive driving course before such driver shall

be eligible to reinstate the driver license or temporary driver license.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

#### Amendment

Subparagraph (c) of paragraph (13) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”, and by deleting the phrase “three (3) to six (6)” in the first sentence and substituting the phrase “six (6) to nine (9)”, so that, as amended, the subparagraph shall read:

- (c) A notice of proposed suspension shall be sent to any first offender driver who has accumulated from six (6) to nine (9) points within a twelve (12) month period as calculated pursuant to subparagraph (a). The notice shall advise the driver and the driver’s parent/guardian that the driver has accumulated sufficient points in a twelve (12) month period to be placed in the Driver Improvement Program and that the driver and the driver’s parent/guardian shall be required to appear at an administrative hearing to contest the proposed suspension. The Department shall provide the driver a hearing before a hearing officer on the date and at the time specified in the notice. If the hearing officer upholds the determination of the Department, the hearing officer may suspend the driver license or temporary driver license for a period of three (3) to six (6) months and/or require the driver to attend a defensive driving course before such driver shall be eligible to reinstate such driver license or temporary driver license. However, if a driver fails to appear for a hearing or request in writing that the hearing be rescheduled, the driver license or temporary driver license shall be suspended for a period of six (6) months and the driver shall be required to attend a defensive driving course before the driver shall be eligible to reinstate the driver license or temporary driver license.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

#### Amendment

Subparagraph (e) of paragraph (13) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”; by deleting the phrase “three (3)” in the first sentence and substituting the phrase “six (6)”; by deleting the phrase “one (1) year” in the next to last sentence and substituting the phrase “either six (6) or twelve (12) months, depending on the driver’s driving record,”; and by deleting the phrase “one (1) year” in the last sentence and substituting the phrase “twelve (12) months”, so that, as amended, the subparagraph shall read:

- (e) A notice of proposed suspension shall be sent to second or subsequent offender drivers who accumulate six (6) or more points within a twelve (12) month period as calculated pursuant to subparagraph (a), with a copy of the notice sent to the driver’s parent/guardian. The notice shall advise the driver and the driver’s parent/guardian that the driver has accumulated sufficient points in a twelve (12) month period to be placed in the Driver Improvement Program and that the driver and the driver’s parent/guardian shall be required to appear at an administrative hearing to contest the proposed suspension. The Department shall provide the driver a hearing before a hearing officer on the date and at the time specified in the notice. If the hearing officer upholds the determination of the Department, the driver license or temporary driver license shall be suspended for a period of either six (6) or twelve (12) months, depending on the driver’s driving record, and the driver shall be required to attend a defensive driving course before the driver shall be eligible to reinstate the driver license or temporary driver license. However, if the driver fails to appear for a hearing or request in writing that the hearing be rescheduled, the driver license or temporary driver license shall be suspended for a period of twelve (12) months and the driver shall be required to attend a defensive driving course before the driver shall be eligible to reinstate the driver license or temporary driver license.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Subparagraph (f) of paragraph (13) of Rule 1340-01-04-.04 is amended by the deleting the phrase “certificate for driving” where it occurs in the subparagraph and substituting the phrase “temporary driver license”, so that, as amended, the subparagraph shall read:

- (f) A driver has ninety (90) days from the date of the letter/order assigning the driver to attend a defensive driving course or ninety (90) days from the date of the driver’s hearing to attend a defensive driving course. Failure to complete an assigned defensive driving course shall result in the suspension of the driver license or temporary driver license for six (6) or twelve (12) months, depending on whether the driver has previously attended a defensive driving course. A driver may request an extension of time to attend the defensive driving course, provided that the request shall be made in writing at least ten (10) days before the expiration of the ninety (90) day period to attend a defensive driving course. The Department may grant an extension of time to attend the defensive driving course if the driver shows good cause. Good cause for and the length of such extension shall be determined by the Department. The Department shall notify the driver in writing of its decision.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Paragraph (13) of Rule 1340-01-04-.04 is amended by deleting the existing subparagraphs (h) and (i) in their entirety and changing the existing subparagraphs (j) and (k) to (h) and (i) respectively, and by deleting the language in newly designated subparagraph (h) in its entirety and substituting new language, so that, as amended, the newly designated subparagraphs (h) and (i) shall read:

- (h) At the discretion of the Department, a driver under Driver Improvement Program suspension pursuant to paragraph (13) of this Rule may be issued a restricted driver license or temporary driver license upon attaining the age of eighteen (18). The Department may place conditions on the driver license or temporary driver license as the Department may determine to be appropriate to ensure the safe operation of a motor vehicle by the driver. To obtain a restricted driver license or temporary driver license, the driver must complete an application, furnish proof of financial responsibility, and pay the restricted driver license or temporary driver license fee.
- (i) There shall be no limit to the number of times that the Department may require a driver to attend a defensive driving course.

Authority: T.C.A. §§ 4-5-202, 55-50-505, 55-50-331 and Public Chapter No. 194, 2007.

Amendment

Paragraph (13) of Rule 1340-01-04-.04 is amended by adding a new subparagraph (j) after the newly designated subparagraphs (h) and (i) that shall read:

- (j) Administrative Probation - For good cause or in extreme circumstances (to be determined by the Department), the Department may place a first offender juvenile driver on administrative probation in lieu of suspension. In this event, no suspension of the driver license or temporary driver license shall occur, the probationary period shall be for twelve (12) months or until the driver attains the age of eighteen (18), and the driver shall carry all posted points during this time. Good cause or extreme circumstances may include, but not be limited to, drivers temporarily out of the state or country due to the military, employment or education or serious illness.

Authority: T.C.A. §§ 4-5-202, 55-50-505.

#### Amendment

Subparagraph (c) of paragraph (1) of Rule 1340-01-04-.05 Defensive Driving/Accident Prevention Courses is amended by deleting the language in its entirety and substituting new language, so that, as amended, the subparagraph shall read:

- (c) Submit an Application supplied by the Department, along with a certified check or money order in the amount of one hundred fifty dollars (\$150.00) for the application fee, to the Department's Driver Improvement Unit.

Authority: T.C.A. §§ 4-5-202, 55-50-505 and 56-7-1107.

The proposed rules set out herein were properly filed in the Department of State on the 11th day of March, 2008, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of July, 2008. (FS 03-07-08; DBID 2843)