

By: Riddle

H.B. No. 1611

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the civil and criminal consequences of a person's
3 refusal to consent to the taking of a blood or breath specimen to
4 test for intoxication.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 724.002, Transportation Code, is amended
7 to read as follows:

8 Sec. 724.002. APPLICABILITY. The provisions of this
9 chapter that apply to suspension of a license for refusal to submit
10 to the taking of a specimen (Sections [~~724.013,~~ 724.015[~~7~~] and
11 724.048 and Subchapters C and D) apply only to a person arrested for
12 an offense involving the operation of a motor vehicle or watercraft
13 powered with an engine having a manufacturer's rating of 50
14 horsepower or above.

15 SECTION 2. Section 724.013, Transportation Code, is amended
16 to read as follows:

17 Sec. 724.013. REFUSAL TO SUBMIT TO [PROHIBITION ON] TAKING
18 OF SPECIMEN [IF PERSON REFUSES]; PENALTY [EXCEPTION]. (a) A person
19 commits an offense if the [Except as provided by Section
20 724.012(b), a specimen may not be taken if a] person refuses to
21 submit to the taking of a specimen designated by a peace officer
22 under Section 724.012.

23 (b) Except as provided by Subsections (c) and (d), an
24 offense under Subsection (a) is a Class B misdemeanor.

1 (c) An offense under Subsection (a) is a Class A misdemeanor
2 if it is shown on the trial of the offense that the person has
3 previously been convicted one time of:

4 (1) an offense relating to the operating of a motor
5 vehicle while intoxicated;

6 (2) an offense of operating an aircraft while
7 intoxicated;

8 (3) an offense of operating a watercraft while
9 intoxicated; or

10 (4) an offense of operating or assembling an amusement
11 ride while intoxicated.

12 (d) An offense under Subsection (a) is a felony of the third
13 degree if it is shown on the trial of the offense that the person has
14 previously been convicted:

15 (1) one time of:

16 (A) an offense under Section 49.08, Penal Code;
17 or

18 (B) an offense under the law of another state
19 that contains elements that are substantially similar to the
20 elements of an offense under Section 49.08 of that code; or

21 (2) two times of:

22 (A) an offense relating to the operating of a
23 motor vehicle while intoxicated;

24 (B) an offense of operating an aircraft while
25 intoxicated;

26 (C) an offense of operating a watercraft while
27 intoxicated; or

1 (D) an offense of operating or assembling an
2 amusement ride while intoxicated.

3 (e) In this section, "offense relating to the operating of a
4 motor vehicle while intoxicated," "offense of operating an aircraft
5 while intoxicated," "offense of operating a watercraft while
6 intoxicated," and "offense of operating or assembling an amusement
7 ride while intoxicated" have the meanings assigned by Section
8 49.09, Penal Code.

9 SECTION 3. Section 724.015, Transportation Code, is amended
10 to read as follows:

11 Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE
12 REQUESTING SPECIMEN. Before requesting a person to submit to the
13 taking of a specimen, the officer shall inform the person orally and
14 in writing that:

15 (1) if the person refuses to submit to the taking of
16 the specimen, that refusal:

17 (A) is an offense under Section 724.013; and

18 (B) may be admissible in a subsequent
19 prosecution;

20 (2) if the person refuses to submit to the taking of
21 the specimen, the person's license to operate a motor vehicle will
22 be automatically suspended, whether or not the person is
23 subsequently prosecuted as a result of the arrest, for not less than
24 180 days;

25 (3) if the person is 21 years of age or older and
26 submits to the taking of a specimen designated by the officer and an
27 analysis of the specimen shows the person had an alcohol

1 concentration of a level specified by Chapter 49, Penal Code, the
2 person's license to operate a motor vehicle will be automatically
3 suspended for not less than 90 days, whether or not the person is
4 subsequently prosecuted as a result of the arrest;

5 (4) if the person is younger than 21 years of age and
6 has any detectable amount of alcohol in the person's system, the
7 person's license to operate a motor vehicle will be automatically
8 suspended for not less than 60 days even if the person submits to
9 the taking of the specimen, but that if the person submits to the
10 taking of the specimen and an analysis of the specimen shows that
11 the person had an alcohol concentration less than the level
12 specified by Chapter 49, Penal Code, the person may be subject to
13 criminal penalties less severe than those provided under that
14 chapter;

15 (5) if the officer determines that the person is a
16 resident without a license to operate a motor vehicle in this state,
17 the department will deny to the person the issuance of a license,
18 whether or not the person is subsequently prosecuted as a result of
19 the arrest, under the same conditions and for the same periods that
20 would have applied to a revocation of the person's driver's license
21 if the person had held a driver's license issued by this state; and

22 (6) the person has a right to a hearing on the
23 suspension or denial if, not later than the 15th day after the date
24 on which the person receives the notice of suspension or denial or
25 on which the person is considered to have received the notice by
26 mail as provided by law, the department receives, at its
27 headquarters in Austin, a written demand, including a facsimile

1 transmission, or a request in another form prescribed by the
2 department for the hearing.

3 SECTION 4. (a) This Act takes effect September 1, 2003.

4 (b) The change in law made by this Act applies only to an
5 offense committed on or after September 1, 2003.

6 (c) An offense committed before September 1, 2003, is
7 covered by the law in effect when the offense was committed, and the
8 former law is continued in effect for that purpose. For purposes of
9 this section, an offense was committed before September 1, 2003, if
10 any element of the offense was committed before that date.