

By: Stick

H.B. No. 1725

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the suspension of a driver's license for a failure to
3 pass a test for intoxication or for a refusal to consent to the
4 taking of a blood or breath specimen to test for alcohol or other
5 intoxicants.

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

7 SECTION 1. The heading to Chapter 524, Transportation Code,
8 is amended to read as follows:

9 CHAPTER 524. ~~[ADMINISTRATIVE]~~ SUSPENSION OF DRIVER'S LICENSE FOR
10 FAILURE TO PASS TEST FOR INTOXICATION

11 SECTION 2. Section 524.002, Transportation Code, is amended
12 to read as follows:

13 Sec. 524.002. RULES ~~[, APPLICATION OF ADMINISTRATIVE~~
14 ~~PROCEDURE ACT]~~. ~~[(a)]~~ The department ~~[and the State Office of~~
15 ~~Administrative Hearings]~~ shall adopt rules to administer this
16 chapter.

17 ~~[(b) Chapter 2001, Government Code, applies to a proceeding~~
18 ~~under this chapter to the extent consistent with this chapter.]~~

19 ~~[(c) The State Office of Administrative Hearings may adopt a~~
20 ~~rule that conflicts with Chapter 2001, Government Code, if a~~
21 ~~conflict is necessary to expedite the hearings process within the~~
22 ~~time required by this chapter and applicable federal funding~~
23 ~~guidelines.]~~

24 SECTION 3. Section 524.031, Transportation Code, is amended

1 to read as follows:

2 Sec. 524.031. PETITION FOR HEARING [~~REQUEST~~]. (a) If, not
3 later than the 15th day after the date on which the person receives
4 notice of suspension under Section 524.011 or is presumed to have
5 received notice under Section 524.013, the person files a petition
6 requesting [~~department receives at its headquarters in Austin, in~~
7 ~~writing, including a facsimile transmission, or by another manner~~
8 ~~prescribed by the department, a request~~] that a hearing be held, a
9 hearing shall be held as provided by this subchapter.

10 (b) A petition under Subsection (a) must be filed in a
11 county court at law in the county in which the person was arrested
12 or, if there is not a county court at law in that county, in the
13 county court.

14 (c) A person who files a petition under Subsection (a) shall
15 send a copy of the petition by certified mail to the department at
16 the department's headquarters in Austin. The copy sent to the
17 department must be certified by the clerk of the court in which the
18 petition is filed.

19 SECTION 4. Section 524.032, Transportation Code, is amended
20 to read as follows:

21 Sec. 524.032. HEARING; HEARING DATE [~~, RESCHEDULING~~]. (a)
22 A hearing under this subchapter shall be conducted by the judge of
23 the court in which the criminal charge against the person under
24 Section 49.04, 49.07, or 49.08, Penal Code, or Section 106.041,
25 Alcoholic Beverage Code, arising from the occurrence that is the
26 basis of the suspension is pending.

27 (b) A hearing [~~requested~~] under this subchapter shall be

1 held before the effective date of the suspension, [~~not earlier than~~
2 ~~the 11th day after the date on which the person requesting the~~
3 ~~hearing is notified of the hearing~~] unless the parties agree to
4 waive this requirement. [~~The hearing shall be held before the~~
5 ~~effective date of the suspension.~~

6 [~~(b) A hearing shall be rescheduled if, before the fifth day~~
7 ~~before the date scheduled for the hearing, the department receives~~
8 ~~a request for a continuance from the person who requested the~~
9 ~~hearing. Unless both parties agree otherwise, the hearing shall be~~
10 ~~rescheduled for a date not earlier than the fifth day after the date~~
11 ~~the department receives the request for the continuance.]~~

12 (c) [~~A person who requests a hearing under this chapter may~~
13 ~~obtain only one continuance under this section unless the person~~
14 ~~shows that a medical condition prevents the person from attending~~
15 ~~the rescheduled hearing, in which event one additional continuance~~
16 ~~may be granted for a period not to exceed 10 days.~~

17 [~~(d)~~] A request for a hearing stays suspension of a person's
18 driver's license until the date of the final decision of the
19 [~~administrative law~~] judge. If the person's driver's license was
20 taken by a peace officer under Section 524.011(b), the department
21 shall notify the person of the effect of the request on the
22 suspension of the person's license before the expiration of any
23 temporary driving permit issued to the person, if the person is
24 otherwise eligible, in a manner that will permit the person to
25 establish to a peace officer that the person's driver's license is
26 not suspended.

27 SECTION 5. Section 524.035, Transportation Code, is amended

1 to read as follows:

2 Sec. 524.035. ISSUES AT HEARING. (a) The issues that must
3 be proved at a hearing by a preponderance of the evidence are:

4 (1) whether:

5 (A) the person had an alcohol concentration of a
6 level specified by Section 49.01(2)(B), Penal Code, while operating
7 a motor vehicle in a public place; or

8 (B) the person is a minor and had any detectable
9 amount of alcohol in the minor's system while operating a motor
10 vehicle in a public place; and

11 (2) whether reasonable suspicion to stop or probable
12 cause to arrest the person existed.

13 (b) If the [~~administrative law~~] judge finds in the
14 affirmative on each issue in Subsection (a), the suspension is
15 sustained.

16 (c) If the [~~administrative law~~] judge does not find in the
17 affirmative on each issue in Subsection (a), the department shall:

18 (1) return the person's driver's license to the
19 person, if the license was taken by a peace officer under Section
20 524.011(b);

21 (2) reinstate the person's driver's license; and

22 (3) rescind an order prohibiting the issuance of a
23 driver's license to the person.

24 (d) The [~~An administrative law~~] judge may not find in the
25 affirmative on the issue in Subsection (a)(1) if:

26 (1) the person is an adult and the analysis of the
27 person's breath or blood determined that the person had an alcohol

1 concentration of a level below that specified by Section 49.01,
2 Penal Code, at the time the specimen was taken; or

3 (2) the person is a minor and the ~~[administrative law]~~
4 judge does not find that the minor had any detectable amount of
5 alcohol in the minor's system when the minor was arrested.

6 (e) The decision of the ~~[administrative law]~~ judge is final
7 when issued and signed.

8 SECTION 6. Sections 524.037(a) and (b), Transportation
9 Code, are amended to read as follows:

10 (a) If the judge grants a continuance in the proceedings,
11 the [A] continuance ~~[under Section 524.032]~~ stays the suspension of
12 a driver's license until the date of the final decision of the
13 ~~[administrative law]~~ judge.

14 (b) A suspension order may not go into effect pending a
15 final decision of the ~~[administrative law]~~ judge as a result of a
16 continuance granted under Section 524.039.

17 SECTION 7. Section 524.039(b), Transportation Code, is
18 amended to read as follows:

19 (b) The judge ~~[department]~~ may reschedule a hearing once not
20 less than 48 hours before the hearing if the person requested to
21 attend under Subsection (a) is unavailable. The judge ~~[department]~~
22 may also reschedule the hearing if the department establishes ~~[on~~
23 ~~showing good cause]~~ that the person requested under Subsection (a)
24 is not available at the time of the scheduled hearing.

25 SECTION 8. Section 524.041, Transportation Code, is amended
26 to read as follows:

27 Sec. 524.041. APPEAL FROM ~~[ADMINISTRATIVE]~~ HEARING. (a)

1 The department or the [A] person whose driver's license suspension
2 is sustained may appeal the judge's decision as in other civil cases
3 ~~[by filing a petition not later than the 30th day after the date the~~
4 ~~administrative law judge's decision is final]~~. The [administrative
5 law] judge's final decision is immediately appealable without the
6 requirement of a motion for rehearing.

7 (b) ~~[A petition under Subsection (a) must be filed in a~~
8 ~~county court at law in the county in which the person was arrested~~
9 ~~or, if there is not a county court at law in the county, in the~~
10 ~~county court. If the county judge is not a licensed attorney, the~~
11 ~~county judge shall transfer the case to a district court for the~~
12 ~~county on the motion of either party or of the judge.~~

13 ~~[(c) A person who files an appeal under this section shall~~
14 ~~send a copy of the petition by certified mail to the department and~~
15 ~~to the State Office of Administrative Hearings at each agency's~~
16 ~~headquarters in Austin. The copy must be certified by the clerk of~~
17 ~~the court in which the petition is filed.~~

18 ~~[(d)]~~ The department's right to appeal is limited to issues
19 of law.

20 (c) ~~[(e)]~~ A district or county attorney may represent the
21 department in an appeal.

22 SECTION 9. Section 524.042, Transportation Code, is amended
23 to read as follows:

24 Sec. 524.042. STAY OF SUSPENSION ON APPEAL. (a) A
25 suspension of a driver's license under this chapter is stayed on the
26 filing of an appeal under Section 524.041 ~~[petition]~~ only if:

27 (1) the person's driver's license has not been

1 suspended as a result of an alcohol-related or drug-related
2 enforcement contact during the five years preceding the date of the
3 person's arrest; and

4 (2) the person has not been convicted during the 10
5 years preceding the date of the person's arrest of an offense under:

6 (A) Article 67011-1, Revised Statutes, as that
7 law existed before September 1, 1994;

8 (B) Section 19.05(a)(2), Penal Code, as that law
9 existed before September 1, 1994;

10 (C) Section 49.04, Penal Code;

11 (D) Section 49.07 or 49.08, Penal Code, if the
12 offense involved the operation of a motor vehicle; or

13 (E) Section 106.041, Alcoholic Beverage Code.

14 (b) A stay under this section is effective for not more than
15 90 days after the date the appeal [~~petition~~] is filed. On the
16 expiration of the stay, the department shall impose the suspension.
17 The department or the appellate court may not grant an extension of
18 the stay or an additional stay.

19 SECTION 10. Section 524.051(b), Transportation Code, is
20 amended to read as follows:

21 (b) The payment of a reinstatement fee is not required if a
22 suspension under this chapter is:

23 (1) rescinded by the department; or

24 (2) not sustained by the [~~an administrative law~~] judge
25 holding a hearing, or a court on appeal.

26 SECTION 11. Section 724.003, Transportation Code, is
27 amended to read as follows:

1 Sec. 724.003. RULEMAKING. The department [~~and the State~~
2 ~~Office of Administrative Hearings~~] shall adopt rules to administer
3 this chapter.

4 SECTION 12. Section 724.015, Transportation Code, is
5 amended to read as follows:

6 Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE
7 REQUESTING SPECIMEN. Before requesting a person to submit to the
8 taking of a specimen, the officer shall inform the person orally and
9 in writing that:

10 (1) if the person refuses to submit to the taking of
11 the specimen, that refusal may be admissible in a subsequent
12 prosecution;

13 (2) if the person refuses to submit to the taking of
14 the specimen, the person's license to operate a motor vehicle will
15 be automatically suspended, whether or not the person is
16 subsequently prosecuted as a result of the arrest, for not less than
17 180 days;

18 (3) if the person is 21 years of age or older and
19 submits to the taking of a specimen designated by the officer and an
20 analysis of the specimen shows the person had an alcohol
21 concentration of a level specified by Chapter 49, Penal Code, the
22 person's license to operate a motor vehicle will be automatically
23 suspended for not less than 90 days, whether or not the person is
24 subsequently prosecuted as a result of the arrest;

25 (4) if the person is younger than 21 years of age and
26 has any detectable amount of alcohol in the person's system, the
27 person's license to operate a motor vehicle will be automatically

1 suspended for not less than 60 days even if the person submits to
2 the taking of the specimen, but that if the person submits to the
3 taking of the specimen and an analysis of the specimen shows that
4 the person had an alcohol concentration less than the level
5 specified by Chapter 49, Penal Code, the person may be subject to
6 criminal penalties less severe than those provided under that
7 chapter;

8 (5) if the officer determines that the person is a
9 resident without a license to operate a motor vehicle in this state,
10 the department will deny to the person the issuance of a license,
11 whether or not the person is subsequently prosecuted as a result of
12 the arrest, under the same conditions and for the same periods that
13 would have applied to a revocation of the person's driver's license
14 if the person had held a driver's license issued by this state; and

15 (6) the person has a right to a hearing on the
16 suspension or denial if, not later than the 15th day after the date
17 on which the person receives the notice of suspension or denial or
18 on which the person is considered to have received the notice by
19 mail as provided by law, the person files a petition requesting a
20 hearing in a county court at law in the county in which the person
21 was arrested or, if there is not a county court at law in that
22 county, in the county court [~~department receives, at its~~
23 ~~headquarters in Austin, a written demand, including a facsimile~~
24 ~~transmission, or a request in another form prescribed by the~~
25 ~~department for the hearing]~~.

26 SECTION 13. Section 724.034, Transportation Code, is
27 amended to read as follows:

1 Sec. 724.034. CONTENTS OF NOTICE OF SUSPENSION OR DENIAL OF
2 LICENSE. A notice of suspension or denial of a license must state:

- 3 (1) the reason and statutory grounds for the action;
4 (2) the effective date of the suspension or denial;
5 (3) the right of the person to a hearing;
6 (4) how to request a hearing; and
7 (5) the period in which a petition requesting [~~request~~
8 ~~for~~] a hearing must be filed in a county court at law or county court
9 [received by the department].

10 SECTION 14. Section 724.041, Transportation Code, is
11 amended by amending Subsections (a), (b), (c), and (g) and adding
12 Subsections (a-1), (a-2), and (a-3) to read as follows:

13 (a) If, not later than the 15th day after the date on which
14 the person receives notice of suspension or denial under Section
15 724.032(a) or is considered to have received notice under Section
16 724.033, the person files a petition requesting [~~department~~
17 ~~receives at its headquarters in Austin, in writing, including a~~
18 ~~facsimile transmission, or by another manner prescribed by the~~
19 ~~department, a request] that a hearing be held, [~~the State Office of~~
20 ~~Administrative Hearings shall hold] a hearing shall be held as
21 provided by this subchapter.~~~~

22 (a-1) A petition under Subsection (a) must be filed in a
23 county court at law in the county in which the person was arrested
24 or, if there is not a county court at law in that county, in the
25 county court.

26 (a-2) A person who files a petition under Subsection (a)
27 shall send a copy of the petition by certified mail to the

1 department at the department's headquarters in Austin. The copy
2 sent to the department must be certified by the clerk of the court
3 in which the petition is filed.

4 (a-3) A hearing under this subchapter shall be conducted by
5 the judge of the court in which the criminal charge against the
6 person under Section 49.04, 49.07, or 49.08, Penal Code, or Section
7 106.041, Alcoholic Beverage Code, arising from the occurrence that
8 is the basis of the suspension is pending.

9 (b) A hearing under this subchapter shall be held before the
10 effective date of the suspension [~~not earlier than the 11th day~~
11 ~~after the date the person is notified~~], unless the parties agree to
12 waive this requirement [~~, but before the effective date of the~~
13 ~~notice of suspension or denial~~].

14 (c) A request for a hearing stays the suspension or denial
15 until the date of the final decision of the [~~administrative law~~
16 judge. If the person's license was taken by a peace officer under
17 Section 724.032(a), the department shall notify the person of the
18 effect of the request on the suspension of the person's license
19 before the expiration of any temporary driving permit issued to the
20 person, if the person is otherwise eligible, in a manner that will
21 permit the person to establish to a peace officer that the person's
22 license is not suspended.

23 (g) [~~An administrative hearing under this section is~~
24 ~~governed by~~] Sections [~~524.032(b) and (c),~~] 524.035(e),
25 524.037(a), and 524.040 apply to a hearing under this subchapter.

26 SECTION 15. Section 724.043, Transportation Code, is
27 amended to read as follows:

1 Sec. 724.043. FINDINGS OF [~~ADMINISTRATIVE LAW~~] JUDGE. (a)
2 If the [~~administrative law~~] judge finds in the affirmative on each
3 issue under Section 724.042, the suspension order is sustained. If
4 the person is a resident without a license, the department shall
5 continue to deny to the person the issuance of a license for the
6 applicable period provided by Section 724.035.

7 (b) If the [~~administrative law~~] judge does not find in the
8 affirmative on each issue under Section 724.042, the department
9 shall return the person's license to the person, if the license was
10 taken by a peace officer under Section 724.032(a), and reinstate
11 the person's license or rescind any order denying the issuance of a
12 license because of the person's refusal to submit to the taking of a
13 specimen under Section 724.032(a).

14 SECTION 16. Section 724.046(b), Transportation Code, is
15 amended to read as follows:

16 (b) If a suspension or denial under this chapter is
17 rescinded by the department, a [~~an administrative law~~] judge
18 conducting a hearing under this subchapter, or a court on appeal,
19 payment of the fee under this section is not required for
20 reinstatement or issuance of a license.

21 SECTION 17. Section 724.047, Transportation Code, is
22 amended to read as follows:

23 Sec. 724.047. APPEAL. Chapter 524 governs an appeal from an
24 action of the department, following a [~~an administrative~~] hearing
25 under this chapter, in suspending or denying the issuance of a
26 license.

27 SECTION 18. The heading to Section 724.048, Transportation

1 Code, is amended to read as follows:

2 Sec. 724.048. RELATIONSHIP OF DETERMINATION
3 [~~ADMINISTRATIVE PROCEEDING~~] TO CRIMINAL PROCEEDING.

4 SECTION 19. Section 724.048(a), Transportation Code, is
5 amended to read as follows:

6 (a) The determination of the department, a [~~or~~
7 ~~administrative law~~] judge, or an appellate court under this
8 subchapter:

9 (1) is a civil matter;

10 (2) is independent of and is not an estoppel as to any
11 matter in issue in an adjudication of a criminal charge arising from
12 the occurrence that is the basis for the suspension or denial; and

13 (3) does not preclude litigation of the same or
14 similar facts in a criminal prosecution.

15 SECTION 20. Sections 524.033, 524.034, 524.037(c),
16 524.043, 524.044, and 724.041(d), (e), and (f), Transportation
17 Code, are repealed.

18 SECTION 21. (a) This Act takes effect September 1, 2003.

19 (b) Chapters 524 and 724, Transportation Code, as amended by
20 this Act, apply only to a person arrested for an offense described
21 by Section 524.011 or 724.011 of that code on or after the effective
22 date of this Act.

23 (c) A person arrested for an offense described by Section
24 524.011 or 724.011, Transportation Code, before the effective date
25 of this Act is covered by the law in effect on the date the person
26 was arrested.

27 (d) An administrative proceeding brought under Chapter 524

1 or 724, Transportation Code, before the effective date of this Act,
2 or an appeal from an administrative proceeding brought under those
3 chapters, that is pending on the effective date of this Act is
4 governed by the law in effect on the date the administrative
5 proceeding or the appeal was brought, and the former law is
6 continued in effect for that purpose.