

By: Carona

S.B. No. 191

Substitute the following for S.B. No. 191:

By: Talton

C.S.S.B. No. 191

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the suspension or denial of a driver's license  
3 following a failure to pass a test for intoxication and the penalty  
4 for reinstatement or issuance of the license, and to a license  
5 suspension following a refusal to consent to the taking of a blood  
6 or breath specimen to test for alcohol or other intoxicants.

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

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

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

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

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

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

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

1 SECTION 3. Section 524.031, Transportation Code, is amended  
2 to read as follows:

3 Sec. 524.031. PETITION FOR HEARING [~~REQUEST~~]. (a) If, not  
4 later than the 15th day after the date on which the person receives  
5 notice of suspension under Section 524.011 or is presumed to have  
6 received notice under Section 524.013, the person files a petition  
7 requesting [~~department receives at its headquarters in Austin, in~~  
8 ~~writing, including a facsimile transmission, or by another manner~~  
9 ~~prescribed by the department, a request~~] that a hearing be held and,  
10 except as provided by Subsection (d), pays a \$35 filing fee, a  
11 hearing shall be held as provided by this subchapter.

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

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

21 (d) A person who files an affidavit of indigency with the  
22 person's petition is not required to pay the filing fee required by  
23 Subsection (a).

24 (e) Filing fees collected under Subsection (a) shall be  
25 deposited to the credit of the general fund of the county.

26 SECTION 4. Section 524.032, Transportation Code, is amended  
27 to read as follows:

1           Sec. 524.032. HEARING; HEARING DATE~~[, RESCHEDULING]~~. (a)

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

7           **(b)** A hearing ~~[requested]~~ under this subchapter shall be  
8 held before the effective date of the suspension ~~[not earlier than~~  
9 ~~the 11th day after the date on which the person requesting the~~  
10 ~~hearing is notified of the hearing]~~ unless the parties agree to  
11 waive this requirement. ~~[The hearing shall be held before the~~  
12 ~~effective date of the suspension.~~

13           ~~[(b) A hearing shall be rescheduled if, before the fifth day~~  
14 ~~before the date scheduled for the hearing, the department receives~~  
15 ~~a request for a continuance from the person who requested the~~  
16 ~~hearing. Unless both parties agree otherwise, the hearing shall be~~  
17 ~~rescheduled for a date not earlier than the fifth day after the date~~  
18 ~~the department receives the request for the continuance.]~~

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

24           ~~[(d)]~~ A request for a hearing stays suspension of a person's  
25 driver's license until the date of the final decision of the  
26 ~~[administrative law]~~ judge. If the person's driver's license was  
27 taken by a peace officer under Section 524.011(b), the department

1 shall notify the person of the effect of the request on the  
2 suspension of the person's license before the expiration of any  
3 temporary driving permit issued to the person, if the person is  
4 otherwise eligible, in a manner that will permit the person to  
5 establish to a peace officer that the person's driver's license is  
6 not suspended.

7 SECTION 5. Section 524.035, Transportation Code, is amended  
8 to read as follows:

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

11 (1) whether:

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

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

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

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

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

25 (1) return the person's driver's license to the  
26 person, if the license was taken by a peace officer under Section  
27 524.011(b);

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

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

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

6 (1) the person is an adult and the analysis of the  
7 person's breath or blood determined that the person had an alcohol  
8 concentration of a level below that specified by Section 49.01,  
9 Penal Code, at the time the specimen was taken; or

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

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

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

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

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

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

26 (b) The judge [~~department~~] may reschedule a hearing once not  
27 less than 48 hours before the hearing if the person requested to

1 attend under Subsection (a) is unavailable. The judge [~~department~~]  
2 may also reschedule the hearing if the department establishes [~~on~~  
3 ~~showing good cause~~] that the person requested under Subsection (a)  
4 is not available at the time of the scheduled hearing.

5 SECTION 8. Section 524.041, Transportation Code, is amended  
6 to read as follows:

7 Sec. 524.041. APPEAL FROM [~~ADMINISTRATIVE~~] HEARING. (a)  
8 The department or the [A] person whose driver's license suspension  
9 is sustained may appeal the judge's decision as in other civil cases  
10 [~~by filing a petition not later than the 30th day after the date the~~  
11 ~~administrative law judge's decision is final~~]. The [~~administrative~~  
12 ~~law~~] judge's final decision is immediately appealable without the  
13 requirement of a motion for rehearing.

14 (b) [~~A petition under Subsection (a) must be filed in a~~  
15 ~~county court at law in the county in which the person was arrested~~  
16 ~~or, if there is not a county court at law in the county, in the~~  
17 ~~county court. If the county judge is not a licensed attorney, the~~  
18 ~~county judge shall transfer the case to a district court for the~~  
19 ~~county on the motion of either party or of the judge.~~

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

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

27 (c) [~~(e)~~] A district or county attorney may represent the

1 department in an appeal.

2 SECTION 9. Section 524.042, Transportation Code, is amended  
3 to read as follows:

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

7 (1) the person's driver's license has not been  
8 suspended as a result of an alcohol-related or drug-related  
9 enforcement contact during the five years preceding the date of the  
10 person's arrest; and

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

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

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

17 (C) Section 49.04, Penal Code;

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

20 (E) Section 106.041, Alcoholic Beverage Code.

21 (b) A stay under this section is effective for not more than  
22 90 days after the date the appeal [~~petition~~] is filed. On the  
23 expiration of the stay, the department shall impose the suspension.  
24 The department or the appellate court may not grant an extension of  
25 the stay or an additional stay.

26 SECTION 10. Section 524.051, Transportation Code, is  
27 amended by amending Subsection (b) and adding Subsection (c) to

1 read as follows:

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

4 (1) rescinded by the department; or

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

7 (c) If the person was arrested in a county that maintains a  
8 certified breath alcohol testing program but does not use the  
9 services of a certified technical supervisor employed by the  
10 department, of each penalty collected under Subsection (a), the  
11 department shall remit \$15 to the treasurer of that county. Money  
12 received by a county under this subsection may be used only to  
13 defray the costs incurred by the county for the use of the services  
14 of a certified technical supervisor employed by the county in  
15 connection with the enforcement of this chapter.

16 SECTION 11. Section 724.003, Transportation Code, is  
17 amended to read as follows:

18 Sec. 724.003. RULEMAKING. The department ~~[and the State~~  
19 ~~Office of Administrative Hearings]~~ shall adopt rules to administer  
20 this chapter.

21 SECTION 12. Section 724.015, Transportation Code, is  
22 amended to read as follows:

23 Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE  
24 REQUESTING SPECIMEN. Before requesting a person to submit to the  
25 taking of a specimen, the officer shall inform the person orally and  
26 in writing that:

27 (1) if the person refuses to submit to the taking of

1 the specimen, that refusal may be admissible in a subsequent  
2 prosecution;

3 (2) if the person refuses to submit to the taking of  
4 the specimen, the person's license to operate a motor vehicle will  
5 be automatically suspended, whether or not the person is  
6 subsequently prosecuted as a result of the arrest, for not less than  
7 180 days;

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

15 (4) if the person is younger than 21 years of age and  
16 has any detectable amount of alcohol in the person's system, the  
17 person's license to operate a motor vehicle will be automatically  
18 suspended for not less than 60 days even if the person submits to  
19 the taking of the specimen, but that if the person submits to the  
20 taking of the specimen and an analysis of the specimen shows that  
21 the person had an alcohol concentration less than the level  
22 specified by Chapter 49, Penal Code, the person may be subject to  
23 criminal penalties less severe than those provided under that  
24 chapter;

25 (5) if the officer determines that the person is a  
26 resident without a license to operate a motor vehicle in this state,  
27 the department will deny to the person the issuance of a license,

1 whether or not the person is subsequently prosecuted as a result of  
2 the arrest, under the same conditions and for the same periods that  
3 would have applied to a revocation of the person's driver's license  
4 if the person had held a driver's license issued by this state; and

5 (6) the person has a right to a hearing on the  
6 suspension or denial if, not later than the 15th day after the date  
7 on which the person receives the notice of suspension or denial or  
8 on which the person is considered to have received the notice by  
9 mail as provided by law, the person files a petition requesting a  
10 hearing in a county court at law in the county in which the person  
11 was arrested or, if there is not a county court at law in that  
12 county, in the county court [~~department receives, at its~~  
13 ~~headquarters in Austin, a written demand, including a facsimile~~  
14 ~~transmission, or a request in another form prescribed by the~~  
15 ~~department for the hearing)].~~

16 SECTION 13. Section 724.034, Transportation Code, is  
17 amended to read as follows:

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

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

27 SECTION 14. Section 724.041, Transportation Code, is

1 amended by amending Subsections (a), (b), (c), and (g) and adding  
2 Subsections (a-1), (a-2), and (a-3) to read as follows:

3 (a) If, not later than the 15th day after the date on which  
4 the person receives notice of suspension or denial under Section  
5 724.032(a) or is considered to have received notice under Section  
6 724.033, the person files a petition requesting [~~department~~  
7 ~~receives at its headquarters in Austin, in writing, including a~~  
8 ~~facsimile transmission, or by another manner prescribed by the~~  
9 ~~department, a request~~] that a hearing be held, [~~the State Office of~~  
10 ~~Administrative Hearings shall hold~~] a hearing shall be held as  
11 provided by this subchapter.

12 (a-1) A petition under Subsection (a) must be filed in a  
13 county court at law in the county in which the person was arrested  
14 or, if there is not a county court at law in that county, in the  
15 county court.

16 (a-2) A person who files a petition under Subsection (a)  
17 shall send a copy of the petition by certified mail to the  
18 department at the department's headquarters in Austin. The copy  
19 sent to the department must be certified by the clerk of the court  
20 in which the petition is filed.

21 (a-3) A hearing under this subchapter shall be conducted by  
22 the judge of the court in which the criminal charge against the  
23 person under Section 49.04, 49.07, or 49.08, Penal Code, or Section  
24 106.041, Alcoholic Beverage Code, arising from the occurrence that  
25 is the basis of the suspension is pending.

26 (b) A hearing under this subchapter shall be held before the  
27 effective date of the suspension [~~not earlier than the 11th day~~

1 ~~after the date the person is notified,~~] unless the parties agree to  
2 waive this requirement[~~, but before the effective date of the~~  
3 ~~notice of suspension or denial~~].

4 (c) A request for a hearing stays the suspension or denial  
5 until the date of the final decision of the [~~administrative law~~]  
6 judge. If the person's license was taken by a peace officer under  
7 Section 724.032(a), the department shall notify the person of the  
8 effect of the request on the suspension of the person's license  
9 before the expiration of any temporary driving permit issued to the  
10 person, if the person is otherwise eligible, in a manner that will  
11 permit the person to establish to a peace officer that the person's  
12 license is not suspended.

13 (g) [~~An administrative hearing under this section is~~  
14 ~~governed by~~] Sections [~~524.032(b) and (c),~~] 524.035(e),  
15 524.037(a), and 524.040 apply to a hearing under this subchapter.

16 SECTION 15. Section 724.043, Transportation Code, is  
17 amended to read as follows:

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

24 (b) If the [~~administrative law~~] judge does not find in the  
25 affirmative on each issue under Section 724.042, the department  
26 shall return the person's license to the person, if the license was  
27 taken by a peace officer under Section 724.032(a), and reinstate

1 the person's license or rescind any order denying the issuance of a  
2 license because of the person's refusal to submit to the taking of a  
3 specimen under Section 724.032(a).

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

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

11 SECTION 17. Section 724.047, Transportation Code, is  
12 amended to read as follows:

13 Sec. 724.047. APPEAL. Chapter 524 governs an appeal from an  
14 action of the department, following a [~~an administrative~~] hearing  
15 under this chapter, in suspending or denying the issuance of a  
16 license.

17 SECTION 18. The heading to Section 724.048, Transportation  
18 Code, is amended to read as follows:

19 Sec. 724.048. RELATIONSHIP OF DETERMINATION  
20 [~~ADMINISTRATIVE PROCEEDING~~] TO CRIMINAL PROCEEDING.

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

23 (a) The determination of the department, a [~~an~~  
24 ~~administrative law~~] judge, or an appellate court under this  
25 subchapter:

26 (1) is a civil matter;

27 (2) is independent of and is not an estoppel as to any

1 matter in issue in an adjudication of a criminal charge arising from  
2 the occurrence that is the basis for the suspension or denial; and

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

5 SECTION 20. Sections 524.033, 524.034, 524.037(c),  
6 524.043, 524.044, and 724.041(d), (e), and (f), Transportation  
7 Code, are repealed.

8 SECTION 21. (a) This Act takes effect January 1, 2004.

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

13 (c) A person arrested for an offense described by Section  
14 524.011 or 724.011, Transportation Code, before the effective date  
15 of this Act is covered by the law in effect on the date the person  
16 was arrested.

17 (d) An administrative proceeding brought under Chapter 524  
18 or 724, Transportation Code, before the effective date of this Act,  
19 or an appeal from an administrative proceeding brought under those  
20 chapters, that is pending on the effective date of this Act is  
21 governed by the law in effect on the date the administrative  
22 proceeding or the appeal was brought, and the former law is  
23 continued in effect for that purpose.