

By: Williams

S.B. No. 1061

A BILL TO BE ENTITLED

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AN ACT

relating to the suspension or denial of the driver's license of a person who refuses to submit to the taking of a specimen to test for intoxication.

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

SECTION 1. Section 724.001, Transportation Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Ignition interlock device" has the meaning assigned by Section 521.241.

SECTION 2. Section 724.015, Transportation Code, is amended to read as follows:

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

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

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

(A) 180 days; or

1           (B) 90 days and the person restricted to the  
2 operation of a motor vehicle equipped with an ignition interlock  
3 device for not less than 90 days beginning on the date following the  
4 last day of the license suspension, if the person:

5                   (i) applies to the department to have the  
6 person's license reinstated after 90 days; and

7                   (ii) presents evidence satisfactory to the  
8 department showing that the person has had installed an ignition  
9 interlock device on any motor vehicle of which the person is a  
10 registered owner;

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

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

1           (5) if the officer determines that the person is a  
2 resident without a license to operate a motor vehicle in this state,  
3 the department will deny to the person the issuance of a license,  
4 whether or not the person is subsequently prosecuted as a result of  
5 the arrest, under the same conditions and for the same periods that  
6 would have applied to a suspension [~~revocation~~] of the person's  
7 driver's license if the person had held a driver's license issued by  
8 this state; and

9           (6) the person has a right to a hearing on the  
10 suspension or denial if, not later than the 15th day after the date  
11 on which the person receives the notice of suspension or denial or  
12 on which the person is considered to have received the notice by  
13 mail as provided by law, the department receives, at its  
14 headquarters in Austin, a written demand, including a facsimile  
15 transmission, or a request in another form prescribed by the  
16 department for the hearing.

17           SECTION 3. Subsections (a), (c), and (d), Section 724.032,  
18 Transportation Code, are amended to read as follows:

19           (a) If a person refuses to submit to the taking of a  
20 specimen, whether expressly or because of an intentional failure of  
21 the person to give the specimen, the peace officer shall:

22           (1) serve notice of license suspension, license [~~or~~]  
23 denial, or license suspension or denial followed by a restriction  
24 of the person to the operation of a motor vehicle equipped with an  
25 ignition interlock device on the person;

26           (2) take possession of any license issued by this  
27 state and held by the person arrested;

1           (3) issue a temporary driving permit to the person  
2 unless department records show or the officer otherwise determines  
3 that the person does not hold a license to operate a motor vehicle  
4 in this state; and

5           (4) make a written report of the refusal to the  
6 director of the department.

7           (c) The officer shall forward to the department not later  
8 than the fifth business day after the date of the arrest:

9           (1) a copy of the notice served under Subsection (a)  
10 ~~[of suspension or denial]~~;

11           (2) any license taken by the officer under Subsection  
12 (a);

13           (3) a copy of any temporary driving permit issued  
14 under Subsection (a); and

15           (4) a copy of the refusal report.

16           (d) The department shall develop forms for notices required  
17 by this section ~~[of suspension or denial]~~ and temporary driving  
18 permits to be used by all state and local law enforcement agencies.

19           SECTION 4. The heading to Section 724.033, Transportation  
20 Code, is amended to read as follows:

21           Sec. 724.033. ISSUANCE BY DEPARTMENT OF NOTICE OF LICENSE  
22 SUSPENSION, [OR] DENIAL OF LICENSE, OR LICENSE SUSPENSION OR DENIAL  
23 WITH RESTRICTION.

24           SECTION 5. Subsection (a), Section 724.033, Transportation  
25 Code, is amended to read as follows:

26           (a) On receipt of a report of a peace officer under Section  
27 724.032, if the officer did not serve notice as required by that

1 section [~~of suspension or denial of a license~~] at the time of  
2 refusal to submit to the taking of a specimen, the department shall  
3 mail notice [~~of suspension or denial~~], by first class mail, to the  
4 person at the address of the person shown by the records of the  
5 department or to the address given in the peace officer's report, if  
6 different. The notice shall state whether the person's license to  
7 operate a motor vehicle will be suspended or denied for not less  
8 than:

9 (1) 180 days; or

10 (2) 90 days and the person restricted to the operation  
11 of a motor vehicle equipped with an ignition interlock device for:

12 (A) 90 days beginning on the date following the  
13 last day of the license suspension or denial, if the person:

14 (i) applies to the department to have the  
15 person's license reinstated after 90 days; and

16 (ii) presents evidence satisfactory to the  
17 department showing that the person has had installed an ignition  
18 interlock device on any motor vehicle of which the person is a  
19 registered owner; or

20 (B) two years beginning on the date following the  
21 last day of the license suspension or denial if the person's driving  
22 record shows one or more alcohol-related or drug-related  
23 enforcement contacts, as defined by Section 524.001(3), during the  
24 10 years preceding the date of the person's arrest, if the person:

25 (i) applies to the department to have the  
26 person's license reinstated after 90 days; and

27 (ii) presents evidence satisfactory to the

1 department showing that the person has had installed an ignition  
2 interlock device on any motor vehicle of which the person is a  
3 registered owner.

4 SECTION 6. Section 724.034, Transportation Code, is amended  
5 to read as follows:

6 Sec. 724.034. CONTENTS OF NOTICE OF LICENSE SUSPENSION,  
7 LICENSE [~~OR~~] DENIAL, OR SUSPENSION OR DENIAL OF LICENSE WITH  
8 DRIVING RESTRICTION. (a) A notice under Section 724.033 [~~of~~  
9 ~~suspension or denial of a license~~] must state:

10 (1) the reason and statutory grounds for the action;

11 (2) as applicable, the effective date of:

12 (A) the 180-day driver's license suspension or  
13 denial; or

14 (B) the 90-day driver's license suspension or  
15 denial preceding:

16 (i) the 90-day restriction to the operation  
17 of a motor vehicle equipped with an ignition interlock device; or

18 (ii) the two-year restriction to the  
19 operation of a motor vehicle equipped with an ignition interlock  
20 device if the person's driving record shows one or more  
21 alcohol-related or drug-related enforcement contacts, as defined  
22 by Section 524.001(3), during the 10 years preceding the date of the  
23 person's arrest;

24 (3) the right of the person to a hearing;

25 (4) how to request a hearing; and

26 (5) the period in which a request for a hearing must be  
27 received by the department.

1        (b) The notice required under Subsection (a) must include  
2 instructions detailing the procedures for applying for the 90-day  
3 suspension as provided by Subsection (a)(2)(B) with a restriction  
4 to the operation of a motor vehicle equipped with an ignition  
5 interlock device.

6        SECTION 7. The heading to Section 724.035, Transportation  
7 Code, is amended to read as follows:

8        Sec. 724.035. SUSPENSION, [OR] DENIAL, OR SUSPENSION OR  
9 DENIAL OF LICENSE WITH DRIVING RESTRICTION.

10        SECTION 8. Section 724.035, Transportation Code, is amended  
11 by amending Subsections (a) and (b) and adding Subsection (a-1) to  
12 read as follows:

13        (a) Except as provided by Subsection (b), if [If] a person  
14 refuses the request of a peace officer to submit to the taking of a  
15 specimen, the department shall[+]

16        [~~(1)~~] suspend the person's license to operate a motor  
17 vehicle on a public highway for:

18        (1) 180 days; or

19        (2) 90 days and restrict the person to the operation of  
20 a motor vehicle equipped with an ignition interlock device for 90  
21 days beginning on the date following the last day of the license  
22 suspension, if the person:

23        (A) applies to the department to have the  
24 person's license reinstated after 90 days; and

25        (B) presents evidence satisfactory to the  
26 department showing that the person has had installed an ignition  
27 interlock device on any motor vehicle of which the person is a

1 registered owner.

2 (a-1) If a person refuses the request of a peace officer to  
3 submit to the taking of a specimen and [if] the person is a resident  
4 without a license, the department shall issue an order denying the  
5 issuance of a license to the person for 180 days.

6 (b) Notwithstanding Subsection (a), [The period of  
7 suspension or denial is two years] if the person's driving record  
8 shows one or more alcohol-related or drug-related enforcement  
9 contacts, as defined by Section 524.001(3), during the 10 years  
10 preceding the date of the person's arrest, the period of suspension  
11 or denial is 90 days and the department shall restrict the person to  
12 the operation of a motor vehicle with an ignition interlock device  
13 for two years beginning on the date following the last day of the  
14 license suspension or denial, if the person:

15 (1) applies to the department to have the person's  
16 license reinstated after 90 days; and

17 (2) presents evidence satisfactory to the department  
18 showing that the person has had installed an ignition interlock  
19 device on any motor vehicle of which the person is a registered  
20 owner.

21 SECTION 9. Section 724.046, Transportation Code, is amended  
22 by amending Subsection (a) and adding Subsection (a-1) to read as  
23 follows:

24 (a) A license suspended under this chapter may not be  
25 reinstated or a new license issued until the person whose license  
26 has been suspended:

27 (1) pays to the department a fee of \$125 in addition to



1 any other fee required by law; and

2 (2) if the person is required to have installed an  
3 ignition interlock device, presents evidence satisfactory to the  
4 department showing that the person has had installed the device on  
5 any motor vehicle of which the person is a registered owner~~[.—A~~  
6 ~~person subject to a denial order issued under this chapter may not~~  
7 ~~obtain a license after the period of denial has ended until the~~  
8 ~~person pays to the department a fee of \$125 in addition to any other~~  
9 ~~fee required by law].~~

10 (a-1) A person subject to a denial order issued under this  
11 chapter may not obtain a license after the period of denial has  
12 ended until the person:

13 (1) pays to the department a fee of \$125 in addition to  
14 any other fee required by law; and

15 (2) if the person is required to have installed an  
16 ignition interlock device, presents evidence satisfactory to the  
17 department showing that the person has had installed the device on  
18 any motor vehicle of which the person is a registered owner.

19 SECTION 10. Subsections (b) and (c), Section 724.048,  
20 Transportation Code, are amended to read as follows:

21 (b) Except as provided by Subsection (c), the disposition of  
22 a criminal charge does not affect a license suspension, [ex]  
23 denial, or suspension or denial with restriction under this chapter  
24 and is not an estoppel as to any matter in issue in a suspension or  
25 denial proceeding under this chapter.

26 (c) If a criminal charge arising from the same arrest as a  
27 suspension under this chapter results in an acquittal, the

1 suspension under this chapter may not be imposed and a person may  
2 not be restricted to the operation of a motor vehicle with an  
3 ignition interlock device. If a suspension under this chapter has  
4 already been imposed, the department shall rescind the suspension  
5 and remove references to the suspension from the computerized  
6 driving record of the individual.

7 SECTION 11. The change in law made by this Act applies only  
8 to the refusal to submit to the taking of a specimen to test for  
9 intoxication on or after the effective date of this Act. A refusal  
10 to submit to the taking of a specimen that occurs before the  
11 effective date of this Act is covered by the law in effect when the  
12 refusal was made, and the former law is continued in effect for that  
13 purpose.

14 SECTION 12. This Act takes effect September 1, 2007.