

By: Williams

S.B. No. 1061

A BILL TO BE ENTITLED

AN ACT

relating to restricting persons who refuse to submit a breath specimen to the operation of a vehicle equipped with an ignition interlock device.

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(2).

SECTION 2. Section 724.002, Transportation Code, is amended to read as follows:

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

SECTION 3. 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 (1) if the person refuses to submit to the taking of
2 the specimen, that refusal may be admissible in a subsequent
3 prosecution;

4 (2) if the person refuses to submit to the taking of
5 the specimen, the person's license to operate a motor vehicle may
6 ~~[will]~~ be automatically suspended, whether or not the person is
7 subsequently prosecuted as a result of the arrest, for not less than
8 180 days;

9 (3) if the person refuses to submit to the taking of
10 the specimen, the person may be restricted to the operation of a
11 motor vehicle equipped with an ignition interlock device for 180
12 days, whether or not the person is subsequently prosecuted as a
13 result of the arrest;

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

21 (5) ~~[(4)]~~ if the person is younger than 21 years of age
22 and has any detectable amount of alcohol in the person's system, the
23 person's license to operate a motor vehicle will be automatically
24 suspended for not less than 60 days even if the person submits to
25 the taking of the specimen, but that if the person submits to the
26 taking of the specimen and an analysis of the specimen shows that
27 the person had an alcohol concentration less than the level

1 specified by Chapter 49, Penal Code, the person may be subject to
2 criminal penalties less severe than those provided under that
3 chapter;

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

12 (7) [~~(6)~~] the person has a right to a hearing on the
13 license restriction, suspension, or denial if, not later than the
14 15th day after the date on which the person receives the notice of
15 restriction, suspension, or denial or on which the person is
16 considered to have received the notice by mail as provided by law,
17 the department receives, at its headquarters in Austin, a written
18 demand, including a facsimile transmission, or a request in another
19 form prescribed by the department for the hearing.

20 SECTION 4. The heading to Section 724.032, Transportation
21 Code, is amended to read as follows:

22 Sec. 724.032. OFFICER'S DUTIES FOR LICENSE RESTRICTION,
23 SUSPENSION, OR DENIAL; WRITTEN REFUSAL REPORT.

24 SECTION 5. Subsections (a), (c), and (d), Section 724.032,
25 Transportation Code, are amended to read as follows:

26 (a) If a person refuses to submit to the taking of a
27 specimen, whether expressly or because of an intentional failure of

1 the person to give the specimen, the peace officer shall:

2 (1) serve on the person notice of license suspension
3 or denial or of restriction to the use of an ignition interlock
4 device ~~[on the person]~~;

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

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

11 (4) make a written report of the refusal to the
12 director of the department.

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

15 (1) a copy of the notice of license restriction,
16 suspension, or denial;

17 (2) any license taken by the officer under Subsection
18 (a);

19 (3) a copy of any temporary driving permit issued
20 under Subsection (a); and

21 (4) a copy of the refusal report.

22 (d) The department shall develop forms for notices of
23 license restriction, suspension, or denial and for temporary
24 driving permits to be used by all state and local law enforcement
25 agencies.

26 SECTION 6. Section 724.033, Transportation Code, is amended
27 to read as follows:

1 Sec. 724.033. ISSUANCE BY DEPARTMENT OF NOTICE OF LICENSE
2 RESTRICTION, SUSPENSION, OR DENIAL [~~OF LICENSE~~]. (a) On receipt
3 of a report of a peace officer under Section 724.032, if the officer
4 did not serve notice of license restriction, suspension, or denial
5 [~~of a license~~] at the time of refusal to submit to the taking of a
6 specimen, the department shall mail notice of the restriction,
7 suspension, or denial, by first class mail, to the address of the
8 person shown by the records of the department or to the address
9 given in the peace officer's report, if different.

10 (b) Notice is considered received on the fifth day after the
11 date it is mailed.

12 SECTION 7. Section 724.034, Transportation Code, is amended
13 to read as follows:

14 Sec. 724.034. CONTENTS OF NOTICE OF LICENSE RESTRICTION,
15 SUSPENSION, OR DENIAL [~~OF LICENSE~~]. A notice of license
16 restriction, suspension, or denial [~~of a license~~] must state:

- 17 (1) the reason and statutory grounds for the action;
18 (2) the effective date of the restriction, suspension,
19 or denial;
20 (3) the right of the person to a hearing;
21 (4) how to request a hearing; and
22 (5) the period in which a request for a hearing must be
23 received by the department.

24 SECTION 8. Section 724.035, Transportation Code, is amended
25 to read as follows:

26 Sec. 724.035. SUSPENSION OR DENIAL OF LICENSE; RESTRICTION
27 TO USE OF IGNITION INTERLOCK DEVICE. (a) If a person refuses the

1 request of a peace officer to submit to the taking of a specimen,
2 the department shall:

3 (1) restrict the person to the operation of a motor
4 vehicle equipped with an ignition interlock device for 180 days; or

5 (2) suspend the person's license to operate a motor
6 vehicle on a public highway for 180 days~~[+]~~ or,

7 ~~[(2)]~~ if the person is a resident without a license,
8 issue an order denying the issuance of a license to the person for
9 180 days.

10 (b) If ~~[The period of suspension or denial is two years if]~~
11 the person's driving record shows one or more alcohol-related or
12 drug-related enforcement contacts, as defined by Section
13 524.001(3), during the 10 years preceding the date of the person's
14 arrest, the person shall be restricted to the operation of a motor
15 vehicle equipped with an ignition interlock device for one year.

16 (c) A license restriction, suspension, or denial takes
17 effect on the 40th day after the date on which the person:

18 (1) receives notice of the restriction, suspension, or
19 denial under Section 724.032(a); or

20 (2) is considered to have received notice of the
21 restriction, suspension, or denial under Section 724.033.

22 SECTION 9. The heading to Section 724.041, Transportation
23 Code, is amended to read as follows:

24 Sec. 724.041. HEARING ON RESTRICTION, SUSPENSION, OR
25 DENIAL.

26 SECTION 10. Subsections (a), (b), and (c), Section 724.041,
27 Transportation Code, are amended to read as follows:

1 (a) If, not later than the 15th day after the date on which
2 the person receives notice of a license restriction, suspension, or
3 denial under Section 724.032(a) or is considered to have received
4 notice under Section 724.033, the department receives at its
5 headquarters in Austin, in writing, including a facsimile
6 transmission, or by another manner prescribed by the department, a
7 request that a hearing be held, the State Office of Administrative
8 Hearings shall hold a hearing.

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

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

23 SECTION 11. Section 724.043, Transportation Code, is
24 amended to read as follows:

25 Sec. 724.043. FINDINGS OF ADMINISTRATIVE LAW JUDGE.

26 (a) If the administrative law judge finds in the affirmative on
27 each issue under Section 724.042, the restriction or suspension

1 order is sustained. If the person is a resident without a license,
2 the department shall continue to deny to the person the issuance of
3 a license for the applicable period provided by Section 724.035.

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

11 SECTION 12. Section 724.044, Transportation Code, is
12 amended to read as follows:

13 Sec. 724.044. WAIVER OF RIGHT TO HEARING. A person waives
14 the right to a hearing under this subchapter and the department's
15 license restriction, suspension, or denial is final and may not be
16 appealed if the person:

17 (1) fails to request a hearing under Section 724.041;
18 or

19 (2) requests a hearing and fails to appear, without
20 good cause.

21 SECTION 13. Section 724.046, Transportation Code, is
22 amended to read as follows:

23 Sec. 724.046. REMOVAL OF LICENSE RESTRICTION,
24 REINSTATEMENT OF LICENSE, OR ISSUANCE OF NEW LICENSE. (a) A
25 license restricted or suspended under this chapter may not be
26 reinstated or a new license issued until the person whose license
27 has been restricted or suspended pays to the department a fee of

1 \$125 in addition to any other fee required by law. A person subject
2 to a denial order issued under this chapter may not obtain a license
3 after the period of denial has ended until the person pays to the
4 department a fee of \$125 in addition to any other fee required by
5 law.

6 (b) If a license restriction, suspension, or denial under
7 this chapter is rescinded by the department, an administrative law
8 judge, or a court, payment of the fee under this section is not
9 required for removal of the restriction or the reinstatement or
10 issuance of a license.

11 (c) Each fee collected under this section shall be deposited
12 to the credit of the Texas mobility fund.

13 SECTION 14. Section 724.047, Transportation Code, is
14 amended to read as follows:

15 Sec. 724.047. APPEAL. Chapter 524 governs an appeal from an
16 action of the department, following an administrative hearing under
17 this chapter, in restricting, suspending, or denying the issuance
18 of a license.

19 SECTION 15. Section 724.048, Transportation Code, is
20 amended to read as follows:

21 Sec. 724.048. RELATIONSHIP OF ADMINISTRATIVE PROCEEDING TO
22 CRIMINAL PROCEEDING. (a) The determination of the department or
23 administrative law judge:

24 (1) is a civil matter;

25 (2) is independent of and is not an estoppel as to any
26 matter in issue in an adjudication of a criminal charge arising from
27 the occurrence that is the basis for the license restriction,

1 suspension, or denial; and

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

4 (b) Except as provided by Subsection (c), the disposition of
5 a criminal charge does not affect a license restriction,
6 suspension, or denial under this chapter and is not an estoppel as
7 to any matter in issue in a restriction, suspension, or denial
8 proceeding under this chapter.

9 (c) If a criminal charge arising from the same arrest as a
10 license restriction or suspension under this chapter results in an
11 acquittal, the restriction or suspension under this chapter may not
12 be imposed. If a restriction or suspension under this chapter has
13 already been imposed, the department shall rescind the restriction
14 or suspension and remove references to the restriction or
15 suspension from the computerized driving record of the individual.

16 SECTION 16. (a) The changes in law made by this Act apply
17 only to a refusal to submit to the taking of a breath specimen on or
18 after the effective date of this Act. A refusal to submit to the
19 taking of a breath specimen that occurs before the effective date of
20 this Act is covered by the law in effect when the refusal was made,
21 and the former law is continued in effect for that purpose.

22 (b) The Department of Public Safety of the State of Texas
23 shall adopt rules to administer the imposition of the use of an
24 ignition interlock device under the provisions of this Act.

25 SECTION 17. This Act takes effect September 1, 2007.