

1-1 By: Williams S.B. No. 1061
1-2 (In the Senate - Filed March 1, 2007; March 14, 2007, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 March 26, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 26, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1061 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the suspension or denial of the driver's license of a
1-11 person who refuses to submit to the taking of a specimen to test for
1-12 intoxication.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 724.001, Transportation Code, is amended
1-15 by adding Subdivision (8-a) to read as follows:

1-16 (8-a) "Ignition interlock device" has the meaning
1-17 assigned by Section 521.241.

1-18 SECTION 2. Section 724.015, Transportation Code, is amended
1-19 to read as follows:

1-20 Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE
1-21 REQUESTING SPECIMEN. Before requesting a person to submit to the
1-22 taking of a specimen, the officer shall inform the person orally and
1-23 in writing that:

1-24 (1) if the person refuses to submit to the taking of
1-25 the specimen, that refusal may be admissible in a subsequent
1-26 prosecution;

1-27 (2) if the person refuses to submit to the taking of
1-28 the specimen, the person's license to operate a motor vehicle will
1-29 be automatically suspended, whether or not the person is
1-30 subsequently prosecuted as a result of the arrest, for not less
1-31 than:

1-32 (A) 180 days; or

1-33 (B) 45 days and the person restricted to the
1-34 operation of a motor vehicle equipped with an ignition interlock
1-35 device for not less than 135 days beginning on the date following
1-36 the last day of the license suspension;

1-37 (3) if the person is 21 years of age or older and
1-38 submits to the taking of a specimen designated by the officer and an
1-39 analysis of the specimen shows the person had an alcohol
1-40 concentration of a level specified by Chapter 49, Penal Code, the
1-41 person's license to operate a motor vehicle will be automatically
1-42 suspended for not less than 90 days, whether or not the person is
1-43 subsequently prosecuted as a result of the arrest;

1-44 (4) if the person is younger than 21 years of age and
1-45 has any detectable amount of alcohol in the person's system, the
1-46 person's license to operate a motor vehicle will be automatically
1-47 suspended for not less than 60 days even if the person submits to
1-48 the taking of the specimen, but that if the person submits to the
1-49 taking of the specimen and an analysis of the specimen shows that
1-50 the person had an alcohol concentration less than the level
1-51 specified by Chapter 49, Penal Code, the person may be subject to
1-52 criminal penalties less severe than those provided under that
1-53 chapter;

1-54 (5) if the officer determines that the person is a
1-55 resident without a license to operate a motor vehicle in this state,
1-56 the department will deny to the person the issuance of a license,
1-57 whether or not the person is subsequently prosecuted as a result of
1-58 the arrest, under the same conditions and for the same periods that
1-59 would have applied to a suspension [~~revocation~~] of the person's
1-60 driver's license if the person had held a driver's license issued by
1-61 this state; and

1-62 (6) the person has a right to a hearing on the
1-63 suspension or denial if, not later than the 15th day after the date

2-1 on which the person receives the notice of suspension or denial or
2-2 on which the person is considered to have received the notice by
2-3 mail as provided by law, the department receives, at its
2-4 headquarters in Austin, a written demand, including a facsimile
2-5 transmission, or a request in another form prescribed by the
2-6 department for the hearing.

2-7 SECTION 3. Subsections (a), (c), and (d), Section 724.032,
2-8 Transportation Code, are amended to read as follows:

2-9 (a) If a person refuses to submit to the taking of a
2-10 specimen, whether expressly or because of an intentional failure of
2-11 the person to give the specimen, the peace officer shall:

2-12 (1) serve notice of license suspension, license ~~[or]~~
2-13 denial, or license suspension or denial followed by a restriction
2-14 of the person to the operation of a motor vehicle equipped with an
2-15 ignition interlock device on the person;

2-16 (2) take possession of any license issued by this
2-17 state and held by the person arrested;

2-18 (3) issue a temporary driving permit to the person
2-19 unless department records show or the officer otherwise determines
2-20 that the person does not hold a license to operate a motor vehicle
2-21 in this state; and

2-22 (4) make a written report of the refusal to the
2-23 director of the department.

2-24 (c) The officer shall forward to the department not later
2-25 than the fifth business day after the date of the arrest:

2-26 (1) a copy of the notice served under Subsection (a)
2-27 [of suspension or denial];

2-28 (2) any license taken by the officer under Subsection
2-29 (a);

2-30 (3) a copy of any temporary driving permit issued
2-31 under Subsection (a); and

2-32 (4) a copy of the refusal report.

2-33 (d) The department shall develop forms for notices required
2-34 by this section [of suspension or denial] and temporary driving
2-35 permits to be used by all state and local law enforcement agencies.

2-36 SECTION 4. The heading to Section 724.033, Transportation
2-37 Code, is amended to read as follows:

2-38 Sec. 724.033. ISSUANCE BY DEPARTMENT OF NOTICE OF LICENSE
2-39 SUSPENSION, ~~[OR]~~ DENIAL OF LICENSE, OR LICENSE SUSPENSION OR DENIAL
2-40 WITH RESTRICTION.

2-41 SECTION 5. Subsection (a), Section 724.033, Transportation
2-42 Code, is amended to read as follows:

2-43 (a) On receipt of a report of a peace officer under Section
2-44 724.032, if the officer did not serve notice as required by that
2-45 section [of suspension or denial of a license] at the time of
2-46 refusal to submit to the taking of a specimen, the department shall
2-47 mail notice [of suspension or denial], by first class mail, to the
2-48 person at the address of the person shown by the records of the
2-49 department or to the address given in the peace officer's report, if
2-50 different. The notice shall state whether the person's license to
2-51 operate a motor vehicle will be suspended or denied for not less
2-52 than:

2-53 (1) 180 days; or

2-54 (2) 45 days and the person restricted to the operation
2-55 of a motor vehicle equipped with an ignition interlock device for:

2-56 (A) 135 days beginning on the date following the
2-57 last day of the license suspension or denial; or

2-58 (B) one year beginning on the date following the
2-59 last day of the license suspension or denial if the person's driving
2-60 record shows one or more alcohol-related or drug-related
2-61 enforcement contacts, as defined by Section 524.001(3), during the
2-62 10 years preceding the date of the person's arrest.

2-63 SECTION 6. Section 724.034, Transportation Code, is amended
2-64 to read as follows:

2-65 Sec. 724.034. CONTENTS OF NOTICE OF LICENSE SUSPENSION,
2-66 LICENSE ~~[OR]~~ DENIAL, OR SUSPENSION OR DENIAL OF LICENSE WITH
2-67 DRIVING RESTRICTION. A notice under Section 724.033 ~~[of~~
2-68 suspension or denial of a license] must state:

2-69 (1) the reason and statutory grounds for the action;

3-1 (2) as applicable, the effective date of:
3-2 (A) the 180-day driver's license suspension or
3-3 denial; or

3-4 (B) the 45-day driver's license suspension or
3-5 denial preceding:

3-6 (i) the 135-day restriction to the
3-7 operation of a motor vehicle equipped with an ignition interlock
3-8 device; or

3-9 (ii) the one-year restriction to the
3-10 operation of a motor vehicle equipped with an ignition interlock
3-11 device if the person's driving record shows one or more
3-12 alcohol-related or drug-related enforcement contacts, as defined
3-13 by Section 524.001(3), during the 10 years preceding the date of the
3-14 person's arrest;

3-15 (3) the right of the person to a hearing;

3-16 (4) how to request a hearing; and

3-17 (5) the period in which a request for a hearing must be
3-18 received by the department.

3-19 SECTION 7. The heading to Section 724.035, Transportation
3-20 Code, is amended to read as follows:

3-21 Sec. 724.035. SUSPENSION, ~~OR~~ DENIAL, OR SUSPENSION OR
3-22 DENIAL OF LICENSE WITH DRIVING RESTRICTION.

3-23 SECTION 8. Section 724.035, Transportation Code, is amended
3-24 by amending Subsections (a) and (b) and adding Subsection (a-1) to
3-25 read as follows:

3-26 (a) Except as provided by Subsection (b), if ~~if~~ a person
3-27 refuses the request of a peace officer to submit to the taking of a
3-28 specimen, the department shall~~+~~

3-29 ~~(1)~~ suspend the person's license to operate a motor
3-30 vehicle on a public highway for:

3-31 (1) 180 days; or

3-32 (2) 45 days and restrict the person to the operation of
3-33 a motor vehicle equipped with an ignition interlock device for 135
3-34 days beginning on the date following the last day of the license
3-35 suspension.

3-36 (a-1) If a person refuses the request of a peace officer to
3-37 submit to the taking of a specimen and ~~if~~ the person is a resident
3-38 without a license, the department shall issue an order denying the
3-39 issuance of a license to the person for 180 days.

3-40 (b) Notwithstanding Subsection (a), ~~The period of~~
3-41 ~~suspension or denial is two years~~ if the person's driving record
3-42 shows one or more alcohol-related or drug-related enforcement
3-43 contacts, as defined by Section 524.001(3), during the 10 years
3-44 preceding the date of the person's arrest, the period of suspension
3-45 or denial is 45 days and the department shall restrict the person to
3-46 the operation of a motor vehicle with an ignition interlock device
3-47 for one year beginning on the date following the last day of the
3-48 license suspension or denial.

3-49 SECTION 9. Subsections (b) and (c), Section 724.048,
3-50 Transportation Code, are amended to read as follows:

3-51 (b) Except as provided by Subsection (c), the disposition of
3-52 a criminal charge does not affect a license suspension, ~~or~~
3-53 denial, or suspension or denial with restriction under this chapter
3-54 and is not an estoppel as to any matter in issue in a suspension or
3-55 denial proceeding under this chapter.

3-56 (c) If a criminal charge arising from the same arrest as a
3-57 suspension under this chapter results in an acquittal, the
3-58 suspension under this chapter may not be imposed and a person may
3-59 not be restricted to the operation of a motor vehicle with an
3-60 ignition interlock device. If a suspension under this chapter has
3-61 already been imposed, the department shall rescind the suspension
3-62 and remove references to the suspension from the computerized
3-63 driving record of the individual.

3-64 SECTION 10. The change in law made by this Act applies only
3-65 to the refusal to submit to the taking of a specimen to test for
3-66 intoxication on or after the effective date of this Act. A refusal
3-67 to submit to the taking of a specimen that occurs before the
3-68 effective date of this Act is covered by the law in effect when the
3-69 refusal was made, and the former law is continued in effect for that

4-1 purpose.

4-2 SECTION 11. This Act takes effect September 1, 2007.

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