

By: Patrick, Dan

S.B. No. 1328

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the civil and criminal consequences of driving while
3 intoxicated.

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

5 SECTION 1. Sections 521.245(a) and (e), Transportation
6 Code, are amended to read as follows:

7 (a) If the petitioner's license has been suspended under
8 Chapter [~~524 or~~] 724, the court shall require the petitioner to
9 attend a program approved by the court that is designed to provide
10 counseling and rehabilitation services to persons for alcohol
11 dependence. This requirement shall be stated in the order granting
12 the occupational license.

13 (e) On receipt of the copy under Subsection (d), the
14 department shall suspend the person's occupational license for[+

15 [~~(1) 60 days, if the original driver's license~~
16 ~~suspension was under Chapter 524, or~~

17 [~~(2)] 120 days[, if the original driver's license~~
18 ~~suspension was under Chapter 724].~~

19 SECTION 2. Sections 521.251(a) and (e), Transportation
20 Code, are amended to read as follows:

21 (a) If a person's license is suspended under Chapter [~~524~~
22 ~~or~~] 724 and the person has not had a prior suspension arising from
23 an alcohol-related or drug-related enforcement contact in the five
24 years preceding the date of the person's arrest, an order under this

1 subchapter granting the person an occupational license takes effect
2 immediately. However, the court shall order the person to comply
3 with the counseling and rehabilitation program required under
4 Section 521.245.

5 (e) For the purposes of this section, "alcohol-related or
6 drug-related enforcement contact" means a driver's license
7 suspension, disqualification, or prohibition order under the laws
8 of this state or another state resulting from:

9 (1) a conviction of an offense prohibiting the
10 operation of a motor vehicle while:

11 (A) intoxicated;

12 (B) under the influence of alcohol; or

13 (C) under the influence of a controlled substance
14 or dangerous drug;

15 (2) a refusal to submit to the taking of a breath or
16 blood specimen following an arrest for an offense prohibiting the
17 operation of a motor vehicle while:

18 (A) intoxicated;

19 (B) under the influence of alcohol; or

20 (C) under the influence of a controlled substance
21 or dangerous drug; or

22 (3) an analysis of a blood, breath, or urine specimen
23 showing an alcohol concentration of a level specified by Section
24 49.01, Penal Code, following an arrest for an offense prohibiting
25 the operation of a motor vehicle while intoxicated [~~has the meaning~~
26 ~~assigned by Section 524.001~~].

27 SECTION 3. Sections 522.081(b) and (c), Transportation

1 Code, are amended to read as follows:

2 (b) This subsection applies to a violation committed while
3 operating any motor vehicle, including a commercial motor vehicle,
4 except as provided by this subsection. A person who holds a
5 commercial driver's license is disqualified from driving a
6 commercial motor vehicle for one year:

7 (1) if convicted of three violations of a law that
8 regulates the operation of a motor vehicle at a railroad grade
9 crossing that occur within a three-year period;

10 (2) on first conviction of:

11 (A) driving a motor vehicle under the influence
12 of alcohol or a controlled substance, including a violation of
13 Section 49.04, 49.045, or 49.07, Penal Code;

14 (B) leaving the scene of an accident involving a
15 motor vehicle driven by the person;

16 (C) using a motor vehicle in the commission of a
17 felony, other than a felony described by Subsection (d)(2);

18 (D) causing the death of another person through
19 the negligent or criminal operation of a motor vehicle; or

20 (E) driving a commercial motor vehicle while the
21 person's commercial driver's license is revoked, suspended, or
22 canceled, or while the person is disqualified from driving a
23 commercial motor vehicle, for an action or conduct that occurred
24 while operating a commercial motor vehicle;

25 (3) for refusing to submit to a test under Chapter 724
26 to determine the person's alcohol concentration or the presence in
27 the person's body of a controlled substance or drug while operating

1 a motor vehicle in a public place; or

2 (4) if an analysis of the person's blood, breath, or
3 urine under Chapter 522[~~7-524~~] or 724 determines that the person:

4 (A) had an alcohol concentration of 0.04 or more,
5 or that a controlled substance or drug was present in the person's
6 body, while operating a commercial motor vehicle in a public place;
7 or

8 (B) had an alcohol concentration of 0.08 or more
9 while operating a motor vehicle, other than a commercial motor
10 vehicle, in a public place.

11 (c) A person who holds a commercial driver's license is
12 disqualified from operating a commercial motor vehicle for three
13 years if:

14 (1) the person:

15 (A) is convicted of an offense listed in
16 Subsection (b)(2) and the vehicle being operated by the person was
17 transporting a hazardous material required to be placarded; or

18 (B) refuses to submit to a test under Chapter 724
19 to determine the person's alcohol concentration or the presence in
20 the person's body of a controlled substance or drug while operating
21 a motor vehicle in a public place and the vehicle being operated by
22 the person was transporting a hazardous material required to be
23 placarded; or

24 (2) an analysis of the person's blood, breath, or urine
25 under Chapter 522[~~7-524~~] or 724 determines that while transporting
26 a hazardous material required to be placarded the person:

27 (A) while operating a commercial motor vehicle in

1 a public place had an alcohol concentration of 0.04 or more, or a
2 controlled substance or drug present in the person's body; or

3 (B) while operating a motor vehicle, other than a
4 commercial motor vehicle, in a public place had an alcohol
5 concentration of 0.08 or more.

6 SECTION 4. Section 522.092, Transportation Code, is amended
7 to read as follows:

8 Sec. 522.092. SUSPENSION, REVOCATION, CANCELLATION, OR
9 DENIAL OF DRIVER'S LICENSE UNDER OTHER LAWS. A person subject to
10 disqualification under this chapter may also have the person's
11 driver's license suspended, revoked, canceled, or denied under one
12 or more of the following, if the conduct that is a ground for
13 disqualification is also a ground for the suspension, revocation,
14 cancellation, or denial of a driver's license suspension under:

- 15 (1) Chapter 521;
- 16 (2) [~~Chapter 524,~~
- 17 [~~3~~] Chapter 601; or
- 18 (3) [~~4~~] Chapter 724.

19 SECTION 5. Sections 522.105(b) and (d), Transportation
20 Code, are amended to read as follows:

21 (b) Except as provided by Subsection (c), the procedure for
22 notice and disqualification under this section is that specified by
23 Subchapters C and D, Chapter 724 [~~, or Chapter 524~~].

24 (d) An appeal of a disqualification under this section is
25 subject to Sections 724.047, 724.0471, and 724.0472
26 [~~524.041-524.044~~].

27 SECTION 6. The heading to Chapter 724, Transportation Code,

1 is amended to read as follows:

2 CHAPTER 724. ADMINISTRATIVE SUSPENSION OF LICENSE TO OPERATE A
3 VEHICLE ON REFUSAL TO PROVIDE SPECIMEN [~~IMPLIED CONSENT~~]

4 SECTION 7. Section 724.015, Transportation Code, is amended
5 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
17 365 [~~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 (4) ~~[(6)]~~ if the person refuses to submit to the
16 taking of the specimen, the person has a right to a hearing on the
17 suspension or denial if, not later than the 15th day after the date
18 on which the person receives the notice of suspension or denial or
19 on which the person is considered to have received the notice by
20 mail as provided by law, the department receives, at its
21 headquarters in Austin, a written demand, including a facsimile
22 transmission, or a request in another form prescribed by the
23 department for the hearing.

24 SECTION 8. Sections 724.035(a) and (b), Transportation
25 Code, are amended to read as follows:

26 (a) If a person refuses the request of a peace officer to
27 submit to the taking of a specimen, the department shall:

1 (1) suspend the person's license to operate a motor
2 vehicle on a public highway for 365 [~~180~~] days; or

3 (2) if the person is a resident without a license,
4 issue an order denying the issuance of a license to the person for
5 365 [~~180~~] days.

6 (b) The period of suspension or denial is two years if the
7 person's driving record shows one or more alcohol-related or
8 drug-related enforcement contacts, as defined by Section 521.251
9 [~~524.001(3)~~], during the 10 years preceding the date of the
10 person's arrest.

11 SECTION 9. Subchapter D, Chapter 724, Transportation Code,
12 is amended by adding Sections 724.0411 and 724.0412 to read as
13 follows:

14 Sec. 724.0411. NOTICE REQUIREMENTS. (a) Notice required
15 to be provided by the department under this subchapter may be given
16 by telephone or other electronic means. If notice is given by
17 telephone or other electronic means, written notice must also be
18 provided.

19 (b) Notice by mail is considered received on the fifth day
20 after the date the notice is deposited with the United States Postal
21 Service.

22 Sec. 724.0412. RESCHEDULING AND CONTINUANCE. (a) A
23 hearing required under Section 724.041 shall be rescheduled if,
24 before the fifth day before the date scheduled for the hearing, the
25 department receives a request for a continuance from the person who
26 requested the hearing. Unless both parties agree otherwise, the
27 hearing shall be rescheduled for a date not earlier than the fifth

1 day after the date the department receives the request for the
2 continuance.

3 (b) A person who requests a hearing under this subchapter
4 may obtain only one continuance unless the person shows that a
5 medical condition prevents the person from attending the
6 rescheduled hearing, in which event one additional continuance may
7 be granted for a period not to exceed 10 days.

8 SECTION 10. Section 724.042, Transportation Code, is
9 amended to read as follows:

10 Sec. 724.042. ISSUES AT HEARING. The issues at a hearing
11 under this subchapter are whether:

12 (1) ~~[reasonable suspicion or probable cause existed to~~
13 ~~stop or arrest the person;~~

14 ~~[(2) probable cause existed to believe that]~~ the
15 person was:

16 (A) operating a motor vehicle in a public place
17 ~~[while intoxicated];~~ or

18 (B) operating a watercraft powered with an engine
19 having a manufacturer's rating of 50 horsepower or above ~~[while~~
20 ~~intoxicated];~~

21 (2) ~~[(3)]~~ the person was placed under arrest ~~[by the~~
22 ~~officer]~~ and was requested by a peace officer to submit to the
23 taking of a specimen; and

24 (3) ~~[(4)]~~ the person refused to submit to the taking
25 of a specimen on request of the officer.

26 SECTION 11. Subchapter D, Chapter 724, Transportation Code,
27 is amended by adding Section 724.0431 to read as follows:

1 Sec. 724.0431. DECISION OF ADMINISTRATIVE LAW JUDGE. The
2 decision of the administrative law judge is final when issued and
3 signed.

4 SECTION 12. Section 724.047, Transportation Code, is
5 amended to read as follows:

6 Sec. 724.047. APPEAL. (a) A person whose license
7 suspension is sustained may appeal the decision by filing a
8 petition not later than the 30th day after the date the
9 administrative law judge's decision is final. The administrative
10 law judge's final decision is immediately appealable without the
11 requirement of a motion for rehearing.

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 the county, in the
15 county court. If the county judge is not a licensed attorney, the
16 county judge shall transfer the case to a district court for the
17 county on the motion of either party or of the judge.

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

23 (d) The department's right to appeal is limited to issues of
24 law.

25 (e) A district or county attorney may represent the
26 department in an appeal. [~~Chapter 524 governs an appeal from an~~
27 ~~action of the department, following an administrative hearing under~~

1 ~~this chapter, in suspending or denying the issuance of a license.]~~

2 SECTION 13. Subchapter D, Chapter 724, Transportation Code,
3 is amended by adding Sections 724.0471 and 724.0472 to read as
4 follows:

5 Sec. 724.0471. REVIEW; ADDITIONAL EVIDENCE. (a) Review on
6 appeal is on the record certified by the State Office of
7 Administrative Hearings with no additional testimony.

8 (b) On appeal, a party may apply to the court to present
9 additional evidence. If the court is satisfied that the additional
10 evidence is material and that there were good reasons for the
11 failure to present it in the proceeding before the administrative
12 law judge, the court may order that the additional evidence be taken
13 before an administrative law judge on conditions determined by the
14 court.

15 (c) There is no right to a jury trial in an appeal under this
16 section.

17 (d) A remand under this section does not stay the suspension
18 of a license.

19 Sec. 724.0472. TRANSCRIPT OF ADMINISTRATIVE HEARING. (a)
20 To obtain a transcript of an administrative hearing, the party who
21 appeals the administrative law judge's decision must apply to the
22 State Office of Administrative Hearings.

23 (b) On payment of a fee not to exceed the actual cost of
24 preparing the transcript, the State Office of Administrative
25 Hearings shall promptly furnish both parties with a transcript of
26 the administrative hearing.

27 SECTION 14. Section 49.04, Penal Code, is amended by

1 amending Subsection (b) and adding Subsection (d) to read as
2 follows:

3 (b) Except as provided by Subsections [~~Subsection~~] (c) and
4 (d) and Section 49.09, an offense under this section is a Class B
5 misdemeanor, with a minimum term of confinement of 72 hours.

6 (d) If it is shown on the trial of an offense under this
7 section that at the time of the offense the person operating the
8 motor vehicle had an alcohol concentration of 0.16 or more, the
9 offense is a Class A misdemeanor.

10 SECTION 15. Article 55.06, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 55.06. LICENSE SUSPENSIONS AND REVOCATIONS. Records
13 relating to the suspension or revocation of a driver's license,
14 permit, or privilege to operate a motor vehicle may not be expunged
15 under this chapter except as provided in Section 724.048 [~~524.015~~],
16 Transportation Code[, ~~or Section 724.048 of that code~~].

17 SECTION 16. Section 54.042(h), Family Code, is amended to
18 read as follows:

19 (h) If a child is adjudicated for conduct that violates
20 Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on
21 which that adjudication is based is a ground for a driver's license
22 suspension under Chapter [~~524-or~~] 724, Transportation Code, each of
23 the suspensions shall be imposed. The court imposing a driver's
24 license suspension under this section shall credit a period of
25 suspension imposed under Chapter [~~524-or~~] 724, Transportation Code,
26 toward the period of suspension required under this section, except
27 that if the child was previously adjudicated for conduct that

1 violates Section 49.04, 49.07, or 49.08, Penal Code, credit may not
2 be given.

3 SECTION 17. Section 75.014(e), Government Code, is amended
4 to read as follows:

5 (e) The County Courts at Law No. 6 and No. 7 of El Paso
6 County, Texas, are designated as criminal misdemeanor courts.
7 Courts designated as criminal misdemeanor courts shall give
8 preference to and have primary responsibility for:

9 (1) criminal misdemeanor cases;

10 (2) appeals or petitions under Section 501.052,
11 521.242, or 521.302, [~~or 524.041,~~] Transportation Code;

12 (3) misdemeanor bail bond and personal bond forfeiture
13 cases; and

14 (4) appeals de novo from the municipal and justice
15 courts.

16 SECTION 18. The following provisions of the Transportation
17 Code are repealed:

18 (1) Chapter 524; and

19 (2) Section 724.041(g).

20 SECTION 19. (a) Section 49.04, Penal Code, as amended by
21 this Act, applies only to an offense committed on or after the
22 effective date of this Act. For purposes of this subsection, an
23 offense was committed before the effective date of this Act if any
24 element of the offense occurred before the effective date of this
25 Act.

26 (b) An offense committed before the effective date of this
27 Act is covered by the law in effect when the offense was committed,

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1 and the former law is continued in effect for that purpose.

2 SECTION 20. This Act takes effect September 1, 2007.