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S.B. No. 1177

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the suspension of the driver's license of a person  
3 arrested for an offense involving the operation of a motor vehicle  
4 while intoxicated or under the influence of alcohol.

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

6 SECTION 1. Chapter 524, Transportation Code, is repealed.

7 SECTION 2. Article 55.06, Code of Criminal Procedure, is  
8 amended to read as follows:

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

14 SECTION 3. Section 54.042(h), Family Code, is amended to  
15 read as follows:

16 (h) If a child is adjudicated for conduct that violates  
17 Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on  
18 which that adjudication is based is a ground for a driver's license  
19 suspension under Chapter [~~524 or~~] 724, Transportation Code, each of  
20 the suspensions shall be imposed. The court imposing a driver's  
21 license suspension under this section shall credit a period of  
22 suspension imposed under Chapter [~~524 or~~] 724, Transportation Code,  
23 toward the period of suspension required under this section, except  
24 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 4. 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 5. Sections 521.245(a) and (e), Transportation  
17 Code, are amended to read as follows:

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

24 (e) On receipt of the copy under Subsection (d), the  
25 department shall suspend the person's occupational license for [+  
26

27 [~~(1) 60 days, if the original driver's license  
suspension was under Chapter 524, or~~

1            [~~2~~] 120 days[, ~~if the original driver's license~~  
2 ~~suspension was under Chapter 724~~].

3            SECTION 6. Sections 521.251(a) and (e), Transportation  
4 Code, are amended to read as follows:

5            (a) If a person's license is suspended under Chapter [~~524~~  
6 ~~or~~] 724 and the person has not had a prior suspension arising from  
7 an alcohol-related or drug-related enforcement contact in the five  
8 years preceding the date of the person's arrest, an order under this  
9 subchapter granting the person an occupational license takes effect  
10 immediately. However, the court shall order the person to comply  
11 with the counseling and rehabilitation program required under  
12 Section 521.245.

13            (e) For the purposes of this section, "alcohol-related or  
14 drug-related enforcement contact" has the meaning assigned by  
15 Section 724.035 [~~524.001~~].

16            SECTION 7. Sections 522.081(b) and (c), Transportation  
17 Code, are amended to read as follows:

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

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

26            (2) on first conviction of:

27            (A) driving a motor vehicle under the influence

1 of alcohol or a controlled substance, including a violation of  
2 Section 49.04 or 49.07, Penal Code;

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

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

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

9 (E) driving a commercial motor vehicle while the  
10 person's commercial driver's license is revoked, suspended, or  
11 canceled, or while the person is disqualified from driving a  
12 commercial motor vehicle, for an action or conduct that occurred  
13 while operating a commercial motor vehicle;

14 (3) for refusing to submit to a test under Chapter 724  
15 to determine the person's alcohol concentration or the presence in  
16 the person's body of a controlled substance or drug while operating  
17 a motor vehicle in a public place; or

18 (4) if an analysis of the person's blood, breath, or  
19 urine under this chapter or Chapter [522, 524, or] 724 determines  
20 that the person:

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

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

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

4 (1) the person:

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

8 (B) refuses to submit to a test under Chapter 724  
9 to determine the person's alcohol concentration or the presence in  
10 the person's body of a controlled substance or drug while operating  
11 a motor vehicle in a public place and the vehicle being operated by  
12 the person was transporting a hazardous material required to be  
13 placarded; or

14 (2) an analysis of the person's blood, breath, or urine  
15 under this chapter or Chapter [~~522, 524, or~~] 724 determines that  
16 while transporting a hazardous material required to be placarded  
17 the person:

18 (A) while operating a commercial motor vehicle in  
19 a public place had an alcohol concentration of 0.04 or more, or a  
20 controlled substance or drug present in the person's body; or

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

24 SECTION 8. Section 522.092, Transportation Code, is amended  
25 to read as follows:

26 Sec. 522.092. SUSPENSION, REVOCATION, CANCELLATION, OR  
27 DENIAL OF DRIVER'S LICENSE UNDER OTHER LAWS. A person subject to

1 disqualification under this chapter may also have the person's  
2 driver's license suspended, revoked, canceled, or denied under one  
3 or more of the following, if the conduct that is a ground for  
4 disqualification is also a ground for the suspension, revocation,  
5 cancellation, or denial of a driver's license suspension under:

- 6 (1) Chapter 521;
- 7 (2) [~~Chapter 524,~~
- 8 [~~3~~] Chapter 601; or
- 9 (3) [~~4~~] Chapter 724.

10 SECTION 9. Sections 522.105(b) and (d), Transportation  
11 Code, are amended to read as follows:

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

15 (d) An appeal of a disqualification under this section is  
16 subject to Sections 724.101-724.104 [~~524.041-524.044~~].

17 SECTION 10. Section 724.035, Transportation Code, is  
18 amended by amending Subsections (a) and (b) and adding Subsection  
19 (d) to read as follows:

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

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

24 (2) if the person is a resident without a license,  
25 issue an order denying the issuance of a license to the person for  
26 one year [~~180 days~~].

27 (b) The period of suspension or denial is two years if the

1 person's driving record shows one or more alcohol-related or  
2 drug-related enforcement contacts[~~, as defined by Section~~  
3 ~~524.001(3),~~] during the 10 years preceding the date of the person's  
4 arrest.

5 (d) In this chapter, "alcohol-related or drug-related  
6 enforcement contact" means a driver's license suspension,  
7 disqualification, or prohibition order under the laws of this state  
8 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  
14 substance;

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  
21 substance; or

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

26 SECTION 11. Section 724.041(g), Transportation Code, is  
27 amended to read as follows:

1 (g) An administrative hearing under this section is  
2 governed by Subchapter D [~~Sections 524.032(b) and (c), 524.035(e),~~  
3 ~~524.037(a), and 524.040~~].

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

6 Sec. 724.047. APPEAL. Subchapter F [~~Chapter 524~~] governs an  
7 appeal from an action of the department, following an  
8 administrative hearing under this subchapter [~~chapter~~], in  
9 suspending or denying the issuance of a license.

10 SECTION 13. Chapter 724, Transportation Code, is amended by  
11 adding Subchapter F to read as follows:

12 SUBCHAPTER F. APPEAL

13 Sec. 724.101. APPEAL FROM ADMINISTRATIVE HEARING. (a) A  
14 person whose driver's license suspension is sustained may appeal  
15 the decision by filing a petition not later than the 30th day after  
16 the date the administrative law judge's decision is final. The  
17 administrative law judge's final decision is immediately  
18 appealable without the requirement of a motion for rehearing.

19 (b) A petition under Subsection (a) must be filed in a  
20 county court at law in the county in which the person was arrested  
21 or, if there is not a county court at law in the county, in the  
22 county court. If the county judge is not a licensed attorney, the  
23 county judge shall transfer the case to a district court for the  
24 county on the motion of either party or of the judge.

25 (c) A person who files an appeal under this section shall  
26 send a copy of the petition by certified mail to the department and  
27 to the State Office of Administrative Hearings at each agency's



1 headquarters in Austin. The copy must be certified by the clerk of  
2 the court in which the petition is filed.

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

5 (e) A district or county attorney may represent the  
6 department in an appeal.

7 Sec. 724.102. STAY OF SUSPENSION ON APPEAL. (a) A  
8 suspension of a driver's license under Subchapter C is stayed on the  
9 filing of an appeal petition only if:

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

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

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

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

20 (C) Section 49.04, 49.045, or 49.05, Penal Code;

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

23 (E) Section 106.041, Alcoholic Beverage Code.

24 (b) A stay under this section is effective for not more than  
25 90 days after the date the appeal petition is filed. On the  
26 expiration of the stay, the department shall impose the suspension.

27 The department or court may not grant an extension of the stay or an

1 additional stay.

2 Sec. 724.103. REVIEW; ADDITIONAL EVIDENCE. (a) Review on  
3 appeal is on the record certified by the State Office of  
4 Administrative Hearings with no additional testimony.

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

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

14 (d) An administrative law judge may change a finding or  
15 decision as to whether the person had an alcohol concentration of a  
16 level specified in Section 49.01, Penal Code, or whether a minor had  
17 any detectable amount of alcohol in the minor's system because of  
18 the additional evidence and shall file the additional evidence and  
19 any changes, new findings, or decisions with the reviewing court.

20 (e) A remand under this section does not stay the suspension  
21 of a driver's license.

22 Sec. 724.104. TRANSCRIPT OF ADMINISTRATIVE HEARING. (a)  
23 To obtain a transcript of an administrative hearing, the party who  
24 appeals the administrative law judge's decision must apply to the  
25 State Office of Administrative Hearings.

26 (b) On payment of a fee not to exceed the actual cost of  
27 preparing the transcript, the State Office of Administrative

1 Hearings shall promptly furnish both parties with a transcript of  
2 the administrative hearing.

3           SECTION 14. The change in law made by this Act applies only  
4 to a person arrested for an offense committed on or after the  
5 effective date of this Act. A person arrested for an offense  
6 committed before the effective date of this Act is covered by the  
7 law in effect when the offense was committed, and the former law is  
8 continued in effect for that purpose. For purposes of this section,  
9 an offense was committed before the effective date of this Act if  
10 any element of the offense occurred before that date.

11           SECTION 15. This Act takes effect September 1, 2009.