

By: Carter, Harless

H.B. No. 3815

A BILL TO BE ENTITLED

AN ACT

relating to the suspension of a person's driver's license or permit on conviction of a fifth offense relating to the operating of a motor vehicle while intoxicated.

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

SECTION 1. This Act may be cited as the Kelly Ray and Patsy Ann Carter Act.

SECTION 2. Chapter 55, Code of Criminal Procedure, is amended by adding Article 55.07 to read as follows:

Art. 55.07. REHABILITATION OF DRIVER'S LICENSE OR PERMIT PRIVILEGE. (a) A person whose driver's license or permit or whose eligibility for the issuance of a driver's license or permit is the subject of a court order issued under Section 49.09(i), Penal Code, may petition a court with jurisdiction over criminal matters for an order finding the person has been rehabilitated for purposes of restoring the person's driver's license or permit privileges if:

(1) the person has completed a driving while intoxicated rehabilitation program that:

(A) includes the provision of alcohol dependence counseling from a licensed chemical dependency counselor;

(B) takes not fewer than six months to complete;
and

(C) issues a certificate of completion to a person who satisfactorily completes the program and indicates the

1 date on which the person completed the program;

2 (2) for the five preceding years:

3 (A) the person has held and met all conditions
4 for an occupational license issued under Subchapter L, Chapter 521,
5 Transportation Code; and

6 (B) the person has not been convicted of an
7 offense under Chapter 49, Penal Code, relating to the operating of a
8 motor vehicle while intoxicated.

9 (b) A petitioner under this section shall provide the court
10 with the following documentation:

11 (1) three letters from persons who are members of an
12 alcohol dependence support or recovery program the petitioner
13 regularly attends attesting to the fact the petitioner regularly
14 attends the program;

15 (2) three letters from persons other than the persons
16 described in Subdivision (1) confirming the person's abstinence
17 from drugs and alcohol;

18 (3) proof that the person has completed all treatment
19 recommended for the person by a licensed chemical dependency
20 counselor; and

21 (4) a continuing care status report for the petitioner
22 provided by a licensed chemical dependency counselor.

23 (c) The court may issue an order finding the person has been
24 rehabilitated for purposes of restoring the person's driver's
25 license or permit privileges if the court finds the documentation
26 provided under Subsection (b), along with any additional evidence
27 offered by the person, constitutes credible evidence showing the

1 person has been rehabilitated and the court finds that issuing the
2 order under this section serves the interests of justice.

3 (d) A court that issues an order for a person under this
4 section shall forward a copy of the order to the Department of
5 Public Safety.

6 SECTION 3. Section 49.09, Penal Code, is amended by adding
7 Subsection (i) to read as follows:

8 (i) Notwithstanding any other law, if it is shown at the
9 trial of a person convicted of an offense under Section 49.04,
10 49.045, 49.07, or 49.08 relating to the operating of a motor vehicle
11 while intoxicated that the person has been previously convicted
12 four or more times of any offense relating to the operating of a
13 motor vehicle while intoxicated, the court shall order the
14 Department of Public Safety to suspend the person's driver's
15 license or permit for a period of 10 years, or, if the person does
16 not have a license or permit, to deny the issuance of a license or
17 permit to the person until the 10th anniversary of the date of the
18 order. To the extent of a conflict between this subsection and
19 Section 13, Article 42.12, Code of Criminal Procedure, or
20 Subchapter O, Chapter 521, Transportation Code, this subsection
21 controls.

22 SECTION 4. Sections 13(g), (j), and (k), Article 42.12,
23 Code of Criminal Procedure, are amended to read as follows:

24 (g) A jury that recommends community supervision for a
25 person convicted of an offense under Sections 49.04-49.08, Penal
26 Code, may recommend that any driver's license issued to the
27 defendant under Chapter 521, Transportation Code, not be suspended.

1 This subsection does not apply to a person:

2 (1) who is punished under Section 49.09(a) or (b),
3 Penal Code, and subject to Section 49.09(h) of that code; or

4 (2) whose driver's license or permit is the subject of
5 a court order issued under Section 49.09(i), Penal Code.

6 (j) The judge shall require a defendant who is punished
7 under Section 49.09, Penal Code, as a condition of community
8 supervision, to attend and successfully complete an educational
9 program for repeat offenders approved by the Texas Commission on
10 Alcohol and Drug Abuse. The Texas Commission on Alcohol and Drug
11 Abuse shall adopt rules and shall monitor, coordinate, and provide
12 training to persons providing the educational programs. The Texas
13 Commission on Alcohol and Drug Abuse is responsible for the
14 administration of the certification of approved educational
15 programs and may charge a nonrefundable application fee for initial
16 certification of approval or for renewal of the certification. The
17 judge may waive the educational program requirement only if the
18 defendant by a motion in writing shows good cause. In determining
19 good cause, the judge may consider the defendant's school and work
20 schedule, the defendant's health, the distance that the defendant
21 must travel to attend an educational program, and the fact that
22 ~~whether~~ the defendant resides out of state, has no valid driver's
23 license, or does not have access to transportation. The judge shall
24 set out the finding of good cause in the judgment. If a defendant is
25 required, as a condition of community supervision, to attend an
26 educational program, the court clerk shall immediately report that
27 fact to the Department of Public Safety, on a form prescribed by the

department, for inclusion in the defendant's driving record. The report must include the beginning date of the defendant's community supervision. On the defendant's successful completion of the educational program for repeat offenders, the defendant's instructor shall give notice to the Department of Public Safety for inclusion in the defendant's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program for repeat offenders within the period required by the judge, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code.

(k) Notwithstanding Sections 521.344(d)-(i), Transportation Code, if the judge, under Subsection (h) or (j) of this section, permits or requires a defendant punished under Section 49.09, Penal Code, to attend an educational program as a condition of community supervision, or waives the required attendance for such a program, and the defendant has previously been required to attend such a program, or the required attendance at the program had been waived, the judge, unless the person's driver's license or permit is the subject of a court order issued under Section 49.09(i), Penal Code, nonetheless shall order the suspension of the driver's license, permit, or operating privilege

of that person for a period determined by the judge according to the following schedule:

(1) not less than 90 days or more than 365 days, if the defendant is convicted under Sections 49.04-49.08, Penal Code;

(2) not less than 180 days or more than two years, if the defendant is punished under Section 49.09(a) or (b), Penal Code; or

(3) not less than one year or more than two years, if the person is convicted of a second or subsequent offense under Sections 49.04-49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed.

SECTION 5. Section 521.202, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The department may not issue a license to a person whose license or permit is the subject of a court order issued under Section 49.09(i), Penal Code, until the 10th anniversary of the date of the order or until a court issues an order under Article 55.07, Code of Criminal Procedure, rehabilitating the person's privilege to operate a motor vehicle.

SECTION 6. Section 521.248, Transportation Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), the ~~The~~ person may not operate a motor vehicle for more than four hours in any 24-hour period, except that on a showing of necessity the court may allow the person to drive for any period determined by the court that does not exceed 12 hours in any 24-hour period.

1 (b-1) A person whose license was suspended under Section
2 49.09(i), Penal Code, may not operate a motor vehicle for more than
3 four hours in any 24-hour period, except that on a showing of
4 necessity the court may allow the person to drive for any period
5 determined by the court that does not exceed 12 hours in any 24-hour
6 period. This subsection does not apply to a person for whom a court
7 issues an order under Article 55.07, Code of Criminal Procedure,
8 rehabilitating the person's privilege to operate a motor vehicle.

9 SECTION 7. Section 521.344, Transportation Code, is amended
10 by amending Subsections (a) and (b) and adding Subsection (j) to
11 read as follows:

12 (a) Except as provided by Sections 521.342(b) and 521.345,
13 and by Subsections (d)-(j) [~~(d)-(i)~~], if a person is convicted of an
14 offense under Section 49.04, 49.045, or 49.07, Penal Code, the
15 license suspension:

16 (1) begins on a date set by the court that is not
17 earlier than the date of the conviction or later than the 30th day
18 after the date of the conviction, as determined by the court; and

19 (2) continues for a period set by the court according
20 to the following schedule:

21 (A) not less than 90 days or more than one year,
22 if the person is punished under Section 49.04, 49.045, or 49.07,
23 Penal Code, except that if the person's license is suspended for a
24 second or subsequent offense under Section 49.07 committed within
25 five years of the date on which the most recent preceding offense
26 was committed, the suspension continues for a period of one year;

27 (B) not less than 180 days or more than two years,

1 if the person is punished under Section 49.09(a) or (b), Penal Code;
2 ~~[or]~~

3 (C) not less than one year or more than two years,
4 if the person is punished under Section 49.09(a) or (b), Penal Code,
5 and is subject to Section 49.09(h) of that code; or

6 (D) 10 years, if the person's driver's license or
7 permit is the subject of a court order issued under Section
8 49.09(i), Penal Code, except as otherwise provided by Subsection
9 (j).

10 (b) Except as provided by Section 521.342(b), if a person is
11 convicted of an offense under Section 49.08, Penal Code, the
12 license suspension:

13 (1) begins on a date set by the court that is not
14 earlier than the date of the conviction or later than the 30th day
15 after the date of the conviction, as determined by the court; and

16 (2) continues for a period set by the court according
17 to the following schedule:

18 (A) ~~[or]~~ not less than 180 days or more than two
19 years, except that if the person's license is suspended for a second
20 or subsequent offense under Section 49.08, Penal Code, committed
21 within 10 years of the date on which the most recent preceding
22 offense was committed, the suspension continues for a period set by
23 the court of not less than one year or more than two years; or

24 (B) 10 years, if the person's driver's license or
25 permit is the subject of a court order issued under Section
26 49.09(i), Penal Code, except as otherwise provided by Subsection
27 (j).

1 (j) The license suspension for a person whose driver's
2 license or permit is the subject of a court order issued under
3 Section 49.09(i), Penal Code, expires and the department may issue
4 a license to the person on or after the date the department
5 receives:

6 (1) a copy of an order finding the person has been
7 rehabilitated for purposes of restoring the person's driver's
8 license or permit privileges issued by a court under Article 55.07,
9 Code of Criminal Procedure; and

10 (2) a copy of the certification issued to the person by
11 the driving while intoxicated rehabilitation program required
12 under Article 55.07(a)(1), Code of Criminal Procedure, that
13 indicates the person completed the rehabilitation program under
14 that section within the 12-month period before the date the person
15 provides the copy to the department under this subsection.

16 SECTION 8. The change in law made by this Act applies only
17 to the trial of an offense committed on or after the effective date
18 of this Act. The trial of an offense committed before the effective
19 date of this Act is governed by the law in effect on the date the
20 offense was committed, and the former law is continued in effect for
21 that purpose. For purposes of this section, an offense was
22 committed before the effective date of this Act if any element of
23 the offense occurred before that date.

24 SECTION 9. This Act takes effect September 1, 2013.