

By: Wilson

H.B. No. 2798

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the requirement that a peace officer take possession of
3 a person's driver's license following the person's failure to pass
4 or refusal to consent to a test for intoxication.

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

6 SECTION 1. Sections 524.011(b), (c), and (e),
7 Transportation Code, are amended to read as follows:

8 (b) A peace officer shall:

9 (1) serve or, if a specimen is taken and the analysis
10 of the specimen is not returned to the arresting officer before the
11 person is admitted to bail, released from custody, delivered as
12 provided by Title 3, Family Code, or committed to jail, attempt to
13 serve notice of driver's license suspension by delivering the
14 notice to the arrested person; and

15 (2) ~~[take possession of any driver's license issued by~~
16 ~~this state and held by the person arrested,~~

17 ~~[(3) issue a temporary driving permit to the person~~
18 ~~unless department records show or the officer otherwise determines~~
19 ~~that the person does not hold a driver's license to operate a motor~~
20 ~~vehicle in this state, and~~

21 ~~[(4)]~~ send to the department not later than the fifth
22 business day after the date of the arrest:

23 (A) a copy of the driver's license suspension
24 notice; and

1 (B) ~~[any driver's license taken by the officer~~
2 ~~under this subsection;~~

3 ~~[(C) a copy of any temporary driving permit~~
4 ~~issued under this subsection; and~~

5 ~~[(D)]~~ a sworn report of information relevant to
6 the arrest.

7 (c) The report required under Subsection (b)(2)(B)
8 ~~[(b)(4)(D)]~~ must:

9 (1) identify the arrested person;

10 (2) state the arresting officer's grounds for
11 believing the person committed the offense;

12 (3) give the analysis of the specimen if any; and

13 (4) include a copy of the criminal complaint filed in
14 the case, if any.

15 (e) The department shall develop forms for the notice of
16 driver's license suspension ~~[and temporary driving permits]~~ to be
17 used by all state and local law enforcement agencies.

18 SECTION 2. Section 524.032(d), Transportation Code, is
19 amended to read as follows:

20 (d) A request for a hearing stays suspension of a person's
21 driver's license until the date of the final decision of the
22 administrative law judge. ~~[If the person's driver's license was~~
23 ~~taken by a peace officer under Section 524.011(b), the department~~
24 ~~shall notify the person of the effect of the request on the~~
25 ~~suspension of the person's license before the expiration of any~~
26 ~~temporary driving permit issued to the person, if the person is~~
27 ~~otherwise eligible, in a manner that will permit the person to~~

1 ~~establish to a peace officer that the person's driver's license is~~
2 ~~not suspended.]~~

3 SECTION 3. Section 524.035(c), Transportation Code, is
4 amended to read as follows:

5 (c) If the administrative law judge does not find in the
6 affirmative on each issue in Subsection (a), the department shall:

7 (1) ~~[return the person's driver's license to the~~
8 ~~person, if the license was taken by a peace officer under Section~~
9 ~~524.011(b),~~

10 [~~(2)~~] reinstate the person's driver's license; and

11 (2) [~~(3)~~] rescind an order prohibiting the issuance of
12 a driver's license to the person.

13 SECTION 4. Sections 724.032(a), (c), and (d),
14 Transportation Code, are amended to read as follows:

15 (a) If a person refuses to submit to the taking of a
16 specimen, whether expressly or because of an intentional failure of
17 the person to give the specimen, the peace officer shall:

18 (1) serve notice of license suspension or denial on
19 the person; and

20 (2) ~~[take possession of any license issued by this~~
21 ~~state and held by the person arrested,~~

22 [~~(3)~~] ~~issue a temporary driving permit to the person~~
23 ~~unless department records show or the officer otherwise determines~~
24 ~~that the person does not hold a license to operate a motor vehicle~~
25 ~~in this state, and~~

26 [~~(4)~~] make a written report of the refusal to the
27 director of the department.

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

3 (1) a copy of the notice of suspension or denial; and

4 (2) ~~[any license taken by the officer under Subsection~~
5 ~~(a),~~

6 ~~[(3) a copy of any temporary driving permit issued~~
7 ~~under Subsection (a), and~~

8 ~~[(4)]~~ a copy of the refusal report.

9 (d) The department shall develop forms for notices of
10 suspension or denial ~~[and temporary driving permits]~~ to be used by
11 all state and local law enforcement agencies.

12 SECTION 5. Section 724.041(c), Transportation Code, is
13 amended to read as follows:

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

23 SECTION 6. Section 724.043(b), Transportation Code, is
24 amended to read as follows:

25 (b) If the administrative law judge does not find in the
26 affirmative on each issue under Section 724.042, the department
27 shall ~~[return the person's license to the person, if the license was~~

1 ~~taken by a peace officer under Section 724.032(a), and] reinstate~~
2 the person's license or rescind any order denying the issuance of a
3 license because of the person's refusal to submit to the taking of a
4 specimen under Section 724.032(a).

5 SECTION 7. Section 2.005(b), Family Code, is amended to
6 read as follows:

7 (b) The proof must be established by:

8 (1) a driver's license or identification card issued
9 by this state, another state, or a Canadian province that is current
10 or has expired not more than two years preceding the date the
11 identification is submitted to the county clerk in connection with
12 an application for a license;

13 (2) a United States passport;

14 (3) a current passport issued by a foreign country or a
15 consular document issued by a state or national government;

16 (4) an unexpired Certificate of United States
17 Citizenship, Certificate of Naturalization, United States Citizen
18 Identification Card, Permanent Resident Card, Temporary Resident
19 Card, Employment Authorization Card, or other document issued by
20 the federal Department of Homeland Security or the United States
21 Department of State including an identification photograph;

22 (5) an unexpired military identification card for
23 active duty, reserve, or retired personnel with an identification
24 photograph;

25 (6) an original or certified copy of a birth
26 certificate issued by a bureau of vital statistics for a state or a
27 foreign government;

1 (7) an original or certified copy of a Consular Report
2 of Birth Abroad or Certificate of Birth Abroad issued by the United
3 States Department of State;

4 (8) an original or certified copy of a court order
5 relating to the applicant's name change or sex change;

6 (9) school records from a secondary school or
7 institution of higher education;

8 (10) an insurance policy continuously valid for the
9 two years preceding the date of the application for a license;

10 (11) a motor vehicle certificate of title;

11 (12) military records, including documentation of
12 release or discharge from active duty or a draft record;

13 (13) an unexpired military dependent identification
14 card;

15 (14) an original or certified copy of the applicant's
16 marriage license or divorce decree;

17 (15) a voter registration certificate;

18 (16) a pilot's license issued by the Federal Aviation
19 Administration or another authorized agency of the United States;

20 (17) a license to carry a handgun under Subchapter H,
21 Chapter 411, Government Code;

22 (18) [~~a temporary driving permit or~~] a temporary
23 identification card issued by the Department of Public Safety; or

24 (19) an offender identification card issued by the
25 Texas Department of Criminal Justice.

26 SECTION 8. Sections 524.011(f), 524.037(c), and
27 724.032(e), Transportation Code, are repealed.

1 SECTION 9. The change in law made by this Act applies only
2 to a failure to pass a test for intoxication or a refusal to submit
3 to the taking of a specimen to test for intoxication that occurs on
4 or after the effective date of this Act. A failure to pass a test
5 for intoxication or refusal to submit to the taking of a specimen
6 that occurred before the effective date of this Act is governed by
7 the law in effect when the test was taken or the refusal was made,
8 and the former law is continued in effect for that purpose.

9 SECTION 10. This Act takes effect September 1, 2021.