88R12379 CJD-D

By:  Dutton H.B. No. 2922

A BILL TO BE ENTITLED

AN ACT

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

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

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  Chapter 524, Transportation Code, is repealed.

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

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

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

(h)  If a child is adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on which that adjudication is based is a ground for a driver's license suspension under Chapter [~~524 or~~] 724, Transportation Code, each of the suspensions shall be imposed. The court imposing a driver's license suspension under this section shall credit a period of suspension imposed under Chapter [~~524 or~~] 724, Transportation Code, toward the period of suspension required under this section, except that if the child was previously adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, credit may not be given.

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

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

(1)  criminal misdemeanor cases;

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

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

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

SECTION 5.  Section 123.009, Government Code, is amended to read as follows:

Sec. 123.009.  OCCUPATIONAL DRIVER'S LICENSE. Notwithstanding Section 521.242, Transportation Code, if a participant's driver's license has been suspended as a result of an alcohol-related or drug-related enforcement contact, as defined by Section 724.035 [~~524.001~~], Transportation Code, or as a result of a conviction under Section 49.04, 49.07, or 49.08, Penal Code, the judge or magistrate administering a drug court program under this chapter may order that an occupational license be issued to the participant.  An order issued under this section is subject to Sections 521.248-521.252, Transportation Code, except that any reference to a petition under Section 521.242 of that code does not apply.

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

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

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

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

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

SECTION 7.  Section 521.2461, Transportation Code, is amended to read as follows:

Sec. 521.2461.  TESTING FOR ALCOHOL OR CONTROLLED SUBSTANCES.  The court granting an occupational license under this subchapter may require as a condition of the license that the person submit to periodic testing for alcohol or controlled substances, to be conducted by an entity specified by the court, if the person's license has been suspended under Chapter [~~524 or~~] 724 or as a result of the person's conviction of an offense involving the operation of a motor vehicle while intoxicated.

SECTION 8.  Sections 521.251(a) and (e), Transportation Code, are amended to read as follows:

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

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

SECTION 9.  Sections 522.081(b) and (c), Transportation Code, are amended to read as follows:

(b)  Except as provided by this subsection, this subsection applies to a violation committed while operating any type of motor vehicle, including a commercial motor vehicle.  A person who holds a commercial driver's license or commercial learner's permit is disqualified from driving a commercial motor vehicle for one year:

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

(2)  on first conviction of:

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

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

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

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

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

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

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

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

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

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

(1)  the person:

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

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

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

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

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

SECTION 10.  Section 522.092, Transportation Code, is amended to read as follows:

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

(1)  Chapter 521;

(2)  [~~Chapter 524;~~

[~~(3)~~]  Chapter 601; or

(3) [~~(4)~~]  Chapter 724.

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

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

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

SECTION 12.  Section 724.035, Transportation Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

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

(d)  In this chapter, "alcohol-related or drug-related enforcement contact" means a driver's license suspension, disqualification, or prohibition order under the laws of this state or another state resulting from:

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

(A)  intoxicated;

(B)  under the influence of alcohol; or

(C)  under the influence of a controlled substance;

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

(A)  intoxicated;

(B)  under the influence of alcohol; or

(C)  under the influence of a controlled substance; or

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

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

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

SECTION 14.  Section 724.047, Transportation Code, is amended to read as follows:

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

SECTION 15.  Chapter 724, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. APPEAL

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

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

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

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

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

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

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

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

(A)  Article 6701l-1, Revised Statutes, as that law existed before September 1, 1994;

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

(C)  Section 49.04, 49.045, or 49.06, Penal Code;

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

(E)  Section 106.041, Alcoholic Beverage Code.

(b)  A stay under this section is effective for not more than 90 days after the date the appeal petition is filed. On the expiration of the stay, the department shall impose the suspension. The department or court may not grant an extension of the stay or an additional stay.

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

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

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

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

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

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

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

SECTION 16.  The change in law made by this Act applies only to a person arrested for an offense committed on or after the effective date of this Act. A person arrested for an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 17.  This Act takes effect September 1, 2023.