

SUBJECT: Automatic license suspension of persons arrested for intoxication offenses

COMMITTEE: Criminal Jurisprudence — favorable, with amendment

VOTE: 7 ayes — Hinojosa, Garcia, Green, Keel, Nixon, Smith, Wise
1 nay — Dunnam
1 absent — Talton

SENATE VOTE: On final passage, April 28 — voice vote

WITNESSES: No public hearing

BACKGROUND: Under current law, an officer must provide certain verbal and written information before requesting a person to submit to the taking of a specimen. This information includes:

- ! a person's refusal to submit to a test may be admissible in a subsequent prosecution;
- ! a person's refusal automatically will result in license suspension, whether or not the person subsequently is prosecuted as a result of the arrest;
- ! the license of a person over 21 who submits to the taking of a specimen showing a blood alcohol level of more than .10 automatically will be suspended for not less than 60 days, whether or not the person is subsequently prosecuted as a result of the arrest;
- ! if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license will be automatically suspended for not less than 60 days, even if the person submits to the test, that if the person submits to the test and it shows that the person had an alcohol concentration less than .10, the minor may be subject to less severe criminal penalties; and
- ! the person has a right to a hearing on the suspension or denial.

If the person arrested submits to a breath or blood test that shows a blood alcohol level of at least .10. alcohol, an arresting officer is required to serve notice for suspension of a driver's license at the time of arrest. The Department of Public Safety (DPS) then makes a determination on whether to

suspend the person's license. Currently, the license of a person who refuses to submit to a blood or breath test automatically is suspended, regardless of whether the person is prosecuted for the arrest. The suspension lasts for at least 120 days if the person is under 21, or at least 90 days if the person is over 21. If a person over 21 submits to a blood or breath test that shows a blood alcohol level over the legal limit, the person's license automatically is suspended for at least 60 days, regardless of whether the person subsequently is prosecuted.

A request for a hearing stays the suspension of a person's license until an administrative law judge makes a final decision on the case. A person may request that a hearing date be rescheduled and a continuance granted. A continuance stays the suspension of a license until the final decision of the judge.

DIGEST:

SB 1774, as amended, would amend provisions in the Transportation Code regarding suspension of a license for driving while intoxicated (sec. 49.04, Penal Code), intoxication assault (sec. 49.07, Penal Code), intoxication manslaughter (sec. 49.08, Penal Code), or driving under the influence by a minor (sec. 106.041, Alcoholic Beverage Code).

Confiscation of license and temporary permit. The bill would require an arresting officer to take possession of a person's driver's license at the time of arrest. The officer would issue a temporary driving permit to the person, unless DPS records showed that the person already did not already hold a Texas license or permit. A temporary permit would be valid for 40 days. If the person was driving a commercial vehicle at the time of arrest, a temporary permit authorizing the person to drive a commercial vehicle would not be effective until 24 hours after the arrest. The bill would require DPS to develop a form to be used by law enforcement agencies for the issuance of a temporary driving permit.

Within five business days of the arrest, the officer would be required to send any confiscated license to DPS, as well as a copy of a any temporary permit issued at the time of arrest. The bill would eliminate the requirement under current law that the arresting officer include in the required arrest report to be sent to DPS a copy of any criminal complaint filed in the case.

The bill, as amended, would entitle an arrested person automatically to receive an occupational driver's license if the person's record showed no alcohol-related offenses during the preceding five years. The person would have to request the license in writing. The occupational license would be subject to the same restrictions as any other occupational license.

As amended, the bill would authorize an administrative law judge to require counseling or rehabilitation for alcohol dependence as a condition of granting the occupational license. The fee for a temporary occupational permit issued to a person whose license was suspended would be \$125.

Suspension period. SB 1774, as amended, would increase to one year the period of suspension for an adult with one or more alcohol- or drug-related offenses within the preceding five years. It would increase to six months the period of suspension for an adult with one or more alcohol- or drug-related offenses within the preceding ten years. An adult with no offenses within the preceding ten years would face a suspension of 60 days.

The bill would require DPS to notify a person whose license was confiscated that a hearing request or continuance would delay the license suspension until final disposition by an administrative law judge. DPS would have to notify the person in a manner that would allow the person to prove to a peace officer that the person's license is not suspended. The notice would have to occur before the expiration of the temporary permit issued to the person.

If a hearing judge did not find against the license holder, DPS would have to return a confiscated license to the license holder.

Information provided by the arresting officer. The bill as amended would require an officer to inform a person, verbally and in writing, that refusal to submit to a breath or blood test could result in immediate confiscation of the person's license for up to six months. The bill would require an officer to inform a person that if the person were to submit to a blood or breath test, and the analysis showed that the person had a blood alcohol level of over .10, the person's license could be immediately confiscated and suspended for 60 days. It also would require an officer to inform a person under 21 that if alcohol was detectable in any amount in the person's system, the officer would be required to take possession of the person's license.

The bill would specify that evidence of a person's refusal to submit would be admissible if the officer substantially complied with requirements to convey certain information. The bill would eliminate all other existing provisions regarding information provided by an officer.

The bill would take effect on September 1, 1999.

**SUPPORTERS
SAY:**

This bill would help keep intoxicated drivers off the road, thus making Texas highways safer and reducing the number of alcohol-related deaths and injuries.

Texas has a high refusal rate for blood and breath tests. One study shows that 46 percent of DWI suspects in Texas refuse to take the tests at the time of arrest. The national refusal rate is under 20 percent. Refusal to take the test reduces that amount of evidence against a suspect, making it very difficult to prosecute and keep the person from repeating the offense. One of the reasons the refusal rate is so high in Texas is because people are not presented with options that motivate them to take the test. This bill would allow arresting officers to warn suspects of the lengthy license suspension periods that could result in refusal to provide a specimen.

Currently, 28 states confiscate licenses at the time of arrest. This is a generally accepted practice that keeps dangerous drivers off the streets. Suspending a person's license for six or twelve months, depending on their history of intoxication offenses, would help greatly reduce the number of dangerous drivers on the roads.

Alcohol-related accidents have dropped substantially since Texas implemented administrative license revocation in 1995. In 1998, the number of administrative suspensions increased dramatically. Statistics show that administrative revocation is an effective way of reducing accidents and injuries. By making the period of suspension longer and more of a deterrent, this bill would dissuade people from driving while intoxicated.

The bill would not pose a challenge to the constitutional rights of the innocently accused. The extreme notion that an innocent person might lose his or her license because of refusal to submit to a test is preposterous because the innocent person would have no reason to refuse in the first place. In the unlikely event that an innocent person's license was confiscated, the

temporary permit issued at the time of arrest would give that person forty days to right the situation. Furthermore, the bill would actually protect the rights of innocent people by requiring officers to inform them that their refusal to take a test might result in suspension of their license.

OPPONENTS
SAY:

A person's license should not be confiscated at the time of arrest. Although no one disputes that drunk drivers should not be on the roads, licenses should be suspended only after a person is found guilty of a crime.

This bill would unfairly coerce people into providing a breath or blood specimen, even when they may be innocent. Though officers are not supposed to request a person to submit to the taking of a specimen without probable cause, there are cases when an officer might for no good reason challenge a person to provide the specimen. This situation would violate a person's constitutional rights. If a person were to refuse on the basis of a constitutional violation, that person might unfairly face a license suspension without ever facing prosecution.

Suspending a person's license does not necessarily keep them from driving. This bill would not substantially reduce the number of unsafe drivers, because unsafe drivers are not likely to cease driving upon license suspension. The bill could, however, impose stiff penalties on innocent drivers who for other reasons refuse to give a test.

OTHER
OPPONENTS
SAY:

The bill should require officers to explain the consequences of a person's actions in a way that is not coercive. Most people who are stopped by an officer do not know the law well, and they may not be aware of the implications of their decisions. If a driver's license is at stake, those accused should be fully aware of the weight of their decisions.

NOTES:

A committee amendment would eliminate a requirement in the Senate-passed version that upon request of the arrested person, and after the arresting officer had provided the required information relating to possible license suspensions, the officer would have to explain the consequences of submitting or refusing to submit to a specimen in a manner that was not coercive or misleading.

A committee amendment would change the suspension period for an adult with a previous conviction in the past ten years to six months from one year,

as in the Senate version. It also would add provisions for the automatic issuance of an occupational license.