

SUBJECT: Extending license suspension for drunk drivers refusing breath test

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Talton, Green, Martinez Fischer, Shields
0 nays
4 absent — Dunnam, Keel, Garcia, Kitchen

WITNESSES: For — Joe Bishop, The Century Council; P.J. Brock, Arlington Police Officers' Association; Ken Evans, Round Rock Police Officers' Association; Bill Lewis, Mothers Against Drunk Driving; Kevin Quinlan, National Transportation Safety Board; Lt. Calvin Smith, Austin Police Department; Lisa White; *Registered but did not testify*: Cris Andersen, San Antonio Police Officers' Association; Ralph Blackman, The Century Council; John Dahill, Dallas County DWI Task Force; Steve T. Lyons, Houston Police Department; Mike Sheffield, Austin Police Association and Combined Law Enforcement Associations of Texas; Frederic C. Warner, Jr., Guinness/United Distillers and Vintners; Laura Dean-Mooney; Felix Rendon

Against — *Registered but did not testify*: Keith S. Hampton, Texas Criminal Defense Lawyers' Association

On — *Registered but did not testify*: Angela Parker, Texas Department of Public Safety

BACKGROUND: The Transportation Code outlines regulations regarding driver's license suspension in drunk driving cases.

Request for blood or breath specimen. Under sec. 724.015, before a peace officer can request that a suspected drunk driver take a breath or blood test, the officer must inform the driver orally and in writing that refusal to submit to the test can be used in future prosecution and will result in a 90-day license suspension for adult drivers and a 120-day suspension for drivers under 21. If an adult takes the test and it shows a blood alcohol concentration of .08 or greater, or if a minor takes the test and it shows any detectable amount of alcohol, a 60-day license suspension is automatic, whether or not the person subsequently is prosecuted. If a person refuses to

take a breath or blood test, sec. 724.032 requires the peace officer to serve notice on the person of license suspension or denial and to submit a written report of the refusal to the Department of Public Safety (DPS). The report must include the officer's reasons for believing the person was driving while intoxicated.

License suspension. Sec. 524.011 requires a peace officer to serve notice to a person arrested for DWI that his or her driver's license has been suspended and to send a copy of the notice to DPS not later than the fifth business day after the arrest. If the person did not have a license, he or she is denied issuance of a license for 90 days if an adult, or for 120 days if a minor under 21. The suspension or denial takes effect on the 40th day after the date of notice of suspension.

Sec. 524.022 mandates that the suspension period for adults who take a blood or breath test last 60 days if the driving record for the past five years is clear of alcohol- or drug-related charges; 120 days if the driver has refused a breath test or blood analysis in the last five years; and 180 days if the driver previously has had his or her license suspended or revoked for drug- or alcohol-related charges. Under sec. 724.035, if the person refuses to take the blood or breath test, the respective suspension periods are 90 days, 180 days, and one year.

Minors under 21 who take the blood or breath test face a 60-day suspension with a clear record, 120 days with a previous conviction of an alcohol-related charge, including possession of alcohol, and 180 days with two or more previous alcohol-related charges. Those who refuse to take the blood or breath test face respective suspension periods of 120 days, 240 days, and one year.

Administrative hearing. People arrested for DWI have a right to a hearing on the license suspension if they make a request for a hearing to DPS within 15 days. The suspension is stayed until the administrative law judge makes a final ruling. Under sec. 524.035, if the judge finds that the person had a .08 blood alcohol concentration while operating a motor vehicle or was a minor with any detectable amount of alcohol in his or her system while operating a motor vehicle, the suspension is sustained. Otherwise, the license is reinstated.

DIGEST: HB 63 would require an officer, before requesting a blood or breath specimen, to inform the driver orally and in writing that refusal to submit a specimen would result in a 180-day license suspension unless the driver had a prior alcohol- or drug-related offense, in which case suspension would last two years.

Whether or not the person refused to submit a blood or breath specimen, the officer would have to seize the person's Texas driver's license and issue a temporary driving permit, unless DPS records showed that the person did not have a Texas driver's license. The officer would have to send the license and a copy of the temporary permit to DPS within five business days. The temporary license would expire on the 41st day after issuance. If the person were driving a commercial vehicle, the temporary license would not become effective until 24 hours after the time of arrest.

HB 63 would extend the period of suspension for failure of a blood or breath test from 60 to 90 days if the person had a clear record, and from 120 or 180 days to one year if the person had any alcohol- or drug-related contacts with law enforcement in the prior 10 years. For refusal to submit a blood or breath specimen, the suspension period would be extended from 90 to 180 days if the person had a clear record, and from 180 days to two years if the person had one or more alcohol-or drug-related law enforcement contacts within the previous 10 years.

If a peace officer took a person's license, DPS would have to notify the person that the request for a hearing would stay the license suspension until an administrative law judge rendered a decision. DPS would have to notify people in a manner that would allow them to establish to a peace officer that their licenses were not suspended. If the judge did not find that the person was driving while intoxicated, DPS would have to return the person's license. Otherwise, the suspension would remain in effect.

This bill would take effect September 1, 2001.

SUPPORTERS SAY: HB 63 would help Texas crack down on drunk driving. Texas ranks number one in the country for alcohol-related traffic deaths and has the highest percentage of drivers stopped for DWI who refuse to take a breath or blood test, making conviction difficult. The national average for breath-test refusal is 19 percent. In Texas, 46 percent of drivers refuse the test. This can be

attributed to a law that provides a license suspension of only 30 days longer for refusing the test rather than taking it, so that there is no real disadvantage to refusing. Drunk drivers know that if they do not take the test, a conviction is unlikely, and their records will remain clean. By doubling the penalty for refusing a breath test, this bill would give drivers an incentive to take one. In California, refusal to take the test brings a one-year suspension of a driver's license. As a result, only 5 percent of Californians refused the test in 1999. That year, California had 468 fewer alcohol-related traffic fatalities than Texas, even though it has 13 million more residents than Texas.

This bill would not violate due-process rights. Drivers would receive temporary licenses immediately upon seizure of their driver's licenses, and if they requested a hearing, the suspension would be stayed until an administrative law judge made a final decision in the case. Similar laws already are in effect in 39 other states

HB 63 would help remove dangerous drivers from the road by implementing a swift and sure driver's license suspension. Losing a license immediately for drunk driving would let drivers know that the state means business. Even if some drivers continued to drive with suspended licenses, they would tend to drive less and would drive more carefully, for fear of being caught.

This bill would serve as a strong deterrent to drunk driving because drivers would be aware that they would face immediate consequences. The potential embarrassment of having to show a paper administrative license as identification at the grocery store, bank, or airport would make many drivers think twice about getting behind the wheel drunk. In addition, having only a paper license would alert law enforcement officers of previous driving offenses when they pulled a driver over and would prevent drunk drivers from circumventing ignition interlock systems by renting a car.

HB 63 would not be too expensive. The fiscal note does not take into account the fees DPS receives for reinstatement of suspended driver's licenses, which generate more than \$6 million annually. Money generated from the fee goes directly to general revenue, which may be why the fiscal note disregarded it. Even more money likely would be generated under this law because drivers would have a greater incentive to have their licenses reinstated, as they would not still have their original licenses in hand. Also,

California's Department of Motor Vehicles estimated that it would cost \$10 million to implement its law, but the actual cost was \$1 million.

OPPONENTS
SAY:

HB 63 would take away the due-process rights of drivers arrested for DWI. Before a license can be taken away, drivers must have access to a hearing. It is not adequate to provide a temporary paper license and instructions on how to persuade a police officer that a license is not really suspended while awaiting a hearing. The license should be seized only after proper adjudication. In addition, taking the license away at the time of arrest would create problems for drivers when they needed to show photo identification to write checks, make bank withdrawals, and fly on commercial airliners.

Drivers should not be punished for failure to offer evidence that could incriminate them. The U.S. Constitution's Fifth Amendment guarantees that no person shall be compelled to be a witness against himself or herself. It is wrong to provide a greater punishment for failure to submit evidence against oneself than for conviction of the crime for which one failed to give evidence.

HB 63 would suspend driver's licenses for too long, especially in the case of people who refused to submit to a breath test. People are leery of the accuracy of breath tests, and some refuse to take one because of a fear that they would be implicated falsely of driving drunk. Improperly calibrated machines can give false readings for people who have just used mouthwash, taken cough syrup, or consumed an amount of alcohol that would put them below the .08 limit. People who protect themselves by not taking this test should not be forced to lose their driver's licenses for six months or more.

This bill would be too expensive. According to the fiscal note, DPS would have to hire new employees to administer it and contract for about 2,100 hours of programming to change current systems and create a new database, at a cost to taxpayers of \$3.4 million over the next five years.

NOTES:

According to the fiscal note, HB 63 would cost about \$1.7 million in general revenue in fiscal 2002-03. DPS estimates that 90,000 licenses would be received annually from local law enforcement agencies. The agency would have to store and evaluate each license and expects that it would have to handle more occupational license requests because of longer suspension periods required by the bill. The Legislative Budget Board estimates that an

additional 13 employees would be needed to handle the change and that 2,112 hours of contract programming would be necessary to change current database systems to integrate the new temporary licenses.

The companion bill, SB 1560 by Zaffirini, has been referred to the Senate Criminal Justice Committee.

A number of bills to address this issue were introduced during the 76th Legislature. HB 2658 by Wolens, which would have allowed seizure of driver's licenses and replacement with a temporary permit as well as an extension of license suspension periods, died in the House Criminal Jurisprudence Committee. Its companion, SB 1774 by Zaffirini, passed the Senate and was placed on the House Calendar late in the session, but was never voted on. Similar bills, SB 388 by Lucio, HB 2327 by Smith, SB 1406 by Zaffirini, and SB 1407 by Zaffirini, all died in the House Criminal Jurisprudence Committee.