

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1774  
By: Zaffirini  
Criminal Justice  
4/26/1999

Committee Report (Substituted - REVISED)

### **DIGEST**

Currently, the percentage of persons driving while intoxicated in Texas who refuse to take a breath test is significantly higher than the national average. It has been cited that prosecutors believe that lengthening the driver's license suspension period and confiscating licenses immediately for breath test refusal would encourage more suspects to take breath tests. This bill would lengthen the driver's license suspension period for first time and repeat offense breath test refusal, increase the suspension period for repeat offense breath test failure, and authorize arresting officers to confiscate a driver's license at the time of arrest for breath test failure or refusal.

### **PURPOSE**

As proposed, S.B. 1774 sets forth procedures for the suspension of a person's driver's license following the person's arrest for certain intoxication offenses.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 524.011, Transportation Code, by amending Subsections (b), (c), and (e) and adding Subsection (f), to require a peace officer to: take possession of any driver's license issued by this state held by a person arrested; issue to the person a temporary driving permit unless Department of Public Safety (DPS) records show or the officer determines that the person does hold a license or permit to operate a vehicle in this state; and send any driver's license taken by the officer and a copy of any temporary permit issued to DPS. Requires a sworn report of information relevant to the arrest required under Subsection (b)(4)(D) to contain certain information. Requires DPS to develop forms, rather than a form, for the notice of driver's license suspension and the temporary driving permit to be, rather than that shall, used by certain law enforcement agencies. Provides that a temporary permit is valid for 40 days after the date of issuance. Provides that a temporary drivers permit that authorizes an individual to drive a commercial vehicle is not effective until 24 hours after the arrest, if the person was driving a commercial vehicle as defined by Section 522.003.

SECTION 2. Amends Subsection (a), Section 524.022, Transportation Code, to provide that a period of suspension for an adult is one year if the person fails an intoxication test and the person's driving record shows one or more alcohol-or-drug-related contacts during the 10, rather than five, years preceding the date of arrest. Deletes a provision regarding a suspension period of 120 days.

SECTION 3. Amends Subsection (d), Section 524.032, Transportation Code, to require DPS to notify the person whose license was taken under Section 524.011(b) of the effect of the hearing request on the suspension of the person's license before the expiration of the temporary permit issued, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's driver's license is not suspended.

SECTION 4. Amends Subsection (c), Section 524.035, Transportation Code, to require DPS to return the person's driver's license taken under Section 524.011(b), if an administrative law judge does not find in the affirmative on each issue in Subsection (a). Makes conforming changes.

SECTION 5. Amends Section 524.037, Transportation Code, by adding Subsection (c), to require DPS to notify the person whose license was taken under Section 524.011(b) of the effect of the continuance on

the suspension of the person's license before the expiration of the temporary permit issued, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's driver's license is not suspended.

SECTION 6. Amends Section 724.015, Transportation Code, to require an officer before requesting a specimen to inform a person: that the officer is requested to take possession of any driver's license issued by this state held by the person for not less than one year if the person refuses to submit to an intoxication test; that the officer is required to take possession of any driver's license issued by this state if the person is 21 years of age or older and an analysis of a specimen shows a certain level of alcohol concentration; and that the officer is required to take possession of a driver's license issued by this state if the analysis of a specimen show that a person under 21 had an alcohol concentration of a level specified by Chapter 49, Penal Code, but if the alcohol level of the person under 21 is less than the level specified by Chapter 49, the person under 21 may be subject to less severe penalties. Authorizes the officer to explain the information required by this section or provide additional information regarding the consequences of submission or refusal to submit to a taking of a specimen. Provides that evidence of a person's refusal to submit to a taking of a specimen is not inadmissible in a hearing or in a court, provided that the officer substantially complies with this section. Deletes text regarding a 90 day period of suspension. Deletes text regarding a 120 day period of suspension.

SECTION 7. Amends Section 724.032, Transportation Code, as follows:

Sec. 724.032. New heading: OFFICER'S DUTIES FOR DRIVER'S LICENSE SUSPENSION; WRITTEN REFUSAL REPORT. Requires a peace officer to forward to DPS: a copy of the notice of suspension or denial; any driver's license taken by the officer under Subsection (a); a copy of any temporary driver's permit issued; and a copy of the refusal report. Deletes text regarding a copy of the notice of suspension. Makes conforming changes.

SECTION 8. Amends Section 724.035, Transportation Code, to require DPS to suspend a person's license for one year, or issue an order denying the issuance of a license to a person without a license for one year, if the person refuses to submit to the taking of a specimen. Deletes a provision regarding a 180 day period of suspension or denial. Deletes a provision regarding a one year period of suspension or denial. Makes a conforming change.

SECTION 9. Amends Subsection (c), Section 724.041, Transportation Code, to require DPS to notify the person whose license was taken under Section 724.032(a) of the effect of the request on the suspension of the person's license before the expiration of the temporary permit issued, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's driver's license is not suspended.

SECTION 10. Amends Subsection (b), Section 724.043, Transportation Code, to require DPS to return the person's driver's license taken under Section 724.032(a), if an administrative law judge does not find in the affirmative on each issue under Section 724.042. Makes a conforming change.

SECTION 11. Amends Section 521.251, Transportation Code, by adding Subsection (e) to require the fee for an occupational license to be \$250 for any occupational license issued to a person whose driver's license is currently under suspension as a result of an alcohol- or drug-related enforcement contact under Chapter 49, Penal Code, or an administrative license suspension under Chapter 524 or 724.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 1999.

SECTION 14. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

Relating clause.

Sets forth procedures for the suspension of a person's driver's license following the person's arrest for certain intoxication offenses.

## SECTION 1.

Amends Section 524.011, Transportation Code to require a sworn report of information relevant to the arrest required under Subsection (b)(4)(D) to contain certain information. Requires DPS to develop forms, rather than a form, for the notice of driver's license suspension and the temporary driving permit to be, rather than that shall, used by certain law enforcement agencies. Provides that a temporary driver's permit that authorizes an individual to drive a commercial vehicle is not effective until 24 hours after the time of arrest, if the person was driving a commercial vehicle as defined by Section 522.003. Deletes text regarding nonresidents. Deletes proposed SECTION 3.

## SECTION 2.

Amends Section 524.022(a), Transportation Code, to reinstate a 60-day period of suspension for certain persons.

## SECTION 3.

Adds SECTION 3 to amend Section 524.032(d), Transportation Code, to require DPS to notify a person of the request on the suspension of the person's license, if the person's license was taken under Section 524.011(b).

## SECTION 4.

Adds SECTION 4 to amend Section 524.035(c), Transportation Code, to require DPS to return a person's license taken under Section 524.011(b), if certain circumstances exist.

## SECTION 5.

Adds SECTION 5 to amend Section 524.037, Transportation Code, by adding Subsection (c), to notify a person of the continuance on the suspension of the person's license, if the person's license was taken under Section 524.011(b).

## SECTION 6.

Amends Section 724.015, Transportation Code, to require an officer to inform a person orally and in writing of the consequences resulting from the submission or refusal to submit to a taking of a specimen. Reinstates automatic period of suspension for a certain person. Authorizes the officer to explain the information required by this section or provide additional information regarding the consequences of submission or refusal to submit to a taking of a specimen. Provides that evidence of a person's refusal to submit to a taking of a specimen is not inadmissible in a hearing or in a court.

## SECTION 7.

Amends the heading of Section 724.032. Requires an officer to forward certain information to DPS. Deletes text regarding nonresidents. Deletes text regarding a copy of a temporary driver's permit and a driver's license. Deletes text regarding a copy of a notice of suspension. Makes nonsubstantive and conforming changes.

## SECTION 8.

Amends Section 724.035, Transportation Code, to require the department to suspend or issue an order denying the issuance of a license for one year for certain persons. Deletes a provision regarding a 180-day period of suspension or denial.

## SECTION 9.

Adds SECTION 9 to amend Section 724.041(c), Transportation Code, to require DPS to notify the person whose license was taken under Section 724.032(a) of the effect of the request on the suspension of the person's license before the expiration of the temporary permit issued, if the

person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's driver's license is not suspended.

#### SECTION 10.

Adds SECTION 10 to amend Section 724.043(b), Transportation Code, to require DPS to return the person's driver's license taken under Section 724.032(a), if an administrative law judge does not find in the affirmative on each issue under Section 724.042.

#### SECTION 11.

Adds SECTION 11 to amend Section 521.251, Transportation Code, by adding Subsection (e), to require the fee for an occupational license to be \$250 for any occupational license issued to a person whose driver's license is currently under suspension.

#### SECTION 12.

Deletes the effective date.

#### SECTION 14.

Effective date: September 1, 1999.