

CHAPTER 82

H.B. No. 536

AN ACT

relating to the law governing consent by certain persons to the taking of breath or blood samples.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 1, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701b-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Any person who operates a motor vehicle *in* [~~upon the public highways or upon~~] a public *place* [~~beach~~] in this state shall be deemed to have given consent, subject to the provisions of this Act, to submit to the taking of one or more specimens of his breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance or drug if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle while intoxicated. Any person so arrested may consent to the giving of any other type of

specimen to determine his alcohol concentration, but he shall not be deemed, solely on the basis of his operation of a motor vehicle *in* [~~upon the public highways or upon~~] a public place [~~beach~~] in this state, to have given consent to give any type of specimen other than a specimen of his breath or blood. The specimen, or specimens, shall be taken at the request of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle *in* [~~upon the public highways or upon~~] a public place [~~beach~~] in this state while intoxicated.

SECTION 2. Section 2(f), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701L-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective 28 days after the date the person receives notice by certified mail or 31 days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the person receives notice by certified mail or the 23rd day after the date the director sent notice by certified mail, if the person has not accepted delivery of the notice, the department receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as a hearing under Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes). If, upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle *in* [~~on the highway or upon~~] a public place [~~beach~~] while intoxicated, (2) that the person was placed under arrest by the officer and was offered an opportunity to give a specimen under the provisions of this Act, and (3) that such person refused to give a specimen upon request of the officer, then the Director of the Texas Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for a period of 90 days, as ordered by the court. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for 90 days.

SECTION 3. Sections 3(j)(5) and (6), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701L-5, Vernon's Texas Civil Statutes), are repealed.

SECTION 4. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before the effective date.

(b) 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.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 4, 1993, by a non-record vote; passed by the Senate on April 21, 1993, by a viva-voce vote.

Approved May 4, 1993.

Effective Sept. 1, 1993.