

**CHAPTER 886**

**S.B. No. 1**

**AN ACT**

relating to the implementation of a statewide administrative driver's license revocation program; providing penalties.

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

SECTION 1. Title 116, Revised Statutes, is amended by adding Article 6687b-1 to read as follows:

**Art. 6687b-1. SUSPENSION BASED ON ADMINISTRATIVE DETERMINATION**

**Sec. 1.** *In this article:*

(1) "Alcohol concentration" has the meaning assigned by Article 6701l-1(a), Revised Statutes.

(2) "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 following:

(A) conviction of an offense prohibiting the operation of a motor vehicle while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance;

(B) a refusal to submit to the taking of a blood or breath specimen following an arrest for an offense prohibiting the operation of a motor vehicle while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance; or

(C) an analysis of a blood or breath specimen showing an alcohol concentration of a level specified in Article 6701l-1(a), Revised Statutes, following an arrest for an offense prohibiting the operation of a motor vehicle while intoxicated.

(3) "Department" means the Department of Public Safety.

(4) "Director" means the director of the Department of Public Safety.

(5) "Driver's license" has the meaning assigned by Section 1, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

(6) "Public place" has the meaning assigned by Section 1.07(a), Penal Code.

**Sec. 2.** (a) If a person arrested for an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Article 6701l-1(a)(2)(B), Revised Statutes, the arresting officer shall serve notice of driver's license suspension personally on the arrested person.

(b) If a person arrested for an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, submits to the taking of a specimen of breath or blood and an analysis of the specimen is not returned to the arresting officer before the person is admitted to bail, released from custody, or committed to jail, the arresting officer shall attempt to serve notice of driver's license suspension personally on the arrested person.

(c) A copy of the notice of suspension shall be sent by the officer to the department before the end of the fifth business day after the date of the arrest.

(d) The department shall develop forms for notices of suspension that shall be used by all state and local law enforcement agencies.

**Sec. 3.** (a) A peace officer who arrests a person for an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, shall, before the end of the fifth business day after the date of the arrest, send the department a sworn report of information relevant to the arrest, if analysis of the specimen showed an alcohol concentration of a level specified in Article 6701l-1(a)(2)(B), Revised Statutes. The report shall identify the arrested person, state the officer's grounds for believing the person committed the offense, give the analysis of the specimen, and include a copy of the criminal complaint filed in the case.

(b) A report required by this section shall be made on a form approved by the department and in the manner specified by the department.

**Sec. 4.** (a) On receipt of a report of a peace officer under this article, if the officer did not serve notice of suspension of driver's license at the time of obtaining the results of the analysis of the blood or breath specimen, the department, in accordance with Section 5 of this article, shall make the determination and issue notice of driver's license suspension if required.

(b) In the event that the officer did not serve notice of suspension of driver's license in accordance with Section 5 of this article, the department shall mail, by certified mail, notice of suspension to the address of the person, as shown by the records of the department, and to the address given in the peace officer's report, if different. Notice is presumed received on the fifth day after the day it is mailed.

(c) A notice of suspension must clearly state the reason and statutory grounds for suspension, the effective date of suspension, the right of the person to a hearing, how to request a hearing, and the time limit within which a request for a hearing must be made. If the department does not suspend the person's driver's license, the department shall notify the person of its determination and shall rescind any notice of suspension served on the person.

Sec. 5. (a) The department shall suspend the driver's license of a person if it determines that the person had an alcohol concentration of a level specified in Article 67011-1(a)(2)(B), Revised Statutes, while driving or operating a motor vehicle in a public place.

(b) The department may not suspend the driver's license of a person if the analysis of the person's breath or blood, submitted at the request of a peace officer, determined that the person had an alcohol concentration of a level below that specified in Article 67011-1(a)(2)(B), Revised Statutes, at the time of taking the specimen.

(c) The department shall make the determination based on the report of a peace officer submitted under Section 3 of this article. The determination is final, unless a hearing is requested under Section 7 of this article.

(d) The determination of the department is a civil matter, is independent of and is not an estoppel as to any matter in issue in an adjudication of a criminal charge arising from the occurrence that is the basis for the suspension, and does not preclude litigation of the same or similar facts in a criminal prosecution. Except as provided by this subsection, the disposition of a criminal charge does not affect a driver's license suspension under this article and is not an estoppel as to any matter in issue in a driver's license suspension proceeding under this article. Provided, that if a criminal charge under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, results in an acquittal, a suspension under this article shall not be imposed. If a suspension under this article has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual.

Sec. 6. (a) A driver's license suspension under this article takes effect on the 40th day after the date on which:

(1) the person received notice from the officer under Section 2 of this article; or

(2) the person is presumed to have received notice of suspension from the department by mail under Section 4 of this article.

(b) A period of suspension under this article is:

(1) 60 days if the person's driving record shows no prior alcohol-related or drug-related enforcement contact during the five years immediately preceding the date of the person's arrest; or

(2) 120 days if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined in Section 1(2)(B) or (C) of this article, during the five years immediately preceding the date of the person's arrest; or

(3) 180 days if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined in Section 1(2)(A) of this article, during the five years immediately preceding the date of the person's arrest.

(c) If a person's driver's license is suspended under this article and the person is also convicted of an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, arising out of the same occurrence, the license suspensions required by this article and by Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), or Section 25, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), shall all be imposed. Provided, that the court shall credit toward the period of suspension of a person's license required by Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), or by Section 25, Texas Commercial Driver's License Act (Article 6687b-2, Revised

Statutes), a period of suspension imposed under this article if the suspension arose from the same offense for which the court is suspending the person's license. The court may not extend the credit to a person who has been previously convicted of an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code.

Sec. 7. (a) A person who receives notice of suspension under this article may request a hearing in writing, including facsimile transmissions, or by other manner prescribed by the department. A request must be received by the department at its headquarters in Austin not later than the 15th day after the date notice of suspension was given under Section 2 of this article or the 15th day after the date the person is presumed to have received notice by mail under Section 4 of this article. The department shall schedule the hearing. The hearing shall be held before the effective date of the suspension. A request for a hearing stays suspension of driver's license until the date of the final decision of the administrative law judge. For the purpose of a hearing, jurisdiction is vested in an administrative law judge employed by the chief administrative law judge of the State Office of Administrative Hearings.

(b) A hearing shall be held at a location designated by the State Office of Administrative Hearings in the county in which the person was alleged to have committed the offense for which the person was arrested or at a site designated by the State Office of Administrative Hearings no more than 75 miles from the county seat of the county of the arrest, except as provided by Subsection (c) of this section. Provided that in counties with a population of 300,000 or more according to the most recent federal census, hearings shall be held in the county of arrest, unless held as provided in Subsection (c) of this section. A hearing shall be held not less than 10 days after the date of notification to the person, unless the parties agree to waive this requirement. The State Office of Administrative Hearings shall provide for the stenographic or electronic recording of all hearings. The issue at a hearing is whether, by a preponderance of the evidence, the person had an alcohol concentration of a level specified in Article 67011-1(a)(2)(B), Revised Statutes, while driving or in actual physical control of a motor vehicle in a public place, and reasonable suspicion or probable cause existed to stop or arrest the person. If the administrative law judge finds in the affirmative as to this issue, the suspension order shall be sustained. If the administrative law judge does not find in the affirmative as to this issue, the department shall reinstate any license, permit, or privilege to operate a motor vehicle and shall rescind an order prohibiting the issuance of a license or permit.

(c) With the consent of the person and the department, the administrative law judge may conduct a hearing under Subsection (b) of this section by telephone conference call.

(d) The administrative law judge may not make an affirmative finding under this section if the analysis of the person's breath or blood, submitted at the request of a peace officer, determined that the person had an alcohol concentration of a level below that specified in Article 67011-1(a), Revised Statutes, at the time of taking the specimen.

(e) A person who requests a hearing and fails to appear, without just cause, waives the right to a hearing, and the department's determination is final.

(f) Notwithstanding Subsection (a) of this section, if no later than five days before the date of a scheduled hearing the department has received a request for a continuance from the person who has requested a hearing, the department shall reschedule the hearing to a date no sooner than the fifth day after the date on which the department received the request for the continuance, unless otherwise agreed by both parties. A continuance under this section stays a suspension of a driver's license until the date of the final decision of the administrative law judge. A person who has requested a hearing under this article may obtain only one continuance under this subsection, unless a bona fide medical condition be shown which prevents the person from attending the hearing in which case one additional continuance may be granted for a period not to exceed 10 days.

(g) A person whose driver's license has been suspended after a hearing under this section may appeal the suspension by filing within 30 days after the date that the administrative law judge's final determination is issued a petition in a county court at law in the county where the person was arrested or, if there is no county court at law in the county, in the county court of the county. 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.

(h) Except as provided by this subsection, filing an appeal petition does not stay a suspension. The filing of an appeal petition stays a suspension if the person's driver's license has not been suspended as a result of any alcohol-related or drug-related enforcement contact, as defined in Section 1, Article 6687b-1, Revised Statutes, in the five years immediately preceding the date of the person's arrest, and the person has not been convicted under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, in the 10 years immediately preceding the date of the person's arrest, regardless of whether the prior alcohol-related or drug-related contact or conviction occurred prior to the effective date of this article. A stay shall only be effective for a period of 90 days from the filing of an appeal petition, and on the expiration of that period the department shall impose the suspension previously ordered by the department. No extension of the stay or additional stay order may be granted by the department or the court. On appeal, review is on the record certified by the State Office of Administrative Hearings with no additional testimony except as provided by Subsection (j) of this section. Review shall be based on the substantial evidence rule.

(i) A person who appeals under this section must send by certified mail a copy of the person's petition, certified by the clerk of the court in which the petition is filed, to both the department and the State Office of Administrative Hearings at their headquarters in Austin. The department's right to appeal is limited to issues of law. There is no right to a jury trial in an appeal under this section. A district or county attorney may represent the department in an appeal.

(j) On appeal, any party may apply to the court for leave to present additional evidence, and the court, if satisfied that the additional information is material and that there were good reasons for the failure to present it in the hearing before an administrative law judge, may order that the additional evidence be taken before an administrative law judge on conditions determined by the court. An administrative law judge may modify a prior determination as to whether the person had an alcohol concentration of a level specified in Article 6701l-1(a), Revised Statutes, by reason of the additional evidence. The administrative law judge shall file the evidence and any modifications. A remand under this subsection does not stay the suspension of a driver's license.

(k) To obtain a transcript of an administrative hearing, a party who appeals the determination must apply to the State Office of Administrative Hearings. On payment to the State Office of Administrative Hearings of a fee not to exceed the actual cost of preparing the transcript, that agency shall promptly furnish both parties with the transcript.

(l) A suspension under this article may not be probated.

(m) In a proceeding under this article, the reliability of an instrument used to take or analyze a specimen of a person's breath to determine alcohol concentration and the validity of the results of the analysis may be attested to by affidavit from the certified breath test technical supervisor who is responsible for maintaining and directing the operation of breath test instruments in compliance with the rules of the department. An affidavit submitted under this subsection must contain statements on the reliability of the instrument and the analytical results and on compliance with state law in the administration of the program. An affidavit of an expert witness contesting the reliability of the instrument or the results is admissible. Except as provided by Subsection (n) of this section, the affidavit may be submitted in lieu of an appearance at the hearing by the breath test operator, breath test technical supervisor, or expert witness.

(n) Notwithstanding Subsection (m) of this section, if no later than five days before the date of a scheduled hearing the department receives from the person who has requested the hearing written notice, including facsimile transmissions, requesting the presence at the hearing of the person who took the specimen of the person's breath to determine alcohol concentration, or the certified breath test technical supervisor who was responsible for maintaining and directing the operation of the breath test instrument used to analyze the specimen of the person's breath, or both, each requested person must appear at the hearing. The department may reschedule a hearing once at least 48 hours before the time of the hearing if a person requested under this section is unavailable. In addition, the department

may reschedule the hearing on a showing of good cause if the requested person is not available at the time of the hearing. A suspension order may not go into effect pending a final decision of the administrative law judge as a result of a continuance granted under this subsection. If any person whose presence is timely requested under this subsection fails to appear at the hearing, without a showing of good cause, an affidavit from that witness is inadmissible.

(o) A person whose driver's license is suspended under this section is subject to Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

(p) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to proceedings under this article to the extent not inconsistent with this article. The State Office of Administrative Hearings shall adopt rules that may conflict with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) as necessary to expedite the hearings process within the time limits required by this article and applicable federal funding guidelines. Notice required by this section to be given by the department may be given telephonically or by other electronic means, and written notice shall follow if such means are used. Notice by mail is presumed received on the fifth day after the date it is deposited with the United States Postal Service. The decision of the administrative law judge is final when issued and signed and immediately appealable without the requirement of a motion for rehearing.

Sec. 8. (a) A driver's license suspended under this article may not be reinstated and another driver's license may not be issued until the person whose driver's license has been suspended pays to the department a fee of \$100 in addition to any other fee required by law.

(b) If a suspension under this article is rescinded by the department, an administrative law judge, or a court, payment of a reinstatement fee is not required.

(c) Fees paid under this section shall be deposited in the state treasury to the credit of the operator's and chauffeur's license fund and may be appropriated only to the department to administer this article and the driver's license suspension provisions of Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701b-5, Vernon's Texas Civil Statutes).

Sec. 9. The department and the State Office of Administrative Hearings shall adopt rules to administer this article.

SECTION 2. Subsection (e), Section 22, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The judge or officer holding a hearing under Subsection (a), (b), or (d) of this section, or the court trying an appeal under Section 31 of this Act, on determining that the License shall be suspended or revoked, may, when it appears to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, recommend that the revocation or suspension be probated on terms and conditions deemed by the officer or judge to be necessary or proper. The report to the department of the results of the hearing must include the terms and conditions of such probation. When probation is recommended by the judge or officer presiding at a hearing, the department shall probate the suspension or revocation. ~~[This subsection does not apply to an appeal under Section 31 of this Act for suspension of a driver's license or denial of operating privileges under Section 2, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701b-5, Vernon's Texas Civil Statutes).]~~

SECTION 3. Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as amended by Chapters 473 and 1127, Acts of the 70th Legislature, Regular Session, 1987, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle or enter an order finding an essential need for operating a motor vehicle. In the event the judge enters the order finding an essential need, he shall also, as part of the order, determine the actual need of the petitioner in operating a motor vehicle. The order shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the Texas Motor Vehicle Safety-Responsibil-

ity Act[, as amended] (Article 6701h, Vernon's Texas Civil Statutes). If the person's license has been suspended following a conviction under Article 6701-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, but only on conviction of a second or subsequent offense under this article or section, the order may restrict the person to the operation of a motor vehicle equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the restricted operator. The defendant shall obtain the device at his own cost. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. The order shall be definite as to hours of the day, days of the week, specific reasons for travel, and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than four (4) hours in any twenty-four (24) consecutive hours. On a proper showing of necessity, however, the court may waive the four-hour restriction and allow the petitioner to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any twenty-four (24) consecutive hours. *When a person's license is suspended under Article 6687b-1, Revised Statutes, or Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701-5, Vernon's Texas Civil Statutes), and the person has not had a prior suspension arising from an alcohol-related or drug-related enforcement contact, as defined in Article 6687b-1, Revised Statutes, in the five years immediately preceding the date of the person's arrest, an order under this section granting the person an occupational license to meet an essential need shall be immediately effective. Provided, that the court shall order the petitioner to comply with the alcohol counselling and rehabilitation program requirements contained in Subsection (g) of this section. If the person's driver's license has been suspended as a result of an alcohol-related or drug-related enforcement contact, as defined in Section 1(2)(B) or (C), Article 6687b-1, Revised Statutes, in the five years immediately preceding the date of the person's arrest, the order may not be effective before 90 days after the effective date of the suspension. If the person's driver's license has been suspended as a result of a conviction under Article 6701-1, Revised Statutes, or under Section 19.05(a)(2), Penal Code, in the five years immediately preceding the date of the person's arrest, the order may not be effective before 180 days after the effective date of the suspension. An order entered by the court shall extend until the end of [for] the period of the [original] suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department. The petitioner may use a copy of the court order as a restricted license for thirty (30) days after the date the order is effective [entered]. The Department of Public Safety shall promulgate rules and regulations for the approval of models and classes of devices used under this subsection and Section 25(a) of this Act. The Department by rule shall establish standards for the calibration and maintenance of devices, but the calibration and maintenance of each individual device is the responsibility of the manufacturer of that device. If the Department approves a device, the Department shall notify the manufacturer in writing of that fact. Written notice from the Department to a manufacturer approving a device is admissible in any civil or criminal proceeding in this state. The manufacturer shall reimburse the Department for any cost incurred by the Department in approving a device under this subsection. The Department may not be held liable in a civil or criminal proceeding arising out of the use of a device approved under this subsection.*

*(g) The court granting an occupational license under this section to a person whose driver's license has been suspended under Article 6687b-1, Revised Statutes, or Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701-5, Vernon's Texas Civil Statutes), shall require the person to attend a program approved by the court designed to provide counselling and rehabilitation services to persons for alcohol dependence, which requirement shall be placed in the order granting the occupational license. The program required as a condition of the occupational license shall not be the program provided for in Section 24(g) of this Act or in Section 13, Article 42.12, Code of Criminal Procedure. The court may require the person to report to the court on a periodic basis to verify that the person is attending the required program. The court may, on a finding that the person has*

not complied with the order requiring attendance at the program, revoke the order granting the occupational license. A certified copy of the order revoking the occupational license shall be forwarded to the Department, which shall suspend the person's license for a period of 60 days if the original suspension was under Article 6687b-1, Revised Statutes, or for 120 days if the original suspension was under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes). The person shall not be eligible for an occupational license during the period of the suspension provided for under this subsection. The effective date of a suspension under this subsection shall be the date on which the order is signed, and such suspension shall be cumulative of the original suspension.

SECTION 4. Section 31, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 31. RIGHT OF APPEAL TO COURTS. (a) Any person whose driver's license has been suspended or revoked after an administrative hearing under Section 22(a) of this Act, any person whose license suspension has been probated under Section 22(e) of this Act, and any person denied a license or whose driver's license has been cancelled by the Department, except where such cancellation, suspension, or revocation is automatic under the provisions of this Act, shall have the right to file a petition within thirty (30) days after the date the order of the Department was entered for a hearing in the matter in the County Court at Law in the county wherein such person shall reside, or if there be no County Court at Law therein, then in the county court of said county, and such court is hereby vested with jurisdiction, and it shall be its duty to set the matter for hearing upon thirty (30) days written notice to the Department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, denial, or revocation of license under the provisions of this Act. A person who appeals under this section must send a copy of the person's petition, certified by the clerk of the court in which the petition is filed, to the Department by certified mail. An order of the Department is binding on the person to whom it pertains unless the person appeals the order as provided by this section or unless the person establishes that a hearing was timely requested, as provided by Section 24(g) of this Act [~~or Section 2(f), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes)~~], but was not held. The Department may appeal the ruling of the judge or officer presiding at the hearing by filing a petition in the manner provided by this section.

(b) The trial on appeal as herein provided for shall be a trial de novo and the licensee shall have the right of trial by jury.

(c) The filing of a petition of appeal as provided by this section shall abate an order of suspension, probated suspension, revocation, or cancellation until the trial herein provided for shall have been consummated and final judgment thereon is had.

SECTION 5. Subsections (a) and (d), Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A person commits an offense if the person operates a motor vehicle on a highway:

(1) after the person's driver's license has been cancelled under this Act and the person does not have a valid license that was subsequently issued under this Act;

(2) during a period that a suspension or revocation, imposed under this Act, [~~or~~] Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes), or Article 6687b-1, Revised Statutes, of the person's driver's license or privilege is in effect; or

(3) while the person's driver's license is expired, if the license expired during a period of suspension imposed under this Act, [~~or~~] Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes), or Article 6687b-1, Revised Statutes.

(d) Except as provided by Subsection (c) of this section, it is an affirmative defense to prosecution of an offense, other than an offense listed in Section 24(a) of this Act, that the person had not received actual notice of a suspension, revocation, cancellation, or prohibition order concerning the person's driver's license or privilege to operate a motor vehicle. For



purposes of this section, actual notice shall be presumed if the notice was *mailed according to procedures provided by law* [~~sent by certified mail to the last known address of the person as shown by the records of the Department~~].

SECTION 6. Subsection (l), Section 25, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), is amended to read as follows:

(l) A person who is subject to disqualification under this article may also have *the person's* [his] driver's license suspended, revoked, canceled, or denied under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes); *Article 6687b-1, Revised Statutes*;[,] Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701-5, Vernon's Texas Civil Statutes);[,] or the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), if the conduct providing grounds for disqualification under this article also constitutes a ground for suspension, revocation, cancellation, or denial under any of those laws.

SECTION 7. Subsections (e) and (f), Section 27, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), are amended to read as follows:

(e) On receipt of the sworn report of a peace officer submitted under this section, the department shall disqualify the driver from driving a commercial motor vehicle under Section 25 of this article. The procedure for notice and disqualification under this section is that specified in Section 2[(4)], Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701-5, Vernon's Texas Civil Statutes), or *in Article 6687b-1, Revised Statutes*, except that the department shall disqualify the person from driving a commercial motor vehicle for the period of time authorized by this article if, in a hearing held under this section, the court finds that:

(1) probable cause existed that the person was driving a commercial motor vehicle while having alcohol, a controlled substance, or drug in the person's system;

(2) the person was offered an opportunity to give a specimen under the provisions of this article; and

(3) the person either submitted a specimen that disclosed an alcohol concentration of 0.04 or more or refused to submit a specimen.

(f) An appeal of a disqualification under this section is subject to *Sections 7(g)-(k), Article 6687b-1, Revised Statutes* [~~Section 31, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)~~]. A disqualification under this section may not be probated.

SECTION 8. Subsections (d) and (e), Article 6701-1, Revised Statutes, are amended to read as follows:

(d) If it is shown on the trial of an offense under this article that the person has previously been convicted one time of an offense under this article, the offense is punishable by:

(1) a fine of not less than \$300 or more than \$2,000; and

(2) confinement in jail for a term of not less than 15 days or more than two years, *of which not less than 48 hours must be served consecutively*.

(e) If it is shown on the trial of an offense under this article that the person has previously been convicted two or more times of an offense under this article, the offense is punishable by:

(1) a fine of not less than \$500 or more than \$2,000; and

(2) confinement in jail for a term of not less than 30 days or more than two years, *of which not less than 48 hours must be served consecutively*, or imprisonment in the state penitentiary for a term of not less than 60 days or more than five years.

SECTION 9. Section 2, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) Except as provided by Subsection (i) of Section 3 of this Act, if a person under arrest refuses, upon the request of a peace officer, to give a specimen designated by the peace officer as provided in Section 1, none shall be taken.

(b) Before requesting a person to give a specimen, the officer shall inform the person orally and in writing that if the person refuses to give the specimen, that refusal may be admissible

in a subsequent prosecution, and that the person's license, permit, or privilege to operate a motor vehicle will be automatically suspended for *not less than 90 days* [~~after the date of adjournment of the hearing provided for in Subsection (f) of this section~~], whether or not the person is subsequently prosecuted as a result of the arrest. *The officer shall inform the person that if the person gives a specimen designated by the officer, and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Article 6701L-1, Revised Statutes, the person's license, permit, or privilege to operate a motor vehicle will be automatically suspended for not less than 60 days, whether or not the person is subsequently prosecuted as a result of the arrest.* If the officer determines that the person is a resident without a license or permit to operate a motor vehicle in this state, the officer shall inform the person that the [Texas] Department of Public Safety shall deny to the person the issuance of a license or permit for a period of *not less than 90 days if the person refuses to give the specimen, or for a period of not less than 60 days if the person gives a specimen designated by the officer, and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Article 6701L-1(a)(2)(B), Revised Statutes* [~~after the date of adjournment of the hearing provided for in Subsection (f) of this section~~], whether or not the person is subsequently prosecuted as a result of the arrest. The officer shall inform the person that the person has a right to a hearing on suspension or denial if, not later than the 15th [20th] day after the date on which the person receives notice of suspension or denial or the person is presumed to have received notice of suspension or denial by mail as provided by law [~~is received~~], the department receives, at its headquarters in Austin, a written demand, including facsimile transmissions, or a demand in another form prescribed by the department, that the hearing be held.

(c) The officer shall provide the person with a written statement containing the information required by Subsection (b) of this section. If the person refuses the request of the officer to give a specimen, the officer shall request the person to sign a statement that the officer requested that he give a specimen, that he was informed of the consequences of not giving a specimen, and that he refused to give a specimen.

(d) If the person refuses to give a specimen, whether the refusal was express or the result of an intentional failure of the person to give a specimen as designated by the peace officer, the officer before whom the refusal was made shall *serve notice of driver's license suspension or denial to the person and* [immediately] make a written report of the refusal to the Director of the [Texas] Department of Public Safety.

(e) The director shall approve the form of the report. The report must show the grounds for the officer's belief that the person had been operating a motor vehicle while intoxicated. The report must also show that the person refused to give a specimen, as evidenced by:

(1) a written refusal to give a specimen, signed by the person; or

(2) a statement signed by the officer stating that the person refused to give a specimen and also refused to sign the statement requested by the officer under Subsection (c) of this section [article].

(f) *A copy of the notice of suspension or denial and the refusal report under Subsection (e) of this section shall be forwarded by the officer to the department before the end of the fifth business day after the date of the arrest.*

(g) *The department shall develop forms for notices of suspension or denial that shall be used by all state and local law enforcement agencies.*

(h) *On receipt of a report of a peace officer under this section, if the officer did not serve notice of suspension or denial of driver's license at the time of refusal to give a specimen, the department shall issue notice to the person of driver's license suspension or prohibition. In the event the officer did not serve notice of suspension at the time of refusal, the department shall mail notice of suspension or prohibition, by certified mail, to the address of the person, as shown by the records of the department, and to the address given in the peace officer's report, if different. Notice is presumed received on the fifth day after the date it is mailed. A notice of suspension or prohibition must clearly state the reason and statutory grounds for and the effective date of the action, the right of the person to a hearing, how to request a hearing, and the period within which a request for a hearing must be received by the department.*

(i) If a person under arrest refuses on the request of a peace officer to give a specimen designated by the peace officer as provided in this Act, ~~[When the director receives the report, the director shall suspend]~~ the person's license, permit, or ~~[nonresident]~~ operating privilege shall be suspended for 90 days, or, if the person is a resident without a permit to operate a motor vehicle in this state, the department 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]~~. The period of suspension or prohibition under this Act is 180 days if the person's driving record shows one or more previous alcohol-related or drug-related enforcement contacts, as defined in Section 1(2)(B) or (C), Article 6687b-1, Revised Statutes, during the five years immediately preceding the date of the person's arrest. The period of suspension or prohibition under this Act is one year if the person's driving record shows one or more previous alcohol-related or drug-related enforcement contacts, as defined in Section 1(2)(A), Article 6687b-1, Revised Statutes, during the five years immediately preceding the date of the person's arrest. A suspension or prohibition under this section is effective on the 40th day after the date on which the person receives from an arresting officer notice of suspension or denial under Subsection (d) of this section or the 40th day after the date on which the person is considered to have received, from the department, notice of suspension or prohibition by mail under Subsection (h) of this section.

(j) If, not later than the 15th ~~[20th]~~ day after the date on which the person receives notice of suspension or prohibition under Subsection (d) of this section or is presumed to have received notice by mail under Subsection (h) of this section ~~[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, at its headquarters in Austin, in writing or by another manner prescribed by the department, a ~~[written]~~ demand that a hearing be held, the State Office of Administrative Hearings ~~[department]~~ shall hold a hearing before the effective date of the notice of suspension or prohibition. A request for a hearing stays the suspension of a driver's license or the prohibition on obtaining a driver's license until the date of the final decision of the administrative law judge, ~~[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]~~. For the purpose of a hearing, jurisdiction is vested in an administrative law judge employed by the chief administrative law judge of the State Office of Administrative Hearings. A hearing shall be held at a location designated by the State Office of Administrative Hearings in the county in which the person was alleged to have committed the offense for which the person was arrested or at a site designated by the State Office of Administrative Hearings no more than 75 miles from the county seat of the county of the arrest, except as provided by Subsection (k) of this section. Provided that in counties with a population of 300,000 or more according to the most recent federal census, hearings shall be held in the county of arrest, unless held as provided in Subsection (k) of this section. A hearing shall be held not earlier than 10 days after the date of notification to the person, unless the parties agree to waive this requirement. The State Office of Administrative Hearings shall provide for the stenographic or electronic recording of all hearings.

(k) With the consent of the person and the department, the administrative law judge may conduct a hearing under Subsection (b) of this section by telephone conference call.

(l) The issues at a hearing are:

- (1) whether reasonable suspicion or probable cause existed to stop or arrest the person;
- (2) whether probable cause existed that the person was driving or in actual physical control of a motor vehicle in a public place while intoxicated;
- (3) whether the person was placed under arrest by the officer and was offered an opportunity to give a specimen under this Act; and
- (4) whether the person refused to give a specimen on request of the officer.

(m) If the administrative law judge finds in the affirmative as to all four issues, the suspension order shall be sustained ~~[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 on the highway or upon a public 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 continue to deny to the person the issuance of a license or permit for the applicable period provided by this Act [90 days]. If the administrative law judge does not find in the affirmative as to all four issues [(g) If, after the hearing, the court finds in the negative one of the issues required by Subsection (f) of this section], the department [director] shall reinstate any license, permit, or privilege to operate a motor vehicle and shall rescind any order prohibiting the issuance of a license or permit on the basis of the person's refusal to give a specimen under Subsection (d) of this section.

(n) A suspension under this Act may not be probated.

(o) A person who requests a hearing and fails to appear, without good cause, waives the right to a hearing, and the department's determination is final.

(p) Notwithstanding the provisions of Subsection (j) of this section, if no later than five days before the date of a scheduled hearing the department has received a request for a continuance from the person who has requested a hearing, the department shall reschedule the hearing to a date no sooner than the fifth day after the date on which the department received the request for the continuance, unless otherwise agreed by both parties. A continuance under this section stays a suspension of a driver's license until the date of the final decision of the administrative law judge. A person who has requested a hearing under this article may obtain only one continuance under this subsection, unless a bona fide medical condition be shown which prevents the person from attending the hearing in which case one additional continuance may be granted for a period not to exceed 10 days.

(q) If a hearing under Subsection (j) of this section is not requested, the department's suspension or prohibition is final, and the person has no right to appeal the suspension or prohibition.

(r) The determination of the department or administrative law judge is a civil matter, is independent of and is not an estoppel as to any matter in issue in an adjudication of a criminal charge arising from the occurrence that is the basis for the suspension or prohibition, and does not preclude litigation of the same or similar facts in a criminal prosecution. Except as provided by this subsection, the disposition of a criminal charge does not affect a driver's license suspension or prohibition under this Act and is not an estoppel as to any matter in issue in a suspension or prohibition proceeding under this Act. Provided, that if a criminal charge under Article 6701b-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, results in an acquittal, a suspension under this article shall not be imposed. If a suspension under this article has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual.

(s) Administrative hearings under this section are governed by Subsections (f)-(k) and Subsection (p) of Section 7, Article 6687b-1, Revised Statutes.

(t) [(h)] A written report submitted by an officer under Subsection (d) of this section [article] is a governmental record for the purposes of Section 37.10, Penal Code.

(u) [(i)] A person whose license, permit, or privilege is suspended under this section, or who is the subject of a prohibition order issued under this section, is subject to Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

(v)(1) A driver's license suspended under this Act may not be reinstated or a new license issued until the person whose driver's license has been suspended pays to the department a fee of \$100 in addition to any other fee required by law. A person subject to a prohibition order issued under this Act may not obtain a driver's license after the period of prohibition has ended unless the person pays to the department a fee of \$100 in addition to any other fee required by law.

(2) *If a suspension or prohibition under this Act is rescinded by the department, an administrative law judge, or a court under this Act, payment of a fee under this subsection is not required for reinstatement or issuance of a driver's license.*

(3) *Fees paid under this subsection shall be deposited in the state treasury to the credit of the operator's and chauffeur's license fund and may be appropriated only to the department to administer this Act and Article 6687b-1, Revised Statutes.*

SECTION 10. Section 3, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended by amending Subsection (d), as added by Chapter 434, Acts of the 61st Legislature, Regular Session, 1969, and by amending Subsection (f) to read as follows:

(d) *The person who gave a specimen of breath, blood, urine, or other bodily substances in connection with this Act may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing draw a specimen and have an analysis made of his blood in addition to any specimen taken and analyzed at the direction of a peace officer. Such person shall be allowed a reasonable opportunity to contact a person listed in this subsection who may draw blood, provided that a peace officer or law enforcement agency is not required to transport for such testing a person who has requested that a blood specimen be drawn under this subsection. The failure or inability to obtain an additional specimen or analysis by a person shall not preclude the admission of evidence relating to the analysis of the specimen taken at the direction of the peace officer under this Act. A peace officer, any other person acting for or on behalf of the state, or a law enforcement agency shall not be held liable for damages arising from the person's request to have a specimen of his blood drawn under this subsection.*

(f) *If for any reason the person's request to have a chemical test is refused by the officer or any other person acting for or on behalf of the state, if the person was not provided a reasonable opportunity to contact a person listed in Subsection (d) of this section who may draw blood, or if reasonable access was not allowed to the arrested person for purposes of blood testing by a person listed in Subsection (d) of this section who may draw blood, such fact may be introduced into evidence on the trial of such person.*

SECTION 11. Subsection (j), Section 3, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended by adding Subdivision (8) to read as follows:

(8) *"Alcohol-related or drug-related enforcement contact" has the meaning assigned by Section 1, Article 6687b-1, Revised Statutes.*

SECTION 12. Section 4, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. Appeals from all actions of the department, *following an administrative hearing* under this Act, in suspending, denying, or refusing to issue a license shall be governed by [~~Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b-1 [6687b], Revised [Vernon's Texas Civil] Statutes[]).~~]

SECTION 13. Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended by adding Section 4A to read as follows:

Sec. 4A. *The Department of Public Safety and the State Office of Administrative Hearings shall adopt rules to administer this Act.*

SECTION 14. Subsection (a), Section 21, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act does not apply to suspensions, revocations, cancellations, denials, or disqualifications of driver's licenses or commercial driver's licenses as authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), [~~Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes),~~] or Section 19 [6f], Article 42.12, Code of Criminal Procedure[, as added by Chapter 427, Acts of the 69th Legislature, Regular Session, 1985].

SECTION 15. Subsection (a), Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, *of which not less than 48 hours must be served consecutively, except that in lieu of the requirement of 48 consecutive hours of detention, the court may require not less than 80 hours of community service*; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes, *of which not less than 48 hours must be served consecutively, except that in lieu of the requirement of 48 consecutive hours of detention, the court may require not less than 160 hours of community service*; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes, *of which not less than 48 hours must be served consecutively, except that in lieu of the requirement of 48 consecutive hours of detention, the court may require not less than 360 hours of community service*; and

(2) an evaluation by a probation officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

SECTION 16. Chapter 55, Code of Criminal Procedure, is amended by adding Article 55.06 to read as follows:

*Art. 55.06. LICENSE SUSPENSIONS AND REVOCATIONS. A person may not use the provisions of this chapter to expunge records relating to the suspension or revocation of a driver's license, permit, or privilege to operate a motor vehicle except as provided in Section 5(d), Article 6687b-1, Revised Statutes, or Section 2(r), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701-5, Vernon's Texas Civil Statutes).*

SECTION 17. The Department of Public Safety shall enter into a contract with the State Office of Administrative Hearings to carry out the provisions of this Act. The interagency contract shall set forth the procedures necessary for the orderly scheduling of hearings and other matters requiring cooperation. The agreement shall also provide for an interagency transfer of funds to the State Office of Administrative Hearings necessary to cover the cost to the State Office of Administrative Hearings in carrying out its responsibilities. This transfer of funds may be made only from amounts appropriated to the department.

SECTION 18. (a) The changes in law made by this Act for the punishment for an offense under Article 67011-1, Revised Statutes, and for the suspension of driver's licenses following a conviction for an offense under that article or Section 19.05, Penal Code, apply only to an offense committed on or after the effective date of this Act. The changes in law relating to the administrative suspension of a driver's license and to a suspension for refusal to give a specimen of breath or blood apply only to a person who is arrested on or after the effective date of this Act.

(b) For the purposes of this Act, an offense was committed before the effective date of this Act if any element of the offense occurred before the effective date of this Act. The suspension of a driver's license for a reason other than the conviction of an offense is controlled by the law in effect when the action that is the basis for the suspension occurred. 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 this purpose.

SECTION 19. The Department of Public Safety shall deliver an annual report to the legislature relating to the operation and administration of Article 6687b-1, Revised Statutes, as added by this Act. The report shall be separate from any other report of the Department of Public Safety to the legislature. The report shall include statistical information relating to the number of driver's licenses suspended under Article 6687b-1, Revised Statutes, the number of administrative hearings requested by persons whose licenses were suspended, the number of administrative hearings conducted under Article 6687b-1, Revised Statutes, by the State Office of Administrative Hearings and the results of those hearings, the number of

judicial appeals of hearings conducted under Article 6687b-1, Revised Statutes, and the results of those appeals, the number of requests for testimony of breath test operators and breath test supervisors and the outcomes of hearings, the number of continuances requested by persons subject to license suspension hearings, the amount of federal funds received by the state as a result of this program, together with recommendations concerning the operation or administration of Article 6687b-1, Revised Statutes, and other information that demonstrates whether the purposes of this Act are being achieved.

SECTION 20. This Act takes effect January 1, 1995.

SECTION 21. Notwithstanding any other legislation enacted by the 73rd Legislature, Regular Session, the reinstatement fees provided for in this Act shall prevail with regard to any suspension imposed under this Act.

SECTION 22. 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 the Senate on April 21, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 29, 1993, by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Jan. 1, 1995.