

## State DUI Laws: Texas

**Legal Blood Alcohol Content Level: .08**

**Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes**

**Ignition Interlock Requirement upon Conviction: Yes**

**Felony Conviction for Repeat Offenses: Yes**

### Texas Alcoholic Beverage Code

#### § 106.041. Driving Under the Influence of Alcohol by Minor

(a) A minor commits an offense if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, the offense is punishable by:

- (1) a fine of not less than \$ 500 or more than \$ 2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115, the court shall order a minor convicted of an offense under this section to perform community service for:

- (1) not less than 20 or more than 40 hours, if the minor has not been previously convicted of an offense under this section; or
- (2) not less than 40 or more than 60 hours, if the minor has been previously convicted of an offense under this section.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.

(f) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition.

(g) An offense under this section is not a lesser included offense under Section 49.04, Penal Code.

(h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

(i) A peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor that contains written notice of the time and place the minor must appear before a magistrate, the name and address of the minor charged, and the offense charged.

(j) In this section:

(1) "Child" has the meaning assigned by Section 51.02, Family Code.

(2) "Motor vehicle" has the meaning assigned by Section 32.34(a), Penal Code.

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

## Texas Penal Code

### § 49.01. Definitions

In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

(A) 210 liters of breath;

(B) 100 milliliters of blood; or

(C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

(5) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(6) "Mobile amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

#### **§ 49.031. Possession of Alcoholic Beverage in Motor Vehicle**

(a) In this section:

(1) "Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.

(2) "Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

(A) a glove compartment or similar storage container that is locked;

(B) the trunk of a vehicle; or

(C) the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

(3) "Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.

(b) A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.

(c) It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger

in:

(1) the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxicab, or limousine; or

(2) the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.

(d) An offense under this section is a Class C misdemeanor.

(e) A peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.

#### **§ 49.04. Driving While Intoxicated**

(a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

(b) Except as provided by Subsection (c) and § 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

#### **§ 49.045. Driving While Intoxicated With Child Passenger**

(a) A person commits an offense if:

(1) the person is intoxicated while operating a motor vehicle in a public place; and

(2) the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b) An offense under this section is a state jail felony.

#### **§ 49.08. Intoxication Manslaughter**

(a) A person commits an offense if the person:

(1) operates a motor vehicle in a public place, operates an aircraft, a

watercraft, or an amusement ride, or assembles a mobile amusement ride;  
and

(2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) An offense under this section is a felony of the second degree.

### **§ 49.09. Enhanced Offenses and Penalties**

(a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.

(b) An offense under Section 49.04, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:

(1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or

(2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(c) For the purposes of this section:

(1) "Offense relating to the operating of a motor vehicle while intoxicated" means:

(A) an offense under Section 49.04 or 49.045;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a motor vehicle;

(C) an offense under Article 6701I-1, Revised Statutes, as that law existed before September 1, 1994;

(D) an offense under Article 6701I-2, Revised Statutes, as that law existed before January 1, 1984;

(E) an offense under Section 19.05(a)(2), as that law existed before

September 1, 1994, if the vehicle operated was a motor vehicle; or

(F) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was an aircraft;

(C) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was an aircraft; or

(E) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;

(C) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or

(E) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(4) "Offense of operating or assembling an amusement ride while intoxicated" means:

(A) an offense under Section 49.065;

(B) an offense under Section 49.07 or 49.08, if the offense involved the operation or assembly of an amusement ride; or

(C) an offense under the law of another state that prohibits the operation of an amusement ride while intoxicated or the assembly of a mobile amusement ride while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.05, 49.06, 49.065, 49.07, or 49.08 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) Except as provided by Subsection (f), a conviction may not be used for purposes of enhancement under this section if:

(1) the conviction was a final conviction under Subsection (d);

(2) the offense for which the person is being tried was committed more than 10 years after the latest of:

(A) the date on which the judgment was entered for the previous conviction;

(B) the date on which the person was discharged from any period of community supervision on which the person was placed for the previous conviction;

(C) the date on which the person successfully completed any period of parole on which the person was released after serving a portion of the term to which the person was sentenced for the previous conviction; or

(D) the date on which the person completed serving any term for which the person was confined or imprisoned for the previous conviction; and

(3) the person has not been convicted of an offense under Section 49.04, 49.05, 49.06, 49.065, 49.07, or 49.08 or any offense related to operating a motor vehicle while intoxicated within 10 years of the latest date under Subdivision (2).

(f) A conviction may be used for the purposes of enhancement under this section regardless of when the conviction occurred if the conviction was for an offense under:

(1) Section 49.08 involving the operation of a motor vehicle; or

(2) Section 19.05(a)(2), as that law existed before September 1, 1994, involving the operation of a motor vehicle.

(g) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D,

Chapter 12, [FN1] but not under both this section and Subchapter D.

(h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, 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 operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Section 13(i), Article 42.12, Code of Criminal Procedure, this subsection controls.

#### **§ 521.344. Suspension for Offenses Involving Intoxication**

(a) Except as provided by Sections 521.342(b) and 521.345, and by Subsections (d)-(i), if a person is convicted of an offense under Section 49.04 or 49.07, Penal Code, the license suspension:

(1) begins on a date set by the court that is not earlier than the date of the conviction or later than the 30th day after the date of the conviction, as determined by the court; and

(2) continues for a period set by the court according to the following schedule:

(A) not less than 90 days or more than one year, if the person is punished under Section 49.04 or 49.07, Penal Code, except that if the person's license is suspended for a second or subsequent offense under Section 49.07 committed within five years of the date on which the most recent preceding offense was committed, the suspension continues for a period of one year;

(B) not less than 180 days or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code; or

(C) not less than one year or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code, and is subject to Section 49.09(h) of that code.

(b) Except as provided by Section 521.342(b), if a person is convicted of an offense under Section 49.08, Penal Code, the license suspension:

(1) begins on a date set by the court that is not earlier than the date of the conviction or later than the 30th day after the date of the conviction, as determined by the court; and

(2) continues for a period set by the court of not less than 180 days or more than two years, except that if the person's license is suspended for a second or subsequent offense under Section 49.08, Penal Code, committed within 10 years of the date on which the most recent preceding offense was committed, the suspension continues for a period set by the court of not less than one year or more than two years.

(c) The court shall credit toward the period of suspension a suspension imposed on the person for refusal to give a specimen under Chapter 724 if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this chapter. The court may not extend the credit to a person:

(1) who has been previously convicted of an offense under Section 49.04, 49.07, or 49.08, Penal Code; or

(2) whose period of suspension is governed by Section 521.342(b).

(d) Except as provided by Subsection (e) and Section 521.342(b), during a period of probation the department may not revoke the person's license if the person is required under Section 13(h) or (j), Article 42.12, Code of Criminal Procedure, to successfully complete an educational program designed to rehabilitate persons who have operated motor vehicles while intoxicated, unless the person was punished under Section 49.09(a) or (b), Penal Code, and was subject to Section 49.09(h) of that code. The department may not revoke the license of a person:

(1) for whom the jury has recommended that the license not be revoked under Section 13(g), Article 42.12, Code of Criminal Procedure; or

(2) who is placed under community supervision under that article and is required as a condition of community supervision to not operate a motor vehicle unless the vehicle is equipped with the device described by Section 13(i) of that article, unless the person was punished under Section 49.09(a) or (b), Penal Code, and was subject to Section 49.09(g) of that code.

(e) After the date has passed, according to department records, for successful completion of the educational program designed to rehabilitate persons who operated motor vehicles while intoxicated, the director shall revoke the license of a person who does not successfully complete the program or, if the person is a resident without a license to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license.

(f) After the date has passed, according to department records, for successful completion of an educational program for repeat offenders as required by Section 13, Article 42.12, Code of Criminal Procedure, the director shall suspend the

license of a person who does not successfully complete the program or, if the person is a resident without a license, shall issue an order prohibiting the person from obtaining a license.

(g) A revocation, suspension, or prohibition order under Subsection (e) or (f) remains in effect until the department receives notice of successful completion of the educational program. The director shall promptly send notice of a revocation or prohibition order issued under Subsection (e) or (f) by first class mail to the person at the person's most recent address as shown in the records of the department. The notice must include the date of the revocation or prohibition order, the reason for the revocation or prohibition, and a statement that the person has the right to request in writing that a hearing be held on the revocation or prohibition. Notice is considered received on the fifth day after the date the notice is mailed. A revocation or prohibition under Subsection (e) or (f) takes effect on the 30th day after the date the notice is mailed. The person may request a hearing not later than the 20th day after the date the notice is mailed. If the department receives a request under this subsection, the department shall set the hearing for the earliest practical time and the revocation or prohibition does not take effect until resolution of the hearing.

(h) The hearing shall be held in a municipal or justice court in the county of the person's residence in the manner provided for a suspension hearing under Subchapter N. The issues to be determined at the hearing are whether the person has successfully completed a required educational program and whether the period for completion of the program has passed. If the presiding officer determines that the educational program has not been completed and the period for completion has passed, the officer shall confirm the revocation or prohibition and shall notify the department of that fact. The director may not revoke or prohibit the license if the officer finds that the program has been completed, that, before the hearing, the court that originally imposed the requirement to attend an educational program has granted an extension that has not expired, or that the period for completion has not passed. If the person or the person's agent fails to appear at the hearing, the department shall revoke the person's license until the department receives notice of successful completion of the educational program.

(i) On the date that a suspension order under Section 521.343(c) is to expire, the period of suspension or the corresponding period in which the department is prohibited from issuing a license is automatically increased to two years unless the department receives notice of successful completion of the educational program as required by Section 13, Article 42.12, Code of Criminal Procedure. At the time a person is convicted of an offense under Section 49.04, Penal Code, the court shall warn the person of the effect of this subsection. On the person's successful completion of the program, the person's instructor shall give notice to the department and to the community supervision and corrections department in the manner required by Section 13, Article 42.12, Code of Criminal Procedure. If the department receives proof of completion after a period has been extended under this subsection, the department shall immediately end the suspension or prohibition.

### **§ 524.001. Definitions**

In this chapter:

- (1) "Adult" means an individual 21 years of age or older.
- (2) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.
- (3) "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 resulting from:

(A) a conviction of an offense prohibiting the operation of a motor vehicle while:

- (i) intoxicated;
- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance;

(B) a refusal to submit to the taking of a breath or blood specimen following an arrest for an offense prohibiting the operation of a motor vehicle while:

- (i) intoxicated;
- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance; or

(C) an analysis of a breath or blood specimen showing an alcohol concentration of a level specified by Section 49.01, Penal Code, following an arrest for an offense prohibiting the operation of a motor vehicle while intoxicated.

(4) "Arrest" includes the taking into custody of a child, as defined by Section 51.02, Family Code.

(5) "Conviction" includes an adjudication under Title 3, Family Code.

(6) "Criminal charge" includes a charge that may result in a proceeding under Title 3, Family Code.

(7) "Criminal prosecution" includes a proceeding under Title 3, Family Code.

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

(9) "Director" means the public safety director of the department.

(10) "Driver's license" has the meaning assigned by Section 521.001. The term includes a commercial driver's license or a commercial driver learner's permit issued under Chapter 522.

(11) "Minor" means an individual under 21 years of age.

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

#### **§ 524.011. Officer's Duties for Driver's License Suspension**

(a) An officer arresting a person shall comply with Subsection (b) if:

(1) the person is arrested for an offense under Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08 of that code involving the operation of a motor vehicle, 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 by Section 49.01(2)(B), Penal Code; or

(2) the person is a minor arrested for an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle and:

(A) the minor is not requested to submit to the taking of a specimen; or

(B) the minor submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of greater than .00 but less than the level specified by Section 49.01(2)(B), Penal Code.

(b) A peace officer shall:

(1) serve or, if a specimen is taken and the analysis of the specimen is not returned to the arresting officer before the person is admitted to bail, released from custody, delivered as provided by Title 3, Family Code, or committed to jail, attempt to serve notice of driver's license suspension by delivering the notice to the arrested person;

(2) take possession of any driver's license issued by this state and held by the person arrested;

(3) issue a temporary driving permit to the person unless department records show or the officer otherwise determines that the person does not hold a driver's license to operate a motor vehicle in this state; and

(4) send to the department not later than the fifth business day after

the date of the arrest:

- (A) a copy of the driver's license suspension notice;
- (B) any driver's license taken by the officer under this subsection;
- (C) a copy of any temporary driving permit issued under this subsection; and
- (D) a sworn report of information relevant to the arrest.

(c) The report required under Subsection (b)(2)(B) must:

- (1) identify the arrested person;
- (2) state the arresting officer's grounds for believing the person committed the offense;
- (3) give the analysis of the specimen if any; and
- (4) include a copy of the criminal complaint filed in the case, if any.

(d) A peace officer shall make the report on a form approved by the department and in the manner specified by the department.

(e) The department shall develop forms for the notice of driver's license suspension and temporary driving permits to be used by all state and local law enforcement agencies.

(f) A temporary driving permit issued under this section expires on the 41st day after the date of issuance. If the person was driving a commercial motor vehicle, as defined by Section 522.003, a temporary driving permit that authorizes the person to drive a commercial motor vehicle is not effective until 24 hours after the time of arrest.

#### **§ 524.012. Department's Determination for Driver's License Suspension**

(a) On receipt of a report under Section 524.011, if the officer did not serve a notice of suspension of driver's license at the time the results of the analysis of a breath or blood specimen were obtained, the department shall determine from the information in the report whether to suspend the person's driver's license.

(b) The department shall suspend the person's driver's license if the department determines that:

- (1) the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place; or
- (2) the person is a minor and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place.

(c) The department may not suspend a person's driver's license if:

(1) the person is an adult and the analysis of the person's breath or blood specimen determined that the person had an alcohol concentration of a level below that specified by Section 49.01(2)(B), Penal Code, at the time the specimen was taken; or

(2) the person is a minor and the department does not determine that the minor had any detectable amount of alcohol in the minor's system when the minor was arrested.

(d) A determination under this section is final unless a hearing is requested under Section 524.031.

(e) A determination under this section:

(1) is a civil matter;

(2) is independent of and is not an estoppel to any matter in issue in an adjudication of a criminal charge arising from the occurrence that is the basis for the suspension; and

(3) does not preclude litigation of the same or similar facts in a criminal prosecution.

### **§ 524.013. Notice of Department's Determination**

(a) If the department suspends a person's driver's license, the department shall send a notice of suspension by first class mail to the person's address:

(1) in the records of the department; or

(2) in the peace officer's report if it is different from the address in the department's records.

(b) Notice is considered received on the fifth day after the date the notice is mailed.

(c) If the department determines not to suspend a person's driver's license, the department shall notify the person of that determination and shall rescind any notice of driver's license suspension served on the person.

### **§ 524.021. Suspension Effective Date**

(a) A driver's license suspension under this chapter takes effect on the 40th day after the date the person:

(1) receives a notice of suspension under Section 524.011; or

(2) is presumed to have received notice of suspension under Section 524.013.

(b) A suspension under this chapter may not be probated.

### **§ 524.022. Period of Suspension**

(a) A period of suspension under this chapter for an adult is:

(1) 90 days if the person's driving record shows no alcohol-related or drug-related enforcement contact during the 10 years preceding the date of the person's arrest; or

(2) one year if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts during the 10 years preceding the date of the person's arrest.

(b) A period of suspension under this chapter for a minor is:

(1) 60 days if the minor has not been previously convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle;

(2) 120 days if the minor has been previously convicted once of an offense listed by Subdivision (1); or

(3) 180 days if the minor has been previously convicted twice or more of an offense listed by Subdivision (1).

(c) For the purposes of determining whether a minor has been previously convicted of an offense described by Subsection (b)(1):

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by Subsection (b)(1) is considered a conviction under that provision; and

(2) an order of deferred adjudication for an offense alleged under a provision described by Subsection (b)(1) is considered a conviction of an offense under that provision.

(d) A minor whose driver's license is suspended under this chapter is not eligible for an occupational license under Subchapter L, Chapter 521, for:

(1) the first 30 days of a suspension under Subsection (b)(1);

(2) the first 90 days of a suspension under Subsection (b)(2); or

(3) the entire period of a suspension under Subsection (b)(3).

#### **§ 524.031. Hearing Request**

If, not later than the 15th day after the date on which the person receives notice of suspension under Section 524.011 or is presumed to have received notice under Section 524.013, the department receives at its headquarters in Austin, in writing, including a facsimile transmission, or by another manner prescribed by the department, a request that a hearing be held, a hearing shall be held as provided by this subchapter.

#### **§ 524.032. Hearing Date; Rescheduling**

(a) A hearing requested under this subchapter shall be held not earlier than the 11th day after the date on which the person requesting the hearing is notified of the hearing unless the parties agree to waive this requirement. The hearing shall be held before the effective date of the suspension.

(b) A hearing shall be rescheduled if, before the fifth day before the date scheduled for the hearing, the department receives a request for a continuance from the person who requested the hearing. Unless both parties agree otherwise, the hearing shall be rescheduled for a date not earlier than the fifth day after the date the department receives the request for the continuance.

(c) A person who requests a hearing under this chapter may obtain only one continuance under this section unless the person shows that a medical condition prevents the person from attending the rescheduled hearing, in which event one additional continuance may be granted for a period not to exceed 10 days.

(d) A request for a hearing stays suspension of a person's driver's license until the date of the final decision of the administrative law judge. If the person's driver's license was taken by a peace officer under Section 524.011(b), the department shall notify the person of the effect of the request on the suspension of the person's license before the expiration of any temporary driving permit issued to the person, 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.

#### **§ 524.038. Instrument Reliability and Analysis Validity**

(a) 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 in a proceeding under this subchapter by affidavit from the certified breath test technical supervisor responsible for maintaining and directing the operation of breath test instruments in compliance with department rule.

(b) An affidavit submitted under Subsection (a) must contain statements on:

(1) the reliability of the instrument and the analytical results; and

(2) compliance with state law in the administration of the program.

(c) An affidavit of an expert witness contesting the reliability of the instrument or the results is admissible.

(d) An affidavit from a person whose presence is timely requested under this section is inadmissible if the person fails to appear at a hearing without a showing of good cause. Otherwise, an affidavit under this section may be submitted in lieu of an appearance at the hearing by the breath test operator, breath test technical supervisor, or expert witness.

#### **§ 524.041. Appeal From Administrative Hearing**

(a) A person whose driver's license suspension is sustained may appeal the decision by filing a petition not later than the 30th day after the date the administrative law judge's decision is final. The administrative law judge's final decision is immediately appealable without the requirement of a motion for rehearing.

(b) A petition under Subsection (a) must be filed in a county court at law in the county in which the person was arrested or, if there is not a county court at law in the county, in the county court. 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.

(c) A person who files an appeal under this section shall send a copy of the petition by certified mail to the department and to the State Office of Administrative Hearings at each agency's headquarters in Austin. The copy must be certified by the clerk of the court in which the petition is filed.

(d) The department's right to appeal is limited to issues of law.

(e) A district or county attorney may represent the department in an appeal.

#### **§ 524.042. Stay of Suspension on Appeal**

(a) A suspension of a driver's license under this chapter is stayed on the filing of an appeal petition only if:

(1) the person's driver's license has not been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest; and

(2) the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under:

(A) Article 6701I-1, Revised Statutes, as that law existed before September 1, 1994;

(B) Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994;

(C) Section 49.04, Penal Code;

(D) Section 49.07 or 49.08, Penal Code, if the offense involved the operation of a motor vehicle; or

(E) Section 106.041, Alcoholic Beverage Code.

(b) A stay under this section is effective for not more than 90 days after the date the appeal petition is filed. On the expiration of the stay, the department shall impose the suspension. The department or court may not grant an extension of the stay or an additional stay.

#### **§ 524.051. Reinstatement and Reissuance**

(a) A driver's license suspended under this chapter may not be reinstated or another driver's license issued to the person until the person pays the department a fee of \$ 125 in addition to any other fee required by law.

(b) The payment of a reinstatement fee is not required if a suspension under this chapter is:

- (1) rescinded by the department; or
- (2) not sustained by an administrative law judge, or a court.

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

#### **Texas Transportation Code**

#### **§ 724.001. Definitions**

In this chapter:

- (1) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.
- (2) "Arrest" includes the taking into custody of a child, as defined by Section 51.02, Family Code.
- (3) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.
- (4) "Criminal charge" includes a charge that may result in a proceeding under Title 3, Family Code.
- (5) "Criminal proceeding" includes a proceeding under Title 3, Family Code.
- (6) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.
- (7) "Department" means the Department of Public Safety.

(8) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(9) "Intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(10) "License" has the meaning assigned by Section 521.001.

(11) "Operate" means to drive or be in actual control of a motor vehicle or watercraft.

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

### **§ 724.002. Applicability**

The provisions of this chapter that apply to suspension of a license for refusal to submit to the taking of a specimen (Sections 724.013, 724.015, and 724.048 and Subchapters C and D) apply only to a person arrested for an offense involving the operation of a motor vehicle or watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above.

### **§ 724.011. Consent to Taking of Specimen**

(a) If a person is arrested for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in a public place, or a watercraft, while intoxicated, or an offense under Section 106.041, Alcoholic Beverage Code, the person is deemed to have consented, subject to this chapter, to submit to the taking of one or more specimens of the person's breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance.

(b) A person arrested for an offense described by Subsection (a) may consent to submit to the taking of any other type of specimen to determine the person's alcohol concentration.

### **724.012. Taking of Specimen**

(a) One or more specimens of a person's breath or blood may be taken if the person is arrested and at the request of a peace officer having reasonable grounds to believe the person:

(1) while intoxicated was operating a motor vehicle in a public place, or a watercraft; or

(2) was in violation of Section 106.041, Alcoholic Beverage Code.

(b) A peace officer shall require the taking of a specimen of the person's breath or blood if:

(1) the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft;

(2) the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense;

(3) at the time of the arrest the officer reasonably believes that as a direct result of the accident:

(A) any individual has died or will die; or

(B) an individual other than the person has suffered serious bodily injury; and

(4) the person refuses the officer's request to submit to the taking of a specimen voluntarily.

(c) The peace officer shall designate the type of specimen to be taken.

(d) In this section, "serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.

### **§ 724.013. Prohibition on Taking Specimen if Person Refuses; Exception**

Except as provided by Section 724.012(b), a specimen may not be taken if a person refuses to submit to the taking of a specimen designated by a peace officer.

### **§ 724.014. Person Incapable of Refusal**

(a) A person who is dead, unconscious, or otherwise incapable of refusal is considered not to have withdrawn the consent provided by Section 724.011.

(b) If the person is dead, a specimen may be taken by:

(1) the county medical examiner or the examiner's designated agent; or

(2) a licensed mortician or a person authorized under Section 724.016 or 724.017 if there is not a county medical examiner for the county.

(c) If the person is alive but is incapable of refusal, a specimen may be taken by a person authorized under Section 724.016 or 724.017.

### **§ 724.015. Information Provided by Officer Before Requesting Specimen**

Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1) if the person refuses to submit to the taking of the specimen, that

refusal may be admissible in a subsequent prosecution;

(2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;

(3) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;

(4) 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 to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;

(5) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; and

(6) the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing.

### **§ 724.016. Breath Specimen**

(a) A breath specimen taken at the request or order of a peace officer must be taken and analyzed under rules of the department by an individual possessing a certificate issued by the department certifying that the individual is qualified to perform the analysis.

(b) The department may:

(1) adopt rules approving satisfactory analytical methods; and

(2) ascertain the qualifications of an individual to perform the analysis.

(c) The department may revoke a certificate for cause.

### **§ 724.017. Blood Specimen**

(a) Only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse may take a blood specimen at the request or order of a peace officer under this chapter. The blood specimen must be taken in a sanitary place.

(b) The person who takes the blood specimen under this chapter, or the hospital where the blood specimen is taken, is not liable for damages arising from the request or order of the peace officer to take the blood specimen as provided by this chapter if the blood specimen was taken according to recognized medical procedures. This subsection does not relieve a person from liability for negligence in the taking of a blood specimen.

(c) In this section, "qualified technician" does not include emergency medical services personnel

### **§ 724.018. Furnishing Information Concerning Test Results**

On the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney.

### **§ 724.019. Additional Analysis by Request**

(a) A person who submits to the taking of a specimen of breath, blood, urine, or another bodily substance at the request or order of a peace officer may, on request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse selected by the person take for analysis an additional specimen of the person's blood.

(b) The person shall be allowed a reasonable opportunity to contact a person specified by Subsection (a).

(c) A peace officer or law enforcement agency is not required to transport for testing a person who requests that a blood specimen be taken under this section.

(d) The failure or inability to obtain an additional specimen or analysis under this section does not preclude the admission of evidence relating to the analysis of the specimen taken at the request or order of the peace officer.

(e) A peace officer, another person acting for or on behalf of the state, or a law enforcement agency is not liable for damages arising from a person's request to have a blood specimen taken.

### **§ 724.031. Statement Requested on Refusal**

If a person refuses the request of a peace officer to submit to the taking of a specimen, the peace officer shall request the person to sign a statement that:

- (1) the officer requested that the person submit to the taking of a specimen;
- (2) the person was informed of the consequences of not submitting to the taking of a specimen; and
- (3) the person refused to submit to the taking of a specimen.

**§ 724.032. Officer's Duties for License Suspension; Written Refusal Report.**

(a) If a person refuses to submit to the taking of a specimen, whether expressly or because of an intentional failure of the person to give the specimen, the peace officer shall:

- (1) serve notice of license suspension or denial on the person;
  - (2) take possession of any license issued by this state and held by the person arrested;
  - (3) issue a temporary driving permit to the person unless department records show or the officer otherwise determines that the person does not hold a license to operate a motor vehicle in this state; and
  - (4) make a written report of the refusal to the director of the department.
- (b) The director must approve the form of the refusal report. The report must:
- (1) show the grounds for the officer's belief that the person had been operating a motor vehicle or watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above while intoxicated; and
  - (2) contain a copy of:
    - (A) the refusal statement requested under Section 724.031; or
    - (B) a statement signed by the officer that the person refused to:
      - (i) submit to the taking of the requested specimen; and
      - (ii) sign the requested statement under Section 724.031.

(c) The officer shall forward to the department not later than the fifth business day after the date of the arrest:

- (1) a copy of the notice of suspension or denial;
- (2) any license taken by the officer under Subsection (a);
- (3) a copy of any temporary driving permit issued under Subsection (a);  
and
- (4) a copy of the refusal report.

(d) The department shall develop forms for notices of suspension or denial and temporary driving permits to be used by all state and local law enforcement agencies.

(e) A temporary driving permit issued under this section expires on the 41st day after the date of issuance. If the person was driving a commercial motor vehicle, as defined by Section 522.003, a temporary driving permit that authorizes the person to drive a commercial motor vehicle is not effective until 24 hours after the time of arrest.

#### **§ 724.033. Issuance by Department of Notice of Suspension or Denial of License**

(a) On receipt of a report of a peace officer under Section 724.032, if the officer did not serve notice of suspension or denial of a license at the time of refusal to submit to the taking of a specimen, the department shall mail notice of suspension or denial, by first class mail, to the address of the person shown by the records of the department or to the address given in the peace officer's report, if different.

(b) Notice is considered received on the fifth day after the date it is mailed.

#### **§ 724.034. Contents of Notice of Suspension or Denial of License**

A notice of suspension or denial of a license must state:

- (1) the reason and statutory grounds for the action;
- (2) the effective date of the suspension or denial;
- (3) the right of the person to a hearing;
- (4) how to request a hearing; and
- (5) the period in which a request for a hearing must be received by the department.

#### **§ 724.035. Suspension or Denial of License**

(a) If a person refuses the request of a peace officer to submit to the taking of a specimen, the department shall:

- (1) suspend the person's license to operate a motor vehicle on a public highway for 180 days; or

(2) if the person is a resident without a license, issue an order denying the issuance of a license to the person for 180 days.

(b) The period of suspension or denial is two years if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section 524.001(3), during the 10 years preceding the date of the person's arrest.

(c) A suspension or denial takes effect on the 40th day after the date on which the person:

(1) receives notice of suspension or denial under Section 724.032(a);  
or

(2) is considered to have received notice of suspension or denial under Section 724.033.

#### **§ 724.041. Hearing on Suspension or Denial**

(a) If, not later than the 15th day after the date on which the person receives notice of suspension or denial under Section 724.032(a) or is considered to have received notice under Section 724.033, the department receives at its headquarters in Austin, in writing, including a facsimile transmission, or by another manner prescribed by the department, a request that a hearing be held, the State Office of Administrative Hearings shall hold a hearing.

(b) A hearing shall be held not earlier than the 11th day after the date the person is notified, unless the parties agree to waive this requirement, but before the effective date of the notice of suspension or denial.

(c) A request for a hearing stays the suspension or denial until the date of the final decision of the administrative law judge. If the person's license was taken by a peace officer under Section 724.032(a), the department shall notify the person of the effect of the request on the suspension of the person's license before the expiration of any temporary driving permit issued to the person, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's license is not suspended.

(d) A hearing shall be held by an administrative law judge employed by the State Office of Administrative Hearings.

(e) A hearing shall be held:

(1) at a location designated by the State Office of Administrative Hearings:

(A) in the county of arrest if the county has a population of 300,000 or more; or

(B) in the county in which the person was alleged to have committed the offense for which the person was arrested or not more than 75 miles from the county seat of the county of arrest if the population of the county of arrest is less than 300,000; or

(2) with the consent of the person requesting the hearing and the department, by telephone conference call.

(f) The State Office of Administrative Hearings shall provide for the stenographic or electronic recording of a hearing under this subchapter.

(g) An administrative hearing under this section is governed by Sections 524.032(b) and (c), 524.035(e), 524.037(a), and 524.040.

#### **§ 724.046. Reinstatement of License or Issuance of New License**

(a) A license suspended under this chapter may not be reinstated or a new license issued until the person whose license has been suspended pays to the department a fee of \$ 125 in addition to any other fee required by law. A person subject to a denial order issued under this chapter may not obtain a license after the period of denial has ended until the person pays to the department a fee of \$ 125 in addition to any other fee required by law.

(b) If a suspension or denial under this chapter is rescinded by the department, an administrative law judge, or a court, payment of the fee under this section is not required for reinstatement or issuance of a license.

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

#### **§ 724.048. Relationship of Administrative Proceeding to Criminal Proceeding**

(a) The determination of the department or administrative law judge:

(1) is a civil matter;

(2) 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 denial; and

(3) does not preclude litigation of the same or similar facts in a criminal prosecution.

(b) Except as provided by Subsection (c), the disposition of a criminal charge does not affect a license suspension or denial under this chapter and is not an estoppel as to any matter in issue in a suspension or denial proceeding under this chapter.

(c) If a criminal charge arising from the same arrest as a suspension under this chapter results in an acquittal, the suspension under this chapter may not be imposed. If a suspension under this chapter has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual.

#### **§ 724.061. Admissibility of Refusal of Person to Submit to Taking of Specimen**

A person's refusal of a request by an officer to submit to the taking of a specimen of breath or blood, whether the refusal was express or the result of an intentional failure to give the specimen, may be introduced into evidence at the person's trial.

**§ 724.063. Admissibility of Alcohol Concentration or Presence of Substance**

Evidence of alcohol concentration or the presence of a controlled substance, drug, dangerous drug, or other substance obtained by an analysis authorized by Section 724.014 is admissible in a civil or criminal action.

**§ 724.064. Admissibility in Criminal Proceeding of Specimen Analysis**

On the trial of a criminal proceeding arising out of an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft, or an offense under Section 106.041, Alcoholic Beverage Code, evidence of the alcohol concentration or presence of a controlled substance, drug, dangerous drug, or other substance as shown by analysis of a specimen of the person's blood, breath, or urine or any other bodily substance taken at the request or order of a peace officer is admissible.