

SUBCHAPTER L. OCCUPATIONAL LICENSE

Sec. 521.241. DEFINITIONS. In this subchapter:

(1) "Essential need" means a need of a person for the operation of a motor vehicle:

(A) in the performance of an occupation or trade or for transportation to and from the place at which the person practices the person's occupation or trade;

(B) for transportation to and from an educational facility in which the person is enrolled; or

(C) in the performance of essential household duties.

(2) "Ignition interlock device" means a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator of the vehicle.

Sec. 521.242. PETITION. (a) A person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction under Section 49.04, Penal Code, may apply for an occupational license by filing a verified petition with the clerk of a justice, county, or district court with jurisdiction that includes the precinct or county in which:

(1) the person resides; or

(2) the offense occurred for which the license was suspended.

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the court in which the person was convicted if:

(1) the person's license has been automatically suspended or canceled under this chapter for a conviction of an offense under the laws of this state; and

(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(c) A petition filed under this section must set forth in detail the person's essential need.

(d) A petition filed under Subsection (b) must state that the petitioner was convicted in that court for an offense under the laws of this state.

(e) The clerk of the court shall file the petition as in any other matter.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

Sec. 521.243. NOTICE TO STATE; PRESENTATION OF EVIDENCE. (a) The clerk of the court shall send by certified mail to the attorney representing the state a copy of the petition and notice of the hearing if the petitioner's license was suspended following a conviction for:

- (1) an offense under Section 19.05, 49.04, 49.07, or 49.08, Penal Code; or
- (2) an offense to which Section 521.342 applies.

(b) A person who receives a copy of a petition under Subsection (a) may attend the hearing and may present evidence at the hearing against granting the petition.

Sec. 521.244. HEARING; ORDER; DETERMINATION OF ESSENTIAL NEED. (a) The judge who hears the petition shall sign an order finding whether an essential need exists.

(b) In determining whether an essential need exists, the judge shall consider:

- (1) the petitioner's driving record; and
- (2) any evidence presented by a person under Section 521.243(b).

(c) If the judge finds that there is an essential need, the judge also, as part of the order, shall:

- (1) determine the actual need of the petitioner to operate a motor vehicle; and
- (2) require the petitioner to provide evidence of financial responsibility in accordance

with Chapter 601.

(d) Except as provided by Section 521.243(b), the hearing on the petition may be ex parte.

Sec. 521.245. REQUIRED COUNSELING. (a) If the petitioner's license has been suspended under Chapter 524 or 724, the court shall require the petitioner to attend a program approved by the court that is designed to provide counseling and rehabilitation services to persons for alcohol dependence. This requirement shall be stated in the order granting the occupational license.

(b) The program required under Subsection (a) may not be the program provided by Section 521.344 or by Section 13, Article 42.12, Code of Criminal Procedure.

(c) The court may require the person to report periodically to the court to verify that the person is attending the required program.

(d) On finding that the person is not attending the program as required, the court may revoke the order granting the occupational license. The court shall send a certified copy of the order revoking the license to the department.

(e) On receipt of the copy under Subsection (d), the department shall suspend the person's occupational license for:

- (1) 60 days, if the original driver's license suspension was under Chapter 524; or
- (2) 120 days, if the original driver's license suspension was under Chapter 724.

(f) A suspension under Subsection (e):

(1) takes effect on the date on which the court signs the order revoking the occupational license; and

(2) is cumulative of the original suspension.

(g) A person is not eligible for an occupational license during a period of suspension under Subsection (e).

Sec. 521.246. IGNITION INTERLOCK DEVICE REQUIREMENT. (a) If the person's license has been suspended after a conviction under Section 49.04, 49.07, or 49.08, Penal Code, the judge, before signing an order, shall determine from the criminal history record information maintained by the department whether the person has any previous conviction under those laws.

(b) As part of the order the judge may restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that the person's license has been suspended following a conviction under Section 49.04, 49.07, or 49.08, Penal Code. As part of the order, the judge shall restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that:

(1) the person has two or more convictions under any combination of Section 49.04, 49.07, or 49.08, Penal Code; or

(2) the person's license has been suspended after a conviction under Section 49.04, Penal Code, for which the person has been punished under Section 49.09, Penal Code.

(c) The person shall obtain the ignition interlock device at the person's own expense unless the court finds that to do so is not in the best interest of justice and enters that finding in the record. If the court determines that the person is unable to pay for the device, the court may impose a reasonable payment schedule for a term not to exceed twice the period of the court's order.

(d) The court shall order the ignition interlock device to remain installed for at least half of the period of supervision.

(e) A person to whom this section applies may operate a motor vehicle without the installation of an approved ignition interlock device if:

(1) the person is required to operate a motor vehicle in the course and scope of the person's employment;

- (2) the vehicle is owned by the person's employer;
- (3) the employer is not owned or controlled by the person whose driving privilege is restricted;
- (4) the employer is notified of the driving privilege restriction; and
- (5) proof of that notification is with the vehicle.

(f) A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this section if:

(1) the previous conviction was a final conviction under Section 49.04, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted; and

(2) the person has not been convicted of an offense under Section 49.04, 49.07, or 49.08 of that code committed within 10 years before the date on which the instant offense for which the person was convicted.

Sec. 521.2461. TESTING FOR ALCOHOL OR CONTROLLED SUBSTANCES. The court granting an occupational license under this subchapter may require as a condition of the license that the person submit to periodic testing for alcohol or controlled substances, to be conducted by an entity specified by the court, if the person's license has been suspended under Chapter 524 or 724 or as a result of the person's conviction of an offense involving the operation of a motor vehicle while intoxicated.

Sec. 521.2462. SUPERVISION OF PERSON ISSUED OCCUPATIONAL DRIVER'S LICENSE. (a) The court granting an occupational license under this subchapter may order the person receiving the license to:

(1) submit to supervision by the local community supervision and corrections department to verify compliance with the conditions specified by the order granting the license, including the conditions specified in accordance with Section 521.248; and

(2) pay a monthly administrative fee under Section 76.015, Government Code.

(b) The court may order the supervision to continue until the end of the period of suspension of the person's driver's license, including any extensions of that period.

(c) The court for good cause may modify or terminate supervision before the end of the period of license suspension.

Sec. 521.2465. RESTRICTED LICENSE. (a) On receipt of notice that a person has been restricted to the use of a motor vehicle equipped with an ignition interlock device, the department shall notify that person that the person's driver's license expires on the 30th day after the date of the notice. On application by the person and payment of a fee of \$10, the department shall issue a special restricted license that authorizes the person to operate only a motor vehicle equipped with an ignition interlock device.

(b) On receipt of a copy of a court order removing the restriction, the department shall issue the person a driver's license without the restriction.

Sec. 521.247. APPROVAL OF IGNITION INTERLOCK DEVICES BY DEPARTMENT. (a) The department shall adopt rules for the approval of ignition interlock devices used under this subchapter.

(b) The department by rule shall establish general standards for the calibration and maintenance of the devices. The manufacturer or an authorized representative of the manufacturer is responsible for calibrating and maintaining the device.

(c) If the department approves a device, the department shall notify the manufacturer of that approval in writing. Written notice from the department to a manufacturer is admissible in a civil or criminal proceeding in this state. The manufacturer shall reimburse the department for any cost incurred by the department in approving the device.

(d) The department is not liable in a civil or criminal proceeding that arises from the use of an approved device.

Sec. 521.2475. IGNITION INTERLOCK DEVICE EVALUATION. (a) On January 1 of each year, the department shall issue an evaluation of each ignition interlock device approved under Section 521.247 using guidelines established by the National Highway Traffic Safety Administration, including:

- (1) whether the device provides accurate detection of alveolar air;
- (2) the moving retest abilities of the device;
- (3) the use of tamper-proof blood alcohol content level software by the device;
- (4) the anticircumvention design of the device;
- (5) the recalibration requirements of the device; and
- (6) the breath action required by the operator.

(b) The department shall assess the cost of preparing the evaluation equally against each manufacturer of an approved device.

Sec. 521.2476. MINIMUM STANDARDS FOR VENDORS OF IGNITION INTERLOCK DEVICES. (a)

The department by rule shall establish:

(1) minimum standards for vendors of ignition interlock devices who conduct business in this state; and

(2) procedures to ensure compliance with those standards, including procedures for the inspection of a vendor's facilities.

(b) The minimum standards shall require each vendor to:

(1) be authorized by the department to do business in this state;

(2) install a device only if the device is approved under Section 521.247;

(3) obtain liability insurance providing coverage for damages arising out of the operation or use of devices in amounts and under the terms specified by the department;

(4) install the device and activate any anticircumvention feature of the device within a reasonable time after the vendor receives notice that installation is ordered by a court;

(5) install and inspect the device in accordance with any applicable court order;

(6) repair or replace a device not later than 48 hours after receiving notice of a complaint regarding the operation of the device;

(7) submit a written report of any violation of a court order to that court and to the person's supervising officer, if any, not later than 48 hours after the vendor discovers the violation;

(8) maintain a record of each action taken by the vendor with respect to each device installed by the vendor, including each action taken as a result of an attempt to circumvent the device, until at least the fifth anniversary after the date of installation;

(9) make a copy of the record available for inspection by or send a copy of the record to any court, supervising officer, or the department on request; and

(10) annually provide to the department a written report of each service and ignition interlock device feature made available by the vendor.

(c) The department may revoke the department's authorization for a vendor to do business in this state if the vendor or an officer or employee of the vendor violates:

(1) any law of this state that applies to the vendor; or

(2) any rule adopted by the department under this section or another law that applies to the vendor.

(d) A vendor shall reimburse the department for the reasonable cost of conducting each

inspection of the vendor's facilities under this section.

(e) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

Sec. 521.248. ORDER REQUIREMENTS. (a) An order granting an occupational license must specify:

(1) the hours of the day and days of the week during which the person may operate a motor vehicle;

(2) the reasons for which the person may operate a motor vehicle;

(3) areas or routes of travel permitted;

(4) that the person is restricted to the operation of a motor vehicle equipped with an ignition interlock device, if applicable; and

(5) that the person must submit to periodic testing for alcohol or controlled substances, if applicable.

(b) The person may not operate a motor vehicle for more than four hours in any 24-hour period, except that on a showing of necessity the court may allow the person to drive for any period determined by the court that does not exceed 12 hours in any 24-hour period.

(c) An order granting an occupational license remains valid until the end of the period of suspension of the person's regular driver's license.

Sec. 521.249. NOTICE TO DEPARTMENT; ISSUANCE OF OCCUPATIONAL LICENSE. (a) The court shall send a certified copy of the petition and the court order setting out the judge's findings and restrictions to the department. The person may use a copy of the order as a restricted license until the 31st day after the date on which the order takes effect.

(b) On receipt of the copy under this section and after compliance with Chapter 601, the department shall issue an occupational license to the person. The license must refer on its face to the court order.

Sec. 521.250. COURT ORDER IN OPERATOR'S POSSESSION. A person who is issued an occupational license shall have in the person's possession a certified copy of the court order granting the license while operating a motor vehicle. The person shall allow a peace officer to examine the order on request.

Sec. 521.251. EFFECTIVE DATE OF OCCUPATIONAL LICENSE. (a) If a person's license is suspended

under Chapter 524 or 724 and the person has not had a prior suspension arising from an alcohol-related or drug-related enforcement contact in the five years preceding the date of the person's arrest, an order under this subchapter granting the person an occupational license takes effect immediately. However, the court shall order the person to comply with the counseling and rehabilitation program required under Section 521.245.

(b) If the person's driver's license has 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, the order may not take effect before the 91st day after the effective date of the suspension.

(c) If the person's driver's license has been suspended as a result of a conviction under Section 49.04, 49.07, or 49.08, Penal Code, during the five years preceding the date of the person's arrest, the order may not take effect before the 181st day after the effective date of the suspension.

(d) Notwithstanding any other provision in this section, if the person's driver's license has been suspended as a result of a second or subsequent conviction under Section 49.04, 49.07, or 49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed, an order granting the person an occupational license may not take effect before the first anniversary of the effective date of the suspension.

(e) For the purposes of this section, "alcohol-related or drug-related enforcement contact" has the meaning assigned by Section 524.001.

Sec. 521.252. LICENSE REVOCATION. (a) The court that signs an order granting an occupational license may issue at any time an order revoking the license for good cause.

(b) The court shall send a certified copy of the order to the department.

Sec. 521.253. CRIMINAL PENALTY. (a) A person who holds an occupational license commits an offense if the person:

(1) operates a motor vehicle in violation of a restriction imposed on the license; or

(2) fails to have in the person's possession a certified copy of the court order as required under Section 521.250.

(b) An offense under this section is a Class B misdemeanor.

(c) On conviction of an offense under this section, the occupational license and the order granting that license are revoked.