

- SUBJECT:** Requiring county judges to determine suspension of driver's licenses
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, Pena, Talton
0 nays
1 absent — P. Moreno
- SENATE VOTE:** On final passage, February 27 — voice vote
- WITNESSES:** (*On original bill:*)
For — Craig Pardue, Dallas County

Against — None
- BACKGROUND:** A person arrested for driving while intoxicated (DWI), intoxication assault, or intoxication manslaughter involving the operation of a motor vehicle by a person with a blood alcohol concentration of at least 0.08, or a minor arrested for those offenses who had any detectable alcohol in his or her system, is subject to a suspension of his or her driver's license for a specified period. When a suspect refuses to submit to the taking of a blood alcohol specimen at a peace officer's request, the Department of Public Safety (DPS) must suspend his or her license.
- A person may challenge a suspension by requesting a hearing within 15 days after receiving notice of the suspension. A request for a hearing stays suspension of the person's driver's license until the date of the final decision by the administrative law judge. The case must be heard by an administrative law judge employed by the State Office of Administrative Hearings (SOAH). A person whose driver's license suspension is sustained may appeal the decision by filing a petition in a county court at law or in a county court in the county in which the person was arrested.
- The determination by DPS or the administrative law judge is a civil matter and is independent of any matter relating to criminal charges arising from the

incident. Also, the determination does not preclude litigation of the same facts in a criminal prosecution. A driver's license suspended by DPS cannot be reinstated or another driver's license issued to the person until the person pays DPS a \$125 fee, unless the suspension was rescinded or not sustained by an administrative law judge or a court.

DIGEST:

CSSB 191 would eliminate the role of administrative law judges in determining driver's license suspensions. Instead, a person would have to file a petition requesting a hearing in the county court at law or a county court in the county in which the person was arrested and would have to send a copy of the petition by certified mail to DPS headquarters in Austin. The hearing would have to be conducted by the judge of the court in which the criminal charge against the defendant was pending and would have to be held before the effective date of the driver's license suspension.

A person who requested a hearing on a suspension following a failure of an alcohol test would have to pay a \$35 filing fee, unless the person filed an affidavit of indigency. Filing fees would have to be deposited to the credit of the county's general fund. If the person was arrested in a county that maintained a certified breath alcohol testing program but did not use the services of a certified technical supervisor employed by DPS, DPS would have to remit \$15 of the \$125 reinstatement fee to the county treasurer. The county could use this money only to defray its costs for using the services of a certified technical supervisor employed by the county.

DPS or the person whose driver's license suspension was sustained could appeal the judge's decision as in other civil cases.

The bill would repeal portions of the Transportation Code requiring an administrative law judge to conduct license revocation hearings, authorizing a hearing to take place by telephone conference call, and specifying how review on appeal should be conducted.

The bill would take effect January 1, 2004.

**SUPPORTERS
SAY:**

CSSB 191 appropriately would eliminate the role of administrative law judges in determining driver's license suspensions and would transfer that authority to the county court where the criminal case was pending. Requiring a separate

administrative forum for litigation of the license revocation issue is costly and inefficient for the state.

The bill would save the state money by consolidating the license suspension process with proceedings in the criminal case. According to the fiscal note, the bill would create about \$10 million in net savings for the State Highway Fund during fiscal 2004-05, with a cost to general revenue of about \$600,000. The new \$35 filing fee for a hearing on a license suspension following a test failure would help counties defray the costs of implementing the bill.

It would make sense to litigate the license suspension issue in front of the criminal court that already is handling the DWI or other case that gave rise to the license suspension. That court already has the relevant documents needed to resolve the issue. The court simply would have to decide whether there was probable cause for the arrest and whether the suspect had refused the test or exceeded the legal blood alcohol level when a test was administered. These issues would be similar to those already raised in a motion filed in county court to suppress the evidence. CSSB 191 also would make the process easier for defendants by allowing them to deal with a single county court for determination of all issues arising out of their DWI or other alcohol-related offenses. Prosecutors would benefit because they no longer would be surprised by impeachment evidence from testimony by the peace officer at the administrative hearing in which they did not take part.

Concerns that the bill would give rise to logistical problems are misplaced. Prosecutors already must obtain the paperwork regarding the suspect's refusal or failure of a breath or blood test for use in the criminal proceeding.

**OPPONENTS
SAY:**

CSSB 191 would shift responsibility for license revocation hearings to county courts, which would have a hard time absorbing these cases. License revocation hearings must take place within an expedited time frame, which might not be possible in county courts. In fiscal 2002, there were more than 20,000 such cases, and local courts already are overburdened by their current dockets. Large counties, which would have to handle about half of these cases, would be hit particularly hard.

According to the fiscal note, Dallas County estimates that it would have to conduct about 5,000 hearings per year, at an annual cost of \$850,000. Many

counties would require additional staff to handle the increased caseload. At a time when local governments are suffering from budget cuts of their own, shifting this responsibility to them would create too great a burden.

CSSB 191 might lead to successful legal challenges based on the concept of collateral estoppel. Defendants could argue that because they had prevailed at the revocation hearing, the state could not proceed with criminal prosecution. The same judge and prosecutors would be involved in both proceedings, and some of the same issues would be litigated.

The bill could lead to logistical problems. It would not specify a time frame for a person to notify DPS about a request for a hearing on a driver's license suspension. As a result, DPS might not stay the suspension pending the judge's final decision. Also, it might be difficult for county courts across the state to notify DPS immediately of a judge's final decision. This is important because a temporary permit expires at the time of the decision, but that cannot happen if DPS is unaware of the decision. SOAH is linked to the DPS computer system, which makes exchange of information efficient. However, it would be less efficient for DPS to share information and disburse certified documents necessary for the hearings to prosecutors and courts across the state, especially when DPS would not know exactly when the hearings would be scheduled.

The bill would eliminate the option of conducting a hearing by telephone, which is convenient for defendants as well as for peace officers. Defendants are not always arrested in their home counties, and telephone hearings relieve them from having to travel to distant locations for a hearing.

OTHER
OPPONENTS
SAY:

It would be inappropriate to require a \$35 filing fee for a hearing on a revocation due to a test failure but not to charge a filing fee for a case in which a driver refused a test.

NOTES:

The fiscal note projects net savings of \$10 million to the State Highway Fund during fiscal 2004-05 due to a net reduction of about 80 full-time employees (FTEs) of SOAH and DPS. It assumes elimination of eight SOAH field offices and a general revenue cost of \$622,000, including hiring of up to four FTEs, associated with holding required hearings in the field for cases other than those related to driver's license revocations.

The committee substitute is similar to HB 1725 by Stick, which was referred to the House Law Enforcement Committee but never received a public hearing. The Senate engrossed version of SB 191 only would have increased the fee for reinstating a driver's license from \$125 to \$140 and would have specified that if the person was arrested in a county that maintained a certified breath alcohol testing program but did not use the services of a certified technical supervisor, DPS would have to remit \$15 of the reinstatement fee to the county treasurer. It would not have eliminated the state administrative license revocation program and would not have transferred authority to county courts to make those determinations.