

**SUBJECT:** Prohibiting racial profiling by DPS civilian driver's license clerks

**COMMITTEE:** Public Safety — favorable, without amendment

**VOTE:** 7 ayes — Merritt, Burnam, Driver, Lewis, Mallory Caraway, Rodriguez, Vo

1 nay — P. King

1 absent — Frost

**WITNESSES:** For — Terri Burke, ACLU of Texas; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Katherlene Levels, Texas Criminal Justice Coalition)

Against — None

On — (*Registered, but did not testify*: Rhonda Fleming, Texas Department of Public Safety)

**BACKGROUND:** Code of Criminal Procedure, Art. 2.131 prohibits peace officers from engaging in racial profiling. Art. 2.132 requires each law enforcement agency in Texas to adopt a detailed written policy on racial profiling. The policy must:

- define acts constituting racial profiling;
- prohibit the agency's peace officers from engaging in racial profiling;
- implement a process for people to file complaints if they believed an officer had engaged in racial profiling;
- educate the public about the agency's complaint process; and
- require corrective action against peace officers shown after an investigation to have violated the agency's racial profiling policy.

A provision of the Texas Administrative Code (37 TAC, part 1, sec. 15.171), which took effect on October 1, 2008, requires anyone who is not a citizen or lawful permanent resident of the United States to present documentation proving lawful temporary admission to apply for a Department of Public Safety (DPS) driver's license or identification card.

**DIGEST:** HB 384 would amend Code of Criminal Procedure, Art. 2.131 to prohibit a DPS civilian employee in the driver's license division from engaging in racial profiling in issuing an original, renewal or duplicate driver's license, commercial driver's license, or personal identification card.

The bill also would require adoption of a written policy that would make racial profiling provisions of Code of Criminal Procedure Art. 2.132 that are applicable to DPS commissioned law enforcement officers apply to DPS civilian employees in the driver's license division, to the extent they could be made applicable.

The bill would take effect on September 1, 2009.

**SUPPORTERS SAY:** HB 384 would help put an end to inconsistent and often insensitive application of a new rule requiring proof of citizenship to receive or renew a DPS driver's license or identification card. The rule grants broad discretion to the clerks and forces them effectively to practice immigration law, a very specialized and arcane legal specialty. Racial profiling is a major civil rights problem and breeds cynicism and mistrust of authority by minority Texans.

Reducing complaints about racial profiling would be consistent with recommendations from the Sunset Advisory Commission and the Deloitte management study of DPS to improve customer service at the driver's license offices. The driver's license division represents both the largest point of contact between Texans and the DPS and the largest source of complaints about the agency.

HB 384 would clarify that the statute against racial profiling by DPS commissioned officers also applied to DPS civilian employees. This would be especially important should the DPS transition to a civilian model for driver's license operations. Also, the bill would not create a private right of legal action nor require collection of additional statistical information.

**OPPONENTS SAY:** HB 384 is unnecessary and would represent another case of the Legislature micromanaging a state agency's operations. Complaints about racial profiling could be eliminated by the simple requirement that all applicants be asked to show proof of legal status and Texas residency. For the most part, this practice has already been implemented.