

BILL ANALYSIS

Senate Research Center
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H.B. 3641
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Jurisprudence
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Engrossed

DIGEST

Various offenses related to the operation of a motor vehicle are handled through administrative hearings. Patterning such hearings after the administrative license revocation (ALR) program may make them more efficient. H.B. 3641 would authorize the Texas Department of Public Safety director to notify a person of the revocation or suspension of the person's driver's license, permit, or operating privilege.

PURPOSE

As proposed, H.B. 3641 authorizes the Texas Department of Public Safety director to notify a person of the revocation or suspension of the person's driver's license, permit, or operating privilege.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Public Safety in SECTION 1 (Section 521.291, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter N, Chapter 521, Transportation Code, as follows:

SUBCHAPTER N. GENERAL PROVISIONS RELATING TO LICENSE DENIAL, SUSPENSION, OR REVOCATION

Sec. 521.291. RULES. Authorizes the Texas Department of Public Safety (DPS) to adopt rules to administer the subchapter.

Sec. 521.292. DEPARTMENT'S DETERMINATION FOR LICENSE SUSPENSION. Requires DPS to suspend a person's license if DPS determines that the person has committed one of the enumerated offenses. Defines "habitual violator."

Sec. 521.293. PERIOD OF SUSPENSION UNDER SECTION 521.292. Provides that if a person does not request a hearing, the period of license suspension under Section 521.292 is 90 days. Provides that if DPS determines that the person operated a motor vehicle while the person's license was suspended, canceled, disqualified, or revoked, the period of license suspension is extended for an additional period of the lesser of the term of the original suspension or one year.

Sec. 521.294. DEPARTMENT'S DETERMINATION FOR LICENSE REVOCATION. Requires DPS to revoke a person's license if DPS determines that the person is incapable of safely operating a motor vehicle or has committed one of the specified offenses.

Sec. 521.295. NOTICE OF DEPARTMENT'S DETERMINATION. Requires DPS to send a notice of suspension or revocation by first class mail to a person's address in the records of DPS, if DPS suspends the person's license under Section 521.292 or revokes a person's license under Section 521.294.

Sec. 521.296. NOTICE OF SUSPENSION OR REVOCATION. Provides that a notice of suspension under Section 521.292 or revocation under Section 521.294 must state certain conditions.

Sec. 521.297. SUSPENSION OR REVOCATION EFFECTIVE DATE. Provides that a license

suspension under Section 521.292 or revocation under Section 521.294 takes effect on the 40th day after the date the person is considered to have received notice of the suspension or revocation under Section 521.295.

Sec. 521.298. HEARING REQUEST. Requires a hearing to be held as provided by Sections 521.295-521.303 if, not later than the 15th day after the date on which the person is considered to have received the notice of the suspension or revocation under Section 521.295(b), DPS receives at its headquarters in Austin, in writing, including a facsimile transmission, or by another manner prescribed by DPS, a request for such a hearing.

Sec. 521.299. HEARING DATE; RESCHEDULING. Requires a hearing requested under Section 521.298 to be held not earlier than the 11th day after the date on which the person requesting the hearing is notified of the hearing. Requires the hearing to be set for the earliest practical date. Authorizes a hearing to be continued on a motion of the person, DPS, both parties, or as necessary to accommodate the docket of the presiding officer. Provides that a hearing stays suspension or revocation of a person's license until the date of the final decision of the presiding officer.

Sec. 521.300. HEARING: LOCATION; PRESIDING OFFICER. Requires a hearing under this subchapter to be conducted in a municipal court or a justice court in the county in which the person resides. Provides that the judge of the municipal court or the justice is designated as the presiding officer. Provides that the presiding officer is entitled to receive a fee for hearing the case if a fee is approved and set by the commissioners court in which the person resides. Prohibits the fee from exceeding \$5 and requires the fee to be paid from the general revenue fund of the county. Authorizes the presiding officer to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant books and documents.

Sec. 521.301. ISSUE AT HEARING. Provides that the issue to be proved at the hearing by a preponderance of the evidence is whether the grounds for suspension or revocation stated in the notice are true. Provides that if the presiding officer finds in the affirmative on that issue, the suspension or revocation is sustained. Requires DPS to suspend the person's license for the period specified by the presiding officer, which may not be less than 30 days or more than one year if the presiding officer sustains a suspension. Prohibits DPS from suspending or revoking the person's license if the presiding officer does not find in the affirmative on that issue. Provides that the decision of the presiding officer is final when issued and signed.

Sec. 521.302. FAILURE TO APPEAR. Provides that a person who requests a hearing under this subchapter and fails to appear without just cause waives the right to a hearing and the determination of DPS is final.

Sec. 521.303. CONTINUANCE. Provides that a continuance under Section 521.299 stays the suspension or revocation of a license until the date of the final decision of the presiding officer. Deletes text regarding Sections 521.291-521.295, Transportation Code.

Redesignated existing Sections 521.304-521.307 as Sections 521.296-521.300.

Sec. 521.308. APPEAL; JUDICIAL REVIEW. Authorizes a person whose driver's license suspension or revocation has been sustained by a presiding officer under this subchapter to appeal the decision of the presiding officer, rather than authorizing a person whose driver's license has been suspended, whose license suspension has been probated under Section 521.303, or who is denied a license or whose driver's license has been canceled or revoked by DPS to appeal the action unless the suspension, cancellation, or revocation is automatic under this chapter or Chapter 522. Provides that to appeal the decision of the presiding officer, rather than the action, the person must file a petition no later than the 30th day after the date on which the DPS order was entered in the county court at law of the county in which the person resides, or, if there is no county at law, in the county court. Requires the person to send a file-stamped copy of the petition, certified by the clerk of the court in which the petition is filed, to DPS by certified mail. Requires the court to take testimony, examine the facts of the case, and determine whether the petitioner is subject to the suspension or revocation of a license under this subchapter, rather than whether the petition is entitled to a license or is subject to the cancellation, denial, suspension, revocation of a license under this chapter. Provides that a trial on appeal is a trial de novo, and the person, rather than

license holder, has the right to trial by jury. Provides that the filing of a petition of appeal as provided by this section stays an order of suspension, probated suspension, or revocation until the earlier of the 91st day after the date the appeal petition is filed or the date the trial is completed and final judgment is rendered. Requires DPS to impose, on expiration of the stay, to impose the suspension, probated suspension, or revocation. Prohibits the stay from being extended, and prohibits an additional stay from being granted. Redesignated from Section 521.302. Makes conforming changes.

Sec. 521.309. PROBATION OF SUSPENSION. Authorizes the presiding officer who conducted a hearing under this subchapter, rather than Section 521.291, or the court that tries an appeal under this subchapter, to recommend that the suspension be probated on any terms and conditions considered necessary or proper by the presiding officer or court, if it appears that justice and the best interests of the public and the person, rather than the defendant, will be served by the probation. Prohibits the revocation of a license from being probated. Requires the probationary period to be for a term of not less than 90 days or more than two years, if a presiding officer or a court probates a suspension of a license under this section, rather than probates a suspension of a driver's license or privilege under this section. Makes conforming changes.

Sec. 521.310. PROBATION VIOLATION. Requires the director of DPS (director) to notify the person, rather than license holder, and summon the person to appear at a hearing in the court or before the presiding officer or judge who recommended that the person to be placed on probation, rather than that the suspension be probated, after notice as provided by Sections 521.295 and 521.296, rather than Section 521.291. Requires DPS, under certain conditions, to take the action, rather than suspend the license, as determined in the original hearing. Makes conforming changes.

Sec. 521.311. EFFECTIVE DATE OF ORDER. Adds an exception as provided by another section of this subchapter to the contrary, to the provision that a decision under this subchapter takes effect on the 11th day after the date on which an order is rendered. Makes a nonsubstantive change.

Sec. 521.312. New heading: PERIOD OF SUSPENSION OR REVOCATION; REINSTATEMENT OF LICENSE. Prohibits DPS from suspending a license for a period that exceeds one year, except as provided by Subsection (c), Section 521.293(b), rather than of this section, or Subchapter O. Prohibits DPS from reinstating a license revoked, rather than suspended, under Section 521.294(5) until the court that filed the report for which the license was revoked files an additional report on final disposition of the case. Deletes text providing that a license may not be probated.

Sec. 521.313. REINSTATEMENT AND REISSUANCE; FEE. Prohibits a license suspended or revoked under this subchapter from being reinstated or another license issued to the person until the person pays DPS a fee of \$100 in addition to any other fee required by law. Provides that the payment of a reinstatement fee is not required if a suspension or revocation under this subchapter is rescinded by DPS, or not sustained by a presiding officer or a court. Deletes text prohibiting DPS from reinstating a license suspended or revoked unless the person whose license was suspended or revoked applies for reinstatement of the license and pays a \$50 reinstatement fee.

Sec. 521.314. Redesignated from Section 521.307.

Sec. 521.315. SURRENDER OF LICENSE; RETURN. Authorizes DPS to require the license holder to surrender the license to the DPS. Redesignated from Section 521.308.

Redesignates existing Sections 521.309-521.314 as Sections 521.316-521.320.

SECTION 2. Amends Section 521.344(h), Transportation Code, to make a conforming change.

SECTION 3. Amends Section 522.087(b), Transportation Code, to make conforming changes.

SECTION 4. Amends Section 601.156(a), Transportation Code, to provide that a hearing under this subchapter is subject to the notice and hearing procedures of Sections 521.295-521.303 and to require it to be heard by judge of a municipal court or a justice of the peace of the county, rather than precinct, in

which the person requesting the hearing resides.

SECTION 5. Amends Section 601.158, Transportation Code, by amending Subsection (b) and adding Subsections (c)-(f), as follows:

(b) Provides that, to appeal a determination under Subsection (a), the person must file a petition not later than the 30th day after the date of the determination in the county court at law of the county in which the person resides, or, if there is no county court at law, in county court of the county, rather than providing that an appeal under this section is by trial de novo to the county court of the county in which the hearing was held.

(c) Requires the person who files an appeal under this section to send a file-stamped copy of the petition by certified mail to DPS at DPS headquarters in Austin. Provides that the copy must be certified by the clerk of the court in which the petition is filed.

(d) Provides that the filing of a petition of appeals as provided by this section stays an order of suspension until the earlier of the 91st day after the date the appeal petition is filed or the date the trial is completed and final judgment is rendered.

(e) Requires DPS to impose the suspension on the expiration of the stay. Prohibits the stay from being extended. Prohibits an additional stay from being granted.

(f) Provides that a trial is de novo.

SECTION 6. Amends Section 601.401, Transportation Code, as follows:

Sec. 601.401. New heading: DEPARTMENT ACTIONS SUBJECT TO REVIEW. Authorizes an action, rather than act, of DPS to be appealed, unless certain conditions exist.

Provides that, to appeal an action of DPS, the person must file a petition not later than the 30th day after the date of the action in specified locations. Deletes the provision that the petition may be filed in the district court of the county in which the person resides if the county does not have a county court at law and the county court does not have the civil jurisdiction provided by general law for a county court. Requires a person who files an appeal under this section to send a file-stamped copy of the petition by certified mail to DPS at the DPS headquarters in Austin. Provides that the copy must be certified by the clerk of the court in which the petition is filed. Provides that the filing of a petition of appeal as provided by this section stays an order of suspension until the earlier of the 91st day after the date the appeal petition is filed or the date the trial is completed and final judgment is rendered. Requires DPS to impose the suspension on the expiration of the stay. Prohibits the suspension from being extended, and prohibits an additional stay from being granted.

SECTION 7. Amends Section 2001.221, Government Code, to make conforming changes.

SECTION 8. Amends Section 2002.023, Government Code, to make conforming changes.

SECTION 9. Repealer: Section 601.402, Transportation Code (Time for Appeal).

Repealer: Section 601.403, Transportation Code (Trial).

Repealer: Section 601.404, Transportation Code (Stay of Act on Appeal).

Repealer: Section 601.405, Transportation Code (Filing of Evidence of Financial Responsibility; Effect on Appeal).

Repealer: Section 601.406, Transportation Code (Temporary Stay of Department's Order on Filing of Affidavit).

Repealer: Section 601.407, Transportation Code (Stay After Plea or Conviction).

Repealer: Section 601.408, Transportation Code (Stay After Acquittal or Dismissal).

Repealer: Section 601.409, Transportation Code (Maintenance of Evidence of Financial Responsibility).

Repealer: Section 601.410, Transportation Code (Limit on Courts).

SECTION 10. Effective date: September 1, 2000.

Makes application of this Act prospective.

SECTION 11. Emergency clause.

