
Judiciary Committee

HB 1854

Title: An act relating to withholding of the driving privilege.

Brief Description: Changing procedures on the withholding of the driving privilege.

Sponsors: Representatives Lantz, Priest, Haler, Walsh and Williams.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes an administrative review procedure by the Department of Licensing when the agency is required by statute to suspend or revoke a person's driving privilege.

Hearing Date: 2/23/05

Staff: Trudes Tango Hutcheson (786-7384).

Background:

There are numerous circumstances, both criminal and noncriminal, under which the Department of Licensing (DOL) is required by statute to suspend or revoke a person's driver's license. Two of the more common reasons are: (a) conviction of driving under the influence of alcohol or drugs; and (b) failure to pay traffic infractions or appear at a hearing for an infraction.

Whenever a person is convicted of an offense requiring the withholding of the person's driving privilege, the court must immediately take possession of the person's driver's license and forward it to the DOL. In cases where the person has failed to respond or appear at a hearing for a traffic infraction, the court sends a notice to the DOL.

When the DOL receives the information from the court, the DOL sends a notice to the driver that his or her license will be suspended or revoked 30 days after the mailing of the notice. The suspension or revocation remains in effect until the DOL receives notice from the court that the case has been adjudicated.

In addition to the statutorily required suspension, the DOL has discretion to suspend or revoke a person's driver's license or to put a driver on a probationary status. Before taking discretionary action, the DOL may offer driver improvement interviews or formal hearings. However, when suspension or revocation is mandated by statute, a person is not entitled to driver improvement interviews or a formal hearing.

Recently, the Washington State Supreme Court ruled that the statutes requiring the DOL to suspend a person's license for failing to appear, respond, or comply with the terms of a notice of

traffic infraction or citation violated constitutional due process requirements. *City of Redmond v. Moore*, 151 Wn.2d 664 (2004).

In that case, the defendants were arrested for driving while license suspended in the third degree (DWLS 3). Their licenses were suspended based on the failure to appear, pay, or comply with traffic infractions. The defendants argued that the statutes violate due process requirements because there is no opportunity for a hearing with the DOL either before or after the suspension to correct possible ministerial errors, such as misidentification, that might occur when DOL processes information obtained from the courts. A driver's recourse, under the statutes, is to seek a court hearing. However, the Court in *Redmond* noted that such a judicial hearing to correct a clerical error would be burdensome, and the statutes do not guarantee that such a hearing would take place promptly.

In determining whether the statutes provided adequate due process, the Court weighed the state's interests and the burden on the state in providing procedures against the private interest affected (the driving privilege), the risk of erroneous deprivation of that interest, and the probable value of procedural safeguards. The Court concluded that the benefit of ensuring against wrongly depriving a person of his or her driving privileges outweighed the burden on the state to provide for administrative reviews. Therefore, the Court concluded that the statutes violated a person's right to due process and are unconstitutional.

Because the defendants' licenses should not have been suspended due to the unconstitutionality of the statutes, the defendants' criminal charges for DWLS 3 were dismissed. As a result of *Redmond*, law enforcement agencies are no longer citing drivers for the misdemeanor crime of DWLS 3.

Summary of Bill:

The Legislature makes certain findings regarding the large numbers of drivers who fail to respond and comply with notices of traffic infraction and citations and the risk they pose to public safety.

Procedures are established for an administrative review when the DOL is required by statute to withhold a person's driving privileges. Whenever the DOL is required by statute to withhold a person's driving privilege, the DOL shall either mail or personally serve written notice to the person. The notice must be sent at least 45 days before the date the suspension or revocation takes place. Within 15 days after notice is given, the person may request in writing an administrative review. Failure to request a review within that time forfeits the person's right to review.

The administrative review consists solely of the DOL reviewing the documents available to it. If the person requests an interview with the DOL, the DOL may conduct the review by telephone or other electronic means. The only issues the DOL will address in the review are: (a) whether the records relied upon by the DOL identify the correct person; and (b) whether the information transmitted from the court or other agency regarding the person accurately describes the action taken by the court or agency.

The person whose driving privileges are to be withheld has the burden to show by a preponderance of the evidence that he or she is not subject to the suspension or revocation. During the administrative review process, the suspension or revocation is stayed. The administrative

review procedures do not apply where there is an opportunity for informal settlement, driver improvement interview, or formal hearing.

The person may appeal the DOL's decision to superior court. The appeal is limited to a review of the record of the administrative review. During the appeal, the suspension or revocation is not stayed unless the court finds that the person is likely to prevail in the appeal and that without a stay the person will suffer irreparable injury.

The DOL may adopt rules that are necessary or convenient for implementing the procedures, including rules for expedited orders and expedited notice procedures.

Various statutes on license suspensions and revocations are amended to reflect the new administrative review procedure. Various statutes addressing the failure to appear and failure to respond are amended to clarify that such failure includes the failure to pay any portion of a fine or monetary penalty.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2005.