

SENATE BILL REPORT

SSB 5262

As Passed Senate, March 12, 2005

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

Brief Description: Changing provisions relating to withholding of driving privileges.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Haugen and Swecker; by request of Department of Licensing).

Brief History:

Committee Activity: Transportation: 3/1/05, 3/2/05 [DPS].

Passed Senate: 3/12/05, 48-0.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5262 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Jacobsen, Vice Chair; Poulsen, Vice Chair; Swecker, Ranking Minority Member; Benson, Eide, Esser, Kastama, Mulliken, Oke, Spanel and Weinstein.

Staff: Kimberly Johnson (786-7346)

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: (1) conviction of driving under the influence of alcohol or drugs; and (2) failure to pay traffic infractions or appear at a hearing for an infraction.

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. Some courts offer payment plans for offenders who are unable to pay fines in full at the time they are due. These plans allow an offender to pay the fines off in installments over time, and allow the offender to retain their driving privilege when it would have otherwise been suspended.

Recently, in *City of Redmond v. Moore*, 151 Wn.2d 664 (2004) 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.

Summary of Bill: 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 must 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.

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: (1) whether the records relied upon by the DOL identify the correct person; and (2) 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.

A court must enter into a payment plan with a person, if the court finds that the person is unable to pay a monetary penalty in full, and not more than one year has passed since the later of the effective date of this act, or the date the monetary obligation initially became due. If a person has previously been granted a payment plan in the past and has failed to comply with the plan, the court may, in its discretion, implement a payment plan.

A court that has notified the DOL that a person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court must notify the DOL that the infraction has been adjudicated and the DOL must rescind any suspension of the person's driver's license based on failure to respond.

If a person fails to comply with the terms of a payment plan or complete community restitution, the court must notify the DOL and the DOL must suspend the person's driver's license until all monetary obligations have been paid, or community restitution has been completed.

A court must notify the DOL of persons who do not enter into a payment plan and who fail to pay a monetary obligation in full, and the DOL must suspend the person's driver's license until all monetary obligations have been paid.

Courts administering the payment plans may charge a reasonable administrative fee of not more than ten dollars per infraction or twenty-five dollars per payment plan, whichever is less. A court may contract with outside entities to administer its payment plan system. A fee may be assessed by the court for such administrative services.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 24, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: As a result of the *Redmond v. Moore* decision tickets are not being issued, and DOL is not suspending the driver's licenses for driving while suspended in the third degree. There are people out there driving with a suspended license and law enforcement cannot do anything to stop it. This has a widespread impact to public safety and local governments. Washington is a member of the Non-Resident Violator Compact, which provides protection to Washington residents when they receive a traffic citation in another jurisdiction. Washington may be in violation of the Compact and as a result, Washington residents may be detained in other jurisdictions if they receive a citation and are unable to pay immediately.

This bill gives local jurisdictions the ability to separate out those who cannot pay from those who will not pay. A driver's license is a much needed tool for persons trying to support a family or receive medical treatment, and the option for a payment plan enables persons to retain the ability to support their family while at the same time meet their court ordered financial obligations.

Testimony Against: None.

Who Testified: PRO: Fred Stephens, Director DOL; Tammy Fellin, Association of Washington Cities; Jeff DeVere, Washington State Patrol; Bruce Near, Columbia Legal Services; Lynn Domingo, NW Labor and Employer Law Office.