

SUBJECT: Suspending or denying a driver's license for failure to appear or pay a fine

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 5 ayes — Driver, Frost, Hegar, Hupp, Veasey

0 nays

2 absent — Jackson, Burnam

WITNESSES: For — Charles A. Brothers, OmniBase Services of Texas; David M. Cobos, George E. Ernst, Jr., Justices of the Peace and Constables Association of Texas

Against — None

On — William Foster, DPS; Angela Parker, DPS

BACKGROUND: Code of Criminal Procedure, art. 15.03, allows a magistrate to issue a warrant of arrest or a summons in any situation in which the magistrate would be authorized verbally to order the arrest of an offender. If a defendant fails to appear in response to a summons, a warrant of arrest must be issued.

Code of Criminal Procedure, art. 45.050, allows a judge who holds a juvenile in contempt to order DPS to suspend the juvenile's driver's license or driver's permit, or to deny the issuance of a license or permit if the juvenile does not yet have a license or permit, until the juvenile complies with the orders of the court. Transportation Code, sec. 521.3451, orders DPS to suspend or deny the issuance of a license or permit on receipt of an order to suspend or deny from a justice or municipal court.

Transportation Code, sec. 543.004, requires a peace officer to issue a written notice to appear in court if the offense charged is speeding or a violation of the open container law and if the person has been arrested and makes a written promise to appear. Sec. 543.005 provides that in order to secure release, a person who has been arrested must make a written promise to appear in court by signing the written notice prepared by the arresting officer.

Transportation Code, sec. 706.002, allows a political subdivision to contract with DPS to provide information necessary for DPS to deny renewal of the driver's license of a person who fails to appear or fails to satisfy a judgment ordering payment of a fine and costs.

DIGEST:

CSHB 1081 would allow a magistrate to issue a warrant or an order suspending the defendant's driver's license or permit, or denying issuance of a license or permit, if a defendant failed to appear in response to a summons. The summons would contain a warning notifying the person that upon a failure appear, a warrant could be issued for that person's arrest or an order issued ordering the suspension or denial of issuance of that person's license or permit. If a magistrate issued an order to suspend or deny issuance of a defendant's license or permit, the magistrate would notify DPS when the defendant appeared.

The bill would allow a justice or municipal court to order DPS to suspend or deny the issuance of a person's license or permit if the person failed to appear according to the terms of a release, to honor a summons issued by the court, or to satisfy a judgment of the court. Before issuing such an order to DPS, the court would issue a summons to the person by mail ordering that person's appearance. The summons would warn the person that failure to appear or pay the required fines could result in the suspension or denial of issuance of a license or permit. A magistrate who had issued such an order to DPS would notify DPS when the case had been concluded.

Transportation Code, sec. 521.3451(a), would require DPS to suspend or deny the issuance of a license or permit on receipt of an order to do so from a justice or municipal court under arts. 15.03 or 45.0451, in addition to art. 45.050. DPS would have to reinstate a license or permit suspended under subsection (a) if it received notice from the justice or municipal court that had ordered the suspension or denial of issuance that the person fully had complied with the court's order, the terms of the appearance, or the terms of the judgment.

A written notice to appear would have to be delivered to the person arrested containing a warning that failure to appear could result in the issuance of a warrant for that person's arrest or suspension of that person's license.

The bill would consider the federal government to be a political subdivision. A political subdivision could contract with DPS to provide information necessary for DPS to suspend, rather than deny the renewal of, the driver's license of a person who failed to appear or failed to satisfy a judgment ordering payment of a fine and costs. The contract with the subdivision could apply to a failure to appear, honor a summons, or satisfy a judgment. The bill would allow DPS to accept the same information from the federal government that it accepted from other political subdivisions if the federal government agreed to establish and maintain customer support services as directed by DPS. Those customer support services would be required to include a toll-free phone number for those whose licenses had been suspended to call with questions.

The bill would make several other conforming changes. The bill would take effect September 1, 2005, and would apply to an offense committed on or after that date.

**SUPPORTERS
SAY:**

Currently, if a person fails to appear, a magistrate may prevent that person from renewing that person's license or may issue a warrant for that person's arrest. Driver's licenses must be renewed only every six years, so a person has little incentive to resolve the problem in a timely manner. When the person does finally need to resolve the issue to renew a license, several years often have passed. Trying to conduct a hearing years after the incident in question is difficult for the prosecution because officers and witnesses often forget material details, so the prosecution is often unable to obtain a conviction after such a long time.

CSHB 1081 would provide a more effective incentive for a person to resolve the issue as the bill would authorize the suspension of the person's license, affecting that person immediately, rather than after several years at the time of license renewal. It also would provide additional incentive to show up in court in the first place. Judges have significant leeway in setting fines or requiring community service in lieu of fines. Low-income or young people who cannot afford a ticket would have additional incentive to ask for leniency from a judge rather than incur the expense associated both with the original offense and a suspended driver's license.

Allowing a magistrate to order the suspension of a person's license is more effective than allowing the issuance of a warrant for the person's arrest because DPS no longer maintains a statewide warrant database. Warrants now are maintained on the local level, so not as many arrests are

made. Ordering the suspension of a person's license would have a much more far-reaching effect because peace officers across the state would have access to information that a person's license had been suspended.

Texas already suspends driver's licenses for residents who get traffic tickets for moving violations in other states and fail to pay them. Under the Non-Resident Violator Compact member states, of which Texas is one, a Texas resident's license would be suspended if they failed to appear in another state.

**OPPONENTS
SAY:**

CSHB 1081 disproportionately would affect the poor. Most people who fail to appear in court in response to a class C misdemeanor do so because they cannot afford to pay the fine associated with the ticket. Allowing a magistrate to issue an order suspending such a person's driver's license could make that person's financial situation even worse because the person would not be able to drive to work.

The bill also would allow a magistrate to suspend the license of a juvenile who failed to appear. Juveniles often fail to appear because they do not have the money to pay the required fine and do not wish to admit to their parents that they received a ticket. Suspending a juvenile's license is an overly harsh punishment.

NOTES:

HB 1081 as introduced would have amended Sec. 706.006 of the Transportation Code and Sec. 103.021 of the Government Code to reduce the fee charged for failure to appear, failure to pay, and failure to satisfy a judgment from \$30 to \$4. It would also have amended Sec. 706.007 to allow DPS to collect a fee of \$26 upon reinstatement of a suspended driver's license. DPS would have been credited \$16, rather than \$10, from the fee. Up to \$6 of the \$16 could have been provided to the vendor administered the program, and the remaining \$10 would have been deposited into general revenue.

HB 1081 as introduced included a fiscal note indicating a net loss of \$944,863 in fiscal 2006-07. The fiscal note for the substitute found no significant impact to state or local government.

The companion bill, SB 1134 by Hinojosa, has been referred to the Senate Criminal Justice Committee.