

BILL ANALYSIS

C.S.H.B. 291
By: Murr
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The repeal of the driver's responsibility program has caused confusion regarding the state's occupational driver's license program. There is a need to overhaul and update state law governing the issuance of occupational driver's licenses to provide increased clarity and uniformity to processes and procedures for both citizens and judges. C.S.H.B. 291 seeks to do so.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 291 amends the Transportation Code to revise provisions relating to the state's occupational driver's licensure program to reorganize and update the program.

Eligibility

C.S.H.B. 291 establishes the following as the persons eligible to apply for an occupational driver's license (ODL):

- a person whose license to operate a motor vehicle has been suspended, revoked, or canceled for a cause other than a physical or mental disability or impairment or a determination by the Department of Public Safety (DPS) that the person is incapable of safely operating a motor vehicle;
- a person who does not hold a driver's license and is ineligible to obtain a driver's license because of a suspension order, including an order due to a conviction or an order for failure to pass a test for intoxication or refusal to submit to the taking of a specimen; or
- a person who is ineligible to obtain a driver's license because the person holds a driver's license issued by another state or country that was suspended, revoked, or canceled for a cause other than a physical or mental disability or impairment.

Petition for License

Venue for Filing

C.S.H.B. 291 does the following with respect to the venue for filing a petition for an ODL:

- revises the provision establishing as the default venue a justice, county, or district court with jurisdiction that includes the precinct or county in which the person resides or the incident occurred for which the person's license was suspended, revoked, or canceled to

limit the courts in which the petition may be filed just to those with jurisdiction that includes that applicable county;

- subjects all petitioners whose license was automatically suspended, revoked, or canceled due to a conviction of an applicable offense to the limitation under which they may file their petition only with the clerk of the court in which they were convicted by removing as a trigger on that limitation the person also not having been issued, in the 10 years preceding the date of the filing of the petition, more than one ODL after a conviction under state law; and
- gives a person whose license is suspended, revoked, or canceled due to a court order submitted to DPS by a district, county, or justice court the option to file their petition with the court that issued the order, as an alternative to filing the petition with a justice, county, or district court with jurisdiction that includes the county in which the person resides or in which the incident occurred.

Petition Contents

C.S.H.B. 291 revises and expands the requirements for the content of the petition. Accordingly, the bill requires the petition to do the following:

- set forth in detail the petitioner's essential need justifying the issuance of the ODL, including a description of the hours and location of essential travel;
- describe the reason for the petitioner's license suspension, revocation, or cancellation;
- provide evidence of the petitioner's financial responsibility in accordance with the Texas Motor Vehicle Safety Responsibility Act; and
- include a certified abstract of the petitioner's complete driving record.

The bill includes among the essential needs for which an ODL may be used the pursuit of an occupation or trade.

Dismissal

C.S.H.B. 291 requires a court that lacks jurisdiction over a filed petition to dismiss the application but authorizes the court to hold a hearing to determine if the court has jurisdiction. The bill authorizes a petitioner to submit a written request for a dismissed petition to be reinstated within 14 days of the dismissal, stating the reason the court has jurisdiction over the petition.

Filing Fee; Alternative to Payment

C.S.H.B. 291 clarifies a court's authority to charge a filing fee for a petition for an ODL in the amount the court charges for filing a civil action and provides an alternative to paying the filing fee for a petitioner without the means to do so whereby the petitioner files a statement of that inability to afford payment of court costs under the Texas Rules of Civil Procedure. The court may hold a hearing after such a statement is filed to determine the petitioner's ability to afford payment. The bill sets out provisions relating to the time of the hearing and prohibits a court from granting an ODL to a petitioner the court determines is able to afford to pay the filing fee until they pay the fee. The bill also clarifies that the court must refund any filing fee paid by a petitioner whose petition is dismissed due to lack of jurisdiction as provided by the bill.

Forms

C.S.H.B. 291 requires a court to make the forms required for petitioning for an ODL and for the statement of inability to afford payment of court costs available at no cost.

Notice to State of Hearing; Presentation of Evidence

C.S.H.B. 291 revises provisions requiring the clerk of the court receiving a petition for an ODL to send a copy of the petition and notice of the hearing on the petition to the state's attorney if the petition is arising from certain specified offenses to give a court the option also to notify the state's attorney of a hearing on a petition arising from any other circumstance aside from those specified offenses. The bill gives a state's attorney who receives notice of a hearing on an ODL

petition the option to attend and present evidence at the hearing either for or against granting the petition, whereas currently they may only appear to provide evidence against granting the petition.

Hearing

C.S.H.B. 291 gives a judge the option to make a determination of the essential need for an ODL based on the petition as an alternative to holding a hearing on the petition in all circumstances other than with respect to a petitioner whose license was suspended, revoked, or canceled following a conviction for one of the following:

- criminally negligent homicide;
- certain intoxication-related offenses; or
- an offense that triggers an automatic driver's license suspension for a person under 21 years of age.

The bill authorizes the hearing on a petition to be held using electronic or telephonic means.

Determination of Essential Need

C.S.H.B. 291 requires a judge who determines a petitioner is eligible for an ODL and has an essential need to enter an order granting the petition. If the judge determines the person is ineligible or does not have an essential need, the judge must enter an order denying the petition. The bill removes existing requirements for a judge with respect to the determination of essential need and authorizes a judge to deny a petition based on the evidence presented at hearing by the state's attorney and for any of the following:

- the petitioner being unable to present evidence of financial responsibility;
- the petitioner having been convicted more than once in the 10 years preceding the date of the petition of an applicable intoxication-related offense; or
- the petitioner being subject to an ODL revocation order.

The bill prohibits an order granting or denying an application for an ODL from being appealed.

Order Granting an ODL

C.S.H.B. 291 includes the following among the information that an order granting an ODL must specify:

- that the person may not operate a commercial motor vehicle; and
- that the person is required to submit to supervision to ensure compliance with conditions of the order, if applicable.

Such an order may require the person to keep a travel log showing the date, time, and location of travel, and the court may require the person to show the travel log to demonstrate compliance with the conditions of the order. The bill moves the requirement for the order to specify that the person is required to attend alcohol dependence counseling, if applicable, from provisions relating to such counseling to provisions prescribing the order contents.

C.S.H.B. 291 requires the court to give a copy of the order to the person and inform the person that they must comply with any DPS requirements for the issuance of the ODL. The bill provides for the modification of an order at any time by the court without a hearing or payment of a filing fee. The bill removes provisions providing for a series of delayed effective dates for an ODL following the issuance of an order granting the petitioner an ODL depending on the petitioner's history.

Commercial Vehicles

C.S.H.B. 291 provides the following:

- an ODL does not authorize a person to operate a commercial motor vehicle to which the Texas Commercial Driver's License Act applies; and
- the existing prohibition against a court granting an ODL for the operation of such a vehicle does not prevent a person who has been issued a commercial driver's license from obtaining an ODL for the operation of a noncommercial motor vehicle.

Alcohol Dependence Counseling and Ignition Interlock Devices

C.S.H.B. 291 removes provisions entitling a person convicted of an applicable intoxication-related offense and who is restricted to the operation of a motor vehicle equipped with an ignition interlock device to receive an ODL without a finding that the person has an essential need.

C.S.H.B. 291 establishes that a court must require a petitioner for an ODL whose license was suspended as the result of a conviction for any offense relating to the operating of a motor vehicle while intoxicated to attend a court-approved program designed to provide counseling and rehabilitation services to persons for alcohol dependence. The bill authorizes the court to waive a requirement to attend such a program on a showing of good cause. On finding that a person is not attending the program as required, the court may modify the order granting the ODL to restrict the person to the operation of a motor vehicle with an ignition interlock device installed.

C.S.H.B. 291 does the following with respect to persons who must be restricted by a judge to the operation of a motor vehicle with an ignition interlock device installed:

- includes among those persons a person currently under an order restricting that person's operation of a motor vehicle as such, including an order imposed as a condition of bond;
- authorizes a judge to restrict a person as such in any case on a finding of good cause; and
- removes provisions prohibiting the use of certain previous convictions for purposes of instituting an ignition interlock device requirement.

C.S.H.B. 291 authorizes a court to waive the ignition interlock device requirement if the court finds the requirement is not necessary for the safety of the community and the waiver is in the best interest of justice. The bill provides an exception to the requirement for an ignition interlock device to remain installed for the duration of the period of suspension for cases in which the court finds good cause for the removal of the device and the device is not necessary for the safety of the community.

Defense to Prosecution

C.S.H.B. 291 establishes as an affirmative defense to prosecution for an offense of operating a motor vehicle without an appropriate driver's license or driving while a license is invalid that the person has applied for and complied with DPS requirements for the issuance of an ODL on or before the 10th day after the issuance of the court order but has not yet been issued the ODL.

Revocation of ODL

C.S.H.B. 291 clarifies the authority of a court that signs an order granting an ODL to order the revocation of the ODL for good cause, including for a failure to attend a required alcohol dependence program, and the court's duty to issue a revocation order if the person is restricted to the operation of a motor vehicle equipped with an ignition interlock device and operates a vehicle that is not equipped with the device, unless the person is authorized to do so. The bill requires a court that issues an order revoking an ODL for any such reason to send a certified copy of the order to the person whose ODL is revoked, in addition to DPS as is currently required. The bill removes provisions requiring DPS, on receipt of an order revoking an ODL for failure to attend a required alcohol dependence program, to suspend the person's ODL for a specified number of days, during which time the person is ineligible to receive an ODL.

C.S.H.B. 291 requires a court issuing an order revoking an ODL from a person on the basis of the person's conviction for an offense involving operating a motor vehicle in violation of a restriction imposed on the person's ODL or without having a certified copy of the court order granting the person's ODL in the person's possession to deliver the revocation order to the person, the court that issued the order granting the ODL, and DPS.

Clearance Notice to DPS

C.S.H.B. 291 includes a court finding that the person is indigent and not required to pay a reimbursement fee among the conditions triggering the requirement for a political subdivision to immediately notify DPS that there is no cause to continue to deny renewal of a person's driver's license.

Conforming Changes

C.S.H.B. 291 amends the Family Code and Government Code to make nonsubstantive and conforming changes.

Repealer

C.S.H.B. 291 repeals Section 524.022(d), Transportation Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 291 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the provision from the introduced establishing that, for purposes of eligibility to apply for an ODL, a person's driver's license is not considered to be suspended, revoked, or canceled if the only reason the person is unable to obtain a driver's license is because the person was denied a license renewal for failure to appear for a complaint or citation or failure to pay or satisfy a judgment ordering payment of a fine and cost.

The substitute does not include provisions that appeared in the introduced providing that, in addition to the requirements for the immediate notification to DPS that there is no cause to continue to deny renewal of a person's driver's license, immediate notification is required as follows:

- for a license denied renewal solely because of the person's previous failure to appear, on the person's appearance in court in any manner authorized by law for the underlying offense for which the person previously failed to appear; and
- in any instance in which the person enters into an arrangement with the court to satisfy the fine and cost under a payment plan or by performing community service.

The substitute does not include the authorization present in the introduced for a political subdivision that provides such a notification to DPS to notify DPS if the court subsequently determines the person failed to complete an arrangement to satisfy the fine and cost and the authorization for DPS, on receiving the necessary information from the political subdivision, to again deny renewal of the person's driver's license.