

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1645

Amendment Number: S3 (3/30/15 Engrossment)

Bill Subtitle: TO AUTHORIZE THE ISSUANCE OF A RESTRICTED DRIVING PERMIT UPON SUSPENSION OF THE DRIVER'S LICENSE OF A SPECIALTY COURT PROGRAM PARTICIPANT.

Basic Change : Sponsors: Rep. Bentley and Sen. Stubblefield

Senate amendment 3 adds a section which reads, "The specialty court order shall supersede a previous order to suspend a license. The bill provides that a specialty court may issue a separate order that a person accepted in a specialty court program may be issued a restricted driving permit in order to drive for specialty court-approved purposes during enrollment, compliance, and participation in the specialty court program." Senate amendment 2 adds language that if a person terminates from the specialty court program, the restricted driving permit previously issued will be revoked.

Senate amendment 1 adds another exception to the requirement to issue a restricted driving permit. This exception is § 27-19-610 suspension for failure to deposit security when a motor vehicle accident occurs and the driver at fault does not have insurance. In addition, Senate amendment 1 adds a section that the restricted driving permit issued by the specialty court shall not remain effective for a person who pleads guilty, or nolo contendere, or is found guilty of a separate offense that requires suspension of driving privileges subsequent to acceptance in the specialty court program and issuance of the restricted driving permit. The person must reapply for issuance of a restricted driving permit. This bill as engrossed with House amendments 1 through 3 authorizes the issuance of a restricted driving permit upon suspension of the driver's license of a specialty court program participant convicted of a drug offense. Amendment 3 adds Senator G. Stubblefield as a cosponsor of the bill.

Currently a person suspended under Arkansas code § 27-16-915 (possession or use of a controlled substance) may have a restricted permit if ordered by the suspending court for the purposes of driving to and from work; to and from sessions and meetings of support organizations, counseling, education, or treatment. However, a permit is not issued if the person has another suspension on their record that would cause the person to not be eligible for a restricted permit.

This bill with Senate amendment 1 and engrossed with House amendments 1 through 3 states the specialty court shall provide the order of suspension for the issuance of a restricted permit. What is allowed in the restricted permit has been broadened to include: court appearances, random drug testing appearances, to and from work and in the scope of employment, sessions, meetings, support organizations and counseling organizations, educational institutions, treatment programs, and doctor, hospital or clinic for medical care for the person or his/her family.

In addition to broadening the restricted driving provisions, this bill directs DFA to issue the restricted permit even if there are other unrelated suspensions on the driver's record as long as the person is enrolled in a Specialty Court Program. This bill provides exceptions to this directive. If the person is suspended under:

§ 5-65-101 DWI; § 9-14-239 (child support); § 27-16-905 (revoked); § 27-16-907(b)(4)-(6) (suspension for conviction in another state, is legally blind, or fraud); § 27-16-908 (nonresident suspension); § 27-16-909 (ability to drive); § 27-19-707(e)(2) (unsatisfied judgment unless the judgment creditor furnishes written consent) ; or is a commercial driver DFA will not issue a restricted permit.

However, if the person is suspended for any other reason, the department is directed to issue the restricted permit. Therefore, if there are current court suspensions in effect for Failure to Pay; Failure to Appear; outstanding reinstatement fees not paid from prior suspensions; if a person is suspended for a 2nd offense Refuse Test; or 2nd offense DWI/drug who are not eligible for any driving provisions under current law, DFA would be required to issue the restricted permit under this bill.

Currently a restricted permit under 27-16-915 is issued for 6 months (the duration of the suspension for

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possession of controlled substance). This bill requires the permit to be issued for 18 months, and the person may re-apply for another permit after 18 months. Therefore, all prior suspensions (other than the ones excepted) could remain on the record for an extended period of time until the person completes or terminates the Specialty Court Program.

Revenue Impact :

Courts and the state may wait longer to receive payment for fines and reinstatement fees.

Taxpayer Impact :

Taxpayers suspended for drug offenses not exempted by this bill would receive restricted driving permits for as long as they are in the Specialty Court Program and thus delay completing suspension requirements placed on them by other courts.

Resources Required :

If there are a large number of participants in the Specialty Court Programs, then additional Driver Control Hearing officers and staff will be required. Programming and training will also be required to implement this bill.

Time Required :

No additional time is required to implement this bill.

Procedural Changes :

Procedures would need to be changed to implement this bill.

Legal Analysis :

Under Amendment 3, a specialty court program participant no longer is subject to a license suspension upon enrollment in the program. However, the bill provides that the specialty court program may enter an order authorizing a restricted driving permit. It is unclear why a court would issue a restricted permit to a person whose driving privileges are not subject to a suspension. A person cannot have both a valid driver's license and a restricted permit. If it is the intent of the bill to authorize a suspension of a person upon enrollment into a specialty court program, then bill would need to be amended again to correct this error.

If the above change is made, Amendment 3 would still need to address a procedural conflict. More specifically, under the prior version of the bill, a person's driving privileges are suspended upon entry into the specialty court program. The bill requires a court to prepare a suspension order within 24 hours after the plea or finding to DFA, but does not specify when the suspension order should be prepared upon enrollment in a specialty court program. Therefore, the bill should be amended to provide that acceptance and enrollment in a court-approved pre-adjudication specialty court program shall require the court to prepare and transmit to DFA the order of suspension within 24 hours.

Also, this amendment divides § 27-16-915(b)(1)(A) into two subdivisions, (i) and (ii). In the bill, the introductory "(i)" in the bill is new statutory language and should be underlined. Also, the resulting statutory language in (ii) regarding the suspension of commercial driving privileges is confusing and should be clarified.

In addition, the statutory language added in § 27-16-915(b)(3)(A)(ii) concerning an order for a restricted permit states, "The specialty court order shall supersede a previous order to suspend a license." It is

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possible that this language is intended to clarify that if there is prior court order prohibiting the issuance of a restricted permit, then the restricted permit authorized by the specialty court will control. However, the statutory language of this amendment is ambiguous and this ambiguity may possibly cause confusion to DFA as well as to courts, prosecuting attorneys, and drivers.

In addition, under the bill, a person's driving privileges are suspended for six months upon entry into a specialty court program or a finding of guilt of a drug offense. The bill states that the restricted driving permit shall be effective for 18 months. As stated above, a person cannot have both a valid driver's license and a restricted permit. DFA will experience administrative difficulty by reason that a driver may ask DFA to issue him or her a valid license at the end of the six-month suspension period where the person's license may be subject to a restriction pursuant to the 18-month restriction provided in the bill. If DFA issues the license to the driver, the driver may believe that he or she is no longer subject to any restrictions and the court may believe otherwise. This contradiction in the bill should be clarified.