

House Study Bill 115

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
TRANSPORTATION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to department of transportation administrative
2 procedures by establishing a procedure to remove a conviction
3 relating to the operation of a motor vehicle from a driving
4 record based on identity theft and requiring verification of
5 status in regards to the driver's license of a foreign
6 national.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

8 TLSB 1388DP 83

9 jm/nh/5

PAG LIN

1 1 Section 1. Section 321.196, subsection 1, Code 2009, is
1 2 amended to read as follows:
1 3 1. Except as otherwise provided, a driver's license, other
1 4 than an instruction permit, chauffeur's instruction permit, or
1 5 commercial driver's instruction permit issued under section
1 6 321.180, expires five years from the licensee's birthday
1 7 anniversary occurring in the year of issuance if the licensee
1 8 is between the ages of seventeen years eleven months and
1 9 seventy years on the date of issuance of the license. If the
1 10 licensee is under the age of seventeen years eleven months or
1 11 age seventy or over, the license is effective for a period of
1 12 two years from the licensee's birthday anniversary occurring
1 13 in the year of issuance. A licensee whose license is
1 14 restricted due to vision or other physical deficiencies may be
1 15 required to renew the license every two years. If a licensee
1 16 is a foreign national who is temporarily present in this
1 17 state, the license shall be issued only for the length of time
1 18 the foreign national is authorized to be present as ~~determined~~
1 19 verified by the department, not to exceed two years.

1 20 Sec. 2. NEW SECTION. 321.200A APPLICATION FOR REMOVAL OF
1 21 RECORD == IDENTITY THEFT == POSTCONVICTION RELIEF.

1 22 1. As used in this section, "identify theft" means the
1 23 same as provided in section 715A.8.

1 24 2. If a record of conviction for a violation of this
1 25 chapter or other law regulating the operation of a vehicle on
1 26 the highways of this state is entered against a person as the
1 27 result of identity theft committed against the person, the
1 28 person may make a written application to the department to
1 29 have the record of conviction removed from the records of the
1 30 department. Prior to issuing a ruling the department may
1 31 investigate the application. The department may deny or
1 32 approve the application at the discretion of the department.
1 33 If the department issues an approval of the application, the
1 34 person may commence postconviction proceedings pursuant to
1 35 section 822.3A. If the department denies approval of the
2 1 application the person may not proceed under section 822.3A.
2 2 The department shall not remove the record from the
2 3 department's records until the department receives an order
2 4 granting relief under chapter 822.

2 5 3. Upon receiving an order granting relief under chapter
2 6 822, the department shall rescind any administrative sanction
2 7 imposed upon the person as a result of the conviction, unless
2 8 the person would be subject to the sanction despite the
2 9 removal of the record of conviction. The department may
2 10 impose a new sanction if removal of the record of conviction
2 11 would result in a lesser or different sanction.

2 12 4. This section does not preclude a person from seeking
2 13 postconviction relief in other matters permitted by law.

2 14 5. The approval or denial of an application is not subject
2 15 to contested case proceedings or further review as provided in

2 16 chapter 17A.

2 17 6. The department may adopt rules pursuant to chapter 17A
2 18 to implement this section.

2 19 Sec. 3. Section 822.3, Code 2009, is amended to read as
2 20 follows:

2 21 822.3 HOW TO COMMENCE PROCEEDING == LIMITATION.

2 22 A Except for proceedings commenced under section 822.3A, a

2 23 proceeding is commenced by filing an application verified by
2 24 the applicant with the clerk of the district court in which
2 25 the conviction or sentence took place. However, if the
2 26 applicant is seeking relief under section 822.2, subsection 1,
2 27 paragraph "f", the application shall be filed with the clerk
2 28 of the district court of the county in which the applicant is
2 29 being confined within ninety days from the date the
2 30 disciplinary decision is final. All other applications must
2 31 be filed within three years from the date the conviction or
2 32 decision is final or, in the event of an appeal, from the date
2 33 the writ of procedendo is issued. However, this limitation
2 34 does not apply to a ground of fact or law that could not have
2 35 been raised within the applicable time period. Facts within
3 1 the personal knowledge of the applicant and the authenticity
3 2 of all documents and exhibits included in or attached to the
3 3 application must be sworn to affirmatively as true and
3 4 correct. The supreme court may prescribe the form of the
3 5 application and verification. The clerk shall docket the
3 6 application upon its receipt and promptly bring it to the
3 7 attention of the court and deliver a copy to the county
3 8 attorney and the attorney general.

3 9 Sec. 4. NEW SECTION. 822.3A PROCEEDINGS INVOLVING
3 10 IDENTITY THEFT == DEPARTMENT OF TRANSPORTATION APPROVAL.

3 11 1. If the department of transportation issues an approval
3 12 of an application to remove a record pursuant to section
3 13 321.200A, a proceeding is commenced by filing an application
3 14 verified by the applicant with the clerk of the district court
3 15 in the county where the conviction occurred, or with the clerk
3 16 of the district court where the applicant resides. The
3 17 application filed with the clerk must include a copy of the
3 18 application for removal submitted pursuant to section 321.200A
3 19 and a certified copy of the approval issued by the department
3 20 of transportation.

3 21 2. The application must be filed with the clerk of the
3 22 district court within one year from the date the department of
3 23 transportation issued the approval pursuant to section
3 24 321.200A.

3 25 3. Facts within the personal knowledge of the applicant
3 26 and the authenticity of all documents and exhibits included in
3 27 or attached to the application must be sworn to affirmatively
3 28 as true and correct.

3 29 4. The clerk of the district court shall deliver a copy of
3 30 the application to the department of transportation, the
3 31 attorney general, the clerk of the district court and county
3 32 attorney where each conviction approved for removal occurred,
3 33 and the clerk of the district court where the applicant
3 34 resides.

3 35 5. The clerk of the district court shall also provide a
4 1 copy of any order entered pursuant to section 822.6 or section
4 2 822.7 to the department of transportation, the attorney
4 3 general, and any clerk and county attorney entitled to receive
4 4 a copy of the application under subsection 4.

4 5 6. The supreme court may prescribe the form of the
4 6 application and verification.

4 7 Sec. 5. Section 822.6, Code 2009, is amended to read as
4 8 follows:

4 9 822.6 DETERMINATION OF RELIEF.

4 10 1. Within thirty days after the docketing of the
4 11 application, or within any further time the court may fix, the
4 12 state shall respond by answer or by motion which may be
4 13 supported by affidavits. At any time prior to entry of
4 14 judgment the court may grant leave to withdraw the
4 15 application. The court may make appropriate orders for
4 16 amendment of the application or any pleading or motion, for
4 17 pleading over, for filing further pleadings or motions, or for
4 18 extending the time of the filing of any pleading. In
4 19 considering the application the court shall take account of
4 20 substance regardless of defects of form. If the application
4 21 is not accompanied by the record of the proceedings challenged
4 22 therein, the respondent shall file with its answer the record
4 23 or portions thereof that are material to the questions raised
4 24 in the application.

4 25 2. When a court is satisfied, on the basis of the
4 26 application, the answer or motion, and the record, that the

4 27 applicant is not entitled to postconviction relief and no
4 28 purpose would be served by any further proceedings, it may
4 29 indicate to the parties its intention to dismiss the
4 30 application and its reasons for dismissal. The applicant
4 31 shall be given an opportunity to reply to the proposed
4 32 dismissal. In light of the reply, or on default thereof, the
4 33 court may order the application dismissed or grant leave to
4 34 file an amended application or direct that the proceedings
4 35 otherwise continue. Disposition on the pleadings and record
5 1 is not proper if a material issue of fact exists.

5 2 3. The Except as provided in subsection 4, the court may
5 3 grant a motion by either party for summary disposition of the
5 4 application, when it appears from the pleadings, depositions,
5 5 answers to interrogatories, and admissions and agreements of
5 6 fact, together with any affidavits submitted, that there is no
5 7 genuine issue of material fact and the moving party is
5 8 entitled to judgment as a matter of law.

5 9 4. In proceedings commenced under section 822.3A, the
5 10 court may grant a motion by the applicant for summary
5 11 disposition of the application for any conviction if the
5 12 respective county attorney in the county where the conviction
5 13 approved for removal occurred, affirmatively indicates the
5 14 state has no resistance to the application.

5 15 EXPLANATION

5 16 This bill establishes a procedure to remove a conviction
5 17 relating to the operation of a motor vehicle from a driving
5 18 record which was entered due to identity theft and requires
5 19 verification of status in regards to the driver's license of a
5 20 foreign national.

5 21 The bill specifies that the department of transportation is
5 22 authorized to issue a driver's license to a foreign national
5 23 only for the length of time the foreign national is authorized
5 24 to be present in the United States as verified by the
5 25 department, not to exceed two years. Current law specifies
5 26 the department is to determine the length of time a foreign
5 27 national is authorized to be present in the United States.

5 28 Under the bill, if a record of conviction for a violation
5 29 of Code chapter 321 or other law regulating the operation of a
5 30 vehicle on the highways of this state is entered against a
5 31 person as the result of identity theft, the person may make a
5 32 written application to the department of transportation to
5 33 have the record of conviction removed from the records of the
5 34 department.

5 35 The bill provides that the department of transportation may
6 1 deny or approve the application at the discretion of the
6 2 department. If the department approves the application the
6 3 applicant may commence postconviction proceedings pursuant to
6 4 new Code section 822.3A created in the bill. The approval or
6 5 denial of an application is not subject to contested case
6 6 proceedings or further review as provided in Code chapter 17A.

6 7 Under the bill, if the department of transportation issues
6 8 an approval to remove a record, a postconviction proceeding is
6 9 commenced by filing an application verified by the applicant
6 10 with the clerk of the district court in the county where the
6 11 conviction occurred, or with the clerk of the district court
6 12 where the applicant resides. The application for
6 13 postconviction relief must be filed with the clerk of the
6 14 district court within one year from the date the department of
6 15 transportation issued the approval. The bill provides that
6 16 the clerk of the district court shall deliver a copy of the
6 17 application for postconviction relief to the department of
6 18 transportation; the attorney general; the clerk of the
6 19 district court and the county attorney where each conviction
6 20 approved for removal occurred; and the clerk of the district
6 21 court where the applicant resides.

6 22 In the postconviction proceedings the court may grant a
6 23 motion by the applicant for summary disposition of the
6 24 application for any conviction if the respective county
6 25 attorney in the county where the conviction approved for
6 26 removal occurred, affirmatively indicates the state has no
6 27 resistance to the application.

6 28 If postconviction relief is granted under the bill, the
6 29 department of transportation shall rescind any administrative
6 30 sanction entered against the person as a result of the
6 31 conviction, unless the person would be subject to the sanction
6 32 despite the removal of the record of conviction. The
6 33 department may impose a new sanction if removal of the record
6 34 of conviction would result in a lesser or different sanction.