

Suspension for DUI Test Refusal or Test Failure; Sub. for HB 2289

Sub. for HB 2289 amends the law concerning a driver's license suspension due to test refusal or test failure. Specifically, the bill requires a law enforcement officer's certification and notice of suspension to inform the person that constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing.

At or prior to the time notice of an administrative hearing is sent, the bill requires the Division of Vehicles to issue an order allowing the licensee to review any law enforcement report at the location where it is kept, at a reasonable time designated by the law enforcement agency. Copies of the report can be obtained at a cost of \$0.25 per page. Such review and copying already was allowed for video and audio tape.

If a licensee appeals a suspension or restriction of his or her license, notwithstanding a statutory provision limiting issues that may be raised before the court if not raised before the agency, the bill allows the court to consider and determine constitutional issues, including, but not limited to, the lawfulness of the law enforcement encounter, even if such issue was not raised before the agency. Similarly, even if such issue was not raised before the agency, the bill requires the court to consider and determine such issues, if such issue is raised by the petitioner in the petition for review.