47668-1
~~No. 90607-6~~

The Supreme Court of the State of Washington

Stephen Chriss Johnson,

Appellant,

v.

State of Washington Department of Licensing
and **Pat Kohler,** in her official capacity,

Respondents.

Reply Brief of Appellant

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1. Introduction

The focus of this case is the scope of the Department's statutory authority to withhold the driving privilege or license and whether the Department is exceeding its authority by maintaining prior nonmoving violation suspensions after its authority was curtailed on June 1, 2013.

The Department's response fails to adequately address this central issue. The Department never once mentions RCW 46.20.291, the statute that sets forth its authority to suspend a driver's license. Instead, the Department imagines that it has general or inherent authority to act in any way relating to the driving privilege. Then, in a bizarre turn, the Department argues that it was not granted authority to reinstate prior suspensions, which of course would not be necessary if the Department has general or inherent authority.

The Department's arguments elevate procedure over authority, claiming that its refusal to terminate prior suspensions is procedurally correct, even though the Department is unable to point to any statutory authority supporting those suspensions.

The Department also incorrectly attempts to shift the Court's focus onto Mr. Johnson. While Johnson is the sole named petitioner, the case is not about him. The case is a petition for a writ of prohibition. As such, its focus is on the acts of the Department. Its result, if successful, is to order the Department to cease acting in excess of its authority and to terminate **all** nonmoving violation suspensions, no matter when initiated. It makes no difference whether Johnson has the ability to pay his fines. The Department

no longer has any authority to withhold the driving privilege or license for failure to pay a fine arising from a nonmoving violation. This Court should reverse the trial court's summary judgment dismissal of Johnson's petition and remand for further proceedings, including a hearing on certification of a class action and a jury trial for damages pursuant to RCW 7.16.260.

2. Rebuttal of the Department's Statement of the Case

The Department states that Johnson had the ability to pay his fines but has not done so. Respondent's Brief at 4-5. The Department bases this assertion on this Court's opinion in *State v. Johnson*, 179 Wn.2d 534, 555, 315 P.3d 1090 (2014), which noted that at the time the Department suspended Johnson's license in 2007, Johnson could have borrowed against the equity in his home to pay the fine. *See Id.* at 551-55 (the issue arose with reference to Johnson's constitutional challenge to the 2007 suspension). This is no longer true. In unrebutted testimony, Johnson stated in March 2014 that he no longer owned the home, was dependent on government welfare programs, and had no prospect of earning money to pay his fines. CP 92.

Johnson's ability or inability to pay the fines is irrelevant. This case is not about Johnson's fines. It is about the scope of the Department's statutory authority to withhold the driving privilege or license and whether the Department has exceeded that authority. If the Department has exceeded its authority, a writ of prohibition is proper, regardless of whether Johnson could have paid the fines at some earlier date.

3. Argument

3.1 Split Standard of Review

The Department argues that this case involves only issues of law that should be reviewed de novo. This is correct as to the issues Johnson has raised in this appeal, which go to the issue of the authority of the Department. However, the Department's additional issue—whether Johnson lacks an adequate remedy at law—should be reviewed, if at all (*See* Part 3.5, below), for abuse of discretion. When reviewing a decision on a writ of prohibition, the standard of review is split. Whether the agency or official has authority to act is a question of law reviewed *de novo;* whether there is no plain, speedy, and adequate remedy is reviewed for abuse of discretion. *See River Park Square, L.L.C. v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001).

3.2 The relief Johnson seeks is a writ of prohibition ordering the Department to terminate all unauthorized suspensions.

The Department argues that this Court can affirm if either of Johnson's two suspensions is authorized. The Department incorrectly argues that the relief Johnson seeks is reinstatement of his license. Respondent's Brief at 9 (citing CP 5, in which Johnson actually requests, "A writ of prohibition ordering DOL and its director to terminate **all** current driver's license suspensions for failure to pay traffic fines and reinstate **those licenses** without any reinstatement fee." (emphasis added)). The Department more correctly understood Johnson's request for relief when it wrote, in its Statement of the Case,

> Johnson requested that the court "order that a writ be issued prohibiting the Department from suspending or continuing to suspend **any driver's license** for failure to pay traffic fines for non-moving violations, prohibiting the Department from suspending or continuing to suspend **any driver's license** for failure to pay a criminal sentence, and requiring the Department to terminate **all such suspensions** effective immediately."

Respondent's Brief at 6-7 (quoting CP 109) (emphasis added).

The Department recognizes that Johnson's two suspensions are separate and distinct. Respondent's Brief at 4 ("this separate suspension"). The two suspensions are separately listed on Johnson's driving record maintained by the Department. CP 29-30. A conclusion that one suspension is authorized cannot justify a separate suspension that is **unauthorized.** If either of the suspensions is unauthorized, a writ of prohibition is still the appropriate remedy to put a halt to that suspension. The unauthorized suspension must be released, even if the other, separate suspension remains. The same would be true of any other driver with multiple suspensions: all unauthorized suspensions must be released. This Court must analyze each of the challenged suspensions separately and reverse if either is unauthorized.

The Department argues that Johnson cannot seek relief for the rights of third parties. Respondent's Brief at 39. However, the Department fails to understand the nature of a writ of prohibition. A writ of prohibition **"arrests the proceedings** of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." RCW 7.16.290 (emphasis added). It

is different from a writ of mandamus. The purpose of a writ of mandamus is to order the official to do some act to which the petitioner has a right. *See* RCW 7.16.160. The purpose of a writ of prohibition, on the other hand, is to prohibit the agency from acting in excess of its power. *Brower v. Charles*, 82 Wn. App. 53, 57, 914 P.2d 1202 (1996).

In considering a writ of prohibition, the court analyzes the authority of the agency, not the rights of individuals. When a writ is granted, the court orders the agency to stop acting outside of its authority. The writ targets the *ultra vires* acts of the agency, not the individual rights of the petitioner. If Johnson is correct that the Department lacks authority for either of the challenged suspensions, then **all** such suspensions are invalid. The Department cannot choose to maintain the suspensions of third parties just because they are not named petitioners in this action.[1]

Even if the Department were correct that a writ of prohibition generally only applies with respect to the petitioning party, Johnson has requested certification of a class action. If a class is certified, the case would

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[1] The Department argues that Johnson "distorts the number of drivers with suspensions for failure to pay non-moving violations." Respondent's Brief at 40. Recognizing that such drivers are an as-yet unquantified subset of the approximately 300,000 Washington drivers whose licenses are suspended for failure to respond, appear, pay, or comply, Johnson's Brief stated that "tens [of thousands] or hundreds of thousands of Washington drivers are suffering under the burden of suspension when they should be free to drive," acknowledging in a footnote that, "The number cannot be known without analyzing the Department's records." Brief of Appellant at 1. The Department has not come forward with a more precise number. Johnson is unsure what the alleged distortion is.

determine the rights of all class members, entitling all class members to release of their unauthorized suspensions. The relief Johnson has requested is appropriate and requires that this Court independently analyze the two challenged suspensions and reverse if either is unauthorized.

3.3 The Department of Licensing has no "general jurisdiction" or other authority to withhold the driving privilege or license for failure to pay a fine for a nonmoving violation.

3.3.1 As an administrative agency, the Department has no general authority over driver's licenses, but only that authority specifically granted by statute.

Administrative agencies, such as the Department, have no inherent or general authority. *Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d 430, 445, 120 P.3d 46 (2005); *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998). They have only those powers expressly granted to them by statute and those necessarily implied from the statutory delegation of authority. *Tuerk v. Dep't of Licensing*, 123 Wn.2d 120, 124-25, 864 P.2d 1382 (1994).

Johnson's Brief pointed the Court's attention to the statute granting the Department authority to suspend a driver's license for failure to respond, appear, pay, or comply:

> **The department is authorized to suspend the license of a driver** upon a showing by its records or other sufficient evidence that the licensee ... (5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has

> failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;

RCW 46.20.291 (emphasis added). The Act restricted the authority granted under this section, as provided in RCW 46.20.289, to only those failures arising from moving violations. Under the plain terms of these statutes, the Department is no longer "authorized to suspend the license of a driver" for failure to respond, appear, pay, or comply for a nonmoving violation.

Mysteriously, the Department refuses to acknowledge this plain and specific statute, instead arguing, contrary to law, that the Department has "general authority to administer the driving privilege." Respondent's Brief at 12. The Department does not argue that the authority justifying its continued suspensions is expressly granted by RCW 46.20.291. The Department does not argue that the authority is necessarily implied by RCW 46.20.291. The Department does not make these arguments because the Department knows the authority is not there, express or implied.

Instead, the Department makes an inappropriate analogy to the subject matter jurisdiction of the courts. The Department is not a court and is not similar to a court in its creation, operations, or powers. As an administrative agency, the Department does not have general or subject-matter jurisdiction to adjudicate license suspensions or anything else. *See Ass'n of Wash. Bus.*, 155 Wn.2d at 445 ("Agencies have only express or implied authority, not inherent authority"). The Department itself recognizes that suspension of a driver's license under RCW 46.20.289 is a ministerial act, not an adjudicative proceeding. Respondent's Brief at 38-39 ("The

Department's role is reflexive based on a triggering notice from the convicting court."). This Court has also recognized the ministerial nature of these suspensions. *City of Bellevue v. Lee*, 166 Wn.2d 581, 588, 210 P.3d 1011 (2009) ("The DOL's suspension process involves processing paperwork, not fact finding."). The concept of subject-matter jurisdiction does not apply because there is no "type of controversy" being adjudicated.

The Department misreads RCW 46.01.040 as a grant of general, subject matter jurisdiction. It is not. The statute lists a number of laws the Department is charged with administering. It notes, "The laws administered by the department have the common denominator of licensing and regulation and are directed toward protecting and enhancing the well-being of the residents of the state."[2] RCW 46.01.011. The statute vests the Department with "all powers, functions, and duties **with respect to"** certain subject areas. RCW 46.01.040. For each subject area, the statute contains a cross-reference to the chapter or chapters of the code containing the specific laws to be administered—for example, "Driver's licenses **as provided in chapter 46.20 RCW."** RCW 46.01.040(13) (emphasis added). Between these two phrases, "with respect to" and "as provided in," this statute grants no more authority than that expressly granted or necessarily implied by the referenced statutes.

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[2] Johnson notes that suspension of a driver's license to coerce payment of a civil debt appears to be outside of this mandate of "protecting and enhancing the well-being of the residents of the state," particularly where it actually results in great harm to the well-being of those who are suspended with no ability to pay.

Chapter 46.20 RCW governs driver's licenses. It contains a section, RCW 46.20.291, that expressly grants the Department authority to suspend the driving privilege or license under specific conditions. This section, specific in its scope and express in its grant of authority, provides the contours and full extent of the "powers ... with respect to ... [suspension of] Driver's licenses as provided in chapter 46.20 RCW" that are vested in the Department by RCW 46.01.040. The legislature did not vest the Department with general authority or subject matter jurisdiction. The legislature granted limited, specific powers as provided in RCW 46.20.291.[3]

The Department takes the subject matter jurisdiction argument so far as to say that if the Department expands its own authority by misinterpreting a statute, it has not actually exceeded its authority as long as it stays within the same "type of controversy." *See* Respondent's Brief at 11-12. This argument flatly contradicts well settled principles of administrative law. This Court, not an administrative agency, retains ultimate authority over the interpretation of the statutes the agency administers. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 716, 153 P.3d 846 (2007); *Waste Mgmt. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 627-28, 869 P.2d 1034 (1994). This Court does not defer to an agency's interpretation of its own authority. *Wash. Fed'n of State Emps. v. Dep't of Gen. Admin.*, 152 Wn. App. 368, 377, 216 P.3d 1061 (2009)

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[3] If the Department did have general, subject matter jurisdiction over driver's licenses, the specific grant of authority in RCW 46.20.291 would be superfluous. *See Waste Mgmt. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 637, 869 P.2d 1034 (1994). Therefore the Department's interpretation of its authority cannot be correct.

(citing *Elec. Lightwave v. Utils. & Transp. Comm'n*, 123 Wn.2d 530, 540, 869 P.2d 1045 (1994)).

Ironically, the Department's own arguments later in its Brief contradict the concept of general, subject matter jurisdiction. For example, The Department argues that "the legislature did not provide the Department with the necessary authority to reinstate pre-existing suspensions." Respondent's Brief at 13. No such grant would be necessary if the Department already had general, subject matter jurisdiction over license suspensions. Similarly, the Department argues that "The Department's role in taking a suspension action is limited and proscribed by statute," whereas, "the district court in which the non-payment arose has broader authority." Respondent's Brief at 38-39.

The Department has no general authority over driver's license suspensions. It has only that authority expressly granted by RCW 46.20.291.

3.3.2 The Department fails to recognize that the Act removed the statutory authority for suspensions arising from nonmoving violations.

A license to drive is an important and valuable property interest. *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971); *State v. Dolson*, 138 Wn.2d 773, 776-77, 982 P.2d 100 (1999). Suspension of a driver's license is a deprivation that must be authorized by statute and comport with due process. *Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004); *State v. Scheffel*, 82 Wn.2d 872, 880, 514 P.2d 1052 (1973).

Suspension is a temporary withholding of the driving privilege. *See* RCW 46.20.311(1)(a); RCW 46.04.580 ("'Suspend,' ... means invalidation for any period less than one calendar year and thereafter until reinstatement."). Ordinarily, when a suspension ends, the driver must request reinstatement and pay a $75 fee to the Department. *E.g.*, RCW 46.20.311(3)(a). However, a reinstatement fee is **not** required when the suspension was invalid or void. WAC 308-104-080.[4]

As noted above, the Department's authority to withhold the driving privilege or license through suspension for failure to respond, appear, pay, or comply is set forth in RCW 46.20.291 and further limited "as provided in RCW 46.20.289." The Act amended RCW 46.20.289, limiting suspension under that section to only those failures arising from a moving violation. By operation of the cross-reference, "as provided in RCW 46.20.289," this limitation also applies to the scope of the Department's authority under RCW 46.20.291. With this change, the Department no longer has authority to withhold the driving privilege or license for failure to respond, appear, pay, or comply *for a nonmoving violation.* Where the Department no longer has authority to withhold, its only valid choice is to reinstate.

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[4] For example, the automatic bankruptcy stay renders suspension for failure to pay—an action to collect a debt—void, requiring reinstatement without a fee. *See In re Games*, 213 B.R. 773, 777 (Bankr. E.D. Wash. 1997) ("If a debt has been discharged or will be discharged upon successful completion of a pending chapter 13 case, the state may not deny driving privileges to a person simply because he/she has not paid a civil debt.").

The Department argues that it has correctly interpreted the change in procedures under RCW 46.20.289, but it has failed to recognize the more fundamental problem: the Act did not merely change procedures; it removed the authority that formerly supported suspensions arising from nonmoving violations. Without that statutory authority, such suspensions were immediately rendered invalid. The invalid suspensions should have been released and qualifying licenses reinstated without a fee.

3.3.3 The Department's arguments regarding procedure do not change its lack of any statutory authority to support ongoing suspensions arising from nonmoving violations.

The Department's arguments in Part V.B. of Respondent's Brief all focus on procedure, but this case is not about whether the Department has followed statutory procedures. This case is about authority. The Department has not, and cannot, point to any statutory provision authorizing it to continue to withhold the driving privilege or license for failure to respond, appear, pay, or comply for a nonmoving violation. That alone is reason for this Court to reverse and remand to the trial court for further proceedings, including issuance of a writ ordering the Department to release all suspensions arising from nonmoving violations. The Department cannot maintain suspensions for which it no longer has authority.

The Department argues that the legislature did not provide the Department with special authority to reinstate prior suspensions. However, the Department does not need special authority to reinstate a license. The driver's license is a valuable property interest belonging to the driver.

Suspension is a **temporary** deprivation of that interest. When a suspension ends, either because it was invalid or because it has run its course, the driver has a **right** to have the license reinstated. The Department does not need special authority to give back what rightfully belongs to the driver.

The legislature has not granted special authority for the Department to reinstate the license of a driver who files bankruptcy, yet reinstatement is exactly what the courts have required. *E.g., In re Games*, 213 B.R. 773, 777 (Bankr. E.D. Wash. 1997). After *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004), the legislature did not grant special authority for the Department to reinstate licenses that were suspended under procedures the Court found violated due process. The only thing the legislature did was to enact new procedures and to remove the Department's authority for suspensions arising from violations prior to July 1, 2005. *See* Laws of 2005, ch. 288 (App. at 1).[5] The Department released prior suspensions and reinstated licenses because they were invalid, without needing any special authority or procedure to do so.

The same should be true here.[6] All suspensions for failure to respond, appear, pay, or comply for nonmoving violations are invalid. The Department can and should release all such suspensions and reinstate qualifying licenses without a reinstatement fee. The Department's rules already provide for reinstatement without a fee when a suspension is found

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5 The same act also established payment plans under RCW 46.63.110.

6 The Administrative Office of the Courts agreed, expecting the Act to produce a similar effect to the Court's decision in *City of Redmond v. Moore*. CP 185.

invalid. WAC 308-104-080. No special authority or statutory procedure is required.

The Department argues that RCW 46.20.289 directs the Department not to reinstate a license until the Department receives a certificate of adjudication from the original issuing court. This is not entirely true. The statute provides, "A suspension under this section ... remains in effect" until the Department receives a certificate of adjudication. Importantly, "A suspension under this section" can only refer to a valid, authorized suspension—an unauthorized suspension would not be "under this section," and even if it was, "remains in effect" cannot operate to save a suspension that is already invalid. The language of RCW 46.20.289 does not require an invalid or unauthorized suspension to continue until fines are paid or other reinstatement requirements are met. This language does not, and cannot, provide authority to maintain a suspension that is not authorized.

Significantly, a suspension arising from a nonmoving violation is no longer "A suspension under this section." Section 289 no longer includes suspensions arising from nonmoving violations. Section 291 no longer authorizes them. Because nonmoving violation suspensions are not "under this section," there is no statutory requirement that they remain in effect at all. There is no procedural or statutory barrier to the Department releasing prior nonmoving violation suspensions.

3.3.4 Prospective application of the Act required the Department to release all nonmoving violation suspensions on the effective date of the Act.

The Department argues that prospective application of the Act does not require it to release prior suspensions. However, the Department's argument relies entirely on its interpretation of the procedures in RCW 46.20.289, without considering the impact of the Act on its authority under RCW 46.20.291. A change in authority applies immediately to all acts of the agency, no matter when initiated. *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 274, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994).

A coercive suspension for failure to respond, appear, pay, or comply is a continuing act. Unlike a suspension with a definite term, a coercive suspension does not terminate of its own accord. The Department **continues** to withhold the driver's license or privilege until the driver complies with his or her obligations. On the effective date of the Act, the Department no longer had authority to continue this kind of suspension arising from a nonmoving violation. Termination of all such suspensions on the effective date of the Act is required under a prospective application of the Act to the authority of the Department.

3.3.5 Even if termination of all prior nonmoving violation suspensions is a retroactive effect, it is the correct result.

Johnson does not believe that this effect can be characterized as retroactive. However, even if the Court finds that it is a retroactive effect, it is the correct result because the Act is remedial and termination of all prior

suspensions on the effective date of the Act furthers the purposes of the Act. *See* Brief of Appellant, Parts 5.3.3 and 5.3.4.

The Department argues that the Act is not remedial because it does not provide a new procedure for drivers to "remediate an existing suspension." This is more than courts require to find a statute remedial. "A remedial statute is one which relates to practice, procedures and remedies." *State v. McClendon*, 131 Wn.2d 853, 861, 935 P.2d 1334 (1997). A statute does not need to provide new remedies in order to be classified as remedial. Administrative licensing proceedings such as suspension have long been considered remedial. *McClendon*, 131 Wn.2d at 868. The Act, which changes suspension procedures and authority—changing the remedy available to the State for a driver's nonpayment—is remedial.

The Department argues that there is nothing in the language of the Act to indicate the legislature intended a retroactive effect. However, remedial or curative amendments are given retroactive effect even if **not** expressly stated in the amendment. *Johnson v. Continental West, Inc.*, 99 Wn.2d 555, 559, 663 P.2d 482 (1983). The Court should presume that the Act applies retroactively. *State v. Heath*, 85 Wn.2d 196, 198, 532 P.2d 621 (1975). The presumption holds unless the statutory language or legislative history clearly indicates the opposite intent.

In addition, termination of all prior suspensions furthers the purposes of the Act. Johnson does not argue, as the Department seems to believe, that termination of all suspensions **was** the purpose of the Act. Rather, Johnson argues that termination of prior suspensions **furthers** the

purposes of the Act. Even if the only purpose of the Act was to "remov[e] the requirement for law enforcement intervention for the failure to appear and pay a traffic ticket," CP 9 (Laws of 2012, ch. 82), termination of tens of thousands of prior suspensions arising from nonmoving violations would further that purpose by greatly reducing the number of people driving while suspended. Law enforcement would have no reason to intervene because the drivers would have valid licenses.

3.4 The Department of Licensing does not have authority to suspend a driver's license for failure to pay a fine imposed as a sentence for a traffic crime.

The Department argues that "failed to comply" is a generic, catch-all phrase. This interpretation goes far beyond this Court's holding in *State v. Johnson*, 179 Wn.2d at 546-47. The reasoning that supported this Court's interpretation of the phrase in *Johnson* simply does not apply to failure to pay a criminal sentence resulting from a citation. *See* Brief of Appellant at 26-30.

In addition to the significant differences between a civil infraction and a criminal citation, a person convicted of a traffic crime, with a sentence imposed, is subject to the continuing jurisdiction of the court until his or her sentence is satisfied. *See State v. Blazina*, ___ Wn.2d ___, No. 89028-5, slip op. at 9 (Mar. 12, 2015). If a convicted defendant fails to pay the fine imposed as part of the sentence, the court has the authority to issue a warrant for the person's arrest and to imprison the person for their failure to pay. *See* RCW 9.94B.040. Suspension of the person's driver's license pales in comparison to the coercive power of arrest and imprisonment.

The Department argues that this is an absurd result: allowing driver's license suspension for failure to pay a civil infraction, but not for the "more serious" failure to pay a criminal sentence. The result is not absurd. Rather, the court's power of arrest and imprisonment provides a "more serious" solution to the "more serious" problem of failure to pay a criminal sentence.

The Department argues that Johnson's interpretation renders failure to comply language superfluous. This is not true. "[F]ailed to comply with the terms of a notice of traffic infraction or citation," as used in RCW 46.20.289 has at least two meanings independent of failure to pay. First, it has reference to a notice sent to the Department under the Nonresident Violator Compact.[7] The Compact uses the general term "failed to comply" to refer to any failure to live up to the obligations imposed by a notice of infraction or citation. *See* RCW 46.23.010. By adopting the same language, the legislature ensured that Washington drivers would be subject to license suspension as intended under the Compact, even if the specific failure in the originating state was something other than "respond" or "appear."

Second, it refers, by its plain language, to the written terms of the notice of infraction or the citation itself. The terms to be included on a notice of infraction are delegated to the rulemaking authority of this Court, with certain minimum requirements. RCW 46.63.060. The terms of a citation

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[7] Laws of 1993, Chapter 501 (Substitute House Bill 1741) enacted RCW 46.20.289 and added subsection (5) to RCW 46.20.291. The purpose, as stated in the Final Bill Report, was to obtain the full benefits of the Nonresident Violator Compact, which Washington had adopted. *See* App. at 9.

are delegated to the various traffic enforcement agencies throughout the state, again with minimum requirements. RCW 46.64.010; RCW 46.64.015. The legislature recognized that, because of this delegation, the actual terms were outside of its control and may include requirements beyond the minimum terms prescribed by statute. By providing the open-ended "failure to comply with the terms," in RCW 46.20.289, the legislature ensured that compliance with the written terms would always be enforceable through suspension, even if those terms did not fall under "respond" or "appear."

Johnson's interpretation does not render any language superfluous; does not create absurd results; and is consistent with the plain language of the statutes, the statutory scheme as a whole, and the constitutional protections afforded to criminal defendants. The Department does not have statutory authority to suspend a driver's license for failure to pay a fine imposed as a sentence for a traffic crime. This Court should reverse and remand for further proceedings, including issuance of an appropriate writ of prohibition.

3.5 The superior court did not abuse its discretion when it determined that Johnson had no other adequate remedy at law.

The trial court's order expressly determined that "a Writ of Prohibition was an appropriate procedure for Petitioner to seek relief because he lacked an otherwise adequate remedy." CP 255. In asking this Court to hold otherwise, the Department is not merely asking this Court to affirm the trial court on alternate grounds; the Department is asking this

Court to grant it affirmative relief by modifying the trial court's express determination. The trial court denied this portion of the Department's summary judgment motion, VRP, April 4, 2014, at 29:20-30:3, and the Department did not appeal. The Department's request for reversal is beyond the scope of this Court's review under the Rules.

"The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review **only** (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case." RAP 2.4 (emphasis added); *accord* RAP 5.2(f) ("any other party who wants relief from the decision must file a notice of appeal or notice of discretionary review"). The Department did not file a notice of appeal. The Department does not argue that review is demanded by the necessities of the case. The Department has waived its opportunity to challenge the trial court's express determination that Johnson lacked an adequate remedy at law. This Court should decline to review it.

Even if the Court determines it can hear this issue, the Department has failed to establish that the trial court abused its discretion. "What constitutes a plain, speedy, and adequate remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought." *City of Olympia v. Bd. of Comm'rs*, 131 Wn. App. 85, 96, 125 P.3d 997 (2005).

3.5.1 Johnson could not have raised his challenge to the Department's authority to suspend in an administrative review under RCW 46.20.245.

The Department argues that Johnson could have requested an administrative review prior to imposition of the 2009 suspension. However, the Department fails to recognize the limitations of an administrative review. The Department proposes that Johnson could have made a legal argument regarding the Department's authority under a proper interpretation of the statutes. This is incorrect. An administrative review is a purely factual inquiry. There is no opportunity for the driver to present legal arguments because the review "shall consist solely of an **internal** review of **documents and records.**" RCW 46.20.245(2)(a) (emphasis added).

> **The only issues to be addressed** in the administrative review are:
>
> (i) Whether the records relied on by the department **identify the correct person;** and
>
> (ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person **accurately describes the action taken by the court** or other reporting agency or entity.

RCW 46.20.245(2)(b) (emphasis added). These are purely factual questions, to be determined on the basis of documents, not legal arguments.

In upholding the validity of the administrative review procedure, this Court explained that the administrative review was specifically designed to correct **ministerial errors:**

> DOL policy states, "A specialist will review all documents received by DOL on the pending action[, c]heck Imaging documents along with the court records, review the record

> for accuracy and provide a written response of the results. It is the customer [sic] responsibility to provide any other relevant information." In the case of ministerial error, this review process is designed to catch and resolve that error.

City of Bellevue v. Lee, 166 Wn.2d 581, 587-88, 210 P.3d 1011 (2009). "The DOL's suspension process involves processing paperwork, not fact finding, and therefore there is no reason that an in-person hearing will resolve ministerial errors that an administrative review will not." *Id.* at 588.

In dissent, Justice Sanders, who would have invalidated the procedure, pointed to issues that a driver would not be entitled to raise in an administrative review. Referring to the notice of failure to comply that is sent from a court to the Department, Justice Sanders observed, "No adequate basis exists under the statute to challenge the validity of such court notification." *Id.* at 591 (Sanders, J., dissenting). Additionally, "a driver facing suspension does not have the right to request something other than the document review prior to DOL's suspending his or her license." *Id.* at 592 (Sanders, J., dissenting). Finally, Justice Sanders observed that the administrative review "gives no opportunity to rebut the basis for the suspension." *Id.*

An administrative review under RCW 46.20.245 was not an adequate procedure for Johnson to bring a legal challenge to the Department's authority to suspend for failure to pay a criminal fine. The trial court did not abuse its discretion when it determined that Johnson did not have a plain, speedy, and adequate remedy at law.

3.5.2 Johnson could not have brought his challenge to the Department's authority to suspend by way of an action for declaratory judgment.

The purpose of a declaratory judgment action is to resolve uncertainty between parties as to their individual rights under a contract or statute. *See* RCW 7.24.120; RCW 7.24.020. The purpose of a writ of prohibition, on the other hand, is to prohibit an agency or government official from acting in excess of its power. *Brower v. Charles*, 82 Wn. App. 53, 57, 914 P.2d 1202 (1996). A declaratory judgment would be inadequate to achieve the relief Johnson seeks: an order that the Department terminate all driver's license suspensions for failure to respond, appear, pay, or comply for a nonmoving violation. A writ of prohibition also provides for an award of damages suffered by the petitioner as a result of the *ultra vires* acts. RCW 7.16.260. A declaratory judgment action provides no such remedy. *See* Chapter 7.24 RCW.

The trial court did not abuse its discretion when it held that Johnson's petition for a writ of prohibition "is the action at law needed to determine whether or not the Department of Licensing is acting outside of its authority and to redress damages if there were those." RP, June 27, 2014, at 32:22-24. This Court upheld a similar decision in *Skagit Cnty. Pub. Hosp. Dist. No. 304 v. Skagit Cnty. Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 730-31, 305 P.3d 1079 (2013). In that case, United General Hospital sought declaratory judgment, injunctive relief, and a writ of prohibition. *Id.* at 722. The trial court issued the writ of prohibition, and this Court affirmed, stating, "United General may have been able to seek other relief, but under the facts of this case, it

was not manifestly unreasonable to find that there was no plain, speedy, and adequate remedy available in the ordinary course of legal procedure." Even if Johnson could have sought declaratory relief, under the circumstances of this case, the trial court did not abuse its discretion in finding that no other procedure would have adequately substituted for a writ of prohibition.

3.5.3 Johnson could not have brought his challenge to the Department's authority to suspend by motion in the district court.

The Department argues that Johnson could have gone to the district court to have his cases "adjudicated." In the context of failure to pay a fine, "adjudicated" means that the fine has been paid in full, a payment plan has been established, or the fines have been waived. *See* RCW 46.63.110(6); RCW 46.63.120. The district court could not "adjudicate" the case by finding that the Department did not have authority to suspend. The district court is an inadequate forum for Johnson to challenge the Department's authority. The trial court did not abuse its discretion in determining that Johnson had no other plain, speedy, and adequate remedy for his challenge to the Department's authority to suspend.

4. Conclusion

License suspension for failure to pay a fine does nothing but oppress the poor. Those with means to pay their fines, pay them. Only poor people who are unable to pay end up suspended. These suspensions destroy their already difficult lives. The system criminalizes poverty and imposes an unnecessary burden on society. The legislature attempted to provide some

relief by way of the Act, but the Department has stymied that effort by refusing to recognize the removal of all authority for suspensions arising from nonmoving violations.

For the reasons stated above and in the Brief of Appellant, this Court should reverse the superior court's summary judgment order and grant summary judgment in Johnson's favor. The Department has acted without statutory authority. This Court should remand to the superior court for further proceedings, including issuance of an appropriate writ of prohibition, a decision on Johnson's motion to certify a class action, and a jury trial on damages pursuant to RCW 7.16.260.

Respectfully submitted this 23rd day of March, 2015.

/s/ Kevin Hochhalter
Kevin Hochhalter, WSBA #43124
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on March 23, 2015, I caused the original of the foregoing document, and a copy thereof, to be served by the method indicated below, and addressed to each of the following:

original:	Supreme Court Temple of Justice 415 12th Avenue SW Olympia, WA 98504 supreme@courts.wa.gov	____ U.S. Mail, Postage Prepaid __X__ Electronic Filing _____ Legal Messenger _____ Overnight Mail _____ Facsimile _____ Hand Delivery
copy:	Schuyler Brady Rue Office of the Attorney General 1125 Washington Street SE Olympia, WA 98504 schuylerr@atg.wa.gov	____ U.S. Mail, Postage Prepaid __X__ Electronic Mail __X__ Legal Messenger _____ Overnight Mail _____ Facsimile _____ Hand Delivery

DATED this 23rd day of March, 2015.

/s/ Rhonda Davidson
Rhonda Davidson, Legal Assistant

CHAPTER 288

[Substitute House Bill 1854]

DRIVING PRIVILEGE—REVOCATION

AN ACT Relating to withholding of the driving privilege; amending RCW 46.20.265, 46.20.270, 46.20.285, 46.20.289, 46.20.324, 46.20.334, and 46.63.110; adding a new section to chapter 46.20 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.20 RCW to read as follows:

(1) Whenever the department proposes to withhold the driving privilege of a person or disqualify a person from operating a commercial motor vehicle and this action is made mandatory by the provisions of this chapter or other law, the department must give notice to the person in writing by posting in the United States mail, appropriately addressed, postage prepaid, or by personal service. Notice by mail is given upon deposit in the United States mail. Notice given under this subsection must specify the date upon which the driving privilege is to be withheld which shall not be less than forty-five days after the original notice is given.

(2) Within fifteen days after notice has been given to a person under subsection (1) of this section, the person may request in writing an administrative review before the department. If the request is mailed, it must be postmarked within fifteen days after the date the department has given notice. If a person fails to request an administrative review within fifteen days after the date the department gives notice, the person is considered to have defaulted and loses his or her right to an administrative review unless the department finds good cause for a request after the fifteen-day period.

(a) An administrative review under this subsection shall consist solely of an internal review of documents and records submitted or available to the department, unless the person requests an interview before the department, in which case all or any part of the administrative review may, at the discretion of the department, be conducted by telephone or other electronic means.

(b) The only issues to be addressed in the administrative review are:

(i) Whether the records relied on by the department identify the correct person; and

(ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(c) For the purposes of this section, the notice received from a court or other reporting agency or entity, regardless of form or format, is prima facie evidence that the information from the court or other reporting agency or entity regarding the person is accurate. A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the withholding of the driving privilege.

(d) The action subject to the notification requirements of subsection (1) of this section shall be stayed during the administrative review process.

(e) Judicial review of a department order affirming the action subject to the notification requirements of subsection (1) of this section after an administrative review shall be available in the same manner as provided in RCW 46.20.308(9). The department shall certify its record to the court within thirty days after

service upon the department of the petition for judicial review. The action subject to the notification requirements of subsection (1) of this section shall not automatically be stayed during the judicial review. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury.

(3) The department may adopt rules that are considered necessary or convenient by the department for purposes of administering this section, including, but not limited to, rules regarding expedited procedures for issuing orders and expedited notice procedures.

(4) This section does not apply where an opportunity for an informal settlement, driver improvement interview, or formal hearing is otherwise provided by law or rule of the department.

Sec. 2. RCW 46.20.265 and 2003 c 20 s 1 are each amended to read as follows:

(1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265. ((~~The revocation shall be imposed without hearing.~~))

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(c) Each offense for which the department receives notice shall result in a separate period of revocation. All periods of revocation imposed under this section that could otherwise overlap shall run consecutively up to the juvenile's twenty-first birthday, and no period of revocation imposed under this section shall begin before the expiration of all other periods of revocation imposed under this section or other law. Periods of revocation imposed consecutively under this section shall not extend beyond the juvenile's twenty-first birthday.

(3)(a) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section if the minimum term of revocation as specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3), 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and subject to subsection (2)(c) of this section.

(b) The juvenile may seek reinstatement of his or her driving privileges from the department when the juvenile reaches the age of twenty-one. A notice from the court reinstating the juvenile's driving privilege shall not be required if reinstatement is pursuant to this subsection.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for

which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection, subject to subsection (2)(c) of this section.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement.

Sec. 3. RCW 46.20.270 and 2004 c 231 s 5 are each amended to read as follows:

(1) Whenever any person is convicted of any offense for which this title makes mandatory the ((~~suspension or revocation of the driver's license~~)) withholding of the driving privilege of such person by the department, the ((~~privilege of the person to operate a vehicle is suspended until the department takes the action required by this chapter, and the~~)) court in which such conviction is had shall forthwith ((~~secure the immediate forfeiture of the driver's license of such convicted person and immediately forward such driver's license to the department, and on failure of such convicted person to deliver such driver's license the judge shall cause such person to be confined for the period of such suspension or revocation or until such driver's license is delivered to such judge: PROVIDED, That if the convicted person testifies that he or she does not and at the time of the offense did not have a current and valid vehicle driver's license, the judge shall cause such person to be charged with the operation of a motor vehicle without a current and valid driver's license and on conviction punished as by law provided, and the department may not issue a driver's license to such persons during the period of suspension or revocation: PROVIDED, ALSO, That if the driver's license of such convicted person has been lost or destroyed and such convicted person makes an affidavit to that effect, sworn to before the judge, the convicted person may not be so confined, but the department may not issue or reissue a driver's license for such convicted person during the period of such suspension or revocation: PROVIDED, That~~)) mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department. A valid driver's license or permit to drive marked under this subsection shall remain in effect until the person's driving privilege is withheld by the department pursuant to notice given under section 1 of this act, unless the license or permit expires or otherwise becomes invalid prior to the effective date of this action. Perfection of notice of appeal shall stay the execution of sentence including the ((~~suspension and/or revocation of the driver's license~~)) withholding of the driving privilege.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall forward to the department within ten days of a forfeiture of bail or collateral

deposited to secure the defendant's appearance in court, a payment of a fine or penalty, a plea of guilty or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or other infraction issued under RCW 46.63.030(1)(d) has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more other infractions issued under RCW 46.63.030(1)(d) have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of Title 46 RCW the term "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of Title 46 RCW the term "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding.

Sec. 4. RCW 46.20.285 and 2001 c 64 s 6 are each amended to read as follows:

The department shall ((~~forthwith~~)) revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, for the period prescribed in RCW 46.61.5055;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

Sec. 5. RCW 46.20.289 and 2002 c 279 s 4 are each amended to read as follows:

The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110((~~(5)~~)) (6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after the effective date of this act. A suspension under this section takes effect ((~~thirty days after the date the department mails notice of the suspension~~)) pursuant to the provisions of section 1 of this act, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. In the case of failure to respond to a traffic infraction issued under RCW 46.55.105, the department shall suspend all driving privileges until the person provides evidence from the court that all penalties and restitution have been paid. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

Sec. 6. RCW 46.20.324 and 1965 ex.s. c 121 s 31 are each amended to read as follows:

Unless otherwise provided by law, a person shall not be entitled to a driver improvement interview or formal hearing ((~~as hereinafter provided~~)) under the provisions of RCW 46.20.322 through 46.20.333 when the person:

(1) ((~~When the action by the department is made mandatory by the provisions of this chapter or other law~~)) Has been granted the opportunity for an administrative review, informal settlement, or formal hearing under section 1 of

this act, RCW 46.20.308, 46.25.120, 46.25.125, 46.65.065, 74.20A.320, or by rule of the department; or

(2) ((~~When the person~~)) Has refused or neglected to submit to an examination as required by RCW 46.20.305.

Sec. 7. RCW 46.20.334 and 1972 ex.s. c 29 s 4 are each amended to read as follows:

Unless otherwise provided by law, any person denied a license or a renewal of a license or whose license has been suspended or revoked by the department ((~~except where such suspension or revocation is mandatory under the provisions of this chapter~~)) shall have the right within thirty days, after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his residence. The hearing on the appeal hereunder shall be de novo.

Sec. 8. RCW 46.63.110 and 2003 c 380 s 2 are each amended to read as follows:

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of RCW 46.55.105(2) is two hundred fifty dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the ((~~person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty~~)) court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of the effective date of this act or the date the

monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privilege until ((~~the penalty has~~)) all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid ((~~and the penalty provided in subsection (4) of this section has been paid~~)), and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed a fee of five dollars per

infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

NEW SECTION. **Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the House March 11, 2005.
Passed by the Senate April 11, 2005.
Approved by the Governor May 4, 2005.
Filed in Office of Secretary of State May 4, 2005.

CHAPTER 289

[Substitute House Bill 1887]

LITTER TAX

AN ACT Relating to exemptions to the litter tax; and amending RCW 82.19.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.19.050 and 2003 c 120 s 1 are each amended to read as follows:

The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state;

(2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330;

(3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the

FINAL BILL REPORT

SHB 1741

Synopsis as Enacted
C 501 L 93

Brief Description: Revising penalties for ignoring traffic tickets.

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Ludwig, Johanson and Orr).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: Many traffic laws have been "decriminalized" and made civil infractions instead of crimes. For these infractions, no jail time may be imposed, but civil punishment includes fines and in some instances loss of driving privileges. Although infractions themselves are not crimes, failing to respond to a notice of infraction is a crime.

Under the "Nonresident Violator Compact," a state may agree to release motorists from another state who are cited for traffic law violations without requiring the motorists to post appearance bonds. Such an agreement is dependent, however, on the home state of a cited motorist having a law which requires driver's license suspension for failing to comply with a traffic citation. Washington has adopted the compact, but does not have a law that would require license suspension for Washington drivers who fail to comply with citations issued by other participants in the compact. Washington does have a law that prohibits renewal of a license for a person who has failed to comply.

The state's motor vehicle code has various escalating penalties for driving without a license and for driving while intoxicated (DWI). The crime of driving while a license is suspended or revoked may be committed in any one of three degrees, depending on the offense for which the license was suspended or revoked. Driving without a license that was suspended for being an habitual traffic offender is first-degree driving with a suspended or revoked license. The second-degree offense involves driving following the loss of a license for DWI or other relatively serious traffic offenses. The third-degree offense involves driving after a license has been suspended or revoked solely for secondary reasons such as failure to furnish proof of

financial responsibility, or failure to renew a license after a period of suspension has expired.

Summary: Crimes relating to failure to respond to a traffic infraction and failure to comply with a traffic citation are repealed. The offenses are made infractions for which the Department of Licensing (DOL) is to suspend a driver's license. If a Washington driver fails to respond or comply in the case of an out-of-state offense, DOL will also suspend the driver's license. A suspension continues until the driver responds or complies, shows proof of financial responsibility, and pays a $20 reinstatement fee.

The mandatory minimum jail term for first-degree driving with a suspended or revoked license as the result of being an habitual offender is reduced from one year to 180 days. The crime of driving with a suspended or revoked license in the third degree is amended to include persons who drive while their licenses are suspended as the result of failing to respond to a notice of a traffic infraction or failing to comply with a citation.

Several changes are made with respect to the crime of DWI:

(1) The ground for suspending the otherwise mandatory jail time for DWI is changed. The required risk to a defendant's physical or mental well-being must be "substantial."

(2) The Department of Social and Health Services, instead of the court, must periodically review the alcohol information schools attended by DWI offenders.

(3) For persons convicted of DWI while they were driving with a suspended or revoked license in the first or second degree, the minimum mandatory fine is raised from $200 to $500. This fine and its accompanying mandatory 90 days in jail no longer apply to persons convicted of DWI while driving without a license as a result of third-degree driving with a suspended or revoked license.

(4) A change is made to an ambiguous requirement that a court impose, in addition to the mandatory jail time for DWI, a suspendible term of imprisonment "not exceeding 180 days" that is suspendible but not deferrable "for a period not exceeding two years." This provision is changed to require that the additional suspendible term of confinement be for a period of up to two years.

Various changes are made to the form requirements for notices of traffic infractions and citations in order to reflect the changes made in the substantive provisions described above.

Votes on Final Passage:

House	98	0	
Senate	47	0	(Senate amended)
House			(House refused to concur)
Senate	47	0	(Senate receded)

Effective: July 25, 1993

OFFICE RECEPTIONIST, CLERK

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To: OFFICE RECEPTIONIST, CLERK
Subject: Johnson/DOL - Cause No. 90607-6

Dear Supreme Court: Please accept for filing today the attached Reply Brief of Appellant.

Thank you,

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