



Online



News from the Trenches: SR-22 Requirement Confusion

April 7, 2020

Hello, my name is Jay Freeman. In addition to being a proud affiliate member of the Texas Criminal Defense Lawyers Association, I have spent the last 40 years or so of my life as an insurance agent specializing in the issuance of the Texas SR-22. As a practice, my agency makes it a point to personally speak to every SR-22 client in order to answer any questions they might have. This often puts us in a unique position to identify procedural changes before they become common knowledge. Recently, we

have begun to see a greatly enhanced enforcement by the Texas Department of Public Safety of a requirement that has been around for at least 16 years, but was rarely enforced in the past.

If you have a client who has been convicted of a driving-while-license-is-invalid charge, a driving-while-intoxicated charge, or a drug-possession charge, they are required to maintain an SR-22 for two years from the date of the conviction or their driver's license will be administratively suspended. The authority for this requirement can be found at 37 Texas Administrative Code, § 25.6 (d)(2)(2004). This requirement is mentioned in the Order of Suspension Letter that the Texas Department of Public Safety mails to the client, in addition to being published on the TDPS website and in their Frequently Asked Questions document.

Although this two-year requirement has been around since at least 2004, in the past it was seldom enforced (and then primarily on drug or DWLI cases). Recently there has been a spike in enforcement of this requirement in DWI cases, so it would be prudent to advise your client of its existence and suggest that they maintain the SR-22 for the two years following conviction. In the past, if TDPS determined that a driver was not in compliance with a requirement needed to maintain their driving privileges, they would send the driver a warning letter giving them 21 days to meet that requirement. *None* of the people we have spoken with have received a warning letter, so apparently that procedure has changed. It now seems that if the Texas Department of Public Safety determines that your client does not have an SR-22 on file, they will immediately suspend the license *without any additional notice to your client*. My personal suspicion is that this is occurring because if the client's driver's license is suspended, they will be required to pay another reinstatement fee to the department before they can legally drive.

Sadly, the lucky people discover that their driver's license has been suspended while doing something like registering their vehicle or renewing their license. The unfortunate ones find out about the suspension when they get pulled over for some other reason and suddenly find themselves facing an entirely new set of problems ranging from arrest, impoundment, possible revocation of probation, or a driving-while-license-is-invalid charge (which would start the whole two-year requirement all over again).

While the wording in the Administrative Code seems a bit confusing, there is absolutely no confusion as to the intent on the TDPS website or their FAQ page. The information is, however, quite difficult to find—it has been moved three times in just the last few years. From the TDPS homepage, you must first click on the Driver License tab on the left side of the page. Under the Driver Information & Resources section on this page, there is a column titled Suspensions & Reinstatements. There, you click on the Suspension Notifications link. Under the paragraph titled Suspensions & Withdrawals, there are three tabs labeled:

- Driving While License is Invalid (DWLI) Suspension
- Alcohol-Related Offences
- Drug-Related Offences

Each of these three links contain exactly the same wording:

Obtain a Financial Responsibility Insurance Certificate (SR-22) from an authorized insurance company (an SR-22 must be maintained for two years from the date of conviction).

All of these tabs also contain links to the Frequently Asked Questions page, where this requirement is covered in Section 9.

Perhaps the most disturbing aspect to this situation is that it appears that many of the clerks at TDPS are completely unaware of this requirement. I have personally had a clerk argue with me that this requirement does not exist even after I explained that it is clearly stated on the TDPS website. I have also had several clients tell me that a DPS clerk advised them to cancel their SR-22 because it was no longer required after they reinstated their driver's license, even though they were still within the two-year window on their conviction. I believe that part of this confusion is due to the way a driver's status is displayed on the DPS website. For example, if a driver is required to maintain an SR-22 and has the form on file with DPS, the website will show that there are no requirements (while it should show that the requirement has been met). This leads the driver to the false conclusion that they have met all areas of compliance, so they cancel the SR-22. But then the requirement pops back up on their status again and their license is suspended. If your client's license is suspended solely under this requirement, they will not need to obtain another Occupational Driver license; they will be able to reinstate their license by filing the SR-22 and paying any required fees to the department.

Because very few people at the Department of Public Safety seem to be aware that this situation is even occurring, it is impossible at this point to determine how many drivers are being affected. What I can say with complete confidence is this: Two years ago we very rarely dealt with clients needing an SR-22 to meet this two-year requirement, while today we are seeing it on a weekly (if not daily) basis. And we are only one of the many SR-22 providers in Texas. My fear is that somewhere in the future, DPS might follow the same path in these cases as they did a few years ago with those people convicted in drug-possession cases. They contacted those who had received and pled to traffic violations during the period of suspension following their drug conviction and assessed the surcharges and penalties for DWLI.

In conclusion, my suggestion at this point is to at least make your clients aware of this requirement and explain to them the seriousness of a DWLI charge. One of the

common statements we hear from our SR-22 clients in this situation is: “Why didn’t my attorney warn me about this?”

Author’s Note:

While on the subject of SR-22s, I recently wrote an article titled “A Consumer’s Guide to the Texas SR-22.” This is not an advertisement for myself or my company; it is simply a guide to assist those clients in need of an SR-22 and give them the tools to make the proper decisions for their unique circumstance. The guide is divided into five parts:

- What is a Texas SR-22 and why do I need it?
- Should I tell my insurance company about the SR-22?
- I don’t want to get the SR-22 from my company, now what do I do?
- Will my insurance company know about the SR-22?
- Should I get the SR-22 through the State Pool?

Many of my friends have made this guide part of their client packets and if you would like to see it, I will be happy to send you a copy. Just drop me a line to jayfree55@hotmail.com and I’ll get one to you.



Jay Freeman is a licensed Texas insurance agent with over 40 years of experience, specializing in the issuance and placement of the Texas SR-22. He is the owner of ConceptSR22.com and Accurate Concept Insurance in Dallas, Texas. In addition to his insurance career, he is also an accredited Texas State Bar Sponsor and regularly presents CLE courses for Criminal Defense Groups and Bar Associations around the state. Jay is a proud member of Texas Criminal Defense Lawyers Association, DUI Defense Lawyers Association, Louisiana Association of Criminal Defense Lawyers and Dallas Criminal Defense Lawyers Association.

