

STORAGE NAME: h3275z.cp
DATE: June 15, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3275

RELATING TO: Driver's Licenses / Worthless Checks

SPONSOR(S): Rep. Arnall

COMPANION BILL(S): SB 190

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 1
- (2) TRANSPORTATION (W/D)
- (3) TRANSPORTATION & ECONOMIC DEV. APPROP. YEAS 11 NAYS 0
- (4)
- (5)

I. FINAL ACTION STATUS:

Became law without the Governor's signature on May 24, 1998. See, 98-223, Laws of Florida.

II. SUMMARY:

- Amends the statute governing worthless checks by requiring the suspension of the driver's license for any person being prosecuted for a worthless check, who fails to appear in court and, for whom an arrest warrant or capias has been issued.
- Amends the statute governing traffic infractions by requiring a warning instead of a fine for speeding if less than 5 m.p.h. over the speed limit; by requiring a fine for speeding in a school zone, even if less than 5 m.p.h. over the speed limit; by requiring the presence of construction personnel for imposition of provision which requires doubling of fines for speeding in construction zone.
- Amends the statute governing drivers' licenses by requiring a second offense for a misdemeanor conviction of expiration of registration, over 6 months. A first conviction is reduced to a civil infraction.
- Amends the statute governing drivers' licenses by requiring permanent revocation for any person convicted of murder resulting from the operation of a motor vehicle; D.U.I. manslaughter or D.U.I. with serious bodily injury, if a second or subsequent D.U.I. conviction;
- Requires that periods of license suspension will not run during periods of incarceration.
- Creates a 3rd-degree felony for any person who drives with a permanently revoked license.

The effective date of this bill is July 1 of the year in which enacted.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Passing Worthless Bank Checks

Section 832.05, F.S., provides that it is unlawful for any person to pass a check, knowing at the time that there were insufficient funds on deposit to pay for it. The offense is punished as a 1st-degree misdemeanor (max. 1-year in jail, and a \$1,000 fine). Issuing such check in the amount of \$150, or more, in exchange for something of value, is punished as a 3rd-degree felony (max. 5-years prison, and a \$5,000 fine).

Current Methods Of Resolution

Section 832.08, F.S., explains the state attorneys' bad check diversion program. The program requires the defendant to enter into a written agreement to:

- Attend a program designed to educate offenders about the proper use of checks.
- Make full restitution on the check.
- Full payment of fees incurred by the program, itself.
- Waive the right to a speedy trial.

Successful completion of the program results in dismissal of the charge. Failure to complete the program results in prosecution for the offense.

Current Offenses Which Result In Revocation Of Driver's Licenses

Section 322.26, F.S., provides for mandatory revocation of one's driver's license for:

- Manslaughter resulting from the operation of a motor vehicle.
- Driving Under the Influence of Alcohol (D.U.I.)
- Any felony, the commission of which involved the use of a motor vehicle.
- Any failure to stop under laws which require the motorist to do so, involving death or serious personal injury.
- Perjury or false affidavit to the department relating to the ownership or operation of a motor vehicle.
- Three convictions of reckless driving within 1 year.
- Lewdness, the commission of which involved the use of a motor vehicle.

Section 322.271, F.S., provides that a restricted license may be obtained for business or employment purposes. Driver's may petition for reinstatement of their license 1-year after revocation, regardless of the reason for the revocation.

However, drivers convicted of a 4th D.U.I., or for D.U.I. manslaughter may not have their licenses reinstated until 5-years after the revocation.

Section 322.245, F.S., also provides for mandatory suspension of driver's licenses for non-payment of child support.

B. EFFECT OF PROPOSED CHANGES:

- Amends statute governing worthless checks by requiring the suspension of the driver's license for any person being prosecuted for a worthless check, who fails to appear in court and, for whom an arrest warrant or capias has been issued.
- Amends statute governing worthless checks by providing an alternative to the bad check diversion program by allowing placement of a worthless check debt with a debt collector.
- Amends statute governing drivers' licenses to permit the Department of Highway Safety and Motor Vehicles to sell copies of photographs and other images when they are being purchased for the purpose of preventing fraud.
- Appropriates \$35,000 from the Highway Safety Operations Trust fund to implement the provisions of this legislation.
- Amends statute governing traffic infractions by requiring a warning instead of a fine for speeding if less than 5 m.p.h. over the speed limit; by requiring a fine for speeding in a school zone, even if less than 5 m.p.h. over the speed limit; by requiring the presence of construction personnel for imposition of provision which requires doubling of fines for speeding in construction zone.
- Amends statute governing drivers' licenses by requiring a second offense for a misdemeanor conviction of expiration of registration, over 6 months. A first conviction is reduced to a civil infraction.
- Amends statute governing mandatory drivers' license revocation by requiring permanent revocation for any person convicted of murder resulting from the operation of a motor vehicle; D.U.I. manslaughter or D.U.I. with serious bodily injury, if a second or subsequent D.U.I. conviction.

Consequently, persons whose licenses have been permanently suspended for murder, D.U.I. manslaughter or D.U.I. with serious bodily injury and who have prior D.U.I. related convictions will not be able to petition for reinstatement after 5-years.

- Requires that periods of license suspension will not run during periods of incarceration.

- By creating a 3rd-degree felony for any person who drives with a permanently revoked license.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The FDLE, DHSMV and state attorney office will each have additional duties to identify bad check offenders who are eligible for license suspension, and for performing the procedures necessary for revoking and/or reinstating driver's licenses.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Yes. Anyone whose license was suspended pursuant to the program outlined in the bill will pay an additional \$10 fee to have their license reinstated.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 832.09; 322.251, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 832.09 whereby the DHSMV revokes the license of those motorists who do not fulfill terms of check diversion program or who have failed to appear in court for a bad check charge.

Section 2: Creates s. 832.10 to provide for a private debt collector alternative.

Section 3: Amends s. 322.251 to require notice to persons whose licenses have been suspended.

Section 4: Amends s. 322.142 to permit sale of identification information for bona fide purpose of preventing fraud.

Section 5: Appropriates \$35,000 for the implementation of this legislation.

Section 6: Amends s. 318.18 by reducing fines for certain traffic violations.

Section 7: Amends s. 320.07 by reducing the penalties for an expired registration over 6 months.

Section 8: Amends s. 322.26 by requiring mandatory license revocation, for life, for murder resulting from the use of an automobile, or for certain D.U.I. convictions.

Section 9: Amends s. 322.271 by requiring no prior D.U.I. convictions in order to obtain a license for business or employment purposes after a first D.U.I. conviction.

Section 10: Amends s. 322.28 by specifying that a license may never be renewed if the driver has been convicted of a murder resulting from the use of a motor vehicle.

Section 11: Amends s. 322.283 by requiring periods of license suspension to begin after release from any period of incarceration.

Section 12: Amends s. 322.34 by allowing driving record evidence of a judgement or an order suspending a person's license to satisfy the element of knowledge for driving while license suspended.

Section 13: Creates s. 322.341 to punish the offense of driving while license permanently revoked as a 3rd-degree felony.

Section 14: Amends s. 627.733 to conform with the new requirements of the bill.

Section 15: Provides an effective date.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

While the Department of Highway Safety and Motor Vehicles (DHSMV) will receive funds from the reinstatement of licenses, the actual number of licenses which will be reinstated is undeterminable.

The DHSMV projects a one-time expense for computer hardware and software in the amount of \$23,430.

The DHSMV projects a yearly expense of \$11,385 for the notice to approximately 34,500 drivers with outstanding warrants for bad checks.

Finally, the DHSMV projects \$34,815 for yearly operating costs of the program.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not an unfunded mandate because it affects only state agencies, not local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

VI. COMMENTS:

Retroactive Application

Section 8 of the Law amends s. 322.26, F.S. (Mandatory revocation of license by department) by requiring permanent license revocation for any murder resulting from the operation of a motor vehicle; D.U.I. manslaughter where the defendant has a previous D.U.I. conviction; or for a 4th D.U.I. conviction. This raises the question of whether the law may be applied retroactively, so, that a person who receives his next D.U.I. conviction will have his license permanently revoked even though the law was not in effect when he obtained his previous convictions.

Florida courts have long held that suspension of a driver's license is an administrative matter, not a punishment; hence it does not constitute an ex post facto violation. Neither does merely increasing the penalty for subsequent convictions of the same offense constitute an ex post facto violation. See, **Zarsky v. State, 300 So. 2d 216 (Fla. 1974)**.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VIII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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PAGE 11

AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION &
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FINAL RESEARCH PREPARED BY COMMITTEE ON CRIME AND PUNISHMENT:

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