

STORAGE NAME: h3275a.ted

DATE: April 23, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
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)
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I. SUMMARY:

The bill provides for the suspension or revocation of any person's driver's license who, 1) does not fulfill the agreements for a bad check diversion program for passing a worthless bank check, or 2) is being prosecuted for passing a worthless bank check and has an outstanding warrant for failure to appear in court for that case.

The bill, also, provides for notification of the requirements for reinstatement of the license, to include:

- Full payment of restitution, court costs and fees incurred as a result of the warrant.
- Cancellation of the warrant by the issuing law enforcement agency.
- Payment of an additional \$10 fee to the Highway Safety Operating Trust Fund.

The bill directs the Department of Law Enforcement to make its records electronically accessible to the Department of Highway Safety and Motor Vehicles for the purpose of identifying motorists with outstanding warrants.

The bill has an effective date of "July 1 of the year in which enacted."

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

The Costs To Florida Consumers

Every year, each state attorney office handles thousands of bad check cases, most of which are handled through the bad check diversion programs pursuant to s. 832.08, F.S. The Florida Department of Law Enforcement estimates there are an average of 34,500 outstanding warrants for failure to appear on a worthless bank check case, at any given time. The Florida Retailers Federation conservatively estimates the cost of bad checks to retailers, and ultimately to Florida consumers, to be \$10 million per year.

Previous Legislation Regarding Worthless Checks

HB 225, "An act relating to driver's licenses," was introduced during the 1997 regular session. HB 225 did not suspend or revoke anyone's driver's license, as does the bill (HB 3275). HB 225 only prohibited the renewal of driver's licenses, once expired, for those persons who had outstanding warrants for passing worthless bank checks. HB 225 was passed in both houses of the Florida Legislature, but was vetoed by the Governor on May 29, 1998. The Governor's veto message states, in part:

Committee Substitute for House Bill 225 would prohibit the Department of Highway Safety and Motor Vehicles from renewing a driver's license if the license applicant has an outstanding warrant for passing a worthless bank check.

I recognize that losses due to passing worthless bank checks are staggering; however, I am concerned that targeting the economic crime of passing bad checks elevates that crime over warrants for violent offenses, and makes the state a collection agency for victims of only one type of crime.

Those who are wanted for this crime will be more likely to bypass license renewal altogether with the unintended consequence that this bill will lead to an increase in the number of unlicensed drivers on our roads. Certainly there are more effective means of easing the costs and difficulties of serving warrants in cases involving passing worthless bank checks.

B. EFFECT OF PROPOSED CHANGES:

Revokes Driver's Licenses For Unresolved Bad Check Offenses

The bill directs the Department of Highway Safety and Motor Vehicles to "suspend or revoke" the driver's license of any person who:

- 1) Does not fulfill the agreements for a bad check diversion program.

OR,

- 2) Fails to appear for a court date for a bad check and which results in the issuance of a warrant for arrest or capias.

The FDLE Is Required To Share Information With the DHSMV

The bill directs that the Florida Department of Law Enforcement will make its records electronically accessible by the Department of Highway Safety and Motor Vehicles for the purpose of identifying which drivers have outstanding warrants. The bill, also, requires the two agencies to work together to “develop and implement a plan” for identifying motorists with outstanding warrants for bad checks.

Notice Of Conditions For Reinstatement Required

The bill requires the Department of Highway Safety and Motor Vehicles to notify the affected motorists of the necessary steps to have their license reinstated. The steps include:

- Full payment of restitution, court costs and fees incurred as a result of the warrant.
- Cancellation of the warrant by the issuing law enforcement agency.
- Payment of an additional \$10 fee to the Highway Safety Operating Trust Fund.

Effective Date

The act shall take effect July 1 of the year in which enacted.

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: Requires FDLE to make its records electronically accessible to DHSMV. Directs DHSMV to notify motorists of necessary steps to reinstate their licenses. Directs FDLE and DHSMV to “develop and implement” the bill.

Section 3: Provides an effective date.

III. 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.

IV. 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.

V. COMMENTS:

Concerns From the State Attorneys' Worthless Check Divisions

While the bill expressly requires the Florida Department of Law Enforcement to make its records accessible to the Department of Highway Safety and Motor Vehicles, and for the two agencies to "develop and implement a plan," the bill makes no provision for requiring the same cooperation from the state attorney offices who, presumably, will have to communicate the names of those offenders who did not fulfill agreements for bad check diversion programs.

Assistant State Attorneys have, also, voiced concerns that the language "failure to complete" a bad check diversion program is vague in that a person who has been requested to enter into such a program, but who fails to respond to correspondence, may be included in this definition. Moreover, not only would they be responsible for preparing periodic lists of those who met the definition of having failed to complete the bad check diversion program, but they may also be responsible for updating those lists and periodically notifying the Department of Highway Safety and Motor Vehicles which offenders have complied with the program, since reported. Considering the tens of thousands of bad check cases which are assigned to such programs each year, state attorney offices could be faced with a new and unwieldy administrative workload with no additional funding or support provided by the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed the Committee On Crime and Punishment on April 1, 1998 with three amendments.

Amendment 1: Removes the provision requiring license revocation for those motorists who fail to complete a check diversion program.

Amendment 2: Technical amendment to clarify the bill's intent that all three conditions for reinstatement must be met, not just any one of the three.

Amendment 3: Adds provision that allows driving privilege to be restored when the motorist obtains a restricted license for business or employment purposes, only.

On April 23, 1998 the Transportation and Economic Development Appropriations Committee adopted three amendments.

Amendment 1: Provides the necessary appropriation to implement the provisions of this bill.

Amendment 2: Establishes a bad check diversion program

Amendment 3: Allows the department to sell copies of photographs or electronically stored photographs and driver's license informatio if such information is used for the prevention of fraud.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Jamie Spivey

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AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

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