

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 168

SPONSOR: Senator McKay

SUBJECT: DUI/Forfeiture

DATE: March 2, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Vickers</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/2 amendments</u>
3.	<u>Mannelli</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill provides that a motor vehicle is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act if driven by a person under the influence of alcohol or drugs while that person's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

The bill also authorizes the seizing agency to retain 30 percent of the proceeds from the sale of a forfeited motor vehicle, while the remaining 70 percent of the proceeds are to be deposited into the General Revenue Fund to be used to provide transportation services for participants of the WAGES program.

This bill substantially amends sections 322.34 and 932.701 and reenacts section 932.703 of the Florida Statutes.

## II. Present Situation:

### Driving Under the Influence

Section 316.193, F.S. (Supp. 1998), proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood or breath alcohol level of .08 percent or higher (DUI). Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury and when there have been less than four DUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. He must also be on probation for up to 1 year and participate in 50 hours of community service. However, if the convicted offender's BAL is .20 percent or higher,

or a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail.

A second DUI conviction carries a fine ranging from \$500 to \$1,000 and possible imprisonment up to 9 months in jail. However, if that conviction occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment time of at least 10 days. At least 48 hours of this confinement must be consecutive. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle to include a fine ranging from \$1,000 to \$2,000 and imprisonment not exceeding 12 months.

A third or subsequent DUI conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment up to 12 months. However, if that conviction occurs within 10 years of a previous DUI conviction, there is a 30-day minimum mandatory imprisonment sentence. At least 48 hours of this confinement must be consecutive. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle to include a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI conviction results in a third degree felony penalty, which means a minimum fine of \$1,000 but not exceeding \$5,000 and imprisonment up to 5 years.

A DUI offense involving property damage results in a first degree misdemeanor penalty, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

Section 316.193(6), F.S. (Supp.1998), also requires impoundment or immobilization of the vehicle involved in a DUI offense, unless the court finds that the family of the owner has no other private means of transportation. The period of impoundment or immobilization under the statute is 10 days for a first conviction, 30 days for a second conviction within 3 years of a prior conviction, and 90 days for a third conviction within 5 years of a prior conviction. The impoundment statute has been upheld against a vagueness challenge by the Florida Supreme Court in *Muller v. State*, 693 So.2d 976 (Fla. 1997).

In addition to these penalties, a DUI conviction also results in driver's license revocation under s. 322.28, F.S. (Supp. 1998), as follows: at least 180 days to 1 year for a first conviction; at least 5 years for a second conviction within 5 years of a prior conviction; and at least 10 years for a third conviction within 10 years from the first of three or more prior convictions.

### **Driving with a Suspended or Revoked License**

Section 322.34, F.S. (Supp.1998), provides that a person who knowingly drives with a suspended or revoked license is guilty of a crime as follows: a first offense results in a second degree misdemeanor; a second offense results in a first degree misdemeanor; and a third or subsequent offense results in a third degree felony. This section also provides for the immobilization or impoundment of the vehicle. s. 322.34(8), F.S. (Supp. 1998).

## **Liens for Recovering, Towing, or Storing Vehicles**

Section 713.78, F.S. (Supp. 1998), provides for the recovery of fees for towing and storage of vehicles by placing liens on such vehicles under certain circumstances.

## **Florida Contraband Forfeiture Act**

Currently, any vehicle involved in a felony offense is forfeitable under the Contraband Forfeiture Act as a “contraband article,” defined as “personal property . . . employed as an instrumentality in the commission of or in aiding or abetting in the commission of any felony, whether or not comprising an element of the felony . . .” s. 932.701(2)(a)5., F.S. Thus, a vehicle may be seized and forfeited if the driver is convicted of a fourth DUI offense (third degree felony) or a DUI offense involving serious injury or death (third and second degree felonies). Similarly, forfeiture is possible upon the third conviction for driving with a suspended or revoked license (third degree felony).

The Contraband Forfeiture Act, ss. 932.701-932.707, F.S., prescribes procedures for law enforcement to implement when seizing, forfeiting, and disposing of property. For instance, property may not be forfeited under this Act unless the seizing agency can establish by a preponderance of the evidence that the owner, co-owner, or lienholder knew, or should have known, that the property would be used in criminal activity. s. 932.703(6)(a), F.S. The constitutionality of the Act has been upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

Under the Act, the seizing agency is required to have probable cause to believe that the property sought to be seized “was used, is being used, was attempted to be used, or was intended to be used” in violation of the Act. *White v. State*, 680 So.2d 550, 554 (Fla. App. 1 Dist. 1996).

Personal property may be seized at the time of the violation, or subsequent to the violation, provided that the person entitled to notice is notified at the time of seizure or by certified mail, return receipt requested, and that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been, or is being used in violation of the Act. *Id.*

The fact that the seizing agency does not have probable cause to believe the vehicle contained contraband or was being used in violation of the Act at the moment they seized the vehicle does not render it unlawful under the Act. *Id.*

Section 932.703(2)(a), F.S., provides the notice requirements with regards to the forfeiture of personal property. The person entitled to notice must be notified at the time of the seizure or by certified mail that there is a right to an adversarial preliminary hearing held for the purpose of determining if probable cause exists. Notice must be mailed within five working days after the seizure and must state that the person is entitled to request the adversarial hearing within fifteen days.

### **Disposition of Forfeited Property**

Section 932.7055, F.S. (Supp.1998), provides that when a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may:

- (a) Retain the property for the agency's use;
- (b) Sell the property at a public auction or by sealed bid to the highest bidder; or
- © Salvage, trade, or transfer the property to any public or nonprofit organization.

If the property has a lien attached and the agency decides to sell the property, the proceeds of the sale are to be distributed in this order:

- (a) Payment of the balance due on any lien preserved by the court in the forfeiture proceedings;
- (b) Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; or
- © Payment of court costs incurred in the forfeiture proceeding.

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund. s. 932.7055(5), F.S.(Supp.1998).

### **WAGES**

In the 1996 Legislative Session, Florida established its welfare reform program called the Work and Gain Economic Self-Sufficiency (WAGES) Program by enacting ch. 414, F.S. The purpose of this program is to provide temporary assistance to needy families with (or expecting) children and to provide parents with job preparation, work opportunities, and support services to enable them to leave the program and become self sufficient. There are several work activity requirements for a participant in the WAGES program. In order for participants to move more rapidly from welfare to work, support services such as subsidized child care and transportation are provided. The availability of transportation services has been identified as one of the major problems confronting WAGES program participants.

### **III. Effect of Proposed Changes:**

Senate Bill 168 amends s. 322.34, F.S. (Supp.1998), relating to driving with a suspended or canceled license, and s. 932.701, F.S., relating to forfeiture definitions, to provide that a motor vehicle is contraband, subject to forfeiture under the Florida Contraband Forfeiture Act, if the motor vehicle is driven by a person who is DUI and whose license has been suspended as a result of a prior DUI conviction. Thus, law enforcement would be authorized to seize and forfeit a vehicle if the officer has probable cause to believe that the driver is DUI and the driver's license has been suspended, revoked, or canceled for a prior DUI conviction.

The bill also requires that notice of the seizure be sent to the Department of Highway Safety and Motor Vehicles. Additionally, SB 168 authorizes the seizing agency to retain 30 percent of the proceeds of the sale from the forfeited vehicle and allocates the remaining 70 percent to be used by the Department of Labor and Employment Security for transportation services for participants in the WAGES program. Finally, the bill allows for liens to be placed on the vehicle for the recovery of towing and storage fees under s. 713.78, F.S.(Supp.1998).

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Under the provisions of this bill, persons who are DUI and driving with a suspended, revoked, or canceled license for a previous DUI may have their vehicles seized and forfeited.

Any proceeds from the sale of these vehicles will predominately benefit the WAGES program, which in turn will benefit individuals who participate in the program.

##### **C. Government Sector Impact:**

This bill will generate an indeterminate amount of revenue for state and local law enforcement agencies and the WAGES program.

According to the Department of Highway Safety and Motor Vehicles, implementing this bill will require contracted programming modifications to the Department's database at an estimated cost of \$6,250.

According to the Office of the State Courts Administrator, the bill may have an adverse fiscal impact on the State Courts System to the extent the forfeiture proceedings are contested in court. Unlike the DUI charges, which are heard in county court, the forfeiture proceedings

would be heard in the circuit court. The amount of the fiscal impact is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Criminal Justice:

Changes the bill's effective date from July 1, 1999 to October 1, 1999.

#1 by Transportation:

Technical amendment correcting a cross-reference.

#2 by Transportation:

Provides for the distribution of "net" proceeds from the forfeiture and sale of motor vehicles. Designates local WAGES coalitions instead of the Department of Labor and Employment Security as the recipient agency for proceeds. Provides that in a forfeiture proceeding undertaken pursuant to this bill the court may consider the extent that the family of the owner has access to other means of transportation.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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