

STORAGE NAME: h0549s1.jud

DATE: March 10, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 549

RELATING TO: Alcohol or Drugs/DUI

SPONSOR(S): Committee on Judiciary and Rep. Ogles

COMPANION BILL(S): SB 168(s)

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

- (1) JUDICIARY YEAS 9 NAYS 0
- (2) FINANCE & TAXATION
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (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. The bill allows a judge to consider the extent to which the family of the vehicle owner has other public or private means of transport in the course of a forfeiture proceeding.

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

The bill provides an effective date of October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. 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 revocation of the convicted person's driver's license privilege under s. 322.28, F.S. (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 *et seq.*, 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. 1st DCA 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
- (c) 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
- (c) 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.

B. EFFECT OF PROPOSED CHANGES:

The bill 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, the bill 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).

Finally, the bill allows a judge to consider the extent to which the family of the vehicle owner has other public or private means of transport in the course of a forfeiture proceeding.

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?

The bill will increase local law enforcement agency responsibilities for seizing motor vehicles and will require these agencies to handle an increased number of forfeiture actions.

(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?

The bill does not eliminate or reduce any agency or program.

(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?

No.

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?

The bill may reduce the opportunity for persons to use motor vehicles in the event that those motor vehicles are seized.

- 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?

The bill does not purport to provide services to families or children.

- (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?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 322.34, F.S., s. 932.701, F.S., s. 932.703, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. 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. 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. Allows judge to consider whether family of vehicle owner has other public or private means of transportation in a forfeiture proceeding.

Section 2. Amends s. 932.701(2)(a) to include within the definition of a contraband article any motor vehicle used in violation of s. 322.34, F.S.

Section 3. Reenacts s. 932.703, F.S., relating to forfeitures of contraband articles.

Section 4. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Highway Safety and Motor Vehicles estimates a \$6,250 cost for programming modifications to the Department's drivers license database.

2. Recurring Effects:

May increase the workload of Department of Highway Safety and Motor Vehicles by increasing the number of motor vehicle forfeiture proceedings.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Not estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Not estimated.

2. Recurring Effects:

Not estimated.

3. Long Run Effects Other Than Normal Growth:

Not estimated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill may cause the loss of motor vehicles to citizens who violate the law.

2. Direct Private Sector Benefits:

The bill may reduce the amount of driving under the influence in Florida and thereby cause a related reduction in traffic accidents and injuries.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

While the bill may ostensibly require the expenditure of funds by cities or counties, this expenditure would be insignificant. The bill also creates what amounts to a non-criminal infraction (civil forfeiture). Therefore, the bill is not subject to the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

It is not clear why the bill's sponsor decided to create the new offense in Chapter 322 when it more properly might have been inserted into Chapter 316 (uniform traffic control). The bill penalizes driving under the influence, and might more logically fit in s. 316.193. That section already contains a forfeiture provision, to which this bill might easily be tacked on.

The bill might benefit from a clarification of section 2, relating to the definition of a "contraband article." The present definition includes by amendment a motor vehicle used in "violation" of s. 322.34. However, the latter section does not create a violation *per se*, but merely creates an added civil penalty in cases where a driver commits two existing offenses (DUI and driving with a suspended/revoked license).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted two amendments and made the bill a Committee Substitute. The first amendment provides that 30% of the net proceeds of the sale of a vehicle are to be retained by the law enforcement agency that seized the vehicle and 70% of the net proceeds are to be deposited in to the General Revenue for use by local WAGES coalitions in providing transportations for WAGES participants. The amendment also allows a judge to consider the extent to which the family of the owner has other public or private means of transportation during a forfeiture proceeding. The second amendment changes the effective date from July to October 1, 1999.

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VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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