

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1192

SPONSOR: Transportation Committee and Senator Wise

SUBJECT: Drivers' Licenses

DATE: April 6, 2004

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>FT</u>	_____
5.	_____	_____	<u>ATD</u>	_____
6.	_____	_____	<u>AP</u>	_____
7.	_____	_____	<u>RC</u>	_____

## I. Summary:

This CS directs the Department of Highway Safety and Motor Vehicles (DHSMV) to invalidate a driver's license suspension for driving with an unlawful blood-alcohol or breath-alcohol level imposed under s. 322.2615, F.S., if the suspended person is found not guilty of driving under the influence (DUI) at trial. The CS also clarifies the disposition of a criminal proceeding does not affect a suspension for refusal to submit to a blood, breath, or urine test.

In addition, the CS amends s. 322.025, F.S., to authorize DHSMV to offer a once-in-a-lifetime opportunity for a driver who has received a points warning letter as described under s. 322.27(3)(f), F.S., or a restriction letter as described in s. 322.161, F.S., to attend a basic driver improvement course approved by DHSMV within 60 days after the date of such letter. However, this opportunity is not available to any driver who has attended a basic driver improvement course within the previous 12 months. Upon completion of the approved course and presentation of proof to DHSMV, the driver will have three points deducted from his or her driving record and DHSMV will permanently annotate on the driver's record the one-time offer has been accepted and used.

This CS also authorizes the driver improvement school to assess a \$2.50 fee in addition to the regular course fee from each person who elects to attend an approved course. The additional \$2.50 must be deposited into the Highway Safety Operating Trust Fund.

This CS substantially amends ss. 322.2615, 322.025, and 318.1451 of the Florida Statutes.

## II. Present Situation:

Section 322.2615, F.S., mandates the administrative license suspension of a person arrested for a DUI violation under s. 316.193, F.S., when the person has a breath or blood alcohol level of .08 or higher or if the person refuses to submit to a blood or breath test.

To contest the suspension at DHSMV, the person may request either an informal hearing, where a hearing officer determines based on written submissions whether cause exists to sustain the suspension, or a formal hearing, where a hearing officer determines based on written submissions and witness testimony whether cause exists to sustain the suspension. The hearing, whether informal or formal, must be requested within 10 days of the suspension. If the hearing officer sustains the suspension, the person may appeal the decision to the circuit court.

The administrative suspension process under s. 322.2615, F.S., is separate and distinct from any criminal proceedings under s. 316.193, F.S. Section 322.2615(14), F.S., provides the disposition of any related criminal proceedings shall have no effect on the administrative suspension. In addition, the disposition of the suspension shall not be considered in any related criminal proceedings. As a result, both the administrative suspension and the DUI charge stand on their own merits, with each process independent and distinct from the other.

Under current law, an administrative suspension can be sustained even if the criminal proceeding is dismissed, if the criminal defendant enters a plea to a different charge, or if the criminal defendant is found not guilty at trial. Similarly, even if the hearing officer invalidates the administrative suspension, the criminal process can still go forward and the person could be convicted and sentenced for DUI.

Section 318.14(9), F.S., permits a person cited for certain traffic infractions to elect to attend a basic driver improvement course in lieu of a court appearance. If a person attends a driver improvement course, adjudication is withheld, points are not assessed on the offender's driving record, and the civil penalty is reduced by 18 percent (provided the person has not made such an election in the previous twelve months). A person may only elect to attend a driver improvement course in lieu of court appearance five times in a lifetime. In addition, s. 318.1451(4), F.S., currently allows an assessment fee of \$2.50 on those persons electing to attend a driver improvement course. This assessment is remitted to DHSMV and deposited into the Highway Safety Operating Trust Fund.

Section 322.27(3), F.S., establishes a point system for evaluation of convictions of violations of motor vehicle laws or ordinances to be used for the determination of the continuing qualification of any person to operate a motor vehicle. The DHSMV is also authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence the licensee has been convicted of violations of motor vehicle laws or ordinances amounting to 12 or more points as determined by the point system. The suspension must be for a period of not more than one year.

Section 322.27(3)(f), F.S., provides in computing the total number of points, when the licensee reaches the danger zone, DHSMV is authorized to send the licensee a warning letter advising any further convictions may result in suspension of his or her driving privilege.

Section 322.161, F.S., authorizes DHSMV to restrict the driving privilege of any Class D or Class E licensee who is age 15 through 17 and who has accumulated 6 or more points, excluding parking violations, within a 12-month period. Upon the determination any person has accumulated six or more points, DHSMV must notify the licensee and issue the licensee a restricted license for business purposes only. The licensee must appear before DHSMV within 10 days after notification to have the restriction applied. The period of restriction will be for a period of no less than one year beginning on the date it is applied by DHSMV.

Currently, s. 322.27(3)(h), F.S., provides for an automatic three point deduction from the driver history record of any person whose driving privilege has been suspended one time for the accumulation of points and has been reinstated.

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

This CS directs the DHSMV to invalidate a driver's license suspension for driving with an unlawful blood-alcohol or breath-alcohol level imposed under s. 322.2615, F.S., if the suspended person is found not guilty of DUI at trial. The CS also clarifies the disposition of a criminal proceeding does not affect a suspension for refusal to submit to a blood, breath, or urine test.

This CS amends s. 322.025, F.S., to authorize DHSMV to offer a once-in-a-lifetime opportunity for a driver who has received a points warning letter as described under s. 322.27(3)(f), F.S., or a restriction letter as described in s. 322.161, F.S., to attend a basic driver improvement course approved by DHSMV within 60 days after the date of such letter. However, this opportunity is not available to any driver who has attended a basic driver improvement course within the previous 12 months. Upon completion of the approved course and presentation of proof to DHSMV, the driver will have three points deducted from his or her driving record and DHSMV will permanently annotate on the driver's record the one-time offer has been accepted and used.

This CS also amends s. 318.1451(4), F.S., to authorize the driver improvement school to assess a \$2.50 fee in addition to the regular course fee from each person who elects to attend an approved course. The additional \$2.50 must be deposited into the Highway Safety Operating Trust Fund.

### **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:**

This CS will allow additional individuals to attend driver improvement schools. Individuals who are allowed to attend driver improvement schools will have to pay the costs of such courses. The cost of basic driver improvement courses vary depending on locality. Drivers accepting this one-time basic driver improvement course will be assessed a \$2.50 fee in addition to the regular course fee.

**C. Government Sector Impact:**

According to DHSMV, during fiscal year 2002-2003, there were 196,117 points warning and high risk driver warning letters mailed to drivers approaching a suspension. If all 196,117 drivers receiving these warning letters elect to accept the once-in-a-lifetime offer and have three points deducted from their driver record, the fiscal impact of the additional driver improvement school assessments (\$2.50) provided for in the CS is \$490,293 which would be generated for deposit into the Highway Safety Operating Trust Fund.

DHSMV estimates it will incur \$28,000 for contracted programming to modify the Driver License Software System.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the 2002 Florida Uniform Traffic Citation Statistics, 69,551 citations were issued for DUI violations during 2002. In the case of 12,286 violations the disposition was still pending. Discounting those violations, 57,265 DUI cases had been resolved. Of this total, 48,305 (84.4 percent) were determined guilty. In 521 cases (.9 percent) the person was found not guilty.

**VIII. Amendments:**

None.