

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 2104

INTRODUCER: Transportation Committee and Senator Gaetz

SUBJECT: Callin, Haligwoski, and Seguin Act

DATE: April 18, 2007

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>Pre-Meeting</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>TA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill creates the “Deputy Michael Callin, Michael Haligowski, and Deputy Ryan C. Seguin Memorial Traffic Act.” The bill re-defines when a withhold of adjudication is not a “conviction” regarding traffic infractions. The bill also requires fingerprints be taken of those who drive without a valid driver’s license or drive with a suspended license.

Also included is mandatory vehicle impoundment or immobilization for those driving with a suspended, revoked, cancelled, or disqualified license. The penalties for subsequent violations and violations for driving with suspensions, revocations, disqualifications, and cancellations due to refusal to submit to sobriety tests and breath tests, drug-related suspensions, or DUI suspensions are specified to include 30 days mandatory incarceration. The bill also provides for 90 days minimum incarceration for drivers who drive while their license is permanently revoked. Additionally, the bill provides for a sanction for those who knowingly allow suspended, revoked, cancelled, or disqualified drivers to drive their vehicles.

In addition, the bill requires the Department of Highway Safety and Motor Vehicles (department) to inform the motoring public of the changes to s. 322.34, F.S., made by this act and provide such information in newly printed driver’s license educational materials after July 1, 2007, and in public service announcements produced in cooperation with the Florida Highway Patrol. Lastly, the department is required, during the period from July 1, 2007, to July 1, 2008, to notify by mail, drivers whose license and privilege to drive have been suspended under s. 322.34, F.S.

Except as otherwise expressly provided, the bill will take effect July 1, 2007.

This bill substantially amends the following sections of the Florida Statutes: 318.14, 322.03, 322.251, 322.34, and 322.341.

## II. Present Situation:

Sections 318.14 (9) and (10) F.S., provide conditions for the court to withhold adjudication for certain violations and upon such action it shall not be considered a conviction.

Section 322.03, F.S., prohibits a person from driving without a valid driver's license.

Section. 322.251, F.S., provides the department shall notify a person by mail or in person when the driver's license or driving privilege is cancelled, suspended, revoked, or disqualified.

Section 322.34, F.S., requires law enforcement to impound or immobilize the vehicle of violators who are driving while their driver's license is suspended, revoked, cancelled, or disqualified because of failure to maintain required security, or because they are habitual traffic offenders.

Section 322.341, F.S., provides any person whose driver's license or driving privilege has been permanently revoked and who drives a motor vehicle upon the highways is guilty of a third degree felony.

## III. Effect of Proposed Changes:

The following is a section-by-section analysis of the bill:

**Section 1** provides this act may be cited as the "Deputy Michael Callin, Michael Haligowski, and Deputy Ryan C. Seguin Memorial Traffic Safety Act."

**Section 2** amends s. 318.14, F.S. Currently, s. 318.14(10), F.S., provides a person may elect to have adjudication withheld by the court upon proof of compliance to the court for certain tag, license, or insurance violations. This option is available to the person once every 12 months and shall not be allowed more than a total of three times. Presently, a withhold of adjudication for a non-criminal traffic infraction<sup>1</sup> is not a "conviction."<sup>2</sup> However, a withhold for criminal traffic offenses is considered a "conviction."<sup>3</sup>

An infraction is defined as "a non-criminal violation that may require community service hours under s. 316.027(4), F.S., but is not punishable by incarceration and for which there is not right to a trial by jury or a right to court-appointed counsel." The bill provides non-criminal traffic infractions are "convictions" except for those provided in s. 318.14(9) and (10), F.S. Effectively, all infractions will be subject to withholding of adjudication and not being deemed a

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<sup>1</sup> s. 318.14(1), F.S.

<sup>2</sup> s. 318.14(11), F.S.

<sup>3</sup> *Raulerson v. State*, 763 So.2d 285, 290-291 (Fla. 2000).

“conviction” as long as the offender has not received a withhold of adjudication under s. 318.14, F.S., for three years.<sup>4</sup>

The bill also provides violators of s. 322.34(2)(a) or (b), F.S., (Driving with a canceled, suspended, revoked, or disqualified license first or second offense) are eligible for a withhold of adjudication which will not count as a conviction if the suspension was solely for failure to appear, pay a civil penalty, attend a driver improvement course, pay child support, or pay a judgment, and the violator obtained a reinstated license and insurance. The violator’s withhold of adjudication will not count as a conviction if adjudication has not been withheld for a prior offense during the prior three years.

The significance of not classifying withholds on infractions as convictions means that the offender will not accumulate the predicate convictions to qualify under the habitual traffic offender statute, s. 322.264(2), F.S.<sup>5</sup>

**Section 3** requires recording of certain information by the courts on judgments for violations involving driving without a valid driver’s license. Section 322.03, F.S., prohibits a person from driving without a valid driver’s license. The bill adds the requirement every judgment for this offense (including when adjudication is withheld) must be in writing, signed by the judge, and recorded by the clerk. The same provision requires the offender to affix his or her fingerprints below the judge’s signature. The judge is to certify the fingerprint was affixed in his or her presence. The judgment or certified copy and fingerprints may be admissible against the defendant as prima facie evidence<sup>6</sup> in subsequent proceedings.

**Section 4** amends s. 322.251, F.S., to provide when notification of cancellation, suspension, revocation, or disqualification of a license is sent, the department is also to inform the person that any motor vehicle driven by or under the actual physical control of that person while the license or driving privilege is canceled, suspended, revoked, or disqualified is subject to impoundment and immobilization under s. 322.34, F.S., and lack of notification will not affect or stay the effective date or term of the cancellation, suspension, revocation, or disqualification or the impoundment or immobilization.

In addition, the department must make available on its Internet website the means to determine the status of a person’s driver’s license by entering the person’s driver’s license number. The department must also provide an automated hotline to provide callers with the status of a person’s driver’s license. The provided information must include the date and time the information was first made available to the public. Upon request from any law enforcement agency or officer of the court, the department must certify the date and time the information was first made available to the public. Currently, the department provides a website and hotline to determine the status of a person’s driving status by driver’s license number.

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<sup>4</sup> Section 318.14(3), F.S., provides refusal to accept and sign a summons is guilty of a second degree misdemeanor. This statute is not an infraction but nevertheless currently encompassed by s. 318.14(11)F.S. The bill makes a withhold for refusal to sign a conviction.

<sup>5</sup> Requires fifteen “convictions” for moving traffic offenses to qualify as a habitual traffic offender.

<sup>6</sup> Prima Facie evidence means sufficient evidence or the requisite minimum. See Steven H. Gifis, *Black’s Law Dictionary*, Barron’s (1996)

**Section 5** amends ss. 322.34(1), (2), (4), (5), (6), and adds (10), F.S. Specifically, the bill amends ss. 322.34(1) and (2), F.S., (driving while license suspended, revoked, canceled, or disqualified) to include the term “disqualified” to the list with “canceled, suspended, and revoked” in the body of the statute. The bill amends s. 322.34(2), F.S., to include the offense of knowingly driving without a valid driver’s license as a second degree misdemeanor for a first conviction. A second conviction is a first degree misdemeanor with no minimum sentence specified and a third conviction is a third degree felony without a minimum sentence specified. In addition, if the cancellation, suspension, revocation, or disqualification was due to a refusal to submit to a blood, breath, or urine test, sobriety test, or for DUI or other drug related offenses, then the violation of s. 322.34(2), F.S., for a first conviction is a first degree misdemeanor and regardless of whether a first, second, or third conviction, the court must order a minimum of 30 days incarceration.

Section 322.34(2), F.S. is further amended to provide for a rebuttable presumption<sup>7</sup> that the offender had knowledge of the suspension, revocation, cancellation, or disqualification by the department once notice has been sent pursuant to s. 322.34(4), F.S. The provision also eliminates the exception for the applicability of the presumption for cases involving failure to pay a traffic fine and violations of financial responsibility.

Section 322.34(4), F.S., is amended to provide notice of the suspension, revocation, cancellation, or disqualification is to be accompanied by notice that a vehicle driven by a person with a canceled, suspended, revoked, or disqualified license will be impounded or immobilized.

Section 322.34(5), F.S., is amended to provide anyone who drives while their license is suspended, cancelled, revoked, or disqualified because they are a habitual traffic offender (s. 322.264, F.S.), must be incarcerated for not less than 60 days.

Section 322.34(6), F.S., is amended to provide anyone who operates a motor vehicle without having a driver’s license or when cancelled, suspended, revoked, or disqualified, and by negligent operation of the motor vehicle causes death or serious bodily injury of another person, commits a third degree felony.

Section 322.34(10), F.S., is created to add the requirement every judgment for the offense of driving while license is suspended, revoked, canceled, or disqualified (including when adjudication is withheld) must be in writing, signed by the judge, and recorded by the clerk. The same provision requires the offender to affix his or her fingerprints below the judge’s signature. The judge is to certify the fingerprint was affixed in his or her presence. The judgment or certified copy and fingerprints may be admissible against the defendant as prima facie evidence<sup>8</sup> in subsequent proceedings.

**Section 6** amends ss. 322.34(3), (8), and adds (11), F.S., effective July 1, 2008. Specifically, the bill amends s. 322.34, F.S., to provide in any proceeding for a violation of this section, a court

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<sup>7</sup> A rebuttable presumption is a rule of law that shifts [in this case] the burden of proof from the state to the defense; requiring the defense to present evidence that the defendant was unaware of the suspension, revocation, cancellation, or disqualification. See Steven H. Gifis, *Black’s Law Dictionary*, Barron’s (1996).

<sup>8</sup> Prima Facie evidence means sufficient evidence or the requisite minimum. See Steven H. Gifis, *Black’s Law Dictionary*, Barron’s (1996).

may consider evidence, other than that specified in subsection (2) or subsection (11), that the person knowingly violated this section.

Section 322.34(8), F.S., is amended to provide for impoundment or immobilization of a vehicle if the law enforcement officer determines the vehicle operator's license or driving privilege is cancelled, suspended, revoked or disqualified. Immobilization of a motor vehicle shall mean installing an immobilization device on the vehicle. A law enforcement officer who proceeds in good faith to immobilize or impound a vehicle shall not be responsible for any towing, immobilization, or impounding fees. In addition, the bill includes a provision providing for officers acting in an emergency situation. Law enforcement shall notify the department or department's agent within 24 hours to effect impoundment or immobilization.

The department is required within seven days after the impoundment or immobilization of the motor vehicle to send notice by certified mail to any registered owner or co-owner other than the driver and to each person of record claiming a lien against the motor vehicle. The notice must include the location of where the motor vehicle is being held and procedures to have the motor vehicle released. All costs and fees for the impoundment and immobilization, including the cost of notification, must be paid by the owner of the motor vehicle, or if the vehicle is leased, by the person leasing the vehicle.

The department is also required to collect a \$30 processing fee, to be forwarded to the Department of Revenue for deposit into the State Transportation Trust Fund, to carry out the Department of Transportation's public transit responsibilities. The department estimates \$6,000,000 would be generated annually for deposit into the State Transportation Trust Fund assuming 200,000 vehicles are impounded or immobilized per year.

The department is authorized to assess the motor vehicle's owner or lessee a reasonable fee, not to exceed \$6, to be deposited in the Highway Safety Operating Trust Fund, to cover the operational costs of immobilizing or impounding the vehicle. It is assumed all costs incurred and customer service support would be recovered through this fee.

In addition, the department must make available on its Internet website the means to determine the status of a person's driver's license by entering the person's driver's license number. The department must also provide an automated hotline to provide callers with the status of a person's driver's license.

This bill will result in the establishment of a program for immobilization and impoundment and authorizes the department to contract with vendors to carry out the provisions of this bill. According to the department, approximately 200,000 people are charged with driving with a suspended license with knowledge each year. Only a small fraction of the 200,000 people drive a vehicle owned by someone else. Based on this information, it is assumed the 200,000 cases will result in impoundment or immobilization of the vehicle and the enforcement of this section. It is estimated approximately 100 agents will be needed to immobilize the vehicles. These agents will be monitored through a vendor database, which must interface with the department's database and will require programming. While most of the monitoring will be from headquarters using systems and statistical audits, field visits will also be required to prevent fraud. This program would require one full time position, a senior highway safety specialist, to complete the

necessary audits and field visits. The recurring cost to run this program is estimated at \$149,902 and will include salaries and benefits, travel and other expenses, and public service announcement expenditures as required in section 8.

Section 322.34(11), F.S., is created to provide any person who permits another person to drive a vehicle knowing the person's license or driving privilege is cancelled, suspended, revoked, or disqualified commits a second degree misdemeanor. This bill provides criteria for satisfying the element of knowledge, which includes a rebuttable presumption the requirement is satisfied if it is recorded in the department's records and made available via the Internet or a telephone hotline.

**Section 7** amends s. 322.341, F.S., effective October 1, 2007, to mandate the court order imprisonment for a minimum of 90 days to any person who drives a motor vehicle while his or her driver's license or driving privilege is permanently revoked.

**Section 8** creates an undesignated section of law to provide the department shall inform the motoring public of the changes to s. 322.34, F.S., made by this act and shall provide such information in newly printed driver's license educational materials after July 1, 2007, and in public service announcements produced in cooperation with the Florida Highway Patrol.

The department estimates the cost of developing educational materials and public service announcements will be \$100,000 for the first year.

**Section 9** creates an undesignated section of law to require the department, during the period from July 1, 2007, to July 1, 2008, to notify by mail, drivers whose license and privilege to drive have been canceled, suspended, revoked, or disqualified of the changes relating to impoundment or immobilization of a motor vehicle made to s. 322.34, F.S., by this act. This bill further provides failure of a person to receive notification from the department shall not preclude, bar, or otherwise affect the impoundment or immobilization of a motor vehicle under s. 322.34, F.S.

According to the department, as of February 20, 2006, there were 1,788,231 outstanding cancellation, suspensions, revocations, or disqualifications. This section requires those drivers to be notified of the provisions of this bill. It is estimated the cost to mail out the notifications will be approximately \$733,174 in postage.

**Section 10** specifies the act shall take effect July 1, 2007, except as otherwise provided.

#### **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:

The bill will authorize the impoundment or immobilization of a vehicle if a law enforcement officer determines the vehicle operator's driver's license is suspended or revoked. If the vehicle is owned by the driver, the vehicle must remain immobilized until the person's driving privilege is reinstated and the person has paid costs of towing, impoundment, immobilization, and storage. The owner of the vehicle would be responsible for paying a \$30 processing fee, as well as a \$6 fee to cover the operational costs of immobilizing or impounding the vehicle. If the vehicle is owned by someone other than the driver, the vehicle will be released to the owner upon payment of these fees, as well as the costs of towing, impoundment, immobilization, and storage.

C. Government Sector Impact:

The department estimates the creation of the vehicle immobilization program will result in a \$6,000,000 recurring revenue increase to the State Transportation Trust Fund based on 200,000 vehicles being impounded or immobilized per year and the vehicle owner paying the \$30 processing fee. The department is also authorized to charge a fee up to \$6, to be deposited into the Highway Safety Operating Trust Fund, to fund the vehicle immobilization program. Enactment of this bill may also increase collection of civil fine and reinstatement revenues of which the amount is indeterminate.

If enacted, the department estimates it will cost \$936,545 during the first year to develop and implement this program. This cost assumes \$54,135 for one additional position for administrative oversight of the immobilization or impoundment program, \$100,000 to provide educational materials and public service announcements, \$733,174 to provide a one time notification by mail to certain drivers, and \$85,000 for programming modifications to the driver license software and revenue distribution systems. The second and third year cost are estimated to be \$149,902 each, which includes personnel costs and recurring funding for educational materials and public service announcements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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