

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Transportation Committee

BILL: SB 486

INTRODUCER: Senator Gaetz

SUBJECT: Driving/Suspended or Revoked License

DATE: March 5, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable
2.			CJ	
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill removes provisions requiring law enforcement officers, at time of arrest, to immediately impound or immobilize motor vehicles of persons arrested for driving while the persons driver's license or driving privilege is suspended or revoked when the suspension or revocation is related to failure to maintain required security, or because the person is a habitual traffic offender.

In lieu of impounding or immobilizing, at the time of arrest, 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, the bill will require the court, at the time of sentencing, to order the impoundment or immobilization of a motor vehicle operated by, under the actual control of, or registered in the name of the defendant upon conviction for criminal offenses of driving while his or her license was suspended, revoked, or canceled. The impoundment or immobilization shall be as follows:

- For a second-degree misdemeanor must be for 5 days;
- For a first-degree misdemeanor must be for 10 days; and
- For a third-degree felony must be for 30 days.

This bill substantially amends ss. 322.34 and 932.701 of the Florida Statutes.

II. Present Situation:

Section 322.34(2), F.S., provides criminal penalties for knowingly driving with a suspended, revoked, or canceled license. Any person whose driver's license or driving privilege has been suspended, revoked, or canceled (except a habitual traffic offender) who drives with knowledge

of such suspension, revocation, or cancellation, commits a second degree misdemeanor on the first conviction (up to 30 days in jail and a \$500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a \$1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a \$5,000 fine). (Subsection (1) of this section provides it is a moving violation if a person does not have knowledge of the suspension and drives with a suspended, revoked, or canceled license.)

A habitual traffic offender who drives with a suspended, revoked, or canceled license commits a third degree felony under s. 322.34(5), F.S. One way to become a habitual traffic offender is to drive with a suspended or revoked license three times within five years under s. 322.264(1)(d), F.S. Prior to 2008, there was no distinction under either of these statutes regarding what underlying violation was committed to qualify a person for a driving with a suspended license conviction. For instance, underlying violations can be for failing to pay child support, failing to pay court fines or fees, or failing to comply with a court order. However, during the 2008 Session, the Legislature passed CS/SB 1988 which subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or cancelled for underlying violations as enumerated below, to a second degree misdemeanor penalty for the first conviction and a first degree misdemeanor penalty for the second or subsequent conviction.

Specifically, s. 322.34 (10), F.S., provides the underlying enumerated violations (allowing a driver to be subject to a first degree misdemeanor penalty rather than the third degree felony penalty for a third or subsequent conviction) are as follows:

- Failing to pay child support under s. 322.245 or s. 61.13016, F.S.;
- Failing to pay any other financial obligation under s. 322.245, F.S., (other than those specified criminal offenses in s. 322.245(1), F.S.);
- Failing to comply with a required civil penalty (paying traffic tickets and fees) under s. 318.15, F.S.;
- Failing to maintain required vehicular financial responsibility under ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors under s. 322.091, F.S.; or
- Having been designated a habitual traffic offender under s. 322.264(1)(d), F.S., (driving with a suspended license three times in five years) as a result of license suspensions for any of the underlying violations listed above.

The first degree misdemeanor penalty will only be available to drivers who do not have a prior forcible felony conviction.

Section 322.34(8), 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.

III. Effect of Proposed Changes:

The bill deletes s. 322.34(8), F.S., removing provisions requiring law enforcement officers, at the time of arrest, to immediately impound or immobilize motor vehicles of persons arrested for

driving while the persons driver's license or driving privilege is suspended or revoked when the suspension or revocation is related to failure to maintain required security, or because the person is a habitual traffic offender.

The bill also creates a new subsection (10) of s. 322.34, F.S., to require the court, at the time of sentencing, to order the impoundment or immobilization of a motor vehicle operated by, under the actual control of, or registered in the name of the defendant, as follows:

- For a second-degree misdemeanor the impoundment or immobilization must be for 5 days;
- For a first-degree misdemeanor the impoundment or immobilization must be for 10 days; and
- For a third-degree felony the impoundment or immobilization must be for 30 days.

The bill specifies the court may not order the impoundment or immobilization to run concurrently with any incarceration of the defendant and all costs of impoundment or immobilization must be borne by the defendant.

In addition, the bill includes a provision allowing a person who owns or co-owns but who was not operating the motor vehicle when a violation of s. 322.34, F.S., was committed to petition the sentencing court for an order setting aside the impoundment or immobilization order. In support of the petition, the person must submit a police report demonstrating the motor vehicle was stolen at the time the violation was committed or documentation showing the vehicle was purchased after the offense was committed from a person other than the defendant or the defendant's agent.

The court must dismiss the order of impoundment or immobilization if the court finds the family of the owner of the vehicle has no other private or public means of transportation.

The bill amends s. 932.701, F.S., to correct a cross-reference relating to s. 322.34, F.S., which will change as a result of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A person convicted of knowingly driving with a suspended, revoked or canceled license will at the time of sentencing have the court order the impoundment or immobilization of any motor vehicle operated by, under the actual control of, or registered to such person. The impoundment or immobilization shall be as follows:

- For a second-degree misdemeanor must be for 5 days;
- For a first-degree misdemeanor must be for 10 days; and
- For a third-degree felony must be for 30 days.

C. Government Sector Impact:

The courts will at the time of sentencing now be required to order the impoundment or immobilization of a motor vehicle of a person convicted of knowingly driving with a suspended, revoked or canceled license under certain conditions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.