

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 Criminal Justice Committee

BILL: CS/CS/SB 792

INTRODUCER: Criminal Justice Committee; Transportation Committee; and Senator Diaz de la Portilla

SUBJECT: Driving Without a Valid Driver's License

DATE: April 13, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	Fav/CS
2.	Dugger	Cannon	CJ	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides a person who drives any motor vehicle upon the highways while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s. 322.34(2), F.S., must pay civil penalties as follows: \$250 for a first conviction; \$500 for a second conviction; and \$1,000 for a third or subsequent conviction. The bill provides for the distribution of fines collected and the apportionment between the municipality, the county, and the enforcement agency issuing the citation.

The bill provides that the criminal penalties in s. 322.34(2), F.S., apply when a revocation or suspension results from being convicted of driving under the influence (DUI) or being deemed a Habitual Traffic Offender (HTO). It also requires immediate impoundment of a vehicle when the driver is the registered owner of the vehicle and is driving with a revoked or suspended license resulting from a DUI conviction or being deemed a HTO.

The bill provides for an impoundment surcharge as follows: \$250 for a first offense; \$500 for a second offense; and \$1,000 for a third or subsequent offense. The surcharge must be paid before the vehicle will be released. However, any collected surcharge will be credited toward the civil penalty amount described above.

The bill provides that the court must order the release of the vehicle if the court determines there will be undue hardship on the family relying upon the vehicle without any other means of private transportation.

The bill also eliminates knowingly driving with a driver's license that is suspended, revoked, or canceled for any of the underlying failure to pay violations listed in s. 322.34(8)(a), F.S, from the statute making it a third degree felony for a HTO to drive with a suspended or revoked driver's license. Furthermore, it deletes the first and second degree misdemeanor offenses associated with these failure to pay violations under s. 322.34(10), F.S.

This bill amends ss. 318.18, 318.21, and 322.34 of the Florida Statutes.

II. Present Situation:

Section 318.18, F.S., specifies civil penalties for various violations.

Section 318.21, F.S., provides for the disposition of civil penalties by county courts.

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.)

The element of knowledge is satisfied if the person has been previously cited for driving with a suspended, revoked, or canceled license; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in s. 322.34(4), F.S. There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in s. 322.34(4), F.S., appears in the Department of Highway Safety and Motor Vehicles' (DHSMV or department) records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

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 is only available to drivers who do not have a prior forcible felony conviction.

Section 322.34(11), F.S., provides a person who does not hold a commercial driver license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled and the underlying suspension, revocation, or cancellation is non-driving related may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In addition, this section allows adjudication to be withheld; however, a person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections. If adjudication is withheld, such action is not considered a conviction.

Section 322.34(8), F.S., requires law enforcement, upon the arrest of a person for the offense of driving while the person's driver's license or driving privilege is suspended or revoked, to impound or immobilize the vehicle of violators when the arresting officer determines the affirmative of all of the following criteria:

- Whether the person's driver's license is suspended or revoked;
- Whether the person's driver's license has remained suspended or revoked since a conviction for the offense of driving with a suspended or revoked license;
- Whether the suspension or revocation was made because of failure to maintain required security, or because the person is a habitual traffic offender; and
- Whether the driver is the registered owner or co-owner of the vehicle.

III. Effect of Proposed Changes:

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

Section 1 creates s. 318.18(22), F.S., to provide a person who drives any motor vehicle upon the highways while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s. 322.34(2), F.S., in addition to the fine under s. 318.18(3)(a), F.S., must pay civil penalties as follows: \$250 for a first conviction; \$500 for a second conviction; and \$1,000 for a third or subsequent conviction.

Section 2 creates s. 318.21(22), F.S., to provide for the distribution of fines collected pursuant to s. 318.18(22), F.S., and the apportionment between the municipality, the county, and enforcement agency issuing the citation. Specifically for violations committed within a municipality, 40 percent of the moneys collected would go to the municipality, 40 percent to the county, and 20 percent to the law enforcement agency issuing the citation. For violations committed outside a municipality, 80 percent would be distributed to the county and 20 percent to the enforcement agency issuing the citation.

Section 3 amends s. 322.34(1), F.S., by clarifying that a driver's license revocation or suspension resulting from a DUI is not a moving violation. It also provides that the criminal penalties in (2) apply when a revocation or suspension results from being convicted of DUI or being deemed a HTO. Knowledge of driving with a revoked or suspended license is still required for the criminal penalties to apply.

A new subsection (5) is created to require immediate impoundment of a vehicle when the driver is the registered owner of the vehicle and is driving with a revoked or suspended license resulting from a DUI conviction or being deemed a HTO. The bill provides for an impoundment surcharge as follows: \$250 for a first offense; \$500 for a second offense; and \$1,000 for a third or subsequent offense. The surcharge must be paid before the vehicle will be released. The proceeds from this surcharge will be distributed like the civil penalties under s. 318.21 (22), F.S. Any collected surcharge will be credited toward the civil penalty amount assessed under subsection (22).

The bill eliminates knowingly driving with a driver's license that is suspended, revoked, or canceled for any of the underlying failure to pay violations listed in s. 322.34(8)(a), F.S, from the statute making it a third degree felony for a HTO to drive with a suspended or revoked driver's license.

The bill amends s. 322.34(8), F.S., to delete criteria that an arresting officer must determine prior to immediately impounding or immobilizing a vehicle of a person arrested for the violation of driving while the person's driver's license or driving privilege is suspended or revoked. The bill also eliminates the option to immobilize. The vehicle must remain impounded until payment of the applicable amount required under s. 318.18, F.S., and:

- the person retrieving the vehicle presents to the law enforcement agency proof of a valid driver's license, proof of ownership of the vehicle or written consent by the owner authorizing release to the person, and proof of insurance; or

- the owner presents to the law enforcement agency proof of sale of the vehicle and the buyer presents proof of insurance to the agency.

The bill also provides that the court must order the release of the vehicle if the court determines there will be undue hardship on the family relying upon the vehicle without any other means of private transportation.

The bill amends s. 322.34(10), F.S., relating to financially based driver license suspensions, by providing that a person who does not hold a commercial driver's license and is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying failure to pay violations listed in s. 322.34(8)(a), F.S., may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau.

In this case, adjudication shall be withheld and the clerk of the court, designated official, or authorized operator of a traffic violations bureau shall issue a certificate releasing the vehicle upon payment of the cost of towing and storing the vehicle. A person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections in a lifetime. If the court withholds adjudication, this will not go on the driving record, and therefore will not count towards the habitual traffic offender status.

The first and second degree misdemeanor offenses associated with these failure to pay violations listed in s. 322.34(10), F.S., are deleted under the bill.

Section 4 provides an effective date of July 1, 2011.

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:

Persons who drive with a suspended or revoked driver's license under s. 322.34(2), F.S., will have to pay, in addition to the \$60 fine and court costs associated with the moving violation, the following civil penalties: \$250 for a first conviction; \$500 for a second conviction; and \$1,000 for a third or subsequent conviction. There will also be an impoundment surcharge of \$250 for a first offense, \$500 for a second offense, and \$1,000 for a third or subsequent offense, except the bill provides that any collected surcharge will be credited toward the civil penalty amount.

C. Government Sector Impact:

This bill may generate civil fine revenue for the state, county and local government, and law enforcement agencies, but the potential revenue is indeterminate.

According to DHSMV, the bill will have an indeterminate fiscal impact to the department. The mandatory impoundment of the vehicle, as regarded by this bill, will result in an officer waiting for a wrecker instead of resuming normal duties. As stated in the department's bill analysis, the requirement will decrease officer availability for other duties and potentially impact law enforcement statewide. There will also be minimal fiscal impact resulting from programming requirements, but, the cost would be absorbed within existing resources.¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department estimates impounding a vehicle will add 30 minutes to each traffic stop due to waiting for a wrecker to arrive. Therefore, based on 2009 citations (214,078), law enforcement statewide would spend over 100,000 hours of duty time implementing this aspect of the bill resulting in a comparable decrease in officer availability for other types of calls.²

Law enforcement agencies will also be required to have a person available to review the documents required to be presented to have the vehicle released. In the case of the Florida Highway Patrol (FHP), persons presenting such documents would be required in some cases to travel to the nearest FHP facilities, which could be several counties away or the FHP would have to make available a trooper to meet the vehicle owners.³

The department recommends allowing the towing service to verify the documents necessary to have a vehicle released.

¹ Department of Highway Safety and Motor Vehicles, Agency Bill Analysis SB 792 (on file with the Senate Transportation Committee).

² *Id.*

³ *Id.*

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 12, 2011:**

- Deletes provision that removes the element of knowledge and criminal penalties for knowingly driving without a valid driver's license.
- Restores those criminal penalties, the element of knowledge, and satisfaction of certain criteria establishing such knowledge for violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked for DUI or being deemed a habitual traffic offender (HTO).
- Provides that the newly created civil penalties under s. 318.18, F.S., apply when a person is driving with a suspended or revoked license under s. 322.34(2), F.S.
- Requires an impoundment surcharge of \$250 for a first offense, \$500 for a second offense, and \$1,000 for a third or subsequent offense, except that any collected surcharge will be credited toward the civil penalty amount.
- Requires immediate vehicle impoundment when the driver is the registered owner who is driving with a suspended or revoked license resulting from DUI or being deemed a HTO.
- Provides for a family hardship exception to vehicle impoundment.
- Eliminates knowingly driving with a driver's license that is suspended, revoked, or canceled for any of the underlying failure to pay violations listed in s. 322.34(8)(a), F.S, from the statute making it a third degree felony for a HTO to drive with a suspended or revoked driver's license.

CS by Transportation on March 22, 2011:

- Reduces additional penalties imposed by the bill for violations of s. 322.34(2), F.S. The penalty for:
 - a first offense is reduced from \$500 to \$250,
 - a second offense is reduced from \$1,000 to \$500, and
 - a third or subsequent offense is reduced from \$1,500 to \$1,000.
- Changes the distribution of fines collected pursuant to s. 318.18(22), F.S., for violations committed outside a municipality to the following: 80 percent would be distributed to the county and 20 percent to the enforcement agency impounding the vehicle.
- Deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked.
- Eliminates the option to immobilize, and thereby requiring impoundment of, the vehicle of a person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, who drives a motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked.

B. Amendments:

None.

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