

**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 1992

INTRODUCER: Senator Wise

SUBJECT: Driver Responsibility

DATE: March 31, 2009

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	<b>Favorable</b>
2.			FT	
3.			TA	
4.			WPSC	
5.				
6.				

**I. Summary:**

The bill creates the “Florida’s Driver Responsibility Law,” to provide for an assessment of surcharges for persons who accumulate seven or more points, who are convicted of driving under the influence (DUI), driving without a license or driving without financial responsibility within the preceding thirty-six (36) month period. This bill authorizes the payment of surcharges through installment payments or by the use of a credit card and provides penalties for failure to comply. This bill further authorizes Department of Highway Safety and Motor Vehicles (DHSMV) to enter into a contract with a public or private vendor for the collection of surcharges and allows for a periodic amnesty program for persons liable for assessed surcharges. The bill provides for the distribution of moneys derived from surcharges collected by DHSMV under the Florida’s Driver Responsibility Law. Specifically, the bill requires DHSMV to assess the following surcharges:

- For a person who has accumulated seven or more points against such person’s driver license during a 36-month period, a \$120 surcharge for the first seven points accumulated and \$25 for each additional point.
- A surcharge on each person who has a final conviction during the preceding thirty-six month period for an offense relating to s. 316.193, F.S., driving under the influence. The surcharge amount is \$500 per year for one conviction within the thirty-six month period, \$750 upon a second or subsequent conviction, and \$1,000 for a first or subsequent conviction if the blood-alcohol level was 0.20 or higher at the time the analysis was performed.

- A \$120 surcharge on each person who has been convicted within a 36-month period for driving without a license or without financial responsibility.

This bill creates the following sections of the Florida Statutes: 322.2701, 322.27021, 322.27022, 322.27023, 322.2704, 322.2705, 322.2706, 322.2707 and 322.2709.

The bill substantially amends s. 318.121, F.S.

## II. Present Situation:

### Driving Under the Influence (DUI)

The offense of DUI<sup>1</sup> is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent the person's normal faculties are impaired;
- The person has a BAL of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a BAL of 0.08 or more grams of alcohol per 210 liters of breath.

The DUI offense is punishable as follows:<sup>2</sup>

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months.
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.<sup>3</sup>
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.<sup>4</sup>

A third conviction for an offense occurring within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail<sup>5</sup> and up to five years in prison and a fine of up to \$1000.<sup>6</sup> A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.<sup>7</sup> If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.<sup>8</sup>

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<sup>1</sup>s. 316.193(1), F.S.

<sup>2</sup>s. 316.193(2), F.S.

<sup>3</sup>s. 316.193(6)(b), F.S.

<sup>4</sup>s. 316.193(2)(b)2, F.S.

<sup>5</sup>s. 316.193(6)(c), F.S.

<sup>6</sup>s. 316.193(2)(b)1, F.S.

<sup>7</sup>s. 316.193(2)(b)3., F.S.

<sup>8</sup>s. 316.193(6)(c), F.S.

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.<sup>9</sup> Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles for various periods of time based on the number of DUI convictions.

This section requires the revocation of a driver's license:

- for not less than 180 days and no more than 1 year for a first DUI conviction;<sup>10</sup>
- for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction;<sup>11</sup> and
- for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.<sup>12</sup>

A fourth DUI conviction results in permanent revocation of a person's driving privilege.<sup>13</sup>

### **Florida's Point System**

Section 322.27, F.S., establishes a system of points assessed against a driver's license when a person is convicted of violating certain motor vehicle laws. The point system is used for the evaluation and determination of the continuing qualification of any person to operate a motor vehicle. The DHSMV is authorized to suspend the license of any person upon a showing of its records or other good and sufficient evidence the licensee has been convicted of violation of motor vehicle laws amounting to 12 or more points as determined by the point system. The suspension will be for a period of not more than one year. The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:

- Reckless driving, willful and wanton – 4 points.
- Leaving the scene of a crash resulting in property damage – 6 points.
- Unlawful speed resulting in a crash – 6 points.
- Passing a stopped school bus – 4 points.
- Excessive speed, 15 mph over or less – 3 points.
- Excessive speed, more than 15 mph over – 4 points.
- Traffic control signal device violation – 4 points.
- All other moving violations – 3 points.
- Any moving violation resulting in a crash except excessive speed – 4 points.
- Littering in an amount exceeding 15 pounds, which involves the use of a motor vehicle – 3 points.
- Unauthorized use or possession of a traffic signal preemption device – 4 points.
- Driving during restricted hours – 3 points.
- Violations of curfew – 3 points.
- Open container as an operator – 3 points.

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<sup>9</sup>s. 316.193(6)(k), F.S.

<sup>10</sup>s. 322.28(2)(a)1., F.S.

<sup>11</sup>s. 322.28(2)(a)2., F.S.

<sup>12</sup>s. 322.28(2)(a)3., F.S.

<sup>13</sup>s. 322.28(2)(e), F.S.

- Child restraint violation – 3 points.

Moving violations typically result in assessment of 3 points, unless the infraction or offense is among those viewed as more serious. For example, reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit all require assessment of 4 points. Leaving the scene of a crash and speeding resulting in a crash require assessment of 6 points. All other moving violations require assessment of 3 points.

In addition, s. 322.27, F.S., provides:

- A conviction which occurred out-of-state or in a federal court may be recorded against a driver on the basis of the same number of points received had the conviction been made in a court of this state.
- 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 their driving privilege.
- Three points are deducted from the driver history record of any person whose driving privilege has been suspended only once under the point system and has been reinstated, if such person has complied with all other requirements.
- The offense date of all convictions is used in computing the points and period of time for suspensions.

### **Required Licensure**

Section 322.03, F.S., provides a person may not drive any motor vehicle upon a highway in this state unless such person has a valid driver's license.

### **Motor Vehicle Insurance**

#### *Florida Motor Vehicle No-Fault Law*

The purpose of ss. 627-730 - 627.7405, F.S., (Florida Motor Vehicle No-Fault Law) is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault, and to require motor vehicle insurance securing such benefits, for motor vehicle required to be registered in this state and, with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish and inconvenience.

Under current law, motorists are required to purchase no-fault coverage, referred to as personal injury protection (PIP), which compensates the policyholder directly up to \$10,000 without regard to fault for bodily injury sustained in a motor vehicle accident.<sup>14</sup> The PIP coverage pays for eighty percent of medically necessary expenses, sixty percent of loss of income, plus a \$5,000 death benefit. Property damage (PD) liability coverage of \$10,000 is also required which pays for physical damage expenses caused by the insured to third parties in the accident.

#### *Financial Responsibility Law*

The purpose of chapter 324, F.S., is to promote safety and to provide financial security requirements for owners or operators of motor vehicles whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.

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<sup>14</sup> Sections 627.730-627.7405, F.S., are cited as the Florida Motor Vehicle No-Fault Law.

Under Florida's Financial Responsibility law, motorists must provide proof of the ability to pay monetary damages to DHSMV for bodily injury (BI) liability and PD liability after motor vehicle accidents or serious traffic violations.<sup>15</sup> The minimum amounts of liability coverage are \$10,000 in the event of bodily injury to one person, \$20,000 for bodily injury to two or more persons, and \$10,000 for injury to, or destruction of, property of others in any one crash, or \$30,000 combined single limits.<sup>16</sup>

An individual can comply with the Financial Responsibility law in several ways: obtaining liability insurance, posting a satisfactory surety bond, depositing cash or securities, or furnishing a certificate of self-insurance to the DHSMV.<sup>17</sup> Such coverage must be maintained for three years.<sup>18</sup>

In 2007, the Florida Legislature created s. 324.023, F.S.,<sup>19</sup> under the Financial Responsibility law to provide for an additional financial responsibility requirement based on a vehicle owner or operator who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a violation of s. 316.193, F.S., relating to driving under the influence. After October 1, 2007, such owners or operators must establish and maintain \$100,000 in BI liability coverage for injury to, or death of, one person in any one crash; \$300,000 in BI coverage for injury to, or death of, two or more persons in any one crash; and, \$50,000 in PD liability coverage in any one crash. The driver has the option of posting a bond or furnishing a certificate of deposit of not less than \$350,000. Such higher limits must be carried for a minimum of three years. If the person is not convicted of a DUI or a felony traffic offense during the three year period, he or she may return to the standard coverage requirements.

#### **Statutory Preemption of Additional Court Costs**

Chapter 318 is the Uniform Disposition of Traffic Infractions Act. Section 318.121, F.S., provides for a preemption of additional fees, fines, surcharges, and costs on civil traffic penalties, other than the court costs currently authorized in the chapter.

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

The bill creates s. 322.2701, F.S., known as "Florida's Driver Responsibility Law," to provide for an assessment of surcharges for persons who accumulate seven or more points, or who are convicted of DUI, driving without a license or driving without financial responsibility within the preceding thirty-six (36) month period. This bill authorizes the payment of surcharges through installment payments or by the use of a credit card and provides penalties for failure to comply. This bill further authorizes DHSMV to enter into a contract with a public or private vendor for the collection of surcharges and allows for a periodic amnesty program for persons liable for assessed surcharges. The bill provides for the distribution of moneys derived from surcharges

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<sup>15</sup> Chapter 324, F.S.

<sup>16</sup> Section 324.021(7), F.S.

<sup>17</sup> Section 324.031, F.S. Evidence of such coverage is required in a form prescribed by the DHSMV (SR-22). The form is provided to the driver by his or her insurer with a requirement for insurers to notify DHSMV if a driver cancels liability coverage.

<sup>18</sup> Section 324.071, F.S.

<sup>19</sup> See 2007-150, Laws of Florida.

collected by DHSMV under the Florida's Driver Responsibility Law. The following discussion represents a section-by-section analysis of the bill.

**Section 2** creates s. 322.27021, F.S., to require DHSMV to assess a person who has accumulated seven or more points against such person's driver license during a 36-month period, a \$120 surcharge for the first seven points accumulated and \$25 for each additional point. This bill also requires DHSMV to notify the holder of a driver's license of the assignment of a fourth point to provide an opportunity to avoid the surcharge. Assessment of this surcharge does not apply to any convictions that were final before July 1, 2009.

**Section 3** creates s. 322.27022, F.S., to require the DHSMV to assess a surcharge on each person who has a final conviction during the preceding thirty-six month period for an offense relating to s. 316.193, F.S., driving under the influence. The surcharge amount is \$500 per year for one conviction within the thirty-six month period, \$750 upon a second or subsequent conviction, and \$1,000 for a first or subsequent conviction if the blood-alcohol level was 0.20 or higher at the time the analysis was performed. This section does not apply to convictions final prior to July 1, 2009.

**Section 4** creates s. 322.27023, F.S., to require DHSMV to assess a \$120 surcharge on each person who has been convicted within a 36-month period for driving without a license or without financial responsibility. This section does not apply to a conviction prior to July 1, 2009.

**Section 5** creates s. 322.2704, F.S., to require DHSMV to notify the holder of a driver's license by first class mail of the assessment of a surcharge, the date by which the surcharge must be paid and the consequences of a failure to pay the surcharge. If the surcharge is not paid before the 30th day after the holder is notified or fails to enter into an installment payment agreement with DHSMV, their driving privilege will be suspended until the surcharge or installment is paid.

**Section 6** creates s. 322.2705, F.S., to require the DHSMV to provide for collection of all surcharges through an installment payment plan. If a licensee fails to pay or initiate an installment payment plan within 30 days of notification, the driver's license will be suspended. For amounts less than \$2,300, the DHSMV may authorize an installment plan for up to 12 months. For amounts over \$2,300, the DHSMV may authorize an installment plan for up to 24 months. Also, this section allows DHSMV the discretion to permit licensees to pay assessed surcharges with credit cards. The DHSMV must suspend driving privileges until the assessment and any other related costs are paid.

**Section 7** creates s. 322.2706, F.S., to authorize the DHSMV to enter into contracts with a vendor for the collection of all surcharges created under Florida's driver Responsibility Law.

**Section 8** creates s. 322.2707, F.S., to authorize the DHSMV to adopt rules for a periodic amnesty program for persons liable for assessed surcharges under Florida's Driver Responsibility Law. The amnesty program could include incentives, including a reduction of the surcharge or a decrease in the length of the installment plan.

In addition, this section of the bill allows the DHSMV by rule to establish an indigents program for persons liable for assessed surcharges under Florida's Driver Responsibility Law.

**Section 9** creates s. 322.2709, F.S., to provide for the distribution of moneys derived from surcharges collected by DHSMV under the Florida's Driver Responsibility Law. In particular, collected money will be allocated as follows:

- Up to 1% to provide public service announcements to notify the public of the provisions of Florida's Driver Responsibility Law. Of the remaining moneys:
  - 50% to the DHSMV Law Enforcement Trust Fund to be used for recruiting and retaining Florida Highway Patrol officers, and
  - 50% to the Department of Health Administrative Trust Fund to provide financial support to certified trauma centers to ensure the availability and accessibility of trauma services throughout the state.

**Section 10** amends s. 318.121, F.S., to exempt assessed surcharges under Florida's Driver Responsibility Law from the limitation on surcharges added to civil traffic penalties.

**Section 11** provides this act shall take effect July 1, 2009.

#### **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:

Persons who are convicted for DUI, driving without a license, driving with a license that is expired for less than four months, driving without proof of insurance or who accumulate seven or more points on their driving record would be required to pay an annual surcharge for a three-year period to avoid license suspension.

B. Private Sector Impact:

Persons who are convicted for DUI, driving without a license, driving with a license that is expired for less than four months, driving without proof of insurance or who accumulate seven or more points on their driving record would be required to pay an annual surcharge for a three-year period to avoid license suspension.

**C. Government Sector Impact:**

It is anticipated enactment of the bill will provide a positive fiscal impact to the DHSMV Law Enforcement Trust Fund and the DOH Administrative Trust Fund; however, the amount is indeterminate.

**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.