

STORAGE NAME: h0507.cp
DATE: March 17, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME & PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 507

RELATING TO: Driver's licenses and identification cards

SPONSOR(S): Representative Trovillion

STATUTE(S) AFFECTED: s. 322.32, 322.212, 831.29, and 921.0012, F.S.

COMPANION BILL(S): SB 396

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME & PUNISHMENT

(2)

(3)

(4)

(5)

I. SUMMARY:

This bill creates a felony offense for unlawful use of identification cards issued by any state, and increases the penalty for the unlawful use of driver's licenses.

The bill moves provisions for the unlawful use of a driver's license to another section of the statute and effectively increases the penalty for a violation of law.

The bill provides for a third degree felony for knowingly possessing or displaying any "instrument in the similitude of a driver's license or identification card"(ID) issued by the Department of Highway Safety and Motor Vehicles (DHSMV), an agent, or "by any state" whose drivers' license Florida recognizes for the operation of a motor vehicle or whose identification card Florida recognizes for the purpose of indicating a person's true name and age. The bill provides for a third degree felony for allowing another person to use any driver's license or identification card, or display, or use another person's driver's license or identification card as his own for any unlawful purpose.

The bill inserts "identification cards" into the statute, and provides a second degree felony for counterfeiting or having the implements necessary to counterfeit ID cards issued by DHSMV, an agent, or "by any state" whose drivers' license or ID card Florida recognizes.

The bill has an insignificant but indeterminant fiscal impact on state agencies, the court system, and local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Unlawful Use Of Licenses

Section 322.32, F.S., makes it a second degree misdemeanor for any person to unlawfully use a license to:

- ✓ Display, to cause or permit to be displayed, or to possess a fictitious or fraudulently altered driver's license
- ✓ Lend his driver's license to another, or knowingly permit the use of his license by another
- ✓ Display or represent as his own a driver's license not issued to him
- ✓ Fail to surrender a revoked, suspended, disqualified, or canceled license
- ✓ Permit any unlawful use of his driver's license
- ✓ Apply for, obtain, or cause to be issued to him two or more driver's licenses which are in different names

Improper Use of Driver's Licenses and Identification Cards

Section 322.212, F.S., makes provisions for engaging in unauthorized and unlawful acts in relation to driver's licenses and identification cards (ID's). It is unlawful for:

1. Any person to unlawfully, knowingly possess a "blank, forged, stolen, fictitious, or counterfeit ID card described in s. 322.051, F.S.
2. Any person to barter, sell trade or give away any driver's license or ID card unless authorized by the department
3. Any employee of the department to unlawfully, knowingly issue a driver's license or ID card to an applicant
4. Any person to aid or supply an unlawful driver's license or ID card
5. Any person to use false or fictitious information to obtain a driver's license or ID card

Violations of 1 through 4 are third degree felonies. A violation of number 5 is a second degree misdemeanor.

Improper Use Of Identification Cards

Section 322.051, F.S., references ID cards issued to any person 12 years of age or older, and those issued in conjunction with disabled parking permits. Section 322.051(6), F.S., makes it unlawful for any person to:

- ✓ Display, cause, or permit to be displayed, or have in his possession any fictitious, fraudulently altered, or fraudulently obtained ID card
- ✓ To knowingly lend or permit another persons to use the ID card of another
- ✓ To display or represent the ID card issued to another
- ✓ To permit any unlawful use of an ID card

Section 322.051, F.S., does not provide a penalty for violation of law. Individuals may, therefore, possess false identification, commonly called a "fake ID," without violating the law. Section 322.051, F.S., applies only to ID cards issued in the State of Florida and does not apply to ID cards issued from another state. Therefore, it is not a violation of law to possess a "fake ID" from another state.

Counterfeiting Driver's Licenses

Under s. 831.29, F.S., it is a second degree felony to make false or counterfeit driver's licenses or anything similar to driver's licenses with intent to sell, pass, publish, or utter the same. It is a second degree felony to possess instruments necessary to produce false or counterfeit driver's licenses or anything similar to it.

It is not a violation of s. 831.29, F.S., to make false or counterfeit **identification cards**. It is also not a violation to possess or produce implements necessary to make false or counterfeit identification cards or the similitude of identification cards. Persons actually making, possessing, or producing implements needed to make false or counterfeit identification cards violate neither s. 322.212, F.S., nor s. 831.29, F.S., because the former section deals only with possession of false or counterfeit identification cards, not the implements necessary to make them; and the later section deals only with possessing or producing implements necessary to make driver's licenses, not identification cards.

Sentencing Guidelines

The offense severity ranking chart in s. 921.0012, F.S. provides sentencing guidelines for felony offenders. The guidelines rank offenses in one of 10 levels, each offense is assigned to a level depending on the severity of the offense. Violation of section 322.212, F.S. is categorized as a Level 1 offense. Violation of section 831.29, F.S., relating to counterfeiting of a driver's license is a Level 3 offense.

B. EFFECT OF PROPOSED CHANGES:

Unlawful Use Of Licenses

This bill deletes 2., 3., and 4. from s. 322.32, F.S., the following second degree misdemeanor violations for the unlawful use of a driver's license:

1. Displaying or permitting to be displayed, or possessing fictitious or fraudulently altered driver's licenses
2. Lending a driver's license to another person or knowingly permitting another person to use the license
3. Displaying a driver's license that has not been issued to the person displaying it
4. Permitting the unlawful use of a person's driver's license

By deleting the above offenses from s. 322.32, F.S., and moving the provisions to s. 322.212, F.S., penalties for violation of law are elevated to third degree felonies.

Improper Use of Driver's Licenses and Identification Cards

The bill amends s. 322.212, F.S., to make it a third degree felony for a person to knowingly possess any instrument "in the similitude" of a driver's license for operation of a motor vehicle or an identification card for indicating a person's true name and age, issued by DHSMV or any state, and recognized by the State of Florida.

The word "fictitious" appears in both s. 322.212(1) and s. 322.32, F.S. However, the element of knowledge is the distinguishing element of the violation of law. A person knowingly possessing a fictitious driver's license could be charged with a third degree

felony pursuant to s. 322.212(1), F.S. If the knowledge element were lacking, the person may only be charged with a misdemeanor pursuant to s. 322.32, F.S. This bill equalizes the penalty by placing both offenses under 322.12, F.S., so that both are third degree felonies.

The bill deletes the language “described in s. 322.051” from s. 322.212, F.S., which broadens the application of the statute. The bill clarifies the terms “driver’s license” and “identification card” to include those issued by “any state or jurisdiction”, in addition to those issued by DHSMV or an agent of the department. This subsection makes exception for lawfully possessing or displaying another person’s driver’s license or identification card.

The bill amends s. 322.212, F. S., to provide that anyone allowing another person to use their driver’s license or identification card for an unlawful purpose is in violation of law, punishable as a third degree felony. In addition, the bill provides that it is a third degree felony for a person to display or use for any unlawful purpose, driver’s license or identification card not issued to the person.

Counterfeiting Driver’s Licenses and Identification Cards

The bill amends s. 831.29, F.S., to create a new offense for counterfeiting or having the implements necessary to counterfeit identification cards. Violation of this law is punishable as a third degree felony. Currently this section only bans the counterfeiting of driver’s licenses and does not address counterfeiting ID cards.

Sentencing Guidelines

The bill amends the offense severity ranking chart in s. 921.0012, F.S. to conform sentencing guidelines to the revisions in s. 322.212(1), (5), (6), and 831.29, F.S. by referencing identification cards and adding new language to the descriptions of the offenses. All the above mentioned offenses would remain level 1 offenses in the offense severity ranking chart.. (Refer to present situation.)

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill expands the authority of the DHSMV, and expands the rule making authority to the extent necessary to carry out the newly created provisions.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill may impact the court system and local government to the extent the bill increases adjudication for referenced offenses.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

Not applicable.

d. Does the bill reduce total fees, both rates and revenues?

Not applicable.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1

Section 322.32, F.S., is amended deleting certain language and moving the provisions to s. 322.212, F.S. and subsequently raising penalties for violation of law.

Section 2

Section 322.212, F.S., is amended to create penalties for unlawful possession, display, or use of a driver's license or an identification card issued by "any state or jurisdiction".

Section 3

Section 831.29, F.S., is amended to insert "identification cards" to subsection creating penalties for counterfeiting or possessing materials for counterfeiting identification cards. This section is also amended to specify use for "indicating a person's true name and age."

Section 4

Section 921.0012, F.S., is amended to insert "identification cards" into sentencing guidelines descriptions corresponding with amended subsections of the statute, conforming sentencing guidelines with statutory revisions.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Highway Safety and Motor Vehicles reports the bill will have no fiscal impact upon the department.

The Department of Corrections (DOC) reports the bill will have an indeterminant fiscal impact, but no impact is anticipated.

The bill probably have an insignificant but indeterminant fiscal impact upon the Department of Juvenile Justice (DJJ).

2. Recurring Effects:

The bill may have an insignificant but indeterminate fiscal impact upon the court system to the extent offenders are processed and adjudicated for the unlawful use of identification cards and driver's licenses.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Refer to notes in III. A. 1.

2. Recurring Effects:

Refer to notes in III. A. 2. The bill may have an indeterminant but insignificant impact upon the court system. By raising penalties from misdemeanors to felonies, jurisdiction shifts from the county court to the circuit court.

3. Long Run Effects Other Than Normal Growth:

Indeterminant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

There are potential benefits to the private sector in assuring lawful use of driver's licenses and identification cards to the extent raising penalties for the offenses deters individual unlawful use.

3. Effects on Competition, Private Enterprise and Employment Markets:

No significant effects.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill relates to criminal prosecutions and is therefore exempt from the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The bill deletes a provision from section 322.32, F.S., prohibiting the display of a fraudulently altered driver's license or ID card, and this offense could be legalized by this bill. However, if the altered driver's license or ID card is "in the similitude" of a legal driver's license or ID card, then it is possible that this act would not be legalized depending on the courts' interpretation.

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The bill provides an effective date of October 1, 1997. It should be clearly stated in the bill that the provisions apply to offenses "committed on or after the effective date."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

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