

STORAGE NAME: h0507b.cp
DATE: March 26, 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 YEAS 7 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

The bill amends s. 322.212, F.S., relating to unauthorized possession of driver licenses and identification cards, to add the offense of possession of an instrument in the similitude of a driver's license or of an identification card, regardless of the place of origin of the counterfeit instrument. Current law prohibits the possession of any forged, fictitious, counterfeit or unlawfully issued driver's license or identification card as described in s. 322.051, F.S. However, s. 322.051 can be interpreted to apply only to State of Florida identification cards, therefore, it is not illegal to possess a fictitious or simulated State identification card, purporting to be an official identification card for another State.

Current law allows for a person who possesses a fictitious driver's license or Florida identification to be charged for a misdemeanor under section 322.32, F.S., or a felony under section 322.212. The bill removes the misdemeanor option. However, the giving of a false name in an application for a driver's license or identification card remains a misdemeanor.

The bill moves the following offenses from section 322.32, F.S., which provides for misdemeanor penalties to section 322.212 which provides for felony penalties:

1. Lending a driver's license to another person or knowingly permitting another person to use the license
2. Displaying a driver's license that has not been issued to the person displaying it
3. Permitting the unlawful use of a person's driver's license

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 indeterminate fiscal impact on state agencies, the court system, and local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 322.212, F.S., prohibits the possession of any forged, fictitious, counterfeit or unlawfully issued driver's license or identification card as described in s. 322.051, F.S. However, s. 322.051 can be interpreted to apply only to State of Florida identification cards. The Second District Court of Appeals has raised the question without ruling that possession of out of state identification cards may not be a violation of section 322.212, F.S. Castillo v. State, 536 So. 2d 1134 n.2 (2nd DCA 1988). These counterfeit identification cards are widely available and may be purchased through the Internet.

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 the following acts illegal:

1. Any person who unlawfully, or knowingly possesses a "blank, forged, stolen, fictitious, or counterfeit ID card or driver's license 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.

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 the 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 the 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:

The bill amends s. 322.212, F.S., relating to unauthorized possession of driver licenses and identification cards, to add the offense of the possession of an instrument in the similitude of a driver's license or of an identification card, regardless of the place of origin of the counterfeit instrument. This would resolve the current ambiguity as to whether "fake" I.D. cards from other states are legal in Florida.

Unlawful Use Of Licenses

This bill removes paragraphs (2), (3), and (5) from s. 322.32, F.S., and places those provisions in s. 322.212. By moving these provisions to another section the penalties increase from second degree misdemeanors to third degree felonies. The acts described in paragraphs (2), (3), and (5) which become felonies are as follows:

- (2) To lend his or her driver's license to any other person or knowingly permit the use thereof by another
- (3) To display, or represent as his or her own, any driver's license not issued to him or her.
- (5) To permit any unlawful use of a driver's license issued to him or her.

Paragraph (1) of section 322.32 was amended as follows:

- (1) To display, cause or permit to be displayed, or have in his or her possession any canceled, revoked, suspended, or disqualified, ~~fictitious, or fraudulently altered~~ driver's license.

The display or possession of a fictitious driver's license is currently penalized as a felony under section 322.212, by removing the misdemeanor provision in section 322.32(1), the charging authority will not have the option to charge this offense as a misdemeanor. The display or possession of a fraudulently altered drivers licence is

only addressed by section 322.32(1). Therefore, by removing the words “fraudulently altered” this bill decriminalizes that act.

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, a 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 to delete certain language and moves the provisions to s. 322.212, F.S., and subsequently raises penalties for violations of the 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 the counterfeiting identification cards and driver's licenses.

Section 4

Section 921.0012, F.S., is amended to place the offense of false application for identification card, and possession of simulated ID into the Offense Severity Chart for the purposes of the sentencing guidelines. This offense is ranked as a level one which is the same ranking as possession of a forged driver's license and is the least severe ranking.

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 indeterminate fiscal impact, but no impact is anticipated.

The bill probably have an insignificant but indeterminate 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 that 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:

Indeterminate.

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 indeterminate but insignificant impact upon the court system. Raising penalties from misdemeanors to felonies, shifts the jurisdiction from the county court to the circuit court.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

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 that 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. If only the date of birth is altered, then the driver's license could not be considered "in the similitude" which means likeness. Morales v. State, 407 So. 2d 230 (3rd DCA 1982). It appears that display of a fraudulently altered license could be decriminalized by this bill.

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:

One amendment was adopted by the committee which changes the procedures, required by s. 61.13016, F.S., for the suspension of a driver's licence for failing to pay child support. This amendment allows for notice by regular U.S. Mail of the intent to suspend a driver's license for delinquent child support. The amendment also extends the time period from 15 to 20 days for a person to respond to the notice, and payment of delinquency fees is an additional condition required for notice to suspend a driver's license not to be given to the Department of Highway Safety and Motor Vehicles.

The Department of Revenue, which is the agency responsible for enforcing child support has no objection to this amendment.

The amendment prevents the decriminalizing of the possession of a fraudulently altered driver's license by making it a second degree misdemeanor to possess a driver's license, I.D. card, or any instrument in the similitude thereof, on which the date of birth has been altered. However, if a portion of a driver's license or I.D. card **besides** the date were altered, such as the name, then that act of possession would not be a crime. This amendment also raises the peculiar situation of making it a felony to possess an instrument in the similitude of a driver's license or I.D. card, but if that instrument in the similitude has an altered date, then the offense is a misdemeanor. Of course, it would be unusual for a person who purchases a counterfeit I.D. card to then want to alter the date of birth.

The giving of a false age in the application of an ID card is made a felony by this bill, but the amendment reistates current law and makes it a second degree misdemeanor.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

Legislative Research Director:

Sara A. Wright

Willis Renuart