

STORAGE NAME: h0113s1.jud

DATE: March 6, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 113

RELATING TO: Driver's License Suspension/DUI Test

SPONSOR(S): Committee on Transportation and Rep. Wise

TIED BILL(S): None

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

- (1) TRANSPORTATION YEAS 9 NAYS 1
 - (2) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
 - (3) JUDICIARY
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill requires the Department of Highway Safety and Motor Vehicles (DHS&MV) to invalidate administrative drivers license suspensions for driving with an unlawful blood alcohol or breath alcohol level if the suspended person is found not guilty at trial of an underlying violation of driving under the influence (DUI). The bill does not change current law that if the license was suspended for refusing to take a breath or blood test, the administrative suspension remains in effect regardless of the result at trial.

The bill has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Section 322.2615, F.S., mandates the administrative license suspension of a person arrested for a DUI violation under s. 316.193, F.S., when the person has a breath or blood alcohol level of .08 or higher or if a person refuses to submit to a blood or breath test.

To contest the suspension at DHS&MV, the person may request either an informal hearing, where a hearing officer determines based on written submissions whether cause exists to sustain the suspension, or a formal hearing, where a hearing officer determines based on written submissions and witness testimony whether cause exists to sustain the suspension. The hearing, whether informal or formal, must be requested within 10 days of the suspension. If the hearing officer sustains the suspension, the person may appeal the decision by a petition for writ of certiorari to the circuit court.

The administrative suspension process under s. 322.2615, F.S., is separate and distinct from any criminal proceedings under s. 316.193, F.S. Section 322.2615(14), F.S., provides that the disposition of any related criminal proceedings shall have no effect on the administrative suspension. In addition, the disposition of the suspension shall not be considered in any related criminal proceedings. As a result, both the administrative suspension and the DUI charge stand on their own merits, with each process independent and distinct from the other.

Under current law, an administrative suspension can be sustained even if the criminal proceeding is dismissed, if the criminal defendant enters a plea to a different charge, or if the criminal defendant is found not guilty at trial. Similarly, even if the hearing officer invalidates the administrative suspension, the criminal process can still go forward and the person could be convicted and sentenced for DUI.

C. EFFECT OF PROPOSED CHANGES:

This bill requires DHS&MV to invalidate an administrative suspension for driving with an unlawful blood-alcohol or breath-alcohol level, if the suspended person is found not guilty at trial of the underlying DUI violation. Persons whose charges are dismissed or otherwise disposed of would still be subject to the administrative suspension.

It also clarifies that the disposition of a criminal proceeding does not affect a suspension for refusal to submit to a blood, breath or urine test. If a driver's license is suspended for refusal to submit to a test, the administrative suspension remains in effect regardless of the outcome of any criminal trial. This bill does not change current law on that point.

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The bill will take effect October 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

DHS&MV says the bill will have no fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill does not contain a procedure for a person to show DHS&MV that he or she was found not guilty at trial in order to lift the suspension.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Transportation considered this bill on December 7, 1999. An amendment was adopted which made the following changes requested by DHS&MV:

- a) Included suspensions for breath-alcohol violations in the bill; the bill as originally filed only applied to blood-alcohol administrative suspensions.
- b) Provided that for the administrative suspension to be invalidated the person must be found not guilty of the DUI criminal violation at trial; the original bill required invalidation if the person was not convicted of a DUI violation.
- c) Changed the effective date from July 2000 to October 2000.

The bill as amended was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Phillip B. Miller

Staff Director:

John R. Johnston

AS REVISED BY THE COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Allen Mortham Jr.

Staff Director:

Kurt E. Ahrendt

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Prepared by:

Staff Director:

L. Michael Billmeier, J.D.

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