

STORAGE NAME: h0259.cpcs.doc
DATE: March 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 259
RELATING TO: Driver's Licenses/DUI Convictions
SPONSOR(S): Representative(s) Slosberg

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) TRANSPORTATION
 - (3) STATE ADMINISTRATION
 - (4) HEALTHY COMMUNITIES
 - (5)
-

I. SUMMARY:

HB 259 conforms the provisions relating to suspension of a driver's license for repeat DUI offenses to the provisions relating to mandatory jail terms for repeat DUI offenses. This will increase the length of driver's license suspensions in certain cases. Under the bill, upon a second conviction for a DUI offense that occurs within a period of five years after the date of the prior DUI conviction, a person's driver's license shall be revoked for a minimum of five years. Upon a third conviction for an offense that occurs within a period of ten years after the date of a prior DUI conviction, a person's driver's license shall be revoked for a minimum of ten years.

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 checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill will arguably affect "individual freedom" by increasing the number and length of driver's license suspensions in DUI cases.

B. PRESENT SITUATION:

A driving under the influence (DUI) conviction requires proof of the following elements:

That the person was driving or in actual physical control of a vehicle and either

- a. The person's blood alcohol level at the time was .08% or greater or
- b. The person was under the influence of alcohol or a controlled substance to the extent that their normal faculties were impaired.

s. 316.193(1), F.S.

For a first DUI offense with no property damage or injury involved, the maximum penalty is a \$500 fine and 6-months in jail. s. 316.193(2)(a), F.S. For a second conviction, the maximum penalty is a \$1,000 fine and 9-months in jail. For a third conviction, the maximum penalty is \$2,500 fine and 12-months in jail. s. 316.193(2), F.S. A fourth or subsequent conviction is a third degree felony, which is punishable by up to five years in prison and is ranked as a Level 6 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. ss. 775.082(3)(d) and 921.0022(3)(f), F.S.

Further, there are mandatory jail sentences associated with certain repeat DUI offenses. For example, if a person is convicted of a second DUI that occurred within 5 years after the date of the prior conviction, he or she must serve a mandatory minimum of 10 days in jail. s. 316.193(6)(b), F.S. For a third or subsequent DUI conviction for an offense that occurs within 10 years after the date of a prior conviction, the person must serve at least 30 days in jail. s. 316.193(6)(c), F.S.

In addition to the term of incarceration or probation which may be imposed for a DUI conviction, section 322.28(2)(a), F.S. requires the trial court to revoke the driver's license of a person convicted of DUI as follows:

- 1. Upon a first conviction, the driver's license shall be revoked for not less than 180 days or more than one year.

2. Upon a second conviction within a period of five years from the date of a prior DUI conviction the driver's license shall be revoked for a minimum of five years.
3. Upon a third conviction within a period of ten years from the date of the first of three or more DUI convictions, the driver's license shall be revoked for a minimum of ten years.

Unlike the section which provides a mandatory ten day sentence for a person convicted of a second DUI that occurred within five years of the date of the prior conviction, this provision requires the second DUI conviction be within five years of the first conviction. See, Trombley v. State, 754 So.2d 121 (Fla. 5th DCA 2000)(determining that second "conviction" for DUI occurred when driver entered guilty plea, rather than when he was sentenced). Thus, if the offense occurs within five years of the previous conviction but the conviction for that offense does not occur within five years, the penalty is the same as a first time offense – a driver's license suspension of up to one year. Further, unlike the section which provides a mandatory thirty day sentence for a third conviction for a DUI offense that occurs within ten years after the date of the prior conviction, this provision requires that the third DUI conviction occur with ten years after the date of the first conviction.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 322.28, F.S. to conform the provisions relating to suspension of a driver's license for repeat DUI offenses to the provisions regarding mandatory jail terms for repeat DUI offenses. Under the bill, upon a second conviction for a DUI offense that occurs within a period of five years after the date of the prior DUI conviction, the driver's license shall be revoked for a minimum of five years. Upon a third conviction for an offense that occurs within a period of ten years after the date of a prior DUI conviction, the driver's license shall be revoked for a minimum of ten years.

This bill will increase the length of driver's license suspension in certain cases. For example, under the current statute, if a first conviction occurred in 1990, the second conviction in 1994, and the third conviction occurred in 2002, because the third conviction did not occur within ten years of the first conviction, the defendant's driver's license would be suspended for up to one year rather than for a minimum of ten years. However, under the provisions of the bill, after the 2002 DUI conviction, the trial court would be required to suspend the defendant's driver's license for ten years because the third offense occurred within ten years of the second conviction.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 322.28, F.S., revising provisions relating to the penalty for a second or third DUI offense.

Section 2: Provides effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Highway Safety and Motor Vehicles, this bill will require contracted programming modifications to the Driver's License Software System at a cost of \$27,000 to implement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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