

STORAGE NAME: h0259.tr.doc

DATE: March 25, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION
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 YEAS 8 NAYS 0
 - (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. The bill provides that upon a second or subsequent DUI conviction the period of license revocation will be based on the date of offense rather than the date of conviction. The bill also provides that a 10-year license suspension for a third DUI will be based on having a third offense within 10 years of a prior conviction, instead of being based on having a third DUI conviction within 10 years of the first conviction.

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.

This will increase the length of driver's license suspensions in cases where a DUI offense occurs within the 5-year or 10-year period, but the conviction for the offense occurs outside the 5-year or 10-year period. The bill will also increase the length of driver's license suspensions in cases where a third DUI offense occurs within 10 years of the second conviction, but not within 10 years of the first conviction.

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 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:

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 offense 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. The bill provides that upon a second or subsequent DUI conviction the period of license revocation will be based on the date of offense rather than the date of conviction. The bill also provides that a 10-year license suspension for a third DUI will be based on having a third offense within 10 years of a prior conviction, instead of being based on having a third DUI conviction within 10 years of the first conviction.

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.

This will increase the length of driver's license suspensions in cases where a DUI offense occurs within the 5-year or 10-year period, but the conviction for the offense occurs outside the 5-year or 10-year period. For example, under the current statute, if the first DUI conviction occurs in 1990 and the second offense occurs in 1995 with the conviction for that offense being in 1996, the mandatory 5-year license suspension would not be imposed and the conviction would be treated as a first offense. However, under the bill's provisions, the 5-year license suspension would be imposed after the 1996 conviction.

The bill will also increase the length of driver's license suspensions in cases where a third DUI offense occurs within 10 years of the second conviction, but not within 10 years of the first conviction. 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:

None.

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B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

AS REVISED BY THE COMMITTEE ON TRANSPORTATION:

Prepared by:

Staff Director:

Phillip B. Miller

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