

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1496

SPONSOR: Transportation Committee

SUBJECT: Florida Driver Responsibility Law

DATE: March 19, 2004 REVISED: 04/13/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>ATD</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The CS creates s. 322.75, F.S., known as “Florida’s Driver Responsibility Law,” to provide for an assessment of surcharges for persons who accumulate seven or more points, or who are convicted of driving under the influence within the preceding thirty-six (36) month period. Assessments of these surcharges do not apply to any convictions that were final before July 1, 2004. This CS authorizes the payment of surcharges through installment payments or by the use of a credit card and provides penalties for failure to comply. This CS further authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to enter into a contract with a public or private vendor for the collection of surcharges. The CS provides for the distribution of moneys derived from surcharges collected by DHSMV under the Florida’s Driver Responsibility Law.

The CS creates s. 322.751, F.S., to require DHSMV to assess a \$100 surcharge for the first seven points accumulated against a person’s driver license during a 36-month period and \$25 for each additional point. This CS also requires DHSMV to notify the holder of a driver’s license of the assignment of a fourth point to provide an opportunity to avoid the surcharge.

The CS creates s. 322.7515, F.S., to require DHSMV to assess a surcharge on each person who has a final conviction during the preceding thirty-six month period for an offense relating to s. 316.193, F.S., driving under the influence. The surcharge amount is \$1,000 per year for one conviction within the thirty-six month period, \$1,500 upon a second or subsequent conviction, and \$2,000 for a first or subsequent conviction if the blood-alcohol level was 0.20 or higher at the time the analysis was performed.

This CS creates s. 322.7525, F.S., to require DHSMV to notify the holder of a driver’s license by first class mail of the assessment of a surcharge, the date by which the surcharge must be paid,

and the consequences of a failure to pay the surcharge. If the surcharge is not paid before the 30th day after the holder is notified or fails to enter into an installment payment agreement with DHSMV, his or her driving privilege will be suspended until the surcharge is paid.

The CS creates s. 322.753, F.S., to require DHSMV to provide for collection of all surcharges through an installment payment plan. If a licensee fails to pay or initiate an installment payment plan within 30 days of notification, the driver's license will be suspended. For amounts less than \$2,300, the DHSMV may authorize an installment plan for up to 12 months. For amounts over \$2,300, the DHSMV may authorize an installment plan for up to 24 months. Also, this section allows DHSMV the discretion to permit licensees to pay assessed surcharges with credit cards. The DHSMV must suspend driving privileges until the assessment and any other related fees are paid. Implementation of this section will require the Bureau of Accounting to establish a system for such collections, tracking, follow-up correspondence and will require contracted programming modifications to the Driver License Software Systems for the enforcement of these provisions.

In addition, this CS creates s. 322.7535, F.S., to authorize the DHSMV to enter into contracts with public or private vendors for the collection of the surcharges.

The CS creates s. 322.754, F.S., to provide for the distribution of moneys derived from surcharges collected by DHSMV under the Florida's Driver Responsibility Law. In particular, collected money will be allocated as follows:

- 50 percent to the State Transportation Trust Fund in order to fund Strategic Intermodal System projects,
- 20 percent to the Highway Safety Operating Trust Fund to be used for recruiting and retaining Florida Highway Patrol officers, and
- 20 percent to the Trauma Services Trust Fund to provide financial support to certified trauma centers in order to assure the availability and accessibility of trauma services throughout Florida.
- 10 percent to the Brain and Spinal Cord Injury Program Trust Fund to provide the cost of care for brain or spinal cord injuries as a payor of last resort to Florida residents.

This CS creates ss. 322.75, 322.751, 322.7515, 322.7525, 322.753, 322.7535 and 322.754 of the Florida Statutes.

II. Present Situation:

Driving Under the Influence

Section 316.193, F.S., prohibits driving under the influence (DUI) of alcohol or drugs to the extent normal faculties are impaired or driving with a blood or breath alcohol level of .08 percent or higher. During 2002, 32.04 percent of Florida's traffic fatalities and 8.6 percent of Florida's traffic crashes were alcohol-related.

Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results. If a driver is

stopped by a law enforcement officer for suspicion of DUI and refuses to take a test, his or her driving privilege is automatically suspended for one year.

Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury and when there have been less than four DUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. He must also be on probation for up to 1 year and participate in 50 hours of community service. However, if the convicted offender's BAL is .20 percent or higher, or a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail. Also, regardless of the convicted offender's BAL, his license must be revoked for a minimum of 180 days.

A second DUI conviction carries a fine ranging from \$500 to \$1,000, imprisonment for a period of up to 9 months and license revocation for a minimum of 180 days. However, if that conviction occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive. In addition, the license is revoked for five years. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle to include a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI conviction carries a fine ranging from \$1,000 to \$2,500, possible imprisonment up to 12 months and license revocation for a minimum of 180 days. However, if that conviction occurs within 10 years of a previous DUI conviction, it results in a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years. There is a 30-day minimum mandatory imprisonment period and at least 48 hours of this confinement must be consecutive. Additionally, the license is revoked for ten years. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle to include a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI conviction results in a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years.

Florida's Point System

Section 322.27, F.S., establishes a system of points that are assessed against a driver's license when a person is convicted of violating certain motor vehicle laws. The point system is used for the evaluation and determination of the continuing qualification of any person to operate a motor vehicle. The DHSMV is authorized to suspend the license of any person upon a showing of its records or other good and sufficient evidence the licensee has been convicted of violation of motor vehicle laws amounting to 12 or more points as determined by the point system. The suspension will be for a period of not more than one year. The statute provides the following provisions:

- When a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days.

- When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than 3 months.
- When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than 1 year.
- The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:
 1. Reckless driving—4 points.
 2. Leaving the scene of a crash resulting in property damage of more than \$50—6 points.
 3. Unlawful speed resulting in a crash—6 points.
 4. Passing a stopped school bus—4 points.
 5. Unlawful speed:
 - a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.
 - b. In excess of 15 miles per hour of lawful or posted speed—4 points.
 6. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points.
 7. Any moving violation, excluding unlawful speed, resulting in a crash—4 points.
 8. Dumping litter in an amount exceeding 15 pounds, which involves the use of a motor vehicle—3 points.
 9. Driving during restricted hours—3 points.
 10. Violation of curfew—3 points.
 11. Open container as an operator—3 points.
 12. Child restraint violation—3 points.
- A conviction which occurred out-of-state or in a federal court may be recorded against a driver on the basis of the same number of points received had the conviction been made in a court of this state.
- In computing the total number of points, when the licensee reaches the danger zone, the DHSMV is authorized to send the licensee a warning letter advising any further convictions may result in suspension of their driving privilege.

- Three points are deducted from the driver history record of any person whose driving privilege has been suspended only once under the point system and has been reinstated, if such person has complied with all other requirements.
- The offense date of all convictions is used in computing the points and period of time for suspensions.
- The DHSMV revokes the license of any person designated a habitual offender, as set forth in s. 322.264, F.S., and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271, F.S. Any person whose license is revoked may, by petition to DHSMV, show cause why his or her license should not be revoked.
- The DHSMV revokes the driving privilege of any person who is convicted of a felony for the possession of a controlled substance if, at the time of such possession, the person was driving or in actual physical control of a motor vehicle. A person whose driving privilege has been revoked pursuant to this subsection is not eligible to receive a limited business or employment purpose license during the term of such revocation.
- Review of an order of suspension or revocation is by writ of certiorari as provided in s. 322.31, F.S.

III. Effect of Proposed Changes:

The CS creates s. 322.75, F.S., known as “Florida’s Driver Responsibility Law,” to provide for an assessment of surcharges for persons who accumulate seven or more points, or who are convicted of driving under the influence within the preceding thirty-six (36) month period. This CS authorizes the payment of surcharges through installment payments or by the use of a credit card and provides penalties for failure to comply. This CS further authorizes DHSMV to enter into a contract with a public or private vendor for the collection of surcharges. The CS provides for the distribution of moneys derived from surcharges collected by DHSMV under the Florida’s Driver Responsibility Law. The following discussion represents a section-by-section analysis of the CS.

Section 2 – Section 322.751, F.S., is created to require DHSMV to assess a \$100 surcharge for the first seven points accumulated against a person’s driver license during a 36-month period and \$25 for each additional point. This CS also requires DHSMV to notify the holder of a driver’s license of the assignment of a fourth point to provide an opportunity to avoid the surcharge. Assessment of this surcharge does not apply to any convictions that were final before July 1, 2004.

According to DHSMV, currently, there are 460,857 drivers who have accumulated seven or more points on their driving record within a thirty-six month period. Assuming this population, assessment of the surcharge could generate \$10,884,050 for the first year, \$37,740,900 for the second year, and \$75,262,825 for the third year assuming full payment by effected individuals.

Section 3 – Section 322.7515, F.S., is created to require the DHSMV to assess a surcharge on each person who has a final conviction during the preceding thirty-six month period for an offense relating to s. 316.193, F.S., driving under the influence. The surcharge amount is \$1,000 per year for one conviction within the thirty-six month period, \$1,500 upon a second or subsequent conviction, and \$2,000 for a first or subsequent conviction if the blood-alcohol level was 0.20 or higher at the time the analysis was performed. This section does not apply to convictions final prior to July 1, 2004.

According to DHSMV, there were 48,305 convictions in calendar year 2002 for driving under the influence. According to DHSMV and assuming this level of convictions for future years and all offenders possessing the financial ability to pay the minimum \$1,000 assessment fee, \$48,305,000 would be generated for year one, \$96,610,000 for year two, and \$144,915,000 for year three. However, it is anticipated that actual revenue collections from assessment of the DUI surcharge will be minimal. It usually takes about three years for 45 percent of the DUI offender population to comply with all requirements and reinstate their driving privilege.

Section 4 - Section 322.7525, F.S., is created to require DHSMV to notify the holder of a driver's license by first class mail of the assessment of a surcharge, the date by which the surcharge must be paid and the consequences of a failure to pay the surcharge. If the surcharge is not paid before the 30th day after the holder is notified or fails to enter into an installment payment agreement with DHSMV, their driving privilege will be suspended until the surcharge is paid.

Section 5 – Section 322.753, F.S., is created to require the DHSMV to provide for collection of all surcharges through an installment payment plan. If a licensee fails to pay or initiate an installment payment plan within 30 days of notification, the driver's license will be suspended. For amounts less than \$2,300, the DHSMV may authorize an installment plan for up to 12 months. For amounts over \$2,300, the DHSMV may authorize an installment plan for up to 24 months. Also, this section allows DHSMV the discretion to permit licensees to pay assessed surcharges with credit cards. The DHSMV must suspend driving privileges until the assessment and any other related fees are paid. Implementation of this section will require the Bureau of Accounting to establish a system for such collections, tracking, follow-up correspondence, and will require contracted programming modifications to the Driver License Software Systems for the enforcement of these provisions.

Section 6 – Section 322.7535, F.S., is created to authorize the DHSMV to enter into contracts with public or private vendors for the collection of all surcharges created under ch. 322, F.S.

Section 7 – Section 322.754, F.S., is created to provide for the distribution of moneys derived from surcharges collected by DHSMV under the Florida's Driver Responsibility Law. In particular, collected money will be allocated as follows:

- 50 percent to the State Transportation Trust Fund in order to fund Strategic Intermodal System projects,
- 20 percent to the Highway Safety Operating Trust Fund to be used for recruiting and retaining Florida Highway Patrol officers, and

- 20 percent to the Trauma Services Trust Fund to provide financial support to certified trauma centers in order to assure the availability and accessibility of trauma services throughout Florida.
- 10 percent to the Brain and Spinal Cord Injury Program Trust Fund to provide the cost of care for brain or spinal cord injuries as a payor of last resort to Florida residents.

Section 8 – This CS takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Persons who are convicted for driving under the influence or who accumulate seven or more points on their driving record would be required to pay an annual surcharge for a three year period to avoid license suspension.

B. Private Sector Impact:

Persons who are convicted for driving under the influence or who accumulate seven or more points on their driving record would be required to pay an annual surcharge for a three year period to avoid license suspension.

C. Government Sector Impact:

According to DHSMV, enactment of the proposed surcharges could generate \$59,189,050 during the first year, \$134,350,900 for the second year, and \$220,177,825 for the third year based on prior year activity levels and assuming compliance by all impacted drivers. However, the actual amount collected will vary depending on the degree and efficiency of collection efforts, the ability of convicted individuals to pay the fees, and any reduction in violations resulting from the law's financial disincentives. The impact on collections of authorizing payments by either credit card or installment payment basis is unknown. (According to New Jersey collection rates, the breakdown of the average collection rates is as follows: (1) 55 percent for DUI offenses; and (2) 80 percent for point violations.)

The proposed legislation requires DHSMV to notify license holders regarding assessment of the annual surcharge. According to DHSMV, the estimated cost to mail notifications during the first year is \$181,636, and increases to \$297,647 and \$433,806 in years two and three due to population growth. This CS will also require contracted programming modifications to the Driver License Software Systems at a cost of \$184,534, which is based on 3,430 hours of contracted programming modifications at a rate of \$53.80 per hour. Contracting with a vendor for collection of surcharges would reduce DHSMV's workload for surcharge collection but would require substantial oversight for quality assurance by the Division of Driver Licenses, Bureau of Driver Improvement. The Bureau of Accounting may also realize workload increase due to the processing of additional revenue receipts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Increases the points that are needed to trigger the annual surcharge from 7 to 10 points and provides notification of the surcharge to the driver after he or she receives 6 points, rather than four points. (WITH TITLE AMENDMENT)