

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 161

Records of the Department of Highway Safety and Motor Vehicles

**SPONSOR(S):** Kravitz

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 324

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation	19 Y, 1 N	Garner	Miller
2) Public Safety & Crime Prevention		Cole	De La Paz
3) Transportation & Econ. Dev. Apps. (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to suspend the license of any person without a preliminary hearing upon a showing of its records or other sufficient evidence that a licensee has committed an offense for which mandatory revocation of the license is required upon conviction. In some DUI cases where blood has been drawn to test for impairment or intoxication, law enforcement agencies have not notified DHSMV, and persons accused in such cases continue to drive with an unsuspended license.

DHSMV does not currently maintain driving records for non-resident foreign citizens who travel to Florida as tourists, and who do not obtain a Florida driver's license. Recent changes in the driver's license laws require the expiration of Florida driver's licenses obtained by foreign tourists within two years or upon the expiration of their visas.

HB 161 requires law enforcement agencies to notify DHSMV within 24 hours after blood is drawn by law enforcement officers to test for impairment or intoxication. It is unclear how DHSMV will be notified within 24 hours on weekends and holidays. The bill requires "information" to be forwarded to DHSMV, but does not specify what information must be provided or what DHSMV must do with it.

The bill requires DHSMV to maintain records of a person holding a foreign license who has been issued a citation, if the citation form indicates an address in Florida for that person.

The bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0161b.ps.doc

**DATE:** February 11, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

##### DUI Suspensions

The Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to suspend the license of any person without a preliminary hearing upon a showing of its records or other sufficient evidence that a licensee has committed an offense for which mandatory revocation of the license is required upon conviction.<sup>1</sup> In a normal DUI arrest where a suspected drunk driver is stopped and physically arrested, they are requested to take a breath test. If they take the test and blow over a .08 g/210L, or refuse to take the test, their driver's license is automatically suspended. This also applies to urine and blood tests if some type of drugs are involved. In these type cases, the arrest paperwork is forwarded to the Bureau of Administrative Review (BAR), within DHSMV, automatically by the arresting agency. In some DUI cases where blood has been drawn to test for impairment or intoxication, law enforcement agencies have not notified DHSMV, and persons accused in such cases continue to drive with an unsuspended license.

The BAR within DHSMV is the entity responsible for driver's license suspension review. The paperwork on every DUI arrest is forwarded to the BAR that is responsible for that particular law enforcement agency's review. If a suspected DUI offender is involved in a crash and cannot be physically arrested and blood is drawn at the hospital, charges are not filed until the toxicology results are returned from FDLE.<sup>2</sup> The blood analysis from FDLE can take anywhere from a few weeks to a few months, depending on the lab backlog. Current law provides that an offender's driver's license to be suspended when blood is drawn if the arrest paperwork and blood test results are submitted to the BAR within 5 days of the arrest. If the arrest paperwork, including citations, is not specifically forwarded to BAR, no suspension for an unlawful blood alcohol level will be imposed until the offender is actually convicted of DUI. DHSMV is currently notified on a crash report update form when blood or urine is requested from a driver involved in a crash as to what the results are as soon as they are received from the lab. BAR is not automatically notified.

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<sup>1</sup> S. 322.2615(1)(a), F.S.

<sup>2</sup> "Medical Blood" is drawn at the hospital for medical treatment purposes. Current law allows medical personnel to notify law enforcement officers if a patient's blood alcohol level is over the legal limit of .08 G/210L. Medical blood results can be subpoenaed, if needed, for use in a criminal prosecution.

"Legal blood" is either drawn at the scene of a crash or at the hospital by specific medical personnel. The blood sample is sealed and turned over to a law enforcement officer. The officer then tags the blood into evidence and has it sent to the lab for analysis. The lab will send results back to the investigating officer anywhere from several weeks to several months later.

For example, if a driver is involved in a crash and is unable to be arrested for whatever reason, but blood is drawn at the hospital or at the crash scene, charges are not filed until the toxicology results are returned from FDLE or the lab used by the agency. If a law enforcement officer receives blood results back from the lab showing a driver had a BAC over .08 g/210L, completes a complaint affidavit, and forwards it to the State Attorney's Office, the State Attorney has the discretion whether to issue a warrant or whether to file charges and summon the suspect to arraignment. If no physical arrest is ever made, then there is no means for BAR to administratively suspend the offender's license. If the State Attorney issues a warrant, and any other officer serves the warrant and arrests the offender, there is no provision for the original officer who wrote the complaint affidavit or the BAR to be notified. In this instance, an arrest was made, but BAR is still not being notified, thus no suspension can be applied to the driver's license.

### Foreign Licenses

The DHSMV does not currently maintain driving records for non-resident foreign citizens who travel to Florida as tourists, and who do not obtain a Florida driver's license. Automobile insurers may charge higher premiums to these persons because they are unable to examine records to determine the risk posed by the particular driver. Recent changes in the driver's license laws require the expiration of Florida driver's licenses obtained by foreign tourists within two years or upon the expiration of their visas.

Law enforcement officers generally ask for some type of United States identification when someone who has been stopped presents a foreign license. Many foreign students will obtain state identification cards which have their local address on them. In instances where foreign drivers give a local address, but fail to pay a citation, DHSMV will assign them a driver's license number and then suspend it. It is not uncommon for law enforcement officers to find foreign students who present foreign driver's licenses to have several suspensions on a state issued license or ID card.

The bill requires DHSMV to maintain records of a person holding a foreign license who has been issued a citation, if the citation form indicates an address in Florida for that person.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 322.27, F.S., requiring notification to DHSMV of a traffic fatality or in the event that blood has been drawn to test for intoxication.

**Section 2.** Amends s. 322.20, F.S., requiring DHSMV to maintain driving records for persons with a foreign license who have an address in Florida.

**Section 3.** Provides an effective date of July 1, 2004.

## II. 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:**

Maintenance of driving records by DHSMV for certain persons who hold a foreign driver's license, but who have a part-time residence in Florida, may lower the cost of automobile insurance for those persons.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill does not state what information law enforcement agencies are supposed to furnish to DHSMV within the 24 hour period. It also does not state what DHSMV is supposed to do with the information provided. There is also no requirement for the agencies to renotify DHSMV when blood test results are received back by the agency from their particular lab. Without the BAR being notified of the results of the blood tests within the mandated 5 days of arrest, there is no provision to suspend an offender's license under current law.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**