

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The bill assesses annual surcharges against persons for certain violations, provides for methods of payment and provides for allocation of the funds collected.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Driver Responsibility Law. The bill provides for assessment of an annual surcharge against persons who accumulate seven or more points on their driver license, or who are convicted of driving under the influence(DUI), driving without a license, or driving without financial responsibility within the preceding 36 month period. The bill authorizes the payment of surcharges through installment payments or by the use of a credit card and provides a sanction for failure to comply. The bill also increases the fine for violations involving loads on vehicles. Additional revenues resulting from these surcharges and penalty increase will be used by the DOH to fund trauma center costs.

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 within a 12-month period. 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 12 points within a 12 month period, 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.

HB 1455 requires the DHSMV to assess an annual surcharge of \$100 for the first seven points accumulated against a person's driver license during a 36-month period and an annual surcharge of \$25 for each additional point. The bill also requires the Department to notify the holder of a driver license of the assignment of a fourth point. This provision does not apply to any conviction that became final prior to July 1, 2005, therefore no surcharge could be imposed until a driver accumulates seven or more points resulting from convictions after that date.

Driving Without a License ;Driving Without Required Insurance or Security

Any person whose driver's license or driving privilege has been canceled, suspended, or revoked, and who drives a vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked is guilty of a moving violation, punishable by a fine of \$60 plus applicable court costs and fees. The fees and court costs vary county by county, but the total paid for each citation would range from \$112.50 to \$118.50 and an assessment of 3 points against the driver's license.

Owners of vehicles must have evidence of required insurance, including financial responsibility requirements if applicable, when obtaining or annually renewing their vehicle registration and license tag (s. 320.02, F.S.). Vehicle operators must also carry an insurance card, to demonstrate required coverage at all times while operating a motor vehicle (s. 316.646, F.S.). Any person who violates this section is guilty of a nonmoving traffic infraction punishable by a fine of \$30 plus applicable court costs and fees and shall be required to furnish proof of security as provided in this section. The fees and court costs vary county by county, but the total paid for each citation would range from \$68.50 to \$74.50. If any person charged with a violation of this section fails to furnish proof, at or before the scheduled court appearance date, that security was in effect at the time of the violation, the court may immediately suspend the registration and driver's license of such person.

HB 1455 requires the DHSMV to assess a \$250 surcharge annually to each person who has been convicted within the preceding 36-month for a violation of ss. 322.03, 322.065, 324.021, or 627.733, F.S., relating to driving without a license or without financial responsibility. The bill also requires the DHSMV to assess a \$250 surcharge annually on each person who has been convicted within the preceding 36-month for a violation of ss. 324.021 and 627.733, F.S., relating to financial responsibility insurance requirements. These provisions do not apply to any conviction becoming final prior to July 1, 2005.

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. 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. The offender must also be on probation for up to 1 year and participate in 50 hours of community service. However, if the convicted offender's Blood Alcohol Content (BAC) 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 BAC, the offender's 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 BAC 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 BAC 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.

The bill requires the DHSMV to assess a surcharge to each person who has a final conviction during the preceding thirty-six month period for an offense under s. 316.193, F.S., relating to DUI. The penalty is \$1,000 for the first conviction or \$1,500 upon a second or subsequent conviction, except the penalty will be \$2,000 for the first or subsequent conviction if the blood-alcohol, urine-alcohol, or breath-alcohol level is 0.20 or higher. These provisions do not apply to any conviction that becomes final prior to July 1, 2005.

Administration of "Driver Responsibility Law"

Notice:

HB 1455 requires the DHSMV to notify a 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. If the surcharge is not paid before the 30th day after the holder is notified or the holder fails to enter into an installment payment agreement with the DHSMV, their driving privilege will be suspended until the penalty and all related costs incurred by the DHSMV are paid.

Installment Payments:

The bill further requires the DHSMV, by rule, to provide the collection of all surcharges through an installment payment plan under the following circumstances:

- May not permit a person to pay a surcharge of less than \$2,300 over a period of more than 12 consecutive months; or of \$2,300 or more over a period of more than 24 consecutive months.
- May provide that if the person fails to make a required installment payment, the DHSMV may declare the amount of the unpaid surcharge immediately due and payable.
- The DHSMV may by rule authorize the payment of a surcharge by use of a credit card. The rules will require the person to pay all costs incurred by the DHSMV in connection with the acceptance of the credit card.
- If a person pays a surcharge or related cost by credit card and the amount is subsequently reversed by the issuer of the credit card, the license of that person is automatically suspended.
- A license suspended under this provision remains suspended until the person pays the amount of the surcharge and related costs.

HB 1455 creates s. 322.7535, F.S., to authorize the DHSMV to contract with a public or private vendor to collect surcharges imposed under this Chapter.

Use of Funds Resulting from Surcharges:

HB 1455 creates s. 322.754, F.S., to require the DHSMV to deposit all moneys collected from the assessed surcharges under the Florida Responsibility Law into the Department of Health Administrative Trust Fund to provide financial support of certified trauma centers. The funds deposited will be allocated as follows:

- Fifty percent will be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.
- Fifty percent will be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

Civil Penalties for Load Violations:

According to s. 316.520(1) or (2), F. S., a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent any of its load from dropping, shifting, leaking, blowing, or escaping, except that sand may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

It is the duty of every owner and driver, of any vehicle hauling, on any public road or highway open to the public, dirt, sand, lime rock, gravel, silica, or other similar aggregate or trash, garbage, any inanimate object or objects, or any similar material that could fall or blow from the vehicle, to prevent the materials from falling, blowing, or in any way escaping from the vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover or a load securing device or a device designed to reasonably ensure that cargo will not shift or fall from the vehicle is required.

HB 1455 amends s. 322.18, F.S., to increase the civil penalty from \$100 to \$200 for load violations. The bill requires the DHSMV to deposit all moneys collected from loads violations under the Florida Responsibility Law into the Department of Health Administrative Trust Fund to provide financial support of certified trauma centers. The funds deposited will be allocated according to the same formula described above in the "Use of Funds Resulting from Surcharges" portion of this analysis.

The provision also increases the length of time the driver's license will be suspended from not less than 180 days and no longer than one year to not less than one year and no longer than two years.

C. SECTION DIRECTORY:

Section 1. Creates s. 322.75, F.S., to provide the popular name the "Florida Driver Responsibility Law."

Section 2. Creates s. 322.751, F.S., to direct the DHSMV to assess specified surcharges against a motor vehicle licensee who accumulates seven or more points against their license within the previous 36 months; providing for notification to a licensee upon receipt of 4 points against their license.

Section 3. Creates s. 322.7513, F.S., to direct the DHSMV to assess specified surcharges against a motor vehicle licensee who have a final conviction within the previous 36 months for specified offenses relating to driving without a license or with an expired license and driving without required insurance or security.

Section 4. Creates s. 322.7515, F.S., to direct the DHSMV to assess specified annual surcharges against motor vehicle licensees who have a final conviction within the previous 36 months for a DUI offense.

Section 5. Creating s. 322.7525, F.S., to require the DHSMV to notify licensees of the surcharges and the time period in which to pay the surcharges; providing for suspension of license for failure to pay.

Section 6. Creating s. 322.753, F.S., to require the DHSMV to accept installment payments for the surcharges; providing sanctions for a licensee's failure to pay an installment; authorizing the DHSMV to permit licensees to pay assessed surcharges with credit cards; authorizing the DHSMV to suspend a driver's license if the licensee does not pay the surcharge or arrange for installment payments within a specified time.

Section 7. Creates s. 322.7535, F.S., to authorize the DHSMV to contract with a public or private vendor to collect specified annual surcharges.

Section 8. Creating s. 322.754, F.S., to provide for distribution of surcharges collected by the DHSMV.

Section 9. Amending s. 318.18, F.S., to revise the fine and license suspension period for violation of specified provisions requiring loads on vehicles be prevented from escaping.

Section 10. Amending s. 318.21, F.S., to provide for distribution of fines related to loads on vehicles.

Section 11. Providing an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill will generate revenues for the operation of trauma centers.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who are convicted for driving under the influence, driving without a license or insurance, or who accumulate seven or more points on their driver record would be required to pay an annual surcharge for up to a three year period to avoid license suspension. Persons convicted of load violations would pay an additional \$100 fine.

Although a method of payment or compensation for vendors is not specified in the bill, a vendor contracting with DHSMV to collect the surcharges imposed by the bill would benefit by presumably either retaining a portion of the amounts collected or by being paid on some other contractual basis.

D. FISCAL COMMENTS:

According to the DHSMV, enactment of the proposed surcharges could generate \$21.1 million during the first year, \$53.5 million for the second year and \$99.3 million for the third year based on historical traffic violations and point accumulation levels and on assumption of certain collection percentages. These revenues would be deposited into the Department of Health Administrative Trust Fund to fund trauma centers. This revenue impact assumes that the surcharge will not be assessed against convictions or points occurring prior to the effective date of the bill.

This bill also requires DHSMV to notify license holders regarding assessment of the annual surcharges and regarding accumulation of four points on their driving record. The estimated cost to mail notifications during the first year is \$191,683 and increases to \$317,742 and \$463,949 in years two and three. This bill will also require contracted programming modifications to the Driver License Software Systems at a cost of \$634,550.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DHSMV is authorized to establish by rule an installment payment process for the payment of surcharges. The DHSMV may also by rule authorize the payment of a surcharge by credit card.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Department of Highway Safety Comments:

It is estimated that revenue collections from the assessment of the DUI surcharge will be minimal. In addition to the thousands of dollars in fines and surcharges already assessed on the DUI offender, the ignition interlock program has been implemented which is another fee these offenders must pay. It usually takes about three years for 45% of the DUI offender population to comply with all requirements and reinstate their driving privilege. By increasing the fine structure, it is anticipated that there will be minimal compliance with the surcharge from a segment of this population that has demonstrated anti-social behavior by driving under the influence.

This bill provides for a \$250 annual assessment against persons who have been convicted of a violation of s. 324.021, F.S., within the previous thirty six month period. Presently, law enforcement officers do not issue tickets for violations of s. 324.021, F. S., However, they do issue citations per s. 316.646(1), F.S., for failure to show proof of insurance, as required by Chapter 627, Florida Statutes.

DHSMV also expressed concerns about the effective date of the bill allowing enough time for implementation, but the agency did not suggest an alternative effective date in its evaluation of the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES