

# 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.)

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Prepared By: Transportation Committee

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BILL: SB 538

INTRODUCER: Senator Fasano

SUBJECT: License Plates/ DUI

DATE: March 8, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woods	Meyer	TR	<b>Pre-meeting</b>
2.	_____	_____	CJ	_____
3.	_____	_____	TA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill creates a Driving Under the Influence (DUI) license plate and requires all persons whose driving privileges have been restricted as a result of a DUI conviction to purchase this plate and display this plate on any motor vehicle operated by that person. The bill provides the DUI license plate to be bright pink, and bear the letters "DUI" as the first three alphanumeric characters.

The bill provides for an annual \$20 surcharge, in addition to standard fees, be collected for each plate sold. The proceeds are to be deposited into the Trauma Services Trust Fund created by s. 395.4034 F.S., and used for purposes provided in that section.

In addition, the bill allows for law enforcement officials to stop any vehicle that bears this plate, devoid of probable cause, to check the operator of the vehicle for compliance with the restrictions of the driver license. The bill provides an effective date of July 1, 2006.

## II. Present Situation:

Section 322.28 F.S., provides the following penalties in regards to license revocation and suspension for persons convicted of DUI<sup>1</sup>:

- For a first conviction, the driver's license must be revoked for not less than 180 days or more than 1 year.
- For a second conviction for an offense that occurs within 5 years after the date of a prior conviction, the driver's license must be revoked for not less than 5 years.

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<sup>1</sup> Section 316.193, F.S.

- For a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction, the driver's license must be revoked for not less than 10 years.
- For a fourth conviction, the driver's license must be permanently revoked.

Section 322.271, F.S. authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue what is commonly known as a "hardship" license upon a showing the revocation of an offender's license causes a serious hardship and precludes the person from carrying out his or her normal business, occupation, trade or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family. A person whose license has been revoked for a DUI offense for 5 years or less is required to wait 12 months before applying for a hardship license. A person whose license has been revoked for more than 5 years is required to wait 24 months before applying for a hardship license. A person whose license has been permanently revoked because of a fourth DUI conviction is not eligible to apply for a hardship license. The following are the two types of restricted driving privileges for a DUI:

- A driving privilege restricted to business purposes only, means a driving privilege limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes.
- A driving privilege restricted to employment purposes only, means a driving privilege limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation.

According to the DHSMV, it revoked 48,863 licenses for driving under the influence for the fiscal year 2003-2004. In fiscal year, 2004-2005, 50,666 licenses were revoked as a result of DUI conviction. The DHSMV also estimates 12,000 "hardship" licenses are distributed each year.

### III. Effect of Proposed Changes:

**Section 1** Directs the DHSMV to develop a DUI license plate. All persons with restricted licenses resulting from a DUI conviction must purchase and display this plate on all motor vehicles operated by that person. In addition to normal fees and charges associated with purchasing the DUI license plate, an annual surcharge of \$20 is to be collected for each DUI plate. The proceeds from this collection are to be deposited into the Trauma Services Trust Fund.

The bill specifies for the DUI license plate to be bright pink in color and to bear the letters "DUI" as the first three alphanumeric characters. The plate is marked as such to be easily discernible from other license plates.

In addition, the bill authorizes law enforcement officers to stop any vehicle bearing this plate to check the operator of the vehicle for compliance with the restrictions of the "hardship" license as only those who obtain this kind of license would be required to obtain the DUI plate. The bill specifies no probable cause is needed for a law enforcement officer to stop vehicles and check drivers of vehicles that bear this plate.

**Section 2** provides an effective date of July 1, 2006.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

***Special license plate:*** In *Goldschmitt v. State*<sup>2</sup>, the Second District Court of Appeal ruled on the constitutionality of a DUI offender being required to place a bumper sticker on his vehicle which read, “CONVICTED D.U.I. – RESTRICTED LICENSE”. The court rejected the offender’s claim the order infringed upon his First Amendment rights by “forcing him to broadcast an ideological message via the bumper sticker.” The court also ruled that the bumper sticker did not constitute cruel and unusual punishment. See also, *Lindsay v. State*, 606 So.2d 652 (Fla. 4th DCA 1992)(requirement that probationer place and pay for advertisement in newspaper consisting of defendant’s mug shot, name and caption indicating defendant was “DUI –convicted” did not violate constitution).

***Traffic stops:*** The portion of the bill which authorizes a law enforcement officer to stop a vehicle bearing a DUI license plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. may be subject to a constitutional challenge. A traffic stop of a motor vehicle by a law enforcement officer is considered a seizure under the Fourth Amendment to the United States Constitution. An officer must have a reasonable articulable suspicion of wrongdoing in order to justify a traffic stop.<sup>3</sup> In the case of *State v. Henning*,<sup>4</sup> the Minnesota Supreme Court struck down a statute which authorized a peace officer to stop a vehicle bearing “special series registration plates” issued to a DUI offender for the purpose of determining whether the driver was operating a vehicle lawfully under a valid driver’s license. The court noted that, as with HB 627, the statute would allow an officer to stop a vehicle, even when the person driving the vehicle was not the person who had committed the DUI offense. The court held the presence of the special license plate did not amount to reasonable articulable suspicion of criminal activity justifying a stop. The court stated, “while the

<sup>2</sup> *Goldschmitt v State*, 490 So.2d at 123 (2<sup>nd</sup> DCA 1986)

<sup>3</sup> *Delaware v. Prouse*, 99 S.Ct. 1391, 1401 (1979)(“Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.”)

<sup>4</sup> *State v. Henning*, 666 N.W. 2d 379 (Minn. 2003).

special series plates may be a factor for law enforcement to consider and would provide a basis for closer scrutiny of these vehicles, the special series plates may not provide the sole justification for a stop.”<sup>5</sup>

Article II, section 12 of the State of Florida Constitution states “No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.” The provision allowing law enforcement to perform traffic stops without probable cause is in direct conflict with this section of the state constitution.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

A person who is issued a DUI license plate will be required to pay a \$20 annual surcharge for the license plate.

### **B. Private Sector Impact:**

A person who is issued a DUI license plate will be required to pay a \$20 annual surcharge for the license plate in addition any normal fees for purchasing a Florida license plate.

### **C. Government Sector Impact:**

The DHSMV estimates that the bill will generate \$240,000 annually from use fees for deposit into the Trauma Services Trust Fund based on the issuance of 12,000 hardship licenses per year.

The DHSMV estimates the bill will have an annual \$44,520 impact for the design, manufacture and distribution of a new license plate - \$15,000 in personnel costs and \$29,520 in license plate costs. The bill will also require contracted programming modifications to the Motor Vehicle software systems at an estimated cost of \$26,915.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

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This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>5</sup>*Henning*, 666 N.W. 2d at 386.

## **VIII. Summary of Amendments:**

None.

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