

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.)

Prepared By: Transportation Committee

BILL: SB 878

INTRODUCER: Senator Smith

SUBJECT: Driver License Suspension

DATE: April 11, 2006

REVISED: 4/18/06

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------------|
| 1. | Davis | Meyer | TR | Fav/1 amendment |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | TA | |
| 5. | | | | |
| 6. | | | | |

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill creates the "Michael Haligowski Memorial Traffic Act." The bill amends s. 318.15, F.S., to require impoundment or immobilization of a vehicle driven by or under the actual physical control of a person whose driving privilege was suspended at the time of the violation for failure to comply with civil penalty, failure to attend driver improvement school or failure to appear at a scheduled hearing as required. This bill further amends s. 318.15, F.S., to require the Department of Highway Safety and Motor Vehicles (DHSMV) to provide a means via internet and a toll-free telephone hotline for persons to determine the status of a person's driver's license. Also, this bill creates s. 318.151, F.S., to provide counties and municipalities with authorization for impoundment or immobilization of vehicles and distribution and collection of the funds from such action.

In addition, the bill requires DHSMV to inform the motoring public of the changes to s. 318.15, F.S., made by this act and provide such information in newly printed driver's license educational materials after July 1, 2006, and in public service announcements produced in cooperation with the Florida Highway Patrol. Lastly, DHSMV is required, during the period from July 1, 2006, to July 1, 2007, to notify by mail, drivers whose license and privilege to drive have been suspended under s. 318.15, F.S.

This bill substantially amends section 318.15 and creates section 318.151 of the Florida Statutes. In addition, the bill creates two undesignated sections of law.

II. Present Situation:

Section 318.15, F.S., provides for the suspension of a driver's license where a licensee fails to pay the fine imposed for traffic infractions, attend driver improvement school, or appear at a scheduled hearing. Driver licenses are reinstated at an office of the clerk of the court; a DHSMV driver license office; or a tax collector's office providing driver license services. However, the licensee may not have his or her driver license and privilege to drive reinstated until he or she complies with all imposed obligations and penalties and presents a certificate of compliance issued by the court along with a nonrefundable service charge of up to \$47.50.

Although there are instances when law enforcement is allowed to impound or immobilize a vehicle of a violator for certain infractions, currently, there is no authorization for law enforcement to impound or immobilize a vehicle of a violator cited while suspended for failing to pay the fine imposed for traffic infractions, failing to attend driver improvement school, or failing to appear at a scheduled hearing.

Currently, the DHSMV provides driver license status checks via DHSMV's website. The driver's license number must be entered to obtain the status information. Further, the DHSMV provides a non-toll free number for the public to call to attain the status of a person's driver license.

III. Effect of Proposed Changes:

The following is a section-by-section analysis of the bill:

Section 1 provides this act may be cited as the "Michael Haligowski Memorial Traffic Safety Act."

Section 2 amends s. 318.15, F.S., to require, effective July 1, 2007, provisions for impoundment or immobilization and the release of a vehicle driven by or under the actual physical control of a person whose driving privilege was suspended at the time of the violation for failure to comply with civil penalty, failure to attend driver improvement school or failure to appear at a scheduled hearing as required.

Specifically, an officer stopping a motor vehicle being driven by or under the actual physical control of a person whose driver's license and privilege to drive are suspended shall have the vehicle removed to an impound lot designated by the county or municipality where the vehicle was stopped. At the discretion of the officer and pursuant to procedures enacted by the county or municipality, the officer may have the motor vehicle removed to the property of the motor vehicle's owner or lessee and cause the motor vehicle to be immobilized with a mechanical immobilization device.

The officer must serve notice of the impoundment or immobilization upon the driver. The notice must include the location where the motor vehicle is being held and information on the

procedures to have the motor vehicle released from impoundment or immobilization. A copy of the notice must be delivered to the clerk of the court in the county where the impoundment or immobilization was made.

The bill imposes an impound fee, not to exceed \$100, which must be paid prior to the release of any motor vehicle impounded or immobilized under this section. Any impounded motor vehicle remaining at an impound lot for more than 120 days shall be considered abandoned and disposed of according to law.

This bill requires DHSMV to make available on its website the means to determine the status of a person's driver's license by entering the name of the holder of the license or the person's driver license number.

Currently, the DHSMV makes available on its website the means to determine the status of a person's driver's license by entering the person's driver's license number. Due to the large number of driver license records on DHSMV's database with the same name, entering only a person's name is not a viable means of data to enter to determine a driver's license status.

This bill requires DHSMV to provide a toll-free telephone hotline to provide callers with the status of a person's driver's license.

Currently, DHSMV provides a non toll-free telephone number for a driver license status check.

According to DHSMV, during FY 2004-05, there were 1,200,868 suspensions for failure to comply with court summons or fine. If half of this population used the toll-free hotline to check the status of their driver license, the annual cost to DHSMV would be approximately \$52,200. (600,434 calls x 3 minutes = 1,802,302 minutes @ 0.029 = \$52,237.76)

The DHSMV states an unintended result of providing a toll-free number allowing a person to check the status of his or her driver's license, is the expected significant increase in calls received in the DHSMV's Customer Service Center. Currently, the staff receives approximately 700,000 motor vehicle and driver license calls annually, the great majority being inquiries pertaining to driver licenses. The DHSMV's website has had 229,000 driver license status checks during a recent one-week period. While this proves the convenience of the Internet, there are many citizens who do not have access to the Internet or prefer using the telephone. While the assumption is that the toll-free number will be strictly an automated call with no human interaction between the caller and a customer service analyst, public perception likely will be the public should have an option to immediately find out why their license is invalid, rather than being referred to a long distance number to obtain that information. It is estimated the Customer Service Center could receive an increased call volume of 300,000-400,000 annually. An additional 26 FTEs, consisting of 19 senior consumer service analysts, 2 senior highway safety specialists, 2 operations analysts, 2 section supervisors and a consumer service analyst will be needed to handle the increased call volume. The fiscal impact of the additional staff and related expenses is estimated at \$1.4 million annually.

This bill also requires DHSMV to provide notification to persons whose licenses are suspended pursuant to provisions of s. 318.15, F.S., they will be subject to impoundment or immobilization.

Section 3 creates s. 318.151, F.S., to authorize counties and municipalities to adopt by ordinance rules and procedures necessary for implementation of the provisions of s. 318.15(2), F.S., relating to impoundment or immobilization of vehicles. The rules and procedures must include the following provisions:

- The amount of the impound fee, which shall not exceed \$100, to cover the cost of implementation.
- Distribution of moneys collected from the impound fee, including distribution to municipalities and law enforcement agencies, which shall be used to pay the costs of implementation.
- Designation of lots to be used for implementation.
- Security of impounded vehicles.
- Release of any property, cargo, or load carried in or towed by an impounded motor vehicle.
- Release of a motor vehicle from impound when all conditions for the release have been met.
- Release of an immobilized motor vehicle not later than 24 hours after all conditions for release have been met.
- Any other matters deemed necessary by the county for implementation.

In addition, counties and municipalities may enter into interlocal agreements pursuant to s. 163.01, F.S., as they deem necessary to carry out the provisions of this section. Also, a county or municipality may contract with any wrecker service or wrecker company for the removal, impoundment, immobilization, and release of motor vehicles under s. 318.15(2), F.S. Lastly, this section provides notwithstanding s. 318.21, F.S., impound fees collected by the clerk of the court under s. 318.15(2), F.S., shall be distributed as provided by the county and used to pay the costs of implementing s. 318.15(2), F.S.

Section 4 creates an undesignated section of law to provide DHSMV shall inform the motoring public of the changes to s. 318.15, F.S., made by this act and shall provide such information in newly printed driver's license educational materials after July 1, 2006, and in public service announcements produced in cooperation with the Florida Highway Patrol.

The DHSMV estimates the cost of developing educational materials and public service announcements will be \$100,000 for the first year and \$20,000 for subsequent years.

Section 5 creates an undesignated section of law to require DHSMV, during the period from July 1, 2006, to July 1, 2007, to notify by mail, drivers whose license and privilege to drive have been suspended under s. 318.15, F.S. This bill further provides failure of a person to receive notification from DHSMV shall not preclude, bar, or otherwise affect the impoundment or immobilization of a motor vehicle under s. 318.15, F.S.

According to DHSMV, there were 2,097,178 open suspensions for the period from January 1, 2000, through November 18, 2005, of drivers suspended for failing to pay the fine imposed for traffic infractions, failing to attend driver improvement school, or failing to appear at a scheduled

hearing. This section requires those drivers to be notified of the provisions of this bill. It is estimated the cost to mail out the notifications will be approximately \$776,000 in postage. Also, program modifications will be required to generate a letter to persons who should receive notification of which the cost will be assumed as a part of the normal workload.

Section 6 specifies the act takes effect July, 1, 2006, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill authorizes counties and municipalities to adopt by ordinance rules and procedures necessary for implementation of the provisions of s. 318.15(2), F.S., relating to impoundment or immobilization of vehicles.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would result in a \$100 impound fee to a person for release of his or her impounded or immobilized vehicle.

C. Government Sector Impact:

The bill would result in a \$100 revenue to the local government prior to the release of any impounded or immobilized motor vehicle of a person whose driving privilege was suspended at the time of the violation for failure to comply with civil penalty, failure to attend driver improvement school or failure to appear at a scheduled hearing as required.

If enacted, DHSMV estimates the first year cost to fund additional positions, to provide a one time suspension notification via mail service, to provide a toll free number and to develop public service announcements and educational materials to be \$2,315,622. The second year cost is estimated at \$1,256,896, which is reduced due to elimination of the suspension notification requirement and nonrecurring personnel costs.

VI. Technical Deficiencies:

There will be an indeterminate cost associated with the creation of the notice described in section 2, paragraph 2(b) of the bill. This section does not identify the agency responsible for creating the notice.

VII. Related Issues:

The DHSMV has provided the following concerns in their analysis of the bill:

- According to DHSMV, section 2, paragraph 2(a) of this bill raises some serious concerns for state law enforcement officers/agencies. The bill only requires a county or municipality to designate procedures (or ordinances) regarding the impoundment or immobilization of vehicles. Further, the bill only requires the county or municipality to identify impound lots to store vehicles. It does not require state law enforcement agencies to establish procedures or identify impound lots for such vehicles. Therefore, the county or municipality will have to implement a protocol/system to share said information (i.e., procedures, ordinances, and impoundment locations) with state law enforcement agencies. There will be an indeterminate cost associated with the creation of the notice described in Section 2, paragraph 2(b). This section does not identify the agency responsible for creating the notice. This could potentially cause some confusion and/or resistance from counties or municipalities. In regard to county or local ordinances, although state law enforcement officers have the authority to enforce a county or local ordinance, they generally do not enforce these ordinances. State law enforcement officers are not trained in the enforcement of county or local ordinances, and they may not be aware of a particular ordinance if they are not assigned to the county in question.
- This bill could potentially overwhelm law enforcement officers and agencies in terms of the amount of vehicles impounded or immobilized. The numbers could potentially be very significant, and ample impoundment locations could be a matter of concern.
- According to DHSMV, in regard to s. 318.15(2)(a), consideration, as provided in s. 322.34(1), should be given to a driver whose driver's license is canceled, suspended, or revoked, except a habitual traffic offender, if he or she did not have "knowledge" of such suspension. Currently, a violation of the aforementioned law is only a moving violation. Therefore, impounding or immobilizing a motor vehicle based on a civil traffic infraction could be perceived as too severe.
- This bill requires DHSMV to make available on its website the means to determine the status of a person's driver's license by entering the name of the holder of the license or the person's driver license number. Currently, the DHSMV makes available on its website the means to determine the status of a person's driver's license by entering the person's driver's license number. Due

to the large number of driver license records on DHSMV's database with the same name, entering only a person's name is not a viable means of data retrieval to determine a driver's license status. The DHSMV would not want to return any other information to the requestor to locate the correct driver license number due to the Driver Privacy Protection Act.

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

VIII. Summary of Amendments:

Barcode 200714 by Transportation. This is a strike-all amendment. The following is a section-by-section analysis of the amendment:

Section 1 renames the act to be cited as the “Michael Haligowski and Deputy Ryan C. Seguin Memorial Traffic Safety Act.”

Section 2 amends s. 318.14, F.S., to provide persons cited for a violation of s. 322.34(2)(b) F.S., may comply by providing proof of a valid or reinstated driver’s license and proof of insurance and adjudication will be withheld by the court, providing this option was not elected by the violator within 3 years prior to the latest date of offense. Dispositions of adjudication withheld by the court for this subsection shall not be considered a conviction.

Section 3 amends s. 322.03, F.S., to require recording of certain information by the courts on judgments for violations involving driving without a valid driver’s license.

Section 4 amends s. 322.16, F.S., to provide, effective October 1, 2006, penalties for a violation of an ignition interlock device restriction.

Section 5 amends s. 322.251, F.S., to require DHSMV to provide notification to persons whose driver’s license or driving privilege is canceled, suspended, revoked or disqualified that any motor vehicle driven by or under the actual physical control of that person while their license or privilege is canceled, suspended, revoked or disqualified is subject to impoundment or immobilization under s. 322.34, F.S. This bill also requires DHSMV to make available on its website the means to determine the status of a person’s driver’s license by entering the person’s driver license number or the name and date of birth of the licensee. The DHSMV is also required to provide a toll-free telephone hotline to provide callers with the status of a person’s driver’s license. Finally, this bill requires DHSMV to provide to any law enforcement agency or officer of the court certification of the date and time the status information was provided to the public.

Section 6 amends s. 322.2615, F.S., to require the placement of a DHSMV-approved ignition interlock device before issuing a permanent or restricted driver’s license to a person suspended for refusal to submit to a blood, breath, or urine test.

Section 7 amends s. 322.271, F.S., to require the placement of a DHSMV-approved ignition interlock device under certain circumstances after upholding an administrative suspension.

Section 8 amends s. 322.2715, F.S., to require the placement of a DHSMV-approved ignition interlock device for specified time periods for refusal to submit to testing under s. 316.1939, F.S.

Section 9 amends s. 322.34(1), F.S., to provide, effective October 1, 2006, violations involving driving with a disqualified license are punishable as a moving violation. In addition, the amendment amends s. 322.34(2), F.S., to provide if a person knowingly drives with a disqualified license, a violation is punishable as a criminal offense. Section 322.34(2)(a), F.S., is further amended to provide enhanced penalties for any person who is convicted for driving with

a canceled, suspended, revoked or disqualified driver's license relating to an alcohol or drug related violation.

This amendment amends s. 322.34(4), F.S., to provide any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that cancels, suspends, revokes or disqualifies a person's driver's license must contain a provision notifying the person his or her driver's license has been canceled, suspended, revoked or disqualified and must inform the person any motor vehicle driven by that person while the license is canceled, suspended, revoked or disqualified shall be impounded or immobilized pursuant to this section.

Section 10 amends s. 322.34(8), F.S., to provide, effective July 1, 2007, any person who permits another person to drive a vehicle knowing the person's license or driving privilege is canceled, suspended, revoked, or disqualified commits a second degree misdemeanor. This amendment provides criteria for satisfying the element of knowledge, which includes a rebuttable presumption that the requirement is satisfied if it is recorded in DHSMV's records and made available via the Internet or a toll-free hotline.

This section amends s. 322.34(9), F.S., to provide for impoundment or immobilization of a vehicle if the law enforcement office determines the vehicle operator's driver's license or driving privilege is canceled, suspended, revoked or disqualified. The DHSMV is authorized to charge the motor vehicle's owner or lessee a reasonable fee, to be deposited in the Highway Safety Operating Trust Fund, for the costs of the program and for the immobilizing or impounding the vehicle. The DHSMV is also required to collect a \$30 processing fee, to be forwarded to the Department of Revenue for deposit into the State Transportation Trust Fund, to carry out the Department of Transportation's public transit responsibilities.

Section 11 amends s. 322.341, F.S., effective October 1, 2006, to mandate the court order imprisonment for not less than 90 days to any person who drives a motor vehicle while his or her driver's license or driving privilege is permanently revoked.

Section 12 creates an undesignated section of law to provide DHSMV shall inform the motoring public of the changes to s. 322.34, F.S., made by this act and shall provide such information in newly printed driver's license educational materials after July 1, 2006, and in public service announcements produced in cooperation with the Florida Highway Patrol.

Section 13 creates an undesignated section of law to provide during the period from July 1, 2006, to July 1, 2007, the DHSMV must notify, by mail, drivers whose license and privilege to drive have been canceled, suspended, revoked or disqualified of the changes relating to impoundment or immobilization of a motor vehicle made to s. 322.34, F.S., by this act. The amendment further provides failure of a person to receive notification from DHSMV shall not preclude, bar, or otherwise affect the impoundment or immobilization of a motor vehicle under s. 322.34, F.S.

Section 14 specifies the act takes effect July, 1, 2006, except as otherwise provided.