

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility- The bill increases personal accountability for unlawful behavior by increasing the sanctions for violations of driving without a valid license and driving with a suspended license.

Provide Limited Government- This bill requires minimum jail terms for certain offenses and for impoundment of vehicles.

B. EFFECT OF PROPOSED CHANGES:

I. Withholds of Adjudication for Non-Criminal Traffic Infractions.

Presently, a withhold of adjudication for a non-criminal traffic infraction¹ is not a “conviction”.² However, a withhold for criminal traffic offenses is considered a “conviction.”³

An infraction is defined as “a non-criminal violation that may require community service hours under §316.027(4), F.S., but is not punishable by incarceration and for which there is not right to a trial by jury or a right to court-appointed counsel.” HB 65 amends §318.14, F.S. The bill provides that non-criminal traffic infractions are “convictions” except for those provided in Fla. Stat. §§318.14(9) and (10).⁴ Effectively, all infractions will be subject to withholding of adjudication and not being deemed a “conviction” as long as the offender has not received a withhold of adjudication under §318.14 for three years.⁵

The bill also provides that violators of §322.34(a) or (b), (Driving with a canceled, suspended, revoked, or disqualified license first or second offense) are eligible for a withhold of adjudication which will not count as a conviction if the suspension was solely for failure to appear, pay a civil penalty, or attend a driver improvement course, and the violator obtained a reinstated license and insurance. The violator’s withhold of adjudication will not count as a conviction if adjudication has not been withheld for a prior offense during the prior three years.

The significance of not classifying withholds on infractions as convictions means that the offender will not accumulate the predicate convictions to qualify under the habitual traffic offender statute, §322.264(2).⁶

II. Requiring Written Judgment and Fingerprints

Section 322.03, F.S., prohibits a person from driving without a valid driver’s license. The bill adds the requirement that every judgment for this offense (including when adjudication is withheld) must be in writing, signed by the judge, and recorded by the clerk. The same provision requires the offender to affix his fingerprint below the judge’s signature. The judge is to certify that the fingerprint was affixed in his presence.

¹ Fla. Stat. 318.14(1)

² Fla. Stat. 318.14(11).

³ Raulerson v. State, 763 So.2d 285, 290-291 (Fla. 2000).

⁴ 318.14(9), F.S: violation

⁵ Fla. Stat. §318.14(3) provides that refusal to accept and sign a summons is guilty of a second degree misdemeanor. This statute is not an infraction but nevertheless currently encompassed by §318.14(11). The bill makes a withhold for refusal to sign a conviction.

⁶ Requires fifteen “convictions” for moving traffic offenses to qualify as a habitual traffic offender.

The bill also requires the defendant's social security number attached to the judgment or, if the offender refuses or cannot provide the social security number, then the reason must be recorded. The judgment or certified copy and fingerprints may be admissible against the defendant as prima facie evidence⁷ in subsequent proceedings.

The bill amends §322.34, F.S. relating to driving while license suspended, canceled, revoked, or disqualified to be handled in an identical manner as the provisions set forth for violations of driving without a valid license.

III. Duplicate Licenses

The bill changes current law by requiring a new license to be issued upon an address change rather than allowing an address sticker affixed to the back of the license. The bill eliminates the \$10 fee for a replacement license for address changes.

IV. Notification of Impoundment or Immobilization of Automobile if Driving with a Canceled, Suspended, Revoked or Disqualified License

Sections 322.251 at §322.34, F.S. are amended to provide that when notification of cancellation, suspension, revocation, or disqualification of a license is sent, the department is also to inform the person that any motor vehicle driven by or under the actual physical control of that person while the license or driving privilege is canceled, suspended, revoked, or disqualified is subject to impoundment and immobilization under §322.34 and that lack of notification will not affect or stay the effective date or term of the cancellation, suspension, revocation, or disqualification or the impoundment or immobilization.

V. Internet and Hotline to Check License Status

HB 65 requires DHSMV to create an internet website and hotline for the public to check the status of driver's licenses by entering the person's name, date of birth, and last four digits of the person's social security number. Currently, the department provides a website and hotline to determine the status of a person's driving status by license number only.

VI. Mandatory Incarceration for Driving on Suspension for DUI and Refusal To Submit to Alcohol Tests

HB 65 provides amends §§322.34(1) and (2), F.S. (Driving while license suspended, revoked, canceled, or disqualified) to include the term "disqualified" to list with "canceled, suspended, and revoked" in the body of the statute. The bill amends §322.34(2), F.S. to include the offense of driving without a valid driver's license as a first degree misdemeanor. However, if the cancellation, suspension, revocation, or disqualification was due to a refusal to submit to a blood, breath, or urine test, sobriety test, or for DUI or other drug related offense, then the violation of §322.34(2) is a first degree misdemeanor and requires a minimum of 30 days incarceration. A second conviction is a first degree misdemeanor with no minimum sentence specified and a third conviction is a third degree felony without a minimum sentence specified.

VII. Notice of Suspension and Possible Impoundment and Immobilization

Section 322.34(2), F.S. is further amended to provide for a rebuttable presumption⁸ that the offender had knowledge of the suspension, revocation, cancellation, or disqualification by the department once

⁷ Prima Facie evidence means sufficient evidence or the requisite minimum. See Steven H. Gifis, Black's Law Dictionary, Barron's (1996)

⁸ A rebuttable presumption is a rule of law that shifts [in this case] the burden of proof from the state to the defense; requiring the defense to present evidence that the defendant was unaware of the suspension, revocation, cancellation, or disqualification. See Steven H. Gifis, Black's Law Dictionary, Barron's (1996)

notice has been sent pursuant to §322.34(4). The provision also eliminates the exception for the applicability of the presumption for cases involving failure to pay a traffic fine and violations of financial responsibility. Notice of the suspension, revocation, cancellation, or disqualification is to be accompanied by notice that a vehicle driven by a person with a suspended license will be impounded or immobilized.

VIII. Mandatory Incarceration for DWLS- Habitual Traffic Offenders

Section 322.34(5) is amended to provide that anyone who drives while their license is suspended, cancelled, revoked, or disqualified because they are a habitual traffic offender (§322.264, F.S.), must be incarcerated for not less than 60 days.

IIII. Provides for the Impoundment of Motor Vehicle Driven in Violation of §322.34

Section 322.34(8)(a) provides for the immediate impoundment or immobilization of a motor vehicle driven or in actual physical control by a person whose license is canceled, suspended, revoked, or disqualified. The bill sets forth the procedure for officers to impound or immobilize the vehicle, give notice of the impoundment, and the process for owners to retrieve the vehicle. The vehicle is to remain impounded until the license is reinstated and the fees paid. If the vehicle belongs to someone else, the vehicle may be released to the owner after the fees, costs of towing, impoundment, and storage are to be paid.

A \$30 processing fee is collected by the department of transportation for deposit into the State Transportation Trust Fund. The department is to also charge up to \$6 to the owner or lessee of the vehicle for operation costs of the program for deposit in the Department of Highway Safety and Motor Vehicle Trust Fund.

Current law permits impoundment or immobilization only when the drivers license is suspended or revoked; and if the license has remained suspended or revoked since a conviction for driving on a suspended or revoked license; and if the suspension or revocation is for DUI, or no insurance, or the driver is a habitual traffic offender. Identical to current law, the bill provides for the police officer to make the determination if the automobile is to be impounded or immobilized.

Current law (§322.34(8)(e)2, F.S.) also provides for a procedure to obtain a wrongfully impounded vehicle. Section 322.34(9), F.S. relates to forfeiture proceedings and distribution of the proceeds from seized vehicles. These current provisions are eliminated by HB 65.

The provisions of this section become effective July 1, 2008.

IX. Knowingly Permitting Someone with a Suspended License to Drive is a Misdemeanor

HB 65 creates the offense of knowingly allowing, permitting, or authorizing a person whose license is suspended, revoked, cancelled, or disqualified to drive their motor vehicle. The offense will be a second degree misdemeanor. It is also provided that knowledge is presumed if the cancellation, suspension, disqualification, or revocation is in the department's records and available though the website or telephone hotline.

X. Minimum Incarceration of 90 Days for Driving on a Permanent Revocation

The bill provides for a minimum of 90 days incarceration for those who drive after their driving privileges have been permanently revoked pursuant to §322.26, F.S. or §322.28, F.S.

The bill also amends the definition of "contraband" to include impounded or immobilized vehicles pursuant to 322.34(8)(e) or (9)(a) and requires the Department of Highway Safety and Motor Vehicles

to inform the motoring public the changes proposed by HB 65. The bill also provides that evidence of knowledge may be used in addition to the evidence provided by §322.23(2) and (11), F.S.

C. SECTION DIRECTORY:

Section 1: Provides for a title.

Section 2: Amends §318.14(11), F.S., relating to withholding adjudication on infractions

Section 3: Adds §322.03(7), F.S., relating driving without a valid license and written judgments and fingerprints

Section 4: Amends §322.17(2), F.S., relating to duplicate licenses.

Section 5: Amends §322.251(1) and (6), F.S., relating to notice of cancellation, suspension, revocation, or disqualification.

Section 6: Amends §§322.34(1),(2),(4),(5), and (6), F.S. relating to enhanced sentences for driving with a suspended license.

Section 7: Amends §322.34(3) and (8), F.S., relating to impoundment and immobilization of motor vehicles.

Section 8: Amends §322.341, F.S., relating to mandatory incarceration for driving while license permanently revoked.

Section 9: Amends §932.701(a)(2), F.S., relating to contraband forfeiture of impounded vehicles.

Section 10: Provides for notification of immobilization and impoundment of vehicles.

Section 11: Provides for notification by mail of immobilization and impoundment of vehicles.

Section 12: Provides for an effective date July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: According to DHSMV, the provision of the bill which eliminates the \$10 fee for changing an address on a driver's license will result in a recurring revenue loss of \$8,414,230 . Of this amount, \$961,551 would come from the General Revenue fund and \$7,452,680 would come from the Highway Safety Operating Trust Fund.

2. Expenditures: This bill will require DHSMV, between July 1, 2007 and July 1, 2008, to 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 by this act. According to DSHMV, "as of February 20, 2006, there were 1,788,231 outstanding cancellations, suspensions, revocations or disqualifications for which drivers must be notified of the provisions of this bill. It is estimated that the cost to the Department to mail out the notifications will be approximately \$697,410 in postage (1,788,231 x 0.39 postage = \$697,410)."

The department also anticipates that it will need one senior highway safety specialist to complete audits and field visits relating to the provision of the bill which authorizes the Department to contract with vendors who will impound or immobilize vehicles as required by the bill. The recurring cost to run this program is estimated at \$149,902.

The department estimates the bill will require programming modifications to the driver license software systems at a cost of \$90,000 to eliminate the address fee and develop the immobilization program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: This bill may have a local jail bed impact. The bill will require a judge to impose a 90 day minimum jail term for any person who drives a motor vehicle while their driver's license is permanently revoked. The bill also requires the imposition of a 60 day mandatory jail term for a

person who drives with a driver's license that has been revoked if the person is a habitual traffic offender.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The bill will authorize the impoundment or immobilization of a vehicle if a law enforcement officer determines that the vehicle operator's driver's license is suspended or revoked. If the vehicle is owned by the driver, the vehicle must remain immobilized until the person's driving privilege is reinstated and the person has paid costs of towing, impoundment, immobilization and storage. The owner of the vehicle would be responsible for paying a \$30 processing fee as well as a \$6 fee to cover the operational costs of immobilizing or impounding the vehicle. If the vehicle is owned by someone other than the driver, the vehicle will be released to the owner upon payment of these fees as well as the costs of towing, impoundment, immobilization and storage.

D. **FISCAL COMMENTS:**

The overall fiscal impact to the bill will have a significant negative impact on the Highway Safety Operating Trust Fund. The revenue source for this trust fund is from fees paid from vehicle registration and driver license. However, this trust fund is used pay the operational cost of the department.

Expenditures	Fiscal Year			
	2007-2008	2008-2009	2009-2010	Total
Highway Safety Operating TF Programming Cost, Immobilization and Impoundment Program cost, mailing cost.	941,545	149,902	149,902	1,241,349

Revenue	Fiscal Year			
	2007-2008	2008-2009	2009-2010	Total
General Revenue	(961,551)	(961,551)	(961,551)	(2,884,653)
State Transportation Trust Fund	6,000,000	6,000,000	6,000,000	18,000,000
Highway Safety Operating TF	(7,302,778)	(7,302,778)	(7,302,778)	(21,908,334)
Total	(1,322,784)	(2,114,427)	(2,114,427)	(5,551,638)

III. COMMENTS

A. **CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirement of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other: None

B. **RULE-MAKING AUTHORITY:**

The bill provides for the DHSMV to adopt rules pursuant to §120.536(1) and §120.54 to implement the provisions of §322.34(8)(a), F.S. relating to immobilization and impoundment.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The department stated the \$30 fee collected could be deposited directly to the State Transportation Trust Fund rather than deposited through the Department of Revenue.

D. STATEMENT OF THE SPONSOR

The sponsor submitted the following statement:

All fiscal concerns addressed in the bill will be eliminated in the strike all.

This bill will generate significant revenue for the state, and make the roads safer for lawful drivers.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES