

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 308

INTRODUCER: Senator Wise

SUBJECT: Disorders Affecting a Person's Ability to Operate a Motor Vehicle

DATE: January 20, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Fav/CS
2.			TR	
3.			GO	
4.			WPSC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill requires a physician or other person having knowledge of a licensed driver's or applicant's mental or physical disability to drive or need to wear a medical identification bracelet to report such knowledge to the Department of Highway Safety and Motor Vehicles (DHSMV). The bill expands the immunity given to persons for making such reports to include immunity from administrative liability.

This bill amends section 322.126, Florida Statutes.

**II. Present Situation:**

**Motor Vehicle Injury Due to Aging or Impairment**

Motor vehicle injuries are a leading cause of injury-related deaths in persons aged 65 years and older. Older drivers have a higher fatality rate. Physical and mental impairment may affect driving ability.<sup>1</sup> According to the American Medical Association, a physician or caregiver should

<sup>1</sup> Physician's Guide to Assessing and Counseling Older Drivers, American Medical Association with support from the National Highway Traffic Safety Administration (2003) at the NHTSA's website:  
<http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.31176b9b03647a189ca8e410dba046a0/>

look for physical or mental impairments that may affect driving ability.<sup>2</sup> Physical or mental impairment may be caused by acute events which include: acute myocardial infarction, acute stroke and other traumatic brain injury, syncope and vertigo, seizure, surgery, and delirium. Before hospital or emergency room discharge, patients and caregivers should be counseled regarding driving restrictions and future assessment and rehabilitation.<sup>3</sup>

Certain chronic medical conditions put persons at risk for impaired driving and level of functioning which include: diseases affecting vision, cardiovascular disease, neurologic disease, psychiatric disease, diabetes and metabolic disease, chronic renal failure, and respiratory disease. Additionally, medical conditions with unpredictable or episodic events may put persons at risk for impaired driving ability: epilepsy (disorder affecting how the brain works), narcolepsy (disorder affecting sleep cycles), or catalepsy (sudden loss of consciousness).

Medication has the potential to impair driving ability. Medications with a strong potential to affect a person's driving performance include: anticholinergics; anticonvulsants; antidepressants; antiemetics; antihistamines; antihypertensives; antiparkinsonians; antipsychotics; benzodiazepenes and other sedatives/anxiolytics; muscle relaxants; narcotic analgesics; and stimulants.<sup>4</sup>

### **Florida Driver Examination Requirements**

The DHSMV must examine every first-time applicant, regardless of age, before the issuance of an original Florida driver's license. The examination includes eyesight and hearing tests, the ability to read and understand highway signs, knowledge of traffic laws, and demonstration of motor vehicle operation skills. A new Florida resident with a valid out-of-state license may obtain a Florida license after passing the required eyesight examination.

Once a license is issued, the DHSMV continuously monitors driver performance to ensure Florida's roads are safe. One way the DHSMV monitors driver performance is through reexaminations of drivers it believes are incompetent or otherwise not qualified to drive. On written notice of at least 5 days and having good cause, the DHSMV may require a licensed driver to submit to an examination or reexamination. "Good cause" includes, but is not limited to, the recommendation from a court, a law enforcement agency, or a physician.

At the time of renewal, a licensee may be subject to reexamination by the DHSMV. The reexamination consists of tests of the licensee's eyesight and hearing and her/his ability to read and understand highway signs and pavement markings.

### **Reporting of Driver Disabilities**

Florida law is permissive on whether a physician or any other health care provider has to report information regarding the physical or mental impairment of a person to the DHSMV. Section 322.126, Florida Statutes, authorizes a physician, person, or agency having knowledge of any Florida-licensed driver's or applicant's mental or physical disability to drive or need to obtain or to wear a medical identification bracelet to the DHSMV. The report should be in

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(Last visited on January 14, 2010).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

writing giving the full name, date of birth, address, and a description of the alleged disability of any person over the age of 15 who has mental or physical disorders that could affect his or her driving ability. No civil or criminal action may be brought against a physician who provides the information. The reports may not be used as evidence in any civil or criminal proceeding.

All complaints are evaluated, and if validated, the driver must submit to re-examination or file a medical report. Drivers are given 30 days to submit a required report or their driving privilege is revoked until they do so. If the evaluator does not find any substance or validity to the complaint, no further action is taken.<sup>5</sup>

If the report indicates that further review is needed, the case is referred to the Medical Advisory Board. The Medical Advisory Board receives reports for the purpose of assisting the DHSMV in determining whether a person is qualified to be licensed.<sup>6</sup> Upon request of the DHSMV, the Medical Advisory Board must report to the DHSMV on the individual physical and mental qualifications of a licensed driver or applicant. The Medical Advisory Board may request additional testing, recommend restrictions, or recommend revocation of the driver's license. Drivers may be required to complete an on-road test as a condition of licensure or reinstatement.

The Medical Advisory Board advises the DHSMV on medical criteria and vision standards relating to the licensing of drivers. The board must assist the DHSMV in developing, and keeping current with medical and scientific advancements, coded restrictions to be placed upon drivers' licenses of persons whose medical condition warrants a requirement that they wear medical identification bracelets when operating a motor vehicle.

### **III. Effect of Proposed Changes:**

Section 322.126, F.S., currently is permissive regarding the reporting of at-risk drivers to the DHSMV. The bill requires a physician or other person having knowledge of a licensed driver's or applicant's mental or physical disability to drive or need to wear a medical identification bracelet to report such knowledge to the DHSMV.

The bill expands the immunity given to persons for making reports under s. 322.126, F.S., to include immunity from administrative liability.

The effective date of the bill is July 1, 2010.

### **IV. Constitutional Issues:**

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

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

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<sup>5</sup>“The Effects of Aging On Driving Ability,” by the Florida At-Risk Driver Council, Florida DHSMV, February 2004 at: <[www.flhsmv.gov/ddl/atriskdriver.pdf](http://www.flhsmv.gov/ddl/atriskdriver.pdf)>(Last visited on January 15, 2010).

<sup>6</sup> See s. 322.125, F.S.

B. Public Records/Open Meetings Issues:

Section 119.0712, F.S., also requires the DHSMV to keep personal information as defined in the federal Driver's Privacy Protection Act of 1994, including highly restricted personal information, confidential pursuant to the federal Driver's Privacy Protection Act of 1994. The federal Driver's Privacy Protection Act of 1994 defines "personal information" to mean information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and *medical or disability information*, but does not include information on vehicular accidents, driving violations, and driver's status.

Section 322.126(3), F.S., makes reports by a physician, person, or agency having knowledge of any Florida-licensed driver's or applicant's mental or physical disability to drive or need to obtain or to wear a medical identification bracelet to the DHSMV confidential and exempt from disclosure under the Public Records Law.

Section 322.125(3) and (4), F.S., make reports received by the Medical Advisory Board within the DHSMV and discussed by the board for the purpose of assisting the DHSMV in determining whether a person is qualified to be licensed confidential from disclosure under the Public Records and Meetings Laws, with specified exceptions.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill provides that a physician or a person who makes a report under s. 322.126, F.S., of knowledge of a licensed driver's or applicant's mental or physical disability to drive or need to wear a medical identification bracelet, is not subject to an administrative act for doing so. The bill's revision to a person's ability to bring a cause of action for reports authorized under the bill raises questions about possible infringements on the right of access to the courts. Section 21, Article I of the State Constitution provides that the courts shall be open to all for redress for an injury. To impose a barrier or limitation on litigants right to file certain actions it would have to meet the test announced by the Florida Supreme Court in *Kluger v. White*.<sup>7</sup> Under the constitutional test established by the Florida Supreme Court in *Kluger v. White*, the Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

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<sup>7</sup> See *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Some individuals who are reported by their physician or other person to the DHSMV as having a mental or physical disability or need to wear a medical identification bracelet may incur additional costs associated with examination or re-examination to obtain a driver's license.

**C. Government Sector Impact:**

The DHSMV estimates that it will incur costs to handle the additional reports of alleged at risk drivers if the bill is enacted.

The DHSMV reports that the bill will increase the number of drivers who will need to submit for re-examination which will directly impact Tax Collector's offices in local governments that handle driver license re-examinations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires physicians or other persons having knowledge of a licensed driver's or applicant's mental or physical disability to drive or need to wear a medical identification bracelet to report such knowledge to the DHSMV. If physicians or other persons with such knowledge fail to do so, an administrative proceeding is unavailable to require their compliance with the reporting under s. 322.126, F.S., to identify at-risk drivers.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The bill no longer requires local health departments or the Department of Health to assist the DHSMV in identifying at-risk drivers in Florida. The conditions required to be reported are no longer limited to disorders characterized by lapses of consciousness.

**B. Amendments:**

None.