

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 Transportation Committee

BILL: CS/SB 792

INTRODUCER: Transportation Committee and Senator Diaz de la Portilla

SUBJECT: Driving Without a Valid Driver's License

DATE: March 22, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| 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 removes criminal penalties for knowingly driving without a valid driver's license. In addition, the bill deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended or revoked. Specifically, the bill provides any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except a habitual traffic offender, who, drives any motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked commits a moving violation, punishable as provided in ch. 318, F.S., and the motor vehicle being driven at the time of the offense must be immediately impounded.

The bill provides a person who drives any motor vehicle upon the highways while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s. 322.34(2), F.S., in addition to the fine under s. 318.18(3)(a), F.S., must pay:

- For a first offense, \$250 before release of the vehicle from impoundment;
- For a second offense, \$500 before release of the vehicle from impoundment; or

- For a third or subsequent offense, \$1,000 before release of the vehicle from impoundment.

In addition, the bill provides for the distribution of fines collected and the apportionment between the municipality, the county, and the agency or entity towing and storing the vehicle.

This bill amends ss. 318.18, 318.21, and 322.34 of the Florida Statutes.

II. Present Situation:

Section 318.18, F.S., specifies civil penalties for various violations.

Section 318.21, F.S., provides for the disposition of civil penalties by county courts.

Section 322.34(2), F.S., provides criminal penalties for knowingly driving with a suspended, revoked, or canceled license. Any person whose driver's license or driving privilege has been suspended, revoked, or canceled (except a habitual traffic offender) who drives with knowledge of such suspension, revocation, or cancellation, commits a second degree misdemeanor on the first conviction (up to 30 days in jail and a \$500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a \$1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a \$5,000 fine). (Subsection (1) of this section provides it is a moving violation if a person does not have knowledge of the suspension and drives with a suspended, revoked, or canceled license.)

The element of knowledge is satisfied if the person has been previously cited for driving with a suspended, revoked, or canceled license; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in s. 322.34(4), F.S. There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in s. 322.34(4), F.S., appears in the Department of Highway Safety and Motor Vehicles' (DHSMV or department) records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

A habitual traffic offender who drives with a suspended, revoked, or canceled license commits a third degree felony under s. 322.34(5), F.S. One way to become a habitual traffic offender is to drive with a suspended or revoked license three times within five years under s. 322.264(1)(d), F.S. Prior to 2008, there was no distinction under either of these statutes regarding what underlying violation was committed to qualify a person for a driving with a suspended license conviction. For instance, underlying violations can be for failing to pay child support, failing to pay court fines or fees, or failing to comply with a court order. However, during the 2008 Session, the Legislature passed CS/SB 1988 which subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or cancelled for underlying violations as enumerated below, to a second degree misdemeanor penalty for the first conviction and a first degree misdemeanor penalty for the second or subsequent conviction.

Specifically, s. 322.34(10), F.S., provides the underlying enumerated violations (allowing a driver to be subject to a first degree misdemeanor penalty rather than the third degree felony penalty for a third or subsequent conviction) are as follows:

- Failing to pay child support under s. 322.245 or s. 61.13016, F.S.;
- Failing to pay any other financial obligation under s. 322.245, F.S., (other than those specified criminal offenses in s. 322.245(1), F.S.);
- Failing to comply with a required civil penalty (paying traffic tickets and fees) under s. 318.15, F.S.;
- Failing to maintain required vehicular financial responsibility under ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors under s. 322.091, F.S.; or
- Having been designated a habitual traffic offender under s. 322.264(1)(d), F.S., (driving with a suspended license three times in five years) as a result of license suspensions for any of the underlying violations listed above.

The first degree misdemeanor penalty is only available to drivers who do not have a prior forcible felony conviction.

Section 322.34(11), F.S., provides a person who does not hold a commercial driver license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled and the underlying suspension, revocation, or cancellation is non-driving related may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In addition, this section allows adjudication to be withheld; however, a person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections. If adjudication is withheld, such action is not considered a conviction.

Section 322.34(8), F.S., requires law enforcement, upon the arrest of a person for the offense of driving while the person's driver's license or driving privilege is suspended or revoked, to impound or immobilize the vehicle of violators when the arresting officer determines the affirmative of all of the following criteria:

- Whether the person's driver's license is suspended or revoked;
- Whether the person's driver's license has remained suspended or revoked since a conviction for the offense of driving with a suspended or revoked license;
- Whether the suspension or revocation was made because of failure to maintain required security, or because the person is a habitual traffic offender; and
- Whether the driver is the registered owner or co-owner of the vehicle.

III. Effect of Proposed Changes:

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

Section 1 creates s. 318.18(22), F.S., to provide a person who drives any motor vehicle upon the highways while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s. 322.34(2), F.S., in addition to the fine under s. 318.18(3)(a), F.S., must pay:

- For a first offense, \$250 before release of the vehicle from impoundment;
- For a second offense, \$500 before release of the vehicle from impoundment; or
- For a third or subsequent offense, \$1,000 before release of the vehicle from impoundment.

Section 2 creates s. 318.21(22), F.S., to provide for the distribution of fines collected pursuant to s. 318.18(22), F.S., and the apportionment between the municipality, the county, and enforcement agency impounding the vehicle or the agency or entity that towed and stored the vehicle. Specifically for violations committed within a municipality, 40 percent of the moneys collected would go to the municipality, 40 percent to the county and 20 percent to the agency or company that stored the vehicle. For violations committed outside a municipality, 80 percent would be distributed to the county and 20 percent to the enforcement agency impounding the vehicle.

Section 3 amends s. 322.34(2), F.S., to remove criminal penalties for knowingly driving with an invalid driver's license. In addition, the bill deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended or revoked. Specifically, the bill provides any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except a habitual traffic offender, who drives any motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked commits a moving violation, punishable as provided in ch. 318, F.S., and the motor vehicle being driven at the time of the offense must be immediately impounded.

The bill amends s. 322.34(6), F.S., to delete criteria that an arresting officer must determine prior to immediately impounding or immobilizing a vehicle of person arrested for the violation of driving while the person's driver's license or driving privilege is suspended or revoked. The bill also eliminates the option to immobilize, and thereby requiring impoundment of, the vehicle. This section is amended to require a law enforcement officer to immediately impound the vehicle, upon issuing a citation to a person for a violation of s. 322.34(2), F.S., (driving while the person's driver's license or driving privilege is suspended or revoked). The vehicle must remain impounded until payment of the applicable amount required under s. 318.18, F.S., and:

- the person retrieving the vehicle presents to the law enforcement agency proof of a valid driver's license, proof of ownership of the vehicle or written consent by the owner authorizing release to the person, and proof of insurance; or
- the owner presents to the law enforcement agency proof of sale of the vehicle and the buyer presents proof of insurance to the agency.

The bill also amends s. 322.34(8), F.S., relating to financially based driver license suspensions, by providing that a person who does not hold a commercial driver's license and is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in s. 322.34(8)(a), F.S., may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In this case, adjudication shall be withheld and the clerk of the court, designated official or authorized operator of a traffic violations bureau shall issue a certificate releasing the vehicle upon payment

of the cost of towing and storing the vehicle. A person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections in a lifetime. If the court withholds adjudication, this will not go on the driving record, and therefore will not count towards the habitual traffic offender status. The criminal violations previously associated with those offenses that generally relate to financial concerns, not the driver's actual ability to operate a motor vehicle, are deleted.

Section 4 provides an effective date of July 1, 2011.

Other Potential Implications:

According to DHSMV, the effect of this bill would be primarily on law enforcement agencies that will now be mandated to impound a vehicle in all cases of driving while license canceled, suspended or revoked, whereas currently that mandate only applies in very limited situations. This will result in a dramatic increase in the number of vehicles impounded. In 2009, there were 214,078 persons charged with knowingly driving while license canceled, suspended or revoked. This bill would require each of the vehicles being driven to be impounded, regardless of whether the operator is an owner of the vehicle or whether a properly licensed driver can be located to take control of the vehicle.¹

As currently drafted in the bill, s. 322.34(5), F.S., provides criminal penalties for a violation of the offense involving a person whose driver's license or driving privilege has been canceled, suspended, revoked, or disqualified and who drives a commercial motor vehicle while such license or privilege is canceled, suspended revoked, or disqualified, which was not affected by the bill. However, according to FDOT and DHSMV, the potential remains for the bill to apply to commercial motor vehicles. A law enforcement officer could issue a citation for a violation of s. 322.34(2), F.S., to a person operating a commercial motor vehicle with a canceled, suspended, or revoked driver's license, which would also require the impoundment of the commercial motor vehicle and its cargo.

According to FDOT and DHSMV, further clarification may be needed to ensure commercial motor vehicles are not unintentionally impacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹ Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 792* (on file with the Senate Transportation Committee).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons cited for driving while the person's license or driving privilege is canceled, suspended, or revoked commits a moving violation and the bill requires the immediate impoundment of the motor vehicle being driven at the time of the offense. Violators will have to pay, in addition to the \$60 fine and court costs associated with the moving violation, the costs of towing and storage of the impounded vehicle, a fine of \$250 for a first offense, a fine of \$500 for a second offense, and a fine of \$1,000 for a third or subsequent offense, before the release of the vehicle from impoundment.

C. Government Sector Impact:

This bill may generate civil fine revenue for the state, county and local government, and law enforcement agencies, but the potential revenue is indeterminate.

According to DHSMV, the bill will have an indeterminate fiscal impact to the department. The mandatory impoundment of the vehicle, as regarded by this bill, will result in an officer waiting for a wrecker instead of resuming normal duties. As stated in the department's bill analysis, the requirement will decrease officer availability for other duties and potentially impact law enforcement statewide. There will also be minimal fiscal impact resulting from programming requirements, but, the cost would be absorbed within existing resources.²

VI. Technical Deficiencies:

The bill amends s. 322.34(2), F.S., to eliminate the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended or revoked. The element of knowledge was a distinguishing factor between ss. 322.34(1) and (2), F.S.

Currently in the bill as drafted, ss. 322.34(1) and (2), F.S., both provide any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except a habitual traffic offender, who drives any motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked commits a moving violation, punishable as provided in ch. 318, F.S.; however, a violation of s. 322.34(2), F.S., requires additional penalties as established in s. 318.18(22), F.S., and the motor vehicle being

² *Id.*

driven at the time of the offense must be immediately impounded. Therefore, a violation of the same offense results in differing penalties depending on which section the law enforcement officer lists on the citation.

In addition, s. 322.34(8)(b), F.S., relating to financially based driver license suspensions, still refers to an offense of knowingly driving while his or her license is suspended, revoked, or canceled; however, the bill eliminates the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended or revoked.

VII. Related Issues:

The department estimates impounding a vehicle will add 30 minutes to each traffic stop due to waiting for a wrecker to arrive. Therefore, based on 2009 citations (214,078) law enforcement statewide would spend over 100,000 hours of duty time implementing this aspect of the bill resulting in a comparable decrease in officer availability for other types of calls.³

Law enforcement agencies will also be required to have a person available to review the documents required to be presented to have the vehicle released. In the case of the Florida Highway Patrol (FHP), persons presenting such documents would be required in some cases to travel to the nearest FHP facilities, which could be several counties away or the FHP would have to make available a trooper to meet the vehicle owners.⁴

The department recommends allowing the towing service to verify the documents necessary to have a vehicle released.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 22, 2011:

- Reduces additional penalties imposed by the bill for violations of s. 322.34(2), F.S. The penalty for:
 - a first offense is reduced from \$500 to \$250,
 - a second offense is reduced from \$1,000 to \$500, and
 - a third or subsequent offense is reduced from \$1,500 to \$1,000.
- Changes the distribution of fines collected pursuant to s. 318.18(22), F.S., for violations committed outside a municipality to the following: 80 percent would be distributed to the county and 20 percent to the enforcement agency impounding the vehicle.
- Deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended or revoked.
- Eliminates the option to immobilize, and thereby requiring impoundment of, the vehicle of a person whose driver's license or driving privilege has been canceled, suspended, or

³ *Id.*

⁴ *Id.*

revoked as provided by law, who drives a motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked.

B. Amendments:

None.

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