

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 Committee on Transportation

BILL: SB 302

INTRODUCER: Senator Braynon

SUBJECT: Driver Licenses and Driving Privileges

DATE: February 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Pre-meeting
2.			JU	
3.			ACJ	
4.			AP	

I. Summary:

SB 302 makes numerous changes to offenses related to operating a motor vehicle with a driver license that is suspended, revoked, canceled, or disqualified. Penalties related to these offenses are revised, reduced, or eliminated, particularly as they pertain to the driver's knowledge that his or her license had been suspended, revoked, canceled, or disqualified. Also, the performance of community service is authorized to satisfy monetary penalties associated with criminal offenses listed in s. 318.17, F.S.

II. Present Situation:

Driving while License Suspended, Revoked, Canceled, or Disqualified

Under current law, any person, except a "habitual traffic offender," who drives a motor vehicle on the highways of this state while their license is canceled, suspended, or revoked is guilty of a moving violation,¹ punishable by imposition of a \$60 penalty.² If the arresting officer determines that a person, except a habitual traffic offender, is operating a motor vehicle *with the knowledge* that their driver license has been canceled, suspended, or revoked,³ that person is guilty of:

- a second degree misdemeanor upon a first conviction, punishable by a term of imprisonment not exceeding 60 days,⁴ plus a possible additional \$500 fine.⁵

¹ Section 322.34(1), F.S.

² Section 318.18(3)(a), F.S.

³ Section 322.34(2), F.S.

⁴ Section 775.082(4)(b), F.S.

⁵ Section 775.083(1)(e), F.S.

- a first degree misdemeanor upon a second conviction, punishable by a term of imprisonment not exceeding one year;⁶ plus a possible additional \$1,000 fine;⁷ and
- a third degree felony upon a third or subsequent conviction, punishable by a term of imprisonment not exceeding five years,⁸ plus a possible additional \$5,000 fine,⁹ as well as possible imposition of an extended term of imprisonment under certain circumstances for certain offenders.¹⁰

The element or proof of knowledge is satisfied if the person has been previously cited for driving a motor vehicle while the license is canceled, suspended, or revoked; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received the notice required in any judgment or order by a court or adjudicatory body or any uniform traffic citation that the license has been canceled, suspended, or revoked.¹¹

In *any* proceeding for a violation of s. 322.34, F.S., a court is authorized to consider evidence, other than that specified above, that the person knowingly violated that section.¹²

Habitual Traffic Offenders

A “habitual traffic offender” is defined in s. 322.264, F.S., to mean any person whose driving record shows that such person has accumulated the specified number of convictions for the following offenses within a five-year period:

- Three or more convictions of any one or more of the following arising out of separate acts:
 - ✓ voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;
 - ✓ any violation of s. 316.193, F.S. [driving under the influence (DUI)];
 - ✓ any felony in the commission of which a motor vehicle is used; driving a motor vehicle while his or her license is suspended or revoked;
 - ✓ failing to stop and render aide as required by law in the event of a motor vehicle crash resulting in the death or personal injury of another; or
 - ✓ driving a commercial motor vehicle while the driver’s driving privilege is disqualified.

A person whose driver license has been revoked as a habitual offender and who drives a motor vehicle while the license is revoked, and who by careless or negligent operation of the vehicle causes the death of or serious bodily injury to another human being is guilty of a third degree felony,¹³ punishable by a term of imprisonment not exceeding five years,¹⁴ plus a possible

⁶ Section 775.082(4)(a), F.S.

⁷ Section 775.083(1)(d), F.S.

⁸ Section 775.082(3)(d), F.S.

⁹ Section 775.083(1)(c), F.S.

¹⁰ Section 775.084, F.S.

¹¹ Sections 322.34(2) and s. 322.34(4), F.S.

¹² Section 322.34(3), F.S.

¹³ Section 322.34(5), F.S.

¹⁴ Section 775.082(3)(d), F.S.

additional \$5,000 fine,¹⁵ as well as possible imposition of an extended term of imprisonment under certain circumstances for certain offenders.¹⁶

Death or Serious Injury/ Driving while License Suspended, Revoked, Canceled, or Disqualified

Any person who operates a motor vehicle without having a driver license, or while the person's driver license is canceled, suspended, or revoked pursuant to s. 316.655,¹⁷ s. 322.26(8)¹⁸, s. 322.27(2),¹⁹ or s. 322.28(2) or (4),²⁰ and who by careless or negligent operation of the vehicle causes the death of or serious bodily injury to another human being commits a third degree felony,²¹ punishable by a term of imprisonment not exceeding five years,²² plus a possible additional \$5,000 fine.²³

Notwithstanding any other law, if a person does not have a prior forcible felony conviction²⁴ and the person's driver license is canceled, suspended, or revoked for:

- failing to pay child support as provided in s. 322.245 or s. 61.13016;
- failing to pay any other financial obligation as provided in s. 322.245 other than those specified in s. 322.245(1);
- failing to comply with a civil penalty required in s. 318.15;
- failing to maintain vehicular financial responsibility as required by chapter 324;
- failing to comply with attendance or other requirements for minors as set forth in s. 322.091; or
- having been designated a habitual traffic offender under s. 322.264(1)(d) as a result of suspensions of the person's driver license or driver privilege for any underlying violation listed above,

the person commits:

- a second degree misdemeanor upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled, punishable as provided in s. 775.082 or s. 775.083; and

¹⁵ Section 775.083(1)(c). F.S.

¹⁶ Section 775.084, F.S.

¹⁷ When an offense results in an accident, the court may revoke or suspend a driver license if the court finds it warranted by the totality of the circumstances and the need to provide for maximum safety.

¹⁸ When the court feels that the seriousness of an offense and the circumstances surrounding a conviction warrant revocation.

¹⁹ When the court feels that the seriousness of an offense and the circumstances surrounding a conviction warrant suspension.

²⁰ When the offenses and conviction relate to DUI, DUI involving serious bodily injury, or vehicular manslaughter.

²¹ Section 322.34(6), F.S.

²² Section 775.082(3)(d), F.S.

²³ Section 775.083(1)(c). F.S.

²⁴ A "forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; any other felony which involves the use or threat of physical force or violence against any individual. See s. 776.08, F.S.

- a misdemeanor of the first degree upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled, punishable as provided in s. 775.082 or s. 775.083.²⁵

A person who does not hold a commercial driver's license and who 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 may, instead of paying the fine or appearing in court, enter a plea of *nolo contendere* and provide proof of compliance, in which case adjudication is withheld. A person may make this choice only if not previously made within the last year, and only three times in total.²⁶

Community Service

Section 318.18, F.S., provides penalties for noncriminal traffic infractions under s. 318.14, F.S., and criminal offenses listed in s. 318.17, F.S. When a person ordered to pay a *civil* penalty for a noncriminal traffic infraction is found to be unable to comply with the court's order due to demonstrable financial hardship, s. 318.18(8)(b), F.S., directs the court to allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid. Current law does not provide for the performance of community service to satisfy *criminal* penalties.

With respect to criminal offenses, those listed in s. 318.17, F.S., are:

- Fleeing and attempting to elude a police officer, in violation of s. 316.1935;
- Leaving the scene of a crash, in violation of ss. 316.027 and 316.061;
- Driving, or being in actual physical control of, any motor vehicle while under the influence of alcoholic beverages, any specified chemical or controlled substance, or driving with an unlawful blood-alcohol level, in violation of s. 316.193;
- Reckless driving, in violation of s. 316.192;
- Making false crash reports, in violation of s. 316.067;
- Willfully failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. 316.072(3);
- Obstructing an officer, in violation of s. 316.545(1); or
- Any other offense in ch. 316, F.S., which is classified as a criminal violation.

Chapter 316, F.S., also classifies interference with official traffic control devices or railroad signs or signals as a criminal violation under s. 316.0775, F.S.

Suspensions for Failure to Pay Financial Obligations

Upon notice from the Clerk of Court, s. 322.245(5), F.S., directs the Department of Highway Safety & Motor Vehicles (DHSMV) to suspend the driver license of a person who has failed to pay financial obligations for criminal offenses other than those listed in s. 318.17, F.S., or any

²⁵ Section 322.34(10), F.S.

²⁶ Section 322.34(11), F.S.

offense constituting a misdemeanor under chapters 320 or 322. DHSMV is required to reinstate the license when the clerk provides an affidavit to DHSMV stating:

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering the reinstatement of the license.

III. Effect of Proposed Changes:

Generally, the bill makes numerous changes to offenses related to operating a motor vehicle with a driver license that is suspended, revoked, canceled, or disqualified. Penalties related to these offenses are revised, reduced, or eliminated, particularly as they pertain to the driver's knowledge that his or her license had been suspended, revoked, canceled, or disqualified. Also, the performance of community service is authorized to satisfy monetary penalties associated with criminal offenses listed in s. 318.17, F.S.

Driving while License Suspended, Revoked, Canceled, or Disqualified, Section 3:

The bill amends s. 322.34, F.S., primarily as follows:

- Limits application of provisions relating to driving *with knowledge* that a driver license is canceled, suspended, or revoked for unspecified reasons to only driving with knowledge that a driver license is suspended for failing to pay child support, suspended under s. 322.2615, F.S. (DUI or refusal to submit), or revoked as provided by law. The bill's revisions are unclear with relation to penalties associated with offenses stemming from suspensions and revocations for other reasons.
 - Reduces the third degree felony for a third or subsequent conviction of driving *with knowledge* that a driver license is suspended for unspecified reasons to a first degree misdemeanor for a second or subsequent conviction for failure to pay child support.
 - Retains the penalties for driving *with knowledge* that a driver license is suspended under s. 322.2615, F.S., or revoked as provided by law, the same as the penalties under current law for driving with knowledge that a driver license is canceled, suspended, or revoked for unspecified reasons. However, as a result of the last two revisions, the bill does not appear to address *knowing* violations for anything other than a failure to pay child support, a suspension under s. 322.2615, F.S., or a revocation as provided by law. Therefore, a driver may not be charged if the proof of knowledge cannot be established.
- Repeals the third degree felony for first and second convictions of habitual traffic offenders who drive (*with or without knowledge*) while a driver license is revoked for unspecified reasons; limits application to a habitual traffic offender who *knowingly* drives while the person's driver license is revoked as a habitual traffic offender under s. 322.264(1)(d), F.S. (driving while DL is suspended or revoked); and reduces the third degree felony upon a third

or subsequent conviction to a first degree misdemeanor if the person's habitual traffic offender designation is based only on offenses of driving while the driver license is suspended or canceled *without knowledge*. The penalty for a habitual traffic offender who *knowingly* drives while the person's driver license is suspended or revoked based on being designated as a habitual traffic offender under s. 322.264(1)(d), F.S., remains a third degree felony.

- Provides that a person whose driver license has been revoked as a habitual traffic offender under s. 322.264, F.S., for violations other than a violation of s. 322.264(1)(d), F.S., and who *knowingly* drives while the person's driver license is revoked, commits a third degree felony, the same as under current law.
- Provides that a person whose driver license has been revoked as a habitual traffic offender under s. 322.264, F.S., who has a prior forcible felony conviction, and who drives *knowing* of the revocation commits a third degree felony, the same as under current law. Relocates and expands provisions relating to satisfying the element of knowledge currently applicable only to provisions relating to driving with knowledge that a driver license is canceled, suspended, or revoked for unspecified reasons to provide that the element of knowledge is satisfied if the person has been previously cited, in addition, under new subsections (3) and (4) relating to HTOs.

Enforcement of the provisions relating to habitual traffic offenders is likely to be difficult given the database system available to law enforcement officers at roadside for determining whether a violator is a habitual traffic offender, since underlying violations may have been purged from the system or otherwise satisfied.

- Authorizes a court to consider, in any proceeding for a violation of s. 322.34, F.S., evidence other than that specified in subsection (6) relating to satisfying the element of knowledge, in addition to subsection (2), relating to suspension for failing to pay child support.
- Repeals subsection (10), which currently provides penalties for a person who does not have a prior forcible felony conviction if the person's DL is canceled, suspended, or revoked for:
 - ✓ Failing to pay child support;
 - ✓ Failing to pay certain financial obligations;
 - ✓ Failing to comply with a civil penalty;
 - ✓ Failing to maintain insurance;
 - ✓ Failing to comply with attendance or other requirements for minors; or
 - ✓ Having been designated as an HTO under s. 322.264(1)(d), F.S., as a result of suspensions for any underlying violations listed above.
- Eliminates reference to knowledge in relation to the underlying violations being repealed in subsection (10) from the provisions authorizing a person to enter a nolo plea and provide proof of compliance, in which case adjudication is withheld. Thus, the authorization applies to any violation under s. 322.34, F.S. However, in application, proof of compliance can only be provided for convictions related to child support, financial obligations, failure to pay or comply with a traffic summons, and truancy. Other convictions, e.g., racing on the street,

theft, vehicular manslaughter, etc., have no proof of compliance applicability since these are irreversible actions.

Community Service, Section 2

Section 318.18(8)(b), F.S., is amended to authorize the performance of community service to satisfy criminal penalties, in addition to civil penalties. Specifically, the bill authorizes a court, if a person has been ordered to pay a criminal penalty, including court costs, fines, or fees associated with a criminal offense, and is unable to comply with the court's order due to demonstrable financial hardship, to allow the person to satisfy the criminal penalty by participating in community service until the penalty is paid. The bill also directs the court, in determining whether a person has the ability to pay the criminal penalty, to consider the financial resources of the person, the present and potential future financial needs and earning ability of the person and his or her dependents, and such other factors which the court deems appropriate. If the court finds the person has the inability to pay, the court may consider converting the outstanding penalty to community service.

Department of Highway Safety & Motor Vehicle Suspension, Section 4

Section 322.245(5), F.S., is amended to require the person's failure to pay the financial obligations be willful and to require suspension of the person's driver license after a finding by the court that the person has the ability to pay. However, a clerk of court may not be able to determine whether a person's failure to pay is willful.

In addition, the bill also:

- **in section 5**, amends s. 921.0022(3)(e), F.S., to correct the cross-reference to a re-numbered subsection of the amended s. 322.34, F.S.;
- **in section 6**, amends s. 932.701, F.S., to correct the cross-reference to a re-numbered subsection of the amended s. 322.34, F.S.;
- **in section 1**, provides that the act may be cited as the "Driver Accountability Act."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

Numerous. (See Effects of Proposed Changes)

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 318.18, 322.34, 322.245, 921.0022, and 932.701.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.