

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 482

INTRODUCER: Senator Bracy

SUBJECT: Driving While a Driver License or Driving Privilege is Canceled, Suspended, or Revoked

DATE: December 1, 2017      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	<b>Pre-meeting</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	RC	_____

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**I. Summary:**

SB 482 removes the third degree felony for a third or subsequent conviction of driving a motor vehicle on a Florida highway when the driver knows his or her driver license or driving privilege is canceled, suspended, or revoked. A second or *subsequent* conviction of this offense will be punished as a first degree misdemeanor. Currently, only a second conviction for this offense is a first degree misdemeanor.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the impact of the bill is that 313 fewer prison beds will be required over the next five years (FY 2018-19 to FY 2022-23) with a cumulative costs savings of \$27,350,040 (\$7,050,864 in operating costs and \$20,299,176 in fixed capital outlay costs). This impact statement is a standalone estimate of the prison bed need of this bill. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds. See Section V. Fiscal Impact Statement.

## II. Present Situation:

Except as provided in s. 322.34(2), F.S., a person commits a moving violation under ch. 318, F.S.,<sup>1</sup> if he or she drives a motor vehicle upon a Florida highway while his or her driver license or privilege is canceled, suspended, or revoked.<sup>2</sup>

Section 322.34(2), F.S., punishes a person who, *knowing*<sup>3</sup> his or her driver license or driving privilege is canceled, suspended, or revoke, drives a motor vehicle upon a Florida highway. This offense is punished as follows:

- A first conviction is a second degree misdemeanor;<sup>4</sup>
- A second conviction is a first degree misdemeanor;<sup>5</sup> and
- A third or subsequent conviction is a third degree felony.<sup>6</sup>

## III. Effect of Proposed Changes:

The bill amends s. 322.34(2), F.S., to remove the third degree felony for a third or subsequent conviction of driving a motor vehicle on a Florida highway when the driver knows his or her driver license or driving privilege is canceled, suspended, or revoked. A second or *subsequent* conviction of this offense will be punished as a first degree misdemeanor, which means that a

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<sup>1</sup> A moving violation is a noncriminal traffic infraction. According to information provided by the Department of Highway Safety and Motor Vehicles (DHSMV), a violator is authorized to pay a fine (s. 318.14(4)(a), F.S.), in which case the violator is assessed three points under s. 322.27(3)(d)7., F.S. E-mail from DHSMV staff to staff of the Senate Committee on Criminal Justice, dated Nov. 20, 2017 (on file with the Senate Committee on Criminal Justice). Alternatively, s. 318.14(9), F.S., authorizes the violator to attend a basic driver improvement course approved by the DHSMV, in which case adjudication is withheld and points are not assessed. *Id.* Another alternative is s. 318.14(10)(a), F.S., which authorizes the violator to enter a plea of nolo contendere and provide proof of compliance (a valid, renewed, or reinstated driver license or registration certificate and proper proof of maintenance of applicable security) to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. *Id.* In such case, adjudication is withheld, but the violator is assessed court costs. Section 318.14(10)(b), F.S.

<sup>2</sup> Section 322.34(1), F.S. Subsections (1) and (2) of s. 322.34, F.S., do not apply to a “habitual traffic offender.” As provided s. 322.264, F.S., defines an “habitual traffic offender” as a person whose record, as maintained by the DHSMV, shows that such person has accumulated the requisite number of convictions under subsection (1) or subsection (2) of the statute within a 5-year period. Subsection (1) specifies 3 or more convictions for any offense specified in that subsection, which includes driving a motor vehicle while his or her license is suspended or revoked. Subsection (2) specifies 15 convictions for moving trafficking offenses for which points may be assessed, including those offenses specified in subsection (1). The DHSMV shall revoke the license of any person designated a habitual offender, and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271, F.S. (serious hardship). Section 322.27(5)(a), F.S.

<sup>3</sup> The element of knowledge is satisfied if the person: (1) has been previously cited for a moving violation under s. 322.34(1), F.S.; (2) admits to knowledge of the cancellation, suspension, or revocation; or (3) received notice as provided in s. 322.34(4), F.S. Section 322.34(2), F.S. Section 322.34(4), F.S., provides that any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that cancels, suspends, or revokes a person’s driver license must contain a provision notifying the person that his or her driver license has been canceled, suspended, or revoked. There is 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 records of the DHSMV for any case except for one involving a suspension by the DHSMV for failure to pay a traffic fine or for a financial responsibility violation. Section 322.34(2), F.S.

<sup>4</sup> Section 322.34(2)(a), F.S. A second degree misdemeanor is punishable by a jail term not exceeding 60 days, a fine not exceeding \$500, or both. Sections 775.082 and 775.083, F.S.

<sup>5</sup> Section 322.34(2)(b), F.S. A first degree misdemeanor is punishable by a jail term not exceeding one year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 322.34(2)(c), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

state prison sentence is not an available sentencing option. Currently, only a second conviction for this offense is a first degree misdemeanor.<sup>7</sup>

The bill does not impact s. 322.34(5), F.S., which provides that it is a third degree felony for a person whose driver license has been revoked pursuant to s. 322.264, F.S. (“habitual traffic offender”), to drive a motor vehicle upon a Florida highway while such license is revoked. As previously noted,<sup>8</sup> an “habitual traffic offender” is a person who has been convicted of several traffic-related offenses or moving trafficking offenses *within a 5-year period*. Those convictions may or may not include driving with a suspended or revoked driver license.<sup>9</sup>

The effective date of the bill is October 1, 2018.

#### **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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not yet reviewed the bill.

The Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimates that the impact of the bill is that 313 fewer prison beds will be required over the next five years (FY 2018-19 to FY 2022-23) with a cumulative costs savings of \$27,350,040 (\$7,050,864 in operating costs and \$20,299,176 in fixed capital outlay

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<sup>7</sup> Section 322.34(2)(b), F.S.

<sup>8</sup> Supra n. 2.

<sup>9</sup> Section 322.264, F.S.

costs). This impact statement is a standalone estimate of the prison bed need of this bill. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.<sup>10</sup>

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs <sup>11</sup>	Annual Fixed Capital Outlay Costs <sup>12</sup>	TOTAL Annual Funds	TOTAL Cumulative Funds
2018-2019	-100	-100	(\$308,750)	(\$14,694,472)	(\$15,003,222)	(\$15,003,222)
2019-2020	-229	-129	(\$1,042,108)	(\$3,225,964)	(\$4,268,072)	(\$19,271,294)
2020-2021	-278	-49	(\$1,649,271)	(\$1,687,050)	(\$3,336,321)	(\$22,607,615)
2021-2022	-303	-25	(\$1,939,088)	(691,690)	(\$2,630,778)	(\$25,238,392)
2022-2023	-313	-10	(\$2,111,648)	\$0	(\$2,111,648)	(\$27,350,040)
<b>Total</b>	<b>-313</b>	<b>-313</b>	(\$7,050,864)	(\$20,299,176)	(\$27,350,040)	(\$27,350,040)

Prepared by Florida Legislature, Office of Economic and Demographic Research, November 20, 2017.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 322.34 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

<sup>10</sup> E-mail and prison bed impact analysis from EDR staff to staff of the Senate Committee on Criminal Justice, dated Nov. 20, 2017 (on file with the Senate Committee on Criminal Justice).

<sup>11</sup> FY 2015-16 operating costs per inmate were obtained from the Department of Corrections (DOC). The \$53.49 per diem (\$19,524 annual cost) is for all DOC facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

<sup>12</sup> FY 2006-07 capital costs per bed were based on the DOC cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.

B. Amendments:

None.

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

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