

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 627 License Plates
SPONSOR(S): Brummer
TIED BILLS: **IDEN./SIM. BILLS:** SB 538

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|--------|---------|----------------|
| 1) Criminal Justice Committee | | Kramer | Kramer |
| 2) Transportation Committee | | | |
| 3) Transportation & Economic Development Appropriations Committee | | | |
| 4) Justice Council | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

HB 627 requires the Department of Highway Safety and Motor Vehicles to develop a DUI license plate that must be displayed on any vehicle that is operated by a person whose driving privileges are restricted pursuant to s. 316.193, F.S. because of a violation related to driving under the influence of alcoholic beverages or other specified substances.

The license plate must be a bright pink color that is easily distinguished from other license plates issued by the department. The bill requires the first three letters of the plate to be "DUI". The bill requires an additional annual surcharge of \$20 to be collected for each DUI plate and the proceeds from the surcharge to be deposited into the Trauma Services Trust Fund.

The bill also provides that a law enforcement officer may stop any vehicle that bears a DUI plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. [See Constitutional Issues section for further discussion.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires a person who has been convicted of DUI to use a DUI license plate in certain circumstances. The bill authorizes a law enforcement officer to stop a vehicle that has a DUI license plate without probable cause to check the operator for a DUI offense.

B. EFFECT OF PROPOSED CHANGES:

Upon conviction for driving under the influence (DUI)¹, the court must revoke the driver's license of the convicted person as follows:

- For a first conviction, the driver's license must be revoked for not less than 180 days or more than 1 year.
- For a second conviction for an offense that occurs within 5 years after the date of a prior conviction, the driver's license must be revoked for not less than 5 years.
- For a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction, the driver's license must be revoked for not less than 10 years.
- For a fourth conviction, the driver's license must be permanently revoked.²

Section 322.271, F.S. authorizes the department to issue what is commonly known as a "hardship" license upon a showing that the revocation of an offender's license causes a serious hardship and precludes the person's carrying out his or her normal business, occupation, trade or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family. A person whose license has been revoked for a DUI offense for 5 years or less is required to wait 12 months before applying for a hardship license. A person whose license has been revoked for more than 5 years is required to wait 24 months before applying for a hardship license.³ A person whose license has been permanently revoked because of a fourth DUI conviction is not eligible to apply for a hardship license.⁴

HB 627 requires the Department of Highway Safety and Motor Vehicles to develop a DUI license plate that must be displayed on any vehicle that is operated by a person whose driving privileges are restricted pursuant to s. 316.193, F.S. because of a violation related to driving under the influence of alcoholic beverages or other specified substances.

The license plate must be a bright pink color that is easily distinguished from other license plates issued by the department. The bill requires the word "Florida" to appear at the top of the plate and the first three letters of the plate to be "DUI". The bill requires an additional annual surcharge of \$20 to be collected for each DUI plate and the proceeds from the surcharge to be deposited into the Trauma Services Trust Fund created by s. 395.4035, F.S.⁵

The bill also provides that a law enforcement officer may stop any vehicle that bears a DUI plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. [See Constitutional Issues section for further discussion.]

¹s. 316.193, F.S.

²s. 322.28(2)(a),

³s. 322.271(2)(b), F.S.

⁴s. 322.28(2)(e), F.S.

⁵Section 395.4035, F.S. creates the Trauma Services Trust Fund which is required to be used for the development and support of a system of state-sponsored trauma centers.

C. SECTION DIRECTORY:

Section 1. Requires a driver whose driving privilege is restricted for a DUI offense to have a DUI license plate.

Section 2. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates that the bill will generate \$240,000 annually from use fees for deposit into the Trauma Services Trust Fund based on the issuance of 12,000 hardship licenses per year.

2. Expenditures:

The department estimates that the bill will have an annual \$44,520 impact for the design, manufacture and distribution of a new license plate - \$15,000 in personnel costs and \$29,520 in license plate costs. The bill will also require contracted programming modifications to the Motor Vehicle software systems at an estimated cost of \$26,915.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person who is issued a DUI license plate will be required to pay a \$20 annual surcharge for the license plate.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Special license plate: In *Goldschmitt v. State*,⁶ the Second District Court of Appeal ruled on the constitutionality of a DUI offender being required to place a bumper sticker on his vehicle which read, "CONVICTED D.U.I. – RESTRICTED LICENSE". The court rejected the offender's claim that the order infringed upon his First Amendment rights by "forcing him to broadcast an ideological message via the bumper sticker."⁷ The court also ruled that the bumper sticker did not constitute cruel and unusual punishment. See also, *Lindsay v. State*, 606 So.2d 652 (Fla. 4th DCA 1992)(requirement that probationer place and pay for advertisement in newspaper consisting of defendant's mug shot, name and caption indicating defendant was "DUI –convicted" did not violate constitution).

Traffic stops: The portion of the bill which authorizes a law enforcement officer to stop a vehicle that bears a DUI license plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. may be subject to a constitutional challenge. A traffic stop of a motor vehicle by a law enforcement officer is considered a seizure under the Fourth Amendment to the United States Constitution. An officer must have a reasonable articulable suspicion of wrongdoing in order to justify a traffic stop.⁸ In the case of *State v. Henning*,⁹ the Minnesota Supreme Court struck down a statute which authorized a peace officer to stop a vehicle bearing "special series registration plates" issued to a DUI offender for the purpose of determining whether the driver was operating vehicle lawfully under a valid driver's license. The court noted that, as with HB 627, the statute would allow an officer to stop a vehicle, even when the person driving the vehicle was not the person who had committed the DUI offense. The court held that the presence of the special license plate did not amount to reasonable articulable suspicion of criminal activity justifying a stop. The court stated, "[w]hile the special series plates may be a factor for law enforcement to consider and would provide a basis for closer scrutiny of these vehicles, the special series plates may not provide the sole justification for a stop."¹⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the use of a DUI license plate for a person whose driving privilege is "restricted pursuant to s. 316.193". Section 316.193, F.S. provides penalties for DUI but does not provide for suspension of the offender's driving privilege – these requirements are elsewhere in statute.

The bill analysis of the Department of Highway Safety and Motor Vehicles indicates that several issues could be clarified including:

- What is the effect of the bill on drivers operating company owned vehicles?
- How should hardship licenses for partial years be handled in terms of registration fees?
- If the offender owns multiple vehicles, how should this be handled?

The effective date of the bill is July 1, 2006. The department recommends changing this to October 1, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁶ *Goldschmitt v. State*, 490 So.2d 123 (Fla. 2nd DCA 1986)

⁷ *Goldschmitt*, 490 So.2d at 125.

⁸ *Delaware v. Prouse*, 99 S.Ct. 1391, 1401 (1979)("Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment..")

⁹ *State v. Henning*, 666 N.W. 379 (Minn. 2003).

¹⁰ *Henning*, 666 N.W. 2d at 386.