

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 1030

INTRODUCER: Transportation Committee and Senators Gaetz and Baker

SUBJECT: Highway Safety

DATE: March 5, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.			CJ	
3.			JU	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This committee substitute (CS) creates the “Deputy Michael Callin, Michael Haligowski, and Deputy Ryan C. Seguin Memorial Traffic Safety Act.” The CS re-defines when a withhold of adjudication is not a “conviction” regarding traffic infractions.

Also included is mandatory vehicle impoundment or immobilization for those driving with a suspended, revoked, cancelled, or disqualified license. The penalties for subsequent violations and violations for driving with suspensions, revocations, disqualifications, and cancellations due to refusal to submit to sobriety tests and breath tests, drug-related suspensions, or DUI suspensions are specified to include 30 days mandatory incarceration or a probationary period of not less than 90 days requiring the same level of supervision of community control with electronic monitoring as described in ch. 948, F.S., and the use of a continuous alcohol monitor device. The CS also provides for 90 days minimum incarceration for drivers who drive while their license is permanently revoked.

The CS authorizes the State Attorney to establish a Drive Legal Program for certain persons accused of a misdemeanor offense of driving while license suspended to divert the person from prosecution or offer a negotiated disposition. The CS provides for criteria for admission to the

program and provides policies for the administration of the program. County courts and clerks of court are required to cooperate with the State Attorney to consolidate an applicant's pending traffic matters and to assist indigent applicants obtain a valid driver's license by disposing of outstanding monetary obligations by ordering public works or community service.

In addition, the CS requires the Department of Highway Safety and Motor Vehicles (department) to inform the motoring public of the changes to s. 322.34, F.S., made by this act and provide such information in newly printed driver's license educational materials after July 1, 2008, and in public service announcements produced in cooperation with the Florida Highway Patrol. Lastly, the department is required, during the period from July 1, 2008, to July 1, 2009, to notify by mail, drivers whose license and privilege to drive have been suspended under s. 322.34, F.S.

Except as otherwise expressly provided, the CS will take effect July 1, 2008.

This CS substantially amends the following sections of the Florida Statutes: 318.14, 322.03, 322.251, 322.34, and 322.341; creates s. 322.3402 and undesignated sections of law.

II. Present Situation:

Section 318.14 (9) and (10) F.S., provides conditions for the court to withhold adjudication for certain violations and upon such action it shall not be considered a conviction.

Section 322.03, F.S., prohibits a person from driving without a valid driver's license.

Section 322.251, F.S., provides the department shall notify a person by mail or in person when the driver's license or driving privilege is cancelled, suspended, revoked, or disqualified.

Section 322.34, F.S., requires law enforcement to impound or immobilize the vehicle of violators who are driving while their driver's license is suspended, revoked, cancelled, or disqualified because of failure to maintain required security, or because they are habitual traffic offenders.

Section 322.341, F.S., provides any person whose driver's license or driving privilege has been permanently revoked and who drives a motor vehicle upon the highways is guilty of a third degree felony.

III. Effect of Proposed Changes:

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

Section 1 provides this act may be cited as the "Deputy Michael Callin, Michael Haligowski, and Deputy Ryan C. Seguin Memorial Traffic Safety Act."

Section 2 amends s. 318.14(11), F.S. Currently, s. 318.14(10), F.S., provides a person who does not hold a commercial driver's license may elect to have adjudication withheld by the court upon proof of compliance to the court for certain tag, license, or insurance violations. This option is available to the person once every 12 months and shall not be allowed more than a total of three

times. Presently, a withhold of adjudication for a non-criminal traffic infraction¹ is not a “conviction.”² However, a withhold for criminal traffic offenses is considered a “conviction.”³

An infraction is defined as “a non-criminal violation that may require community service hours under s. 316.027(4), F.S., but is not punishable by incarceration and for which there is not right to a trial by jury or a right to court-appointed counsel.” The CS amends s. 318.14(11)(a), F.S., to provide non-criminal traffic infractions are “convictions” except for those provided in s. 318.14(9) and (10), F.S. Effectively, all infractions will be subject to withholding of adjudication and not being deemed a “conviction” as long as the offender has not received a withhold of adjudication under s. 318.14, F.S., for three years.⁴

The CS also amends s. 318.14(11)(b), F.S., to provide violators of s. 322.34(2)(a) 1. or 2., F.S., (driving with a canceled, suspended, revoked, or disqualified license first or second offense) are eligible for a withhold of adjudication which will not count as a conviction if the suspension was solely for failure to appear, pay a civil penalty, attend a driver improvement course, pay child support, or pay a judgment, and the violator obtained a reinstated license and insurance. The violator’s withhold of adjudication will not count as a conviction if adjudication has not been withheld for a prior offense during the prior three years. The court’s ability to grant a withhold of adjudication under any other provision currently in effect in any provision of traffic or criminal court rules is not affected by this paragraph.

The significance of not classifying withholds on infractions as convictions means that the offender will not accumulate the predicate convictions to qualify under the habitual traffic offender statute, s. 322.264(2), F.S.⁵

Section 3 requires recording of certain information by the courts on judgments for violations involving driving without a valid driver’s license. Section 322.03, F.S., prohibits a person from driving without a valid driver’s license. The CS adds the requirement every judgment for this offense (including when adjudication is withheld) must be in writing, signed by the judge, and recorded by the clerk.

Section 4 amends s. 322.251, F.S., to provide when notification of cancellation, suspension, revocation, or disqualification of a license is sent, the department is also to inform the person that any motor vehicle driven by or under the actual physical control of that person while the license or driving privilege is canceled, suspended, revoked, or disqualified is subject to impoundment and immobilization under s. 322.34, F.S., and lack of notification will not affect or stay the effective date or term of the cancellation, suspension, revocation, or disqualification or the impoundment or immobilization.

¹ s. 318.14(1), F.S.

² s. 318.14(11), F.S.

³ *Raulerson v. State*, 763 So.2d 285, 290-291 (Fla. 2000).

⁴ Section 318.14(3), F.S., provides refusal to accept and sign a summons is guilty of a second degree misdemeanor. This statute is not an infraction but nevertheless currently encompassed by s. 318.14(11)F.S. The bill makes a withhold for refusal to sign a conviction.

⁵ Requires fifteen “convictions” for moving traffic offenses to qualify as a habitual traffic offender.

In addition, the department must make available on its Internet website the means to determine the status of a driver's license by entering the driver's license number. The department must also provide an automated hotline to provide callers with the status of a driver's license. Currently, the department provides a website and hotline to determine the status of a driver's license by driver's license number.

Section 5 amends ss. 322.34(1), (2), (4), (5), (6), and adds (10), F.S., effective October 1, 2008. The CS amends ss. 322.34(1) and (2), F.S., (driving while license suspended, revoked, canceled, or disqualified) to include the term "disqualified" to the list with "canceled, suspended, and revoked" in the body of the statute. Specifically, the CS amends s. 322.34(1), F.S., to provide a violation involving driving with a disqualified license is punishable as a moving violation. The CS amends s. 322.34(2), F.S., to include the offense of knowingly driving without a valid driver's license as a second degree misdemeanor for a first conviction. A second conviction is a first degree misdemeanor with no minimum sentence specified and a third conviction is a third degree felony without a minimum sentence specified. In addition, if the cancellation, suspension, revocation, or disqualification was due to a refusal to submit to a blood, breath, or urine test, sobriety test, or for DUI or other drug related offenses, then the violation of s. 322.34(2), F.S., for a first conviction is a first degree misdemeanor and regardless of whether a first, second, or third conviction, the court must order a minimum of 30 days incarceration or a probationary period of not less than 90 days requiring the same level of supervision of community control with electronic monitoring as described in ch. 948, F.S., and the use of a continuous alcohol monitor device.

Section 322.34(2), F.S. is further amended to provide for a rebuttable presumption⁶ that the offender had knowledge of the suspension, revocation, cancellation, or disqualification by the department once notice has been sent pursuant to s. 322.34(4), F.S. The provision also eliminates the exception for the applicability of the presumption for cases involving failure to pay a traffic fine and violations of financial responsibility.

Section 322.34(4), F.S., is amended to provide notice of the suspension, revocation, cancellation, or disqualification is to be accompanied by notice that a vehicle driven by a person with a canceled, suspended, revoked, or disqualified license will be impounded or immobilized.

Section 322.34(5), F.S., is amended to provide anyone who drives while their license is revoked, because they are a habitual traffic offender (s. 322.264, F.S.), commits a third degree felony and must be incarcerated for not less than 60 days.

Section 322.34(6), F.S., is amended to provide anyone who operates a motor vehicle without having a driver's license or when cancelled, suspended, revoked, or disqualified, and by negligent operation of the motor vehicle causes death or serious bodily injury of another person, commits a third degree felony.

⁶ A rebuttable presumption is a rule of law that shifts [in this case] the burden of proof from the state to the defense; requiring the defense to present evidence that the defendant was unaware of the suspension, revocation, cancellation, or disqualification. See Steven H. Gifis, *Black's Law Dictionary*, Barron's (1996).

Section 322.34(10), F.S., is created to add the requirement every judgment for the offense of driving while license is suspended, revoked, canceled, or disqualified (including when adjudication is withheld) must be in writing, signed by the judge, and recorded by the clerk.

Section 6 amends ss. 322.34(3) and (8), F.S., effective July 1, 2009. Specifically, the CS amends s. 322.34(3), F.S., to provide in any proceeding for a violation of this section, a court may consider evidence, other than that specified in subsection (2) or subsection (11), that the person knowingly violated this section.

Section 322.34(8), F.S., is amended to provide for impoundment or immobilization of a vehicle if the law enforcement officer determines the vehicle operators driver's license or driving privilege is cancelled, suspended, revoked or disqualified. Immobilization of a motor vehicle shall mean installing an immobilization device on the vehicle. A law enforcement officer who proceeds in good faith to immobilize or impound a vehicle shall not be responsible for any towing, immobilization, or impounding fees. In addition, the CS includes a provision providing for officers acting in an emergency situation. Law enforcement shall notify the department or department's agent within 24 hours to effect impoundment or immobilization.

The department is required within seven days after the impoundment or immobilization of the motor vehicle to send notice by certified mail to any registered owner or co-owner other than the driver and to each person of record claiming a lien against the motor vehicle. The notice must include the location of where the motor vehicle is being held and procedures to have the motor vehicle released. All costs and fees for the impoundment and immobilization, including the cost of notification, must be paid by the owner of the motor vehicle, or if the vehicle is leased, by the person leasing the vehicle. However, the CS provides if the department records show a different owner or lessee, and that owner or lessee did not know that the person was driving in violation of s. 322.34, F.S., the motor vehicle shall be released to that owner or lessee or the owner's or lessee's agent without payment of the fees imposed and without payment of costs of towing, impoundment, immobilization, and storage.

The department is also required to collect a \$30 processing fee, to be forwarded to the Department of Revenue, of which \$28 is to be deposited into the State Transportation Trust Fund, to carry out the Department of Transportation's public transit responsibilities. The Department of Revenue must remit the remaining \$2 to the Florida Law Enforcement Memorial Fund of the Florida State Lodge of the Fraternal Order of Police to be used to carry out the purposes of that fund. The department estimates \$6,150,055 would be generated annually assuming 200,000 vehicles are impounded or immobilized per year.

The department is authorized to assess the motor vehicle's owner or lessee a reasonable fee, not to exceed \$6, to be deposited in the Highway Safety Operating Trust Fund, to cover the operational costs of immobilizing or impounding the vehicle. It is assumed all costs incurred and customer service support would be recovered through this fee.

The department is authorized to release the motor vehicle to the owner or lessee upon satisfaction of all requirements or upon request by the owner or lessee and a statement the family of the owner or lessee living in the same household has not other private or public means of transportation. At least one household member must have a valid driver's license that is not

canceled, suspended, revoked, or disqualified. The department must verify the statement using department records prior to authorization of release.

The CS also provides a motor vehicle immobilized under s. 322.34, F.S., may not be operated in this state until released by the department or the department's agent. A motor vehicle immobilized under s. 322.34(8), F.S., found being operated on any street or highway in Florida before being released shall be seized and removed from the street or highway and may be forfeited pursuant ss. 932.701-932.704, F.S., of the Florida Contraband Forfeiture Act.

In addition, the department must make available on its Internet website the means to determine the status of a driver's license by entering the driver's license number. The department must also provide an automated hotline to provide callers with the status of a driver's license.

This CS will result in the establishment of a program for immobilization and impoundment and authorizes the department to contract with vendors to carry out the provisions of this CS. According to the department, approximately 200,000 people are charged with driving with a suspended license with knowledge each year. Only a small fraction of the 200,000 people drive a vehicle owned by someone else. Based on this information, it is assumed the 200,000 cases will result in impoundment or immobilization of the vehicle and the enforcement of this section. It is estimated approximately 100 agents will be needed to immobilize the vehicles. These agents will be monitored through a vendor database, which must interface with the department's database and will require programming. While most of the monitoring will be from headquarters using systems and statistical audits, field visits will also be required to prevent fraud. This program would require one full time position, a senior highway safety specialist, to complete the necessary audits and field visits. The recurring cost to run this program is estimated at \$150,055 and will include salaries and benefits, travel and other expenses, and public service announcement expenditures as required in section 9.

Section 7 creates s. 322.3402, F.S., to authorize the State Attorney to establish a Drive Legal Program for a person accused of a violation of the misdemeanor offense of driving while license suspended if the person's license was suspended at the time of the offense for failure to pay a penalty, failure to appear, failure to complete a driver improvement program, failure to pay child support, or failure to satisfy financial responsibility requirements, insurance requirements, or judgments. The program may divert the person from prosecution or offer a negotiated disposition to an offense other than the one charged. The program may be established within the State Attorney's office or through an independent contractor. The use of a diversion program shall not affect the authority of the State Attorney to prosecute any person for any such violation.

In establishing the criteria for admission to the program, for the effective administration of the program, and for the protection of the public, that State Attorney may exclude any applicant, including, but not limited to, an applicant:

- Who has been previously or is currently classified as a habitual traffic offender.
- Whose license has been previously or is currently permanently suspended or revoked.
- Who has any convictions or suspensions on his or her license for the offense of DUI or a violation of ch. 893, F.S.

- Who has been adjudicated or has had adjudication of guilt withheld for a felony driving or traffic offense in this state or any other jurisdiction.
- Who is deemed at fault by a law enforcement officer in a traffic crash in the instant offense.
- Who is charged with another misdemeanor or felony violation emanating out of the instant offense.
- Who has previously applied to, and successfully or unsuccessfully completed, the program or a comparable program in another jurisdiction.
- Who has a significant prior criminal history.

Policies for the administration of the program should include provision requiring the applicant to:

- Apply to the program within a specified period of time.
- Knowingly and intelligently waive his or her rights to speedy trial and discovery,
- Take all necessary steps to obtain a valid Florida driver's license, including paying or satisfying all outstanding citation, fines, court costs and fees, child support payments, and judgments, within a specified period of time.
- Attend an appropriate education program.
- Obtain and maintain for a specified period of time valid motor vehicle insurance for all vehicles owned and operated by the applicant.
- Correct all previously cited equipment violations for all vehicles owned and operated by the applicant.
- Complete any driving schools required by the department or the program
- Pay a reasonable application fee to cover the costs of the program.

Policies for the administration of the program should include provisions that would make the applicant no longer eligible for successful completion of the program, including, but not limited to:

- Any arrest or charge for any criminal offense or any traffic offense that is a moving violation.
- Any failure to continue to make good faith efforts to comply with the requirements set forth in s 322.3402(3), F.S.

For the effective administration of the State Attorney's program, the county courts and the clerks of court shall cooperate with the State Attorney to facilitate the consolidation of all of an applicant's pending traffic matters before one judge of the county court. Additionally, in order to assist indigent applicants obtain a valid Florida driver's license, all such parties shall develop a process for the disposition of pending outstanding monetary obligations by ordering public works or community service as provided by law.

Section 8 amends s. 322.341, F.S., effective October 1, 2008, to mandate the court order imprisonment for a minimum of 90 days or a minimum of 30 days followed by a minimum of 180 days of community control with electronic monitoring as provided for in ch. 948, F.S., and the use of a continuous alcohol monitor device to any person who drives a motor vehicle while his or her driver's license or driving privilege is permanently revoked.

Section 9 creates an undesignated section of law to provide the department shall inform the motoring public of the changes to s. 322.34, F.S., made by this act and shall provide such information in newly printed driver's license educational materials after July 1, 2008, and in public service announcements produced in cooperation with the Florida Highway Patrol.

The department estimates the cost of developing educational materials and public service announcements will be \$100,000 for the first year.

Section 10 creates an undesignated section of law to require the department, during the period from July 1, 2008, to July 1, 2009, to notify by mail, drivers whose license and privilege to drive have been canceled, suspended, revoked, or disqualified of the changes relating to impoundment or immobilization of a motor vehicle made to s. 322.34, F.S., by this act. This CS further provides failure of a person to receive notification from the department shall not preclude, bar, or otherwise affect the impoundment or immobilization of a motor vehicle under s. 322.34, F.S.

According to the department, as of October 2, 2007, there were 1,847,952 outstanding cancellations, suspensions, revocations, or disqualifications. This section requires those drivers to be notified of the provisions of this CS. It is estimated the cost to mail out the notifications will be approximately \$757,660 in postage.

Section 11 specifies the act shall take effect July 1, 2008, except as otherwise provided.

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:

The CS will authorize the impoundment or immobilization of a vehicle if a law enforcement officer determines the operator of the vehicle driver's license is suspended or revoked. If the vehicle is owned by the driver, the vehicle must remain immobilized

until the person's driving privilege is reinstated and the person has paid costs of towing, impoundment, immobilization, and storage. The owner of the vehicle would be responsible for paying a \$30 processing fee, as well as a fee, not to exceed \$6, to cover the operational costs of immobilizing or impounding the vehicle. If the vehicle is owned by someone other than the driver, the vehicle will be released to the owner upon payment of these fees, as well as the costs of towing, impoundment, immobilization, and storage, unless the owner did not know the driver had a suspended or revoked license.

Persons accepted into the State Attorney Drive Legal Program could pay a reasonable application fee, which is indeterminate, to cover the costs of the program.

C. Government Sector Impact:

The department estimates the creation of the vehicle immobilization program will result in a \$6,150,055 recurring revenue increase based on 200,000 vehicles being impounded or immobilized per year and the vehicle owner paying the \$30 processing fee. Of this revenue, \$5,600,000 would be distributed to the State Transportation Trust Fund and \$400,000 would be distributed to the Florida Law Enforcement Memorial Fund. This impact also assumes the department would recover \$150,055 in fees for the cost of administering the immobilization program. The department is also authorized to charge a fee up to \$6, to be deposited into the Highway Safety Operating Trust Fund, to fund the vehicle immobilization program. Enactment of this CS may also increase collection of civil fine and reinstatement revenues of which the amount is indeterminate.

If enacted, the department estimates it will cost \$989,662 during the first year to develop and implement this program. This cost assumes \$54,002 in personnel expenses for one additional position for administrative oversight of the immobilization or impoundment program, \$100,000 to provide educational materials and public service announcements, \$757,660 to provide a one time notification by mail to certain drivers, and \$78,000 for programming modifications to the driver license software and revenue distribution systems. The second and third year cost are estimated to be \$150,055 each, which includes personnel costs and recurring funding for educational materials and public service announcements.

It is anticipated the establishment of a State Attorney Drive Legal Program will have a fiscal impact of which the amount is indeterminate.

VI. Technical Deficiencies:

According to the department, s. 322.34(8)(c)2., F.S., as drafted in the CS, provides for potential misinterpretation as to the fees collected and the work associated with it.

The strike all amendment, which became the CS, deleted subsection (11) of s. 322.34, F.S.; however, subsection (3) of s. 322.34, F.S., still makes reference to subsection (11).

VII. Related Issues:

None.

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 4, 2008:**

- Deletes the provisions relating to fingerprints and social security numbers.
- Deletes the requirement that the department must include the date and time the information provided on the department's website or via the telephone hotline was first made available to the public.
- Originally, the CS provided if the cancellation, suspension, revocation, or disqualification was due to a refusal to submit to a blood, breath, or urine test, sobriety test, or for DUI or other drug related offenses, then the violation of s. 322.34(2), F.S., for a first conviction is a first degree misdemeanor and regardless of whether a first, second, or third conviction, the court must order a minimum of 30 days incarceration. The CS includes an alternative to the 30 day mandatory incarceration. Allows instead, a probationary period of not less than 90 days requiring the same level of supervision as community control with electronic monitoring as described in ch. 948, F.S., and the use of a continuous alcohol monitor device.
- Deletes the provision created in the original CS that provided any person who permits another person to drive a vehicle knowing the person's license or driving privilege is cancelled, suspended, revoked, or disqualified commits a second degree misdemeanor. The CS provided criteria for satisfying the element of knowledge, which includes a rebuttable presumption the requirement is satisfied if it is recorded in the department's records and made available via the Internet or a telephone hotline.
- Provides if an owner or lessee did not know that the person was driving in violation of s. 322.34, F.S., the motor vehicle must be released to that owner or lessee or the owner's or lessee's agent without payment of the fees imposed and without payment of costs of towing, impoundment, immobilization, and storage.
- Authorizes the State Attorney to establish a Drive Legal Program for certain person accused of a misdemeanor offense of driving while license suspended to divert the person from prosecution or offer a negotiated disposition. Provides for criteria for admission to the program. Provides policies for the administration of the program. Requires county courts and clerks of court to cooperate with the State Attorney to consolidate an applicant's pending traffic matters and to assist indigent applicants obtain a valid driver's license by disposing of outstanding monetary obligations by ordering public works or community service.
- Revises the penalty provisions for a person who drives a motor vehicle when his or her driver license has been permanently revoked. The original CS provided the court must order imprisonment for not less than 90 days. The CS allows the court the option to order imprisonment for not less than 30 days followed by a minimum of 180 days of community control with electronic monitoring as described in ch. 948, F.S., and the use of a continuous alcohol monitor device.

B. Amendments:

None.

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