

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 Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 1988

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Drivers' Licenses/Suspended, Revoked, or Canceled

DATE: March 25, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------|
| 1. | Dugger | Cannon | CJ | Fav/CS |
| 2. | Butler | Sadberry | JA | Favorable |
| 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 subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or cancelled for underlying violations as enumerated in the bill, to a second degree misdemeanor penalty for the first conviction and a first degree misdemeanor penalty for the second or subsequent conviction. (Currently, the third conviction is punished as a third degree felony.)

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) will be 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.

This newly created first degree misdemeanor penalty will only be available to drivers who do not have a prior forcible felony conviction.

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to study the effectiveness of suspending a person's driver's license for the underlying violations listed above and submit a report to the Governor and Legislature by January 2, 2009.

This bill substantially amends section 322.34 of the Florida Statutes.

II. Present Situation:

According to the Office of Program Policy Analysis and Government Accountability (OPPAGA), more than 1.8 million driver license suspensions and revocations occurred in Fiscal Year 2006-07¹. Of these, 1.5 million (82%) were imposed for failure to comply with a summons to appear in court and/or pay traffic tickets, court fines, and costs. While relatively few offenders are sentenced to prison, the number of prison commitments for suspended licenses has disproportionately and significantly increased compared to all new commitments. Between Fiscal Years 2000-01 and 2006-07, the number of people sentenced to prison for driving with a suspended license increased by 133 percent compared to a 47 percent increase in overall prison commitments.

As of November 30, 2007, there were 1,662 offenders in prison for driving with suspended licenses. These offenders had an average sentence length of 2.3 years. Based on a recent OPPAGA analysis of 904 of these inmates' driving and criminal histories, almost all had prior criminal histories. However, some of these inmates had committed less serious driving and criminal offenses. (For instance, 157 inmates had histories consisting of excessive tickets or failure to pay, along with offenses like driving with a suspended license, property offenses, or non-forcible felonies. Out of the 157 inmates, 45 of them had prior suspensions for excessive tickets/other driving-related reasons and failure to pay, without any other criminal history.)

OPPAGA concluded their analysis by acknowledging the competing needs for resources and the limited number of prison beds and recommended that the Legislature consider alternatives to incarceration for less dangerous offenders convicted of driving with suspended licenses. Among other alternatives, OPPAGA suggested that the Legislature could revise the statutory eligibility for prison for certain types of offenders. OPPAGA acknowledged that there are benefits to incarcerating some offenders for driving while their license is suspended. Imprisonment prevents offenders from repeating the violation while incarcerated, thereby temporarily protecting public safety. However, incarceration is an expensive sanction. It costs the state approximately \$19,300

¹ *Several Alternatives Could Be Used to Reduce Increasing Imprisonment of Persons Driving with Suspended Licenses*, OPPAGA Report No. 08-12, March 2008

per year to incarcerate an inmate in a state prison, or \$32.1 million per year to house the 1,662 offenders imprisoned for driving with suspended licenses.

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.)

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. There is 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.

III. Effect of Proposed Changes:

The bill subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or canceled for underlying violations as enumerated in the bill, to a second degree misdemeanor penalty for the first conviction, and a first degree misdemeanor penalty for the second or subsequent conviction. (Currently, the third conviction is punished as a third degree felony.) Thus a person with underlying violations as enumerated in the newly created (10) of s. 322.34, F.S., will no longer be subject to the third degree felony penalty for driving with a suspended license a third or subsequent time. By reducing the penalty to a first degree misdemeanor rather than a third degree felony, a person convicted may spend a maximum of 60 days in jail and a \$1,000 fine, rather than up to 5 years in prison and a \$5,000 fine.

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) will be 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.

This newly created first degree misdemeanor penalty will be available only to drivers who do not have a prior forcible felony conviction under the bill. (A forcible felony includes: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any person.)

The bill will also require the Department of Highway Safety and Motor Vehicles (DHSMV) to study the effectiveness of suspending a person's driver's license for the underlying violations listed above. The DHSMV, in consultation with OPPAGA and other affected entities, would also be required to submit a report to the Governor and Legislature with findings and recommendations related to this issue by January 2, 2009.

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:

A person convicted three times of knowingly driving with a cancelled, suspended or revoked license will now receive a first degree misdemeanor rather than a third degree felony. By reducing the penalty to a first degree misdemeanor from a third degree felony, a person convicted may receive a maximum sentence of 60 days in jail and a \$1,000 fine, rather than up to 5 years in prison and a \$5,000 fine.

C. Government Sector Impact:

On March 14, 2008, the Criminal Justice Impact Conference (CJIC) determined the bill will result in 129 fewer prison commitments in FY 2008-09, yielding operational savings

of \$1.3 million in recurring general revenue. Over a five year period, CJIC projected 462 fewer prison commitments. The estimated operational savings over five years is approximately \$36 million in recurring general revenue. In addition, construction cost avoidance associated with 462 fewer prison commitments for this population represents approximately \$25 million in savings in general revenue funding.

VI. Technical Deficiencies:

None.

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 Criminal Justice on March 11, 2008:

Clarifies that knowledge of the suspension is required under the bill before the criminal penalties can apply, similar to current law.

- B. **Amendments:**

None.