

1989

Session Law 89-525

Florida Senate & House of Representatives

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S 5-A GENERAL BILL by Langley (Identical H 1-A, Similar CS/H 319, CS/1ST ENG/S 30)

Drivers' Licenses: authorizes law enforcement officers to immediately suspend driving privilege of person arrested for specified DUI offenses; provides for confiscation of driver's license & issuance of temporary driving permit & suspension notice; provides for submission of officer's report to H.S.M.V. Dept. & review of suspension by dept.; provides for act to be read in pari materia with acts passed during regular session, etc. Amends Ch. 322. Effective Date: 10/01/90, except as otherwise provided.

06/03/89 SENATE Filed; Introduced, referred to Transportation; Immediately withdrawn from Transportation; Passed; YEAS 36 NAYS 0 -SJ 3

06/03/89 HOUSE In Messages; Received, referred to Rules & Calendar -HJ 5; On Committee agenda—Rules & Calendar, 06/03/89, 4:00 pm, 413-C; Preliminary Committee Action by Rules & Calendar: Favorable with 2 amendments; Comm. Report: Favorable with 2 amendment(s) by Rules & Calendar, placed on Calendar -HJ 26; Placed on Special Order Calendar; Read second time -HJ 18; Read third time; Passed; YEAS 96 NAYS 11 -HJ 20

06/03/89 Ordered enrolled -SJ 20

06/12/89 Signed by Officers and presented to Governor

06/27/89 Approved by Governor; Chapter No. 89-525

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: s0005A-a.cj

DATE: June 13, 1989

**HOUSE OF REPRESENTATIVES
CRIMINAL JUSTICE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: SB 5-A

RELATING TO: Drivers' Licenses/Suspension

SPONSOR(S): Senator Langley

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 27, 1989

CHAPTER #: 89-525, Laws of Florida

COMPANION BILL(S): HB 1-A

OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SUMMARY:

A. PRESENT SITUATION:

Currently, suspension of driving privileges occurs only after conviction of an offense or other court order. One exception is when a person is stopped on suspicion of driving under the influence and refuses to submit to a test for impairment; in that case, the Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to suspend the person's driver's license for up to one year, with administrative procedures provided for resolving the case sooner.

B. EFFECT OF PROPOSED CHANGES:

Senate Bill 5-A provides for administrative suspension of drivers' licenses for persons arrested on probable cause of driving under the influence of alcohol or for refusal to submit to a test for impairment. The officer at the time of the arrest is authorized to confiscate the driver's license and issue a temporary seven-day permit and a notice of suspension. The suspended driver has ten days to request a formal review of the case. Regardless, DHSMV will conduct an informal review of each case and determine whether the suspension is to be sustained, amended or invalidated. The suspension is authorized for six months for the first DUI offense or one year if previously suspended for DUI; one year for first refusal to submit to impairment test, 18 months if previously suspended for refusal to submit. If the suspension is sustained, the driver is not eligible to receive a business or employment-only permit until thirty days after the expiration of the seven-day temporary

permit issued by the officer at the scene. Appeal of the department's decision may be had by writ of certiorari to the circuit court.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 creates s. 322.2615, F. S., providing for the administrative suspension of drivers' licenses by arresting officers in the case of violations of the DUI statute (Section 316.193, F. S.). Notice, administrative review and hearing procedures are provided for, exempting this section from the Administrative Procedures Act (Chapter 120). Provision is made for separating the proceedings under this section from any related criminal proceedings.

Section 2 amends s. 322.271, F. S., to include administrative suspensions among those which DHSMV is authorized to administer or modify.

Section 3 amends s. 322.28, F. S., to prohibit the staying of any administrative suspension pending an appeal of either the departmental order or DUI conviction.

Section 4 identifies the repeal of the section on suspension of driving privileges for refusal to submit to impairment testing to clarify a cross-referenced section.

Section 5 amends s. 322.12, F. S., to provide for an additional fee of \$105 to be paid upon application for reinstatement in the case of administrative suspension for DUI or refusal to submit to alcohol impairment testing. Said fees to be deposited in the Accident Reports Trust Fund. This section is to take effect July 1, 1989 or upon becoming law, whichever occurs later.

Section 6 repeals s. 322.261, F. S., which currently provides for the suspension of drivers' licenses for refusal to submit to impairment testing.

Section 7 provides for an effective date of October 1, 1990, except as otherwise provided for in section 5 of the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

The Department of Law Enforcement (FDLE) reports a first year start-up cost for laboratory services of \$525,000.

The Department of Highway Safety and Motor Vehicles (DHSMV) reports a first start-up cost for administration of \$499,824.

The Department of Health and Rehabilitative Services reports a first-year start-up cost of \$10,540.

2. Recurring or Annualized Continuation Effects:

a. Expenditures

FDLE - FY 89-90 - \$270,000
FY 90-91 - \$283,500
FY 91-92 - \$297,675

DHSMV - FY 89-90 - \$ -0-
FY 90-91 - \$1,808,323
FY 91-92 - \$1,808,323

HRS - FY 90-91 - \$141,321
FY 91-92 - \$176,730

b. Collections (General Revenue plus Accident Reports Trust Fund)

DHSMV - FY 89-90 - \$2,001,510 [trust fund only]
FY 90-91 - \$3,732,200 [GR-\$199,695]
FY 91-92 - \$4,309,010 [GR-\$266,250]

Provides for a \$105 increase in reinstatement fees for DUI, implied consent and administrative suspension (an increase for suspension from \$25 to \$130 and from \$50 to \$155 for revocations). The \$105 is to be deposited into the Accident Reports Trust Fund.

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

FDLE - General Revenue
Will require five new positions.

DHSMV - General Revenue plus Accident Reports Trust Fund
FY 89-90 - \$ 2,001,510 [trust fund only]
FY 90-91 - \$ 3,732,200 [GR-\$ 199,695]
FY 91-92 - \$ 4,309,010 [GR-\$ 266,250]
Will require 58 new positions.

HRS - General Revenue
Will require five new positions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate; FDLE reports that local county crime labs may not be able to respond with lab results without similar increases.

2. Recurring or Annualized Continuation Effects:

Indeterminate

- 3. Long Run Effects Other Than Normal Growth:
Indeterminate

- C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
 - 1. Direct Private Sector Costs:
Indeterminate

 - 2. Direct Private Sector Benefits:
Indeterminate

 - 3. Effects on Competition, Private Enterprise, and Employment Markets:
Indeterminate

- D. FISCAL COMMENTS:

FDLE suggests that the five-day turnaround for test results on page 3, lines 20-30 of the bill is unrealistic given the testing resources currently in place.

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the state comprehensive plan in that it seeks to prevent, punish and discourage criminal behavior. This bill furthermore reflects this state's commitment to stringent enforcement of laws against drunken or drugged driving.

IV. COMMENTS:

This bill is consistent with the Criminal Justice Committee Mission Statement in that it seeks means by which the criminal justice system might work more effectively.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Jeffrey R. Beckham

Staff Director:



Robin S. Hassler

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: May 16, 1989

BILL NO. CS/SB 30

DATE: May 15, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Meredith</u>	<u>Garciulo</u>	1. <u>TR</u>	<u>Fav/CS</u>
2. <u>Duqger</u>	<u>Liepshutz</u>	2. <u>JCR</u>	<u>Favorable</u>
3. <u>Smawley</u>	<u>Smawley</u>	3. <u>JCI</u>	<u>Withdrawn</u>
4. <u>Barrett</u>	<u>Beqqs</u>	4. <u>FTC</u>	<u>Favorable</u>

SUBJECT:

DUI/Driver's License
Administrative Suspension

BILL NO. AND SPONSOR:

CS/SB 30 by
Committee on Transportation
and Senator Langley

I. SUMMARY:

A. Present Situation:

Section 322.26, F.S., directs the Department of Highway Safety and Motor Vehicles (DHSMV) to revoke the license or driving privilege of any person convicted for driving a motor vehicle or being in physical control of a motor vehicle while under the influence of alcoholic beverages or controlled substances (DUI). Section 322.28, F.S., directs the court to revoke the driver's license when imposing sentence and to prescribe the period of revocation. For a first conviction of DUI, the license must be revoked for not less than 6 months or more than 1 year. The revocation for a second conviction within 5 years is not less than 5 years, and for a third conviction in 10 years, revocation must be for at least 10 years. The court must permanently revoke the driving privilege of any person convicted for 4 DUI offenses or for manslaughter or vehicular homicide while DUI.

If the court fails to specify a period of revocation, the DHSMV is required to impose the maximum suspension for a first offense and the minimum suspension for the second and third offenses. The DHSMV may not grant a new license until the revocation period has been completed, and the individual has taken the complete driver's license examination, and has presented to the DHSMV proof of enrollment in a substance abuse course. However, persons convicted of DUI for the first time, persons who refuse to submit to lawful testing for the first time, and certain repeat offenders can apply for hardship licenses after successfully completing a driver training or substance abuse course. s. 322.271, F.S.

The DHSMV is directed by s. 322.261, F.S., upon receipt of an officer's sworn statement, to suspend for 1 year the license of any person arrested for DUI who refuses to submit to a breath, urine, or blood test. The statement must show that the officer has reasonable cause to believe that the person is DUI and that the person refuses to submit to the tests upon the officer's request. If the driving privilege has previously been suspended for refusal, the period of suspension is 18 months.

The DHSMV is required to immediately notify the person who refuses to be tested in writing by certified mail that his license will be suspended 10 days after the notification is mailed and that he has a right to petition for a hearing and to be represented by legal counsel. The person must be granted a hearing within 20 days upon petitioning the court. The petition will stay the suspension until the hearing is conducted.

The determination at the hearing of whether a person lawfully refused to take a chemical test or tests is based on:

1. Whether the arresting officer had reasonable cause to believe the person was in violation of the DUI provisions;
2. Whether the person was placed under lawful arrest;
3. Whether the person refused to submit to the test; and,
4. Whether the person had been told that the applicable suspension period was the penalty for refusal to submit.

The license must be surrendered to the DHSMV upon suspension or revocation. Where the court directs suspension, the license is surrendered to the court and it is forwarded to the DHSMV, along with the record of conviction.

Section 322.12, F.S., 1988 Supp., requires persons applying for reinstatement of a suspended license to pay a \$25 fee and persons seeking reinstatement of a revoked license to pay a \$50 fee. Fifteen dollars of the \$25 fee and \$35 of the \$50 are deposited in the General Revenue Fund and the remaining amounts of each fee are deposited in the Accident Reports Trust Fund.

B. Effect of Proposed Changes:

The bill would create a new section allowing law enforcement officers to suspend the driving privilege of a person the officer had probable cause to believe was DUI with an unlawful blood alcohol level (BAL) (.10 percent or greater), or who refused to submit to a breath, blood, or urine test. Upon arrest, the officer would take the driver's license and issue a notice of suspension and a temporary driving permit to allow the individual to drive for 7 days.

The notice of suspension would inform the driver that his driving privilege had been suspended for DUI with an unlawful BAL or for refusal to submit to testing, that the temporary permit would expire at midnight on the seventh day, that the person could request a formal or informal hearing on the suspension within 10 days after the arrest, and that the person could submit any material relevant to the arrest for the hearing officer to review. The request for a hearing would not stay the suspension but, if the formal hearing was not conducted within 30 days, the department would be required, upon request, to issue a temporary driving permit for business or employment use until the hearing had been conducted.

The law enforcement officer would forward a copy of the notice of suspension and the arrest report to the department within 5 days after the arrest. The report would be required to include an affidavit stating the grounds for the arrest, the results of any test, or an affidavit stating that the arrested person refused to submit to the test, a copy of the citation, and a description or videotape of the field sobriety test.

If a formal hearing were not requested within 10 days, a hearing officer employed by the DHSMV would conduct an informal hearing to examine the submitted material. Notice of the officer's decision would be mailed to the arrested person within 21 days after the expiration of the temporary permit. If a formal review were requested, a department hearing officer would conduct the formal hearing within 30 days after the request was received. Within 7 days after the hearing, the department would inform the petitioner of the decision suspending, amending, or invalidating the suspension. At either hearing, the hearing officer would determine by a preponderance of the evidence whether sufficient cause existed to sustain the suspension.

The bill would specify certain issues to be considered by the hearing officer when reviewing the suspension. These would include:

1. Whether the arresting officer had probable cause for the arrest;
2. Whether there was a lawful arrest;
3. Whether the person had an unlawful BAL or refused to submit to the test; and,
4. Whether the person who refused the test was told that his driver's license would be suspended for refusal to submit.

If the DHSMV sustained a suspension for DUI with a BAL of .10 percent or more, the period of suspension would be 6 months for a first offense and 1 year if the license had previously been suspended for a DUI conviction. If the DHSMV sustained a suspension for a person who refused a breath, blood, or urine test, the suspension would be for 1 year for the first refusal and 18 months if there had been a prior suspension for refusal to submit to one of these tests. Suspensions would begin on the date of arrest.

Furthermore, where a suspension was sustained, the arrested person would not be eligible for any type of driving permit for a period of 30 days after the expiration of the temporary permit. Upon expiration of a temporary permit, however, the person would be eligible to receive a hardship license upon proof of enrollment in a driver training or substance abuse education course, provided he was otherwise eligible to receive such license under s. 322.271, F.S.

The sworn report of the law enforcement officer would be presumed to be correct absent competent evidence to the contrary at all formal and informal hearings. Both types of hearings would be exempt from the Administrative Procedures Act, ch. 120, F.S. A person could appeal the decision of the department by writ of certiorari to the circuit court, but an appeal would not stay the suspension. No decision by the department pursuant to this section or statement submitted by the arrested person in his request for a hearing could be considered in a DUI trial.

Section 322.261, F.S., relating to revocation of a driver's license for refusal to take a breath, blood or urine test would be repealed.

Section 322.12, F.S., would be amended to require persons seeking reinstatement of a license which was revoked or suspended for DUI or for refusal to submit to a breath, blood, or urine test to pay a fee of \$105 in addition to the fees currently collected. The fee would be deposited into the Accident Reports Trust Fund.

The provision requiring the additional \$105 fee for reinstatement of a license revoked or suspended for DUI or for refusal to submit to testing would become effective July 1, 1989 or upon becoming law, whichever occurred later. The other provisions in the bill would not become effective until October 1, 1990.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Those persons whose driving privilege is suspended immediately upon arrest may experience financial problems as a result of their inability to drive following the expiration of the temporary permit.

Those persons whose license is revoked or suspended for DUI or for refusal to submit to a test, would pay an additional license reinstatement fee of \$105.

B. Government:

The DHSMV estimates a need for 22 hearing officers and 11 clerk typists to process the increased hearings; 8 driver's license examiners to process increased reinstatements; 5 clerks, 6 attorneys, and 6 secretaries in legal to assist the hearing officers. These positions are estimated to cost \$2,542,347 in fiscal year 90/91 and \$1,834,523 thereafter.

Assuming 25% of those with revoked or suspended licenses for D.U.I. seek reinstatement, the projected revenue from the applications for reinstatement of the driver's license is as follows:

1. In fiscal year 89/90, revenues from the increased fee for reinstatement of revocations pursuant to s. 316.193 and s. 322.261 are projected to be \$2,001,510.
2. In fiscal year 90/91, reinstatements for administrative suspensions will begin in addition to the continuing reinstatements of s. 316.193 and s. 322.261 suspensions. Projected revenues are \$199,695 to General Revenue, and \$3,532,505 to the Accident Reports Trust Fund.
3. Third year revenues are projected to be \$266,250 to General Revenue, and \$4,042,760 to the Accident Reports Trust Fund.

The Department of Health and Rehabilitative Services estimates that its participation in formal suspension hearings to provide expert testimony on the testing equipment will result in the need for the following additional positions: a chemist III; two alcohol breath testing inspectors; and two secretaries. The department estimates that the personnel and support costs in fiscal year 90-91 will be \$141,321, and in fiscal year 91-92 will be \$176,730.

III. COMMENTS:

According to the National Commission Against Drunk Driving, as of November 10, 1987, 22 other states had administrative suspension laws which allow for the use of summary proceedings to suspend a driver's license upon arrest of a person for drunk driving. The United States Supreme Court has upheld the constitutionality of a statute providing for administrative suspension of a driver's license for refusal to submit to lawful tests after being arrested for DUI. Mackey v. Montrym, 443 U.S. 1 (1978). The Court, using a balancing test, concluded that the statute was a legitimate exercise of the state's police power because the state has a compelling interest in highway safety. Id., at 19. In determining that the statute was constitutional, the Court placed a great deal of weight on the fact that under the statute, a driver who was arrested for DUI and whose license was suspended for refusal to submit to testing could obtain an immediate post-suspension hearing. Id. at 3.

CS/SB 30 provides for a post-suspension hearing similar to the one in Mackey, although it also subjects to suspension the licenses of those drivers who are arrested for DUI and submit to testing.

IV. AMENDMENTS:

None.