

CHAPTER 98-223

House Bill No. 3275

An act relating to worthless checks; creating s. 832.09, F.S.; providing for the suspension of a driver's license with respect to certain persons against whom a warrant or capias is issued in a worthless check case; creating s. 832.10, F.S.; providing for the state attorney to use a private debt collector or independent contractor for 90 days to collect worthless checks; providing for the case to be referred back to the state attorney if the worthless check is not collected in the time allowed; creating s. 832.10, F.S.; providing an alternative to the bad check diversion program; providing fees for collection; amending s. 322.251, F.S.; providing for notification; providing for conditions for reinstatement; providing a fee; directing the Department of Highway Safety and Motor Vehicles and the Department of Law Enforcement to develop and implement a plan; amending s. 322.142, relating to records of the Department of Highway Safety and Motor Vehicles; providing an appropriation; amending s. 318.18, F.S.; rescinding the fine for speeds exceeding the limit by 1-5 m.p.h. and replacing the fine with a warning; providing that fines for construction zone speed violations shall be doubled only under certain circumstances; amending s. 320.07, F.S.; revising penalties for expiration of registration; amending s. 322.26, F.S.; providing for permanent revocation of a driver's license for murder resulting from the operation of a motor vehicle, DUI manslaughter where the conviction represents a subsequent DUI-related conviction, or four or more DUI violations; amending s. 322.271, F.S.; providing for petition for reinstatement under certain circumstances; amending s. 322.28, F.S.; revising provisions with respect to the period of suspension or revocation; conforming current provisions to the act; creating s. 322.283, F.S.; providing for the commencement of the period of suspension or revocation for incarcerated offenders; providing for notification to the Department of Highway Safety and Motor Vehicles; amending s. 322.34, F.S.; providing that the element of knowledge with respect to the suspension, revocation, cancellation, or disqualification is satisfied when certain notice is sent; creating s. 322.341, F.S.; providing penalties for driving while a license is permanently revoked; amending s. 627.733, F.S.; deleting a provision for revoking the driver's license of an owner or registrant of a motor vehicle who does not provide required security for that vehicle; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 832.09, Florida Statutes, is created to read:

832.09 Suspension of driver license after warrant or capias is issued in worthless check case.—

(1) Any person who is being prosecuted for passing a worthless check in violation of s. 832.05, who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court shall have his or her driver's license suspended or revoked pursuant to s. 322.251.

(2) Within 5 working days after the issuance of a warrant or capias for failure to appear the clerk of the court in the county where the warrant or capias is issued, shall notify the Department of Highway Safety and Motor Vehicles by the most efficient method available of the action of the court.

Section 2. Section 832.10, Florida Statutes, is created to read:

832.10 Alternative to bad check diversion program; fees for collection.—

(1) Prior to presenting a complaint about a dishonored check to a state attorney, a payee on such bad check may place or assign the debt evidenced by the bad check for collection pursuant to this section by a private debt collector registered under part VI, chapter 559, Florida Statutes.

(2) Upon such placement or assignment the payee shall be entitled to add a collection fee to offset the cost of collection. This collection fee is in addition to the bad check service charges authorized by law. The collection fee payable to the debt collector shall be a reasonable fee in accord with industry standards, based upon the total amount collected.

(3) Unless extended by the payee, the debt collector shall have 90 days from the date of placement or assignment of the debt for collection within which to collect the amount of the bad check, applicable bad debt charges, and the collector's collection fee. Upon the expiration of such 90 day period and any extensions thereof, the payee then may present a complaint to the appropriate state attorney. The debt collector may continue to try to collect the debt, provided such collection effort does not impede the prosecution or other disposition of the case by the state attorney.

(4) The debt collector may not compromise the amount to be collected without the express consent of the payee of the check. The debt collector shall remit to the payee the amount collected less the collector's fee percentage on the total amount collected.

(5) The use of such debt collector shall not affect the authority of the state attorney to prosecute any person for any violation of s. 832.04, s. 832.041, s. 832.05, or s. 832.06. The use of this section by a payee on a bad check shall not affect the rights of the payee, other than as set forth in this section, to present a complaint to the appropriate state attorney.

Section 3. Subsection (7) is added to section 322.251, Florida Statutes, to read:

322.251 Notice of cancellation, suspension, revocation, or disqualification of license.—

(7)(a) A person whose driving privilege is suspended or revoked pursuant to s. 832.09 shall be notified, pursuant to this section, and the notification

shall direct the person to surrender himself or herself to the sheriff who entered the warrant to satisfy the conditions of the warrant. A person whose driving privilege is suspended or revoked under this subsection shall not have his or her driving privilege reinstated for any reason other than:

1. Full payment of any restitution, court costs, and fees incurred as a result of a warrant or capias being issued pursuant to s. 832.09;

2. The cancellation of the warrant or capias from the Department of Law Enforcement recorded by the entering agency; and

3. The payment of an additional fee of \$10 to the Department of Highway Safety and Motor Vehicles to be paid into the Highway Safety Operating Trust Fund; or

4. The department has modified the suspension or revocation of the license pursuant to s. 322.271 restoring the driving privilege solely for business or employment purposes.

(b) The Department of Law Enforcement shall provide electronic access to the department for the purpose of identifying any person who is the subject of an outstanding warrant or capias for passing worthless bank checks.

(c) The Department of Highway Safety and Motor Vehicles and the Department of Law Enforcement shall develop and implement a plan to ensure the identification of any person who is the subject of an outstanding warrant or capias for passing worthless bank checks and to ensure the identification of the person's driver's license record.

Section 4. Subsections (5) and (6) are added to Section 322.142, Florida Statutes, to read:

Section 322.142 Color photographic or digital imaged licenses.—

(5) Notwithstanding any other provisions of law, the department may sell copies of photographs, electronically stored photographs, or digitized images and other driver's license and state identification card information on file, which are recorded and maintained as required, if such items are to be used solely for the prevention of fraud, including, but not limited to, use in mechanisms intended to prevent the fraudulent use of credit cards, debit cards, or checks, or fraud in other forms of financial transactions. The use of such photographs, electronically stored photographs, or digitized images obtained pursuant to this subsection is limited to the verification of the identity of the holder of an account, other form of identification, or other similar uses, and may not be used for any other purpose.

(6) Notwithstanding any other provisions of law, the department may sell copies of photographs, electronically stored photographs, or digitized images maintained by the department as required, upon receipt of the following from an applicant:

(a) Proof of the identity of the applicant;

(b) A declaration, in such form as is required by the department, describing how the applicant will use such photographs, electronically stored photographs, or digitized images for the prevention of fraud; and

(c) Payment of a fee for the photographs, electronically stored photographs, or digitized images. The department shall establish a fee for providing copies of such photographs, electronically stored photographs, or digitized images and all fees collected pursuant to this subsection shall be used to defray the costs of the department in providing such copies to an applicant.

Section 5. \$35,000 is hereby appropriated from the Highway Safety Operating Trust fund to implement the provisions of this legislation.

Section 6. Subsection (3) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(3)(a) Except as otherwise provided in this section, \$60 for all moving violations not requiring a mandatory appearance.

(b) For moving violations involving unlawful speed, the fines are as follows:

For speed exceeding the limit by:	Fine:
1-5 m.p.h.	Warning
6-9 1-9 m.p.h.	\$ 25
10-14 m.p.h.	\$100
15-19 m.p.h.	\$125
20-29 m.p.h.	\$150
30 m.p.h. and above	\$250

(c) Notwithstanding paragraph (b), a person cited for exceeding the speed limit by up to 5 m.p.h. in a legally posted school zone will be fined \$50. A person exceeding the speed limit in a school zone will be assessed a fine double the amount listed in paragraph (b).

(d) A person cited for exceeding the speed limit in or a posted construction zone will be assessed a fine double the amount listed in paragraph (b). The fine shall be doubled for construction zone violations only if construction personnel are present or operating equipment on the road or immediately adjacent to the road under construction.

~~(e)~~(d) If a violation of s. 316.1301 or s. 316.1303 results in an injury to the pedestrian or damage to the property of the pedestrian, an additional fine of up to \$250 must be assessed. This amount must be distributed pursuant to s. 318.21.

Section 7. Subsection (3) of section 320.07, Florida Statutes, is amended to read:

320.07 Expiration of registration; annual renewal required; penalties.—

(3) The operation of any motor vehicle without having attached thereto a registration license plate and validation stickers, or the use of any mobile home without having attached thereto a mobile home sticker, for the current registration period shall subject the owner thereof, if he or she is present, or, if the owner is not present, the operator thereof to the following penalty provisions:

(a) Any person whose motor vehicle or mobile home registration has been expired for a period of 6 months or less shall be subject to the penalty provided in s. 318.14.

(b) Any person whose motor vehicle or mobile home registration has been expired for more than 6 months shall upon a first offense be subject to the penalty provided in s. 318.14.

~~(c)~~(b) Any person whose motor vehicle or mobile home registration has been expired for more than 6 months shall upon a second or subsequent offense be is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(d)~~(e) However, no operator shall be charged with a violation of this subsection if the operator can show, pursuant to a valid lease agreement, that the vehicle had been leased for a period of 30 days or less at the time of the offense.

Section 8. Subsections (1) and (2) of section 322.26, Florida Statutes, are amended to read:

322.26 Mandatory revocation of license by department.—The department shall forthwith revoke the license or driving privilege of any person upon receiving a record of such person's conviction of any of the following offenses:

(1)(a) Murder resulting from the operation of a motor vehicle, DUI manslaughter where the conviction represents a subsequent DUI-related conviction, or a fourth violation of s. 316.193 or former s. 316.1931. For such cases, the revocation of the driver's license or driving privilege shall be permanent.

(b) Manslaughter resulting from the operation of a motor vehicle.

(2) Driving a motor vehicle or being in actual physical control thereof, or entering a plea of nolo contendere, said plea being accepted by the court and said court entering a fine or sentence to a charge of driving, while under the influence of alcoholic beverages or a substance controlled under chapter 893, or being in actual physical control of a motor vehicle while under the influence of alcoholic beverages or a substance controlled under chapter 893. In any case where DUI manslaughter occurs and the person has no prior convictions for DUI-related offenses, the revocation of the license or driving privilege shall be permanent, except as provided for in s. 322.271(4).

Section 9. Paragraph (b) of subsection (1) and subsection (4) of section 322.271, Florida Statutes, are amended to read:

322.271 Authority to modify revocation, cancellation, or suspension order.—

(1)

(b) A person whose driving privilege has been revoked under s. 322.27(5) may, upon expiration of 12 months from the date of such revocation, petition the department for reinstatement ~~restoration~~ of his or her driving privilege. Upon such petition and after investigation of the person's qualification, fitness, and need to drive, the department shall hold a hearing pursuant to chapter 120 to determine whether the driving privilege shall be reinstated ~~restored~~ on a restricted basis solely for business or employment purposes.

(4) Notwithstanding the provisions of s. 322.28(2)(e), a person whose driving privilege has been permanently revoked because he or she ~~has been convicted four times of violating s. 316.193 or former s. 316.1931 or because he or she~~ has been convicted of DUI manslaughter in violation of s. 316.193 and has no prior convictions for DUI-related offenses may, upon the expiration of 5 years after the date of such revocation or the expiration of 5 years after the termination of any term of incarceration under s. 316.193 or former s. 316.1931, whichever date is later, petition the department for reinstatement of his or her driving privilege.

(a) Within 30 days after the receipt of such a petition, the department shall afford the petitioner an opportunity for a hearing. At the hearing, the petitioner must demonstrate to the department that he or she:

1. Has not been arrested for a drug-related offense during the 5 years preceding the filing of the petition;
2. Has not driven a motor vehicle without a license for at least 5 years prior to the hearing;
3. Has been drug-free for at least 5 years prior to the hearing; and
4. Has completed a DUI program licensed by the department.

(b) At such hearing, the department shall determine the petitioner's qualification, fitness, and need to drive. Upon such determination, the department may, in its discretion, reinstate the driver's license of the petitioner. Such reinstatement must be made subject to the following qualifications:

1. The license must be restricted for employment purposes for not less than 1 year; and

2. Such person must be supervised by a DUI program licensed by the department and report to the program for such supervision and education at least four times a year or additionally as required by the program for the remainder of the revocation period. Such supervision shall include evaluation, education, referral into treatment, and other activities required by the department.

(c) Such person must assume the reasonable costs of supervision. If such person fails to comply with the required supervision, the program shall report the failure to the department, and the department shall cancel such person's driving privilege.

(d) If, after reinstatement, such person is convicted of an offense for which mandatory revocation of his or her license is required, the department shall revoke his or her driving privilege.

(e) The department shall adopt rules regulating the providing of services by DUI programs pursuant to this section.

Section 10. Paragraph (e) of subsection (2) of section 322.28, Florida Statutes, is amended, present subsections (3), (4), (6), and (8) of that section are redesignated as subsections (4), (5), (7), and (9), respectively, present subsection (5) of that section is redesignated as subsection (6) and amended, and a new subsection (3) is added to that section, to read:

322.28 Period of suspension or revocation.—

(2) In a prosecution for a violation of s. 316.193 or former s. 316.1931, the following provisions apply:

(e) The court shall permanently revoke the driver's license or driving privilege of a person who has been convicted four times for violation of s. 316.193 or former s. 316.1931 or a combination of such sections. The court shall permanently revoke the driver's license or driving privilege of any person who has been convicted of DUI manslaughter in violation of s. 316.193. If the court has not permanently revoked such driver's license or driving privilege within 30 days after imposing sentence, the department shall permanently revoke the driver's license or driving privilege pursuant to this paragraph. No driver's license or driving privilege may be issued or granted to any such person. This paragraph applies only if at least one of the convictions for violation of s. 316.193 or former s. 316.1931 was for a violation that occurred after July 1, 1982. For the purposes of this paragraph, a conviction for violation of former s. 316.028, former s. 316.1931, or former s. 860.01 is also considered a conviction for violation of s. 316.193. Also, a conviction of driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other similar alcohol-related or drug-related traffic offense outside this state is considered a conviction for the purposes of this paragraph.

(3) The court shall permanently revoke the driver's license or driving privilege of a person who has been convicted of murder resulting from the operation of a motor vehicle. No driver's license or driving privilege may be issued or granted to any such person.

(4)(3) Upon the conviction of a person for a violation of s. 322.34, the license or driving privilege, if suspended, shall be suspended for 3 months in addition to the period of suspension previously imposed and, if revoked, the time after which a new license may be issued shall be delayed 3 months.

(5)(4) If, in any case arising under this section, a licensee, after having been given notice of suspension or revocation of his or her license in the

manner provided in s. 322.251, fails to surrender to the department a license theretofore suspended or revoked, as required by s. 322.29, or fails otherwise to account for the license to the satisfaction of the department, the period of suspension of the license, or the period required to elapse after revocation before a new license may be issued, shall be extended until, and shall not expire until, a period has elapsed after the date of surrender of the license, or after the date of expiration of the license, whichever occurs first, which is identical in length with the original period of suspension or revocation.

~~(6)(5)(a)~~ (6)(5)(a) Upon a conviction for a violation of s. 316.193(3)(c)2., involving serious bodily injury, a conviction of manslaughter resulting from the operation of a motor vehicle, or a conviction of vehicular homicide, the court shall revoke the driver's license of the person convicted for a minimum period of 3 years ~~if death to any other person resulted from the operation of a motor vehicle by such driver.~~ In the event that a conviction under s. 316.193(3)(c)2., involving serious bodily injury, is also a subsequent conviction as described under paragraph (2)(a), the court shall revoke the driver's license or driving privilege of the person convicted for the period applicable as provided in paragraph (2)(a) or paragraph (2)(e).

(b) If the period of revocation was not specified by the court at the time of imposing sentence or within 30 days thereafter, the department shall revoke the driver's license for the minimum period applicable under paragraph (a) or, for a subsequent conviction, for the minimum period applicable under paragraph (2)(a) or paragraph (2)(e).

~~(7)(6)~~ No administrative suspension of a driving privilege under s. 322.2615 shall be stayed upon a request for review of the departmental order that resulted in such suspension and, except as provided in former s. 322.261, no suspension or revocation of a driving privilege shall be stayed upon an appeal of the conviction or order that resulted therein.

~~(8)(7)~~ In a prosecution for a violation of s. 316.172(1), and upon a showing of the department's records that the licensee has received a second conviction within a period of 5 years from the date of a prior conviction of s. 316.172(1), the department shall, upon direction of the court, suspend the driver's license of the person convicted for a period of not less than 90 days nor more than 6 months.

Section 11. Section 322.283, Florida Statutes, is created to read:

322.283 Commencement of period of suspension or revocation for incarcerated offenders.—

(1) When the court in a criminal traffic case orders the defendant to serve a term of incarceration or imprisonment and also suspends or revokes the defendant's license as a result of the offense, the period of suspension or revocation shall commence upon the defendant's release from incarceration. For purposes of calculating the defendant's eligibility for reinstatement of his or her driver's license or driving privilege under this section, the date of the defendant's release from incarceration shall be deemed the date the suspension or revocation period was imposed.

(2) For defendants convicted of a criminal traffic offense and sentenced to imprisonment with the Department of Corrections, the Department of Corrections shall notify the Department of Highway Safety and Motor Vehicles of the date of the defendant's release from prison or other state correctional facility. For defendants convicted of a criminal traffic offense and sentenced to incarceration within the jurisdictional county jail or other correctional facility operated by the jurisdictional county, the sheriff of the jurisdictional county wherein the defendant is incarcerated shall notify the Department of Highway Safety and Motor Vehicles of the date of the defendant's release from the county jail or other correctional facility. The notification of a defendant's release from incarceration shall be on a form approved by the Department of Highway Safety and Motor Vehicles. This subsection applies only to those defendants who have had their driver's license or driving privilege suspended or revoked as a result of the offense for which they are incarcerated or imprisoned.

Section 12. Subsection (2) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, who, knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second conviction is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

Section 13. Section 322.341, Florida Statutes, is created to read:

322.341 Driving while license permanently revoked.—Any person whose driver's license or driving privilege has been permanently revoked pursuant to s. 322.26 or s. 322.28 and who drives a motor vehicle upon the highways of this state is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. Effective July 1, 2000, subsections (6) and (7) of section 627.733, Florida Statutes, are amended to read:

627.733 Required security.—

(6) The Department of Highway Safety and Motor Vehicles shall suspend, after due notice and an opportunity to be heard, the registration ~~and driver's license~~ of any owner or registrant of a motor vehicle with respect to which security is required under this section and s. 324.022:

(a) Upon its records showing that the owner or registrant of such motor vehicle did not have in full force and effect when required security complying with the terms of this section; or

(b) Upon notification by the insurer to the Department of Highway Safety and Motor Vehicles, in a form approved by the department, of cancellation or termination of the required security.

(7)(a) Any operator or owner whose ~~driver's license or registration~~ has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of \$150 for the first reinstatement. Such reinstatement fee shall be \$250 for the second reinstatement and \$500 for each subsequent reinstatement during the 3 years following the first reinstatement. Any person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in s. 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 2 years. If the person does not have a second reinstatement within 3 years after her or his initial reinstatement, the reinstatement fee shall be \$150 for the first reinstatement after that 3-year period. ~~In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration.~~ All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in the Highway Safety Operating Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Highway Safety Operating Trust Fund to the local government entity or state agency which employed the law enforcement officer or the recovery agent who seizes a license plate pursuant to s. 324.201 or to s. 324.202. Such funds may be used by the local government entity or state agency for any authorized purpose.

(b) One-third of the fee collected for the seizure of a license plate by a recovery agent shall be paid to the recovery agent, and the balance shall remain in the Highway Safety Operating Trust Fund and be distributed pursuant to s. 321.245.

Section 15. This act shall take effect July 1 of the year in which enacted.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.