

SPECIAL LEGAL BULLETIN

PROVIDING HIGHWAY SAFETY AND SECURITY THROUGH EXCELLENCE IN SERVICE, EDUCATION, AND ENFORCEMENT

ELECTRA THEODORIDES-BUSTLE, EXECUTIVE DIRECTOR

VOLUME MMVIII, ISSUE 7

Effective July 1, 2008, §322.34 (10), Florida Statutes, went into effect. This new subsection changes whether certain offenses for driving while license is cancelled, suspended or revoked (DWLSR) are misdemeanors or felonies. In order to put the changes in proper prospective, a review of the entire section is helpful.

- 322.34(1) A driver whose license or driving privilege is cancelled suspended or revoked **who does not have knowledge** of his or her cancellation, suspension, or revocation as set forth in subsection (2) and who drives a vehicle, commits a non-criminal traffic infraction unless he or she is a Habitual Traffic Offender.
- 322.34(2) A driver whose license or driving privilege is cancelled suspended or revoked **who has knowledge** of his or her cancellation, suspension, or revocation as shown by the listed knowledge factors and is operating a motor vehicle commits a criminal traffic offense.
- (a) First conviction is a second degree misdemeanor.
 - (b) Second conviction is a first degree misdemeanor.
 - (c) Third, or subsequent conviction, is a third degree felony.
- 322.34(3) Permits the court to consider evidence that the driver knew of his or her cancellation, suspension, or revocation by means other than those listed in subsection (2).
- 322.34(4) Requires any judgment or order rendered by the court or other adjudicatory body that cancels, suspends, or revokes a person's driver's license or driving privilege to contain a provision notifying the person of the cancellation, suspension, or revocation.
- 322.34(5) A driver whose license or driving privilege is revoked as a Habitual Traffic Offender pursuant to §322.264, Florida Statutes, and who operates a motor vehicle is guilty of a third degree felony. (New subsection 10 removes

322.264(1)(d) from this section and makes HTO based on three DWLSR convictions which are based **solely** on financial suspensions misdemeanor charges and not third degree felonies. See new subsection 10 below.)

322.34(6) A driver who operates a motor vehicle without having a license or while his or her license is cancelled, suspended or revoked pursuant to §316.655 (by court order), 322.26(8) (court order), 322.27(2) (suspension per court directive), 322.28(2) or (4) (DUI manslaughter, vehicular homicide) and who by careless or negligent operation of a motor vehicle causes the death of another is guilty of a third degree felony.

322.34(7) A driver, whose license or driving privilege is cancelled, suspended, revoked or disqualified who operates a commercial motor vehicle is guilty of a first degree misdemeanor for the first offense. A conviction for a second or subsequent offense of this subsection is a third degree felony.

322.34(8) This section authorizes law enforcement to seize and impound a motor vehicle upon the arrest of a driver whose license is suspended or revoked for failure to maintain the appropriate insurance. Additionally, the driver must have previously been convicted of DWLSR, his or her license have been suspended or revoked since that conviction, and the driver must be the registered owner or co-owner of the vehicle. Troopers should follow FHP Policies and Procedures for vehicles impounded under this subsection.

322.34(9) This section provides for forfeiture of a motor vehicle that is being operated by a person who is driving under the influence of alcohol or drugs in violation of §316.193, Florida Statutes, if the driver's license is currently cancelled, suspended, or revoked as a result of a prior DUI conviction. Troopers should follow FHP Policies and Procedures for vehicles being seized for forfeiture.

New Section added by Senate Bill 1988 and effective July 1, 2008

322.34(10)(a) A driver, **who does not have a prior forcible felony conviction**, and is driving while his or her license or driving privilege is cancelled, suspended or revoked for any of the following is guilty of a second degree misdemeanor.

1. Failure to pay child support.
 2. Failure to pay other financial obligations except for criminal traffic fines.
 3. Failure to comply with paying traffic citations and fees (non-criminal).
 4. Failure to maintain required financial responsibility under Chapter 324.
 5. Failure to comply with attendance requirements for minors.
 6. Being declared a Habitual Traffic Offender based on three DWLSR convictions which are **solely** based on financial suspensions listed above under subparagraphs 1-5.
- (b)
1. The driver commits a second degree misdemeanor for driving with knowledge of his or her cancellation, suspension or revocation for a first conviction of subparagraphs 1-6
 2. The driver commits a first degree misdemeanor for a second or subsequent violation of driving with knowledge of his or her cancellation, suspension, or revocation under subparagraphs 1-6.

DISCUSSION

Based on review of the driving record as shown by DAVID, the officer should be able to readily determine which suspensions are based on financially related issues as set forth in new subsection (10) subparagraphs 1-5. See *Attachment 1*. A person driving with a financial suspension or revocation who does not have a prior forcible felony should be charged with misdemeanor driving while license cancelled, suspended or revoked pursuant to the new provision. See *Attachment 2*.

If the person is revoked as a HTO under 322.264(1)(d) (three or more DWLSR suspensions) the officer will need to look further in DAVID to determine the nature of the underlying DWLSR suspensions that gave rise to the HTO revocation. If the DWLSR convictions are the result of financially related suspensions only as set forth in the new subsection (10) subparagraphs 1-5, and the person does not have a prior forcible felony, the driver should be charged with either a first or second degree misdemeanor DWLSR depending on whether or not there is a prior DWLSR based on the financial suspensions listed in subsection (10) subparagraphs 1-5. For

example, in Attachment 2 it is clear that all the suspensions are financial in nature and therefore this driver may only be charged with a misdemeanor DWLSR (a first degree in this case since the driver already has at least one prior DWLSR based on a financial suspension). Under the new subsection(10)subparagraph 6 the officer will need to examine the record to determine if there are prior DWLSR convictions based on financially related suspensions and if so, are these prior DWLSR convictions likely the basis for the HTO revocation, which should result in the misdemeanor charge.

Any other HTO revocation, as set forth in 322.264(1) will result in a felony charge per §322.24(5). For example, in Attachment 3 the prior DWLSR convictions are based on suspensions for DUI and points as well as for financial suspensions. This DWLSR would be a felony.

The Department is seeking a way to code the driving records to better assist the trooper in this regard, but until that is accomplished, the method described above should be followed. If you have any questions concerning this Legal Bulletin, please contact the Office of General Counsel at (850) 617-3101.

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Attachment 1



s1988er.pdf

Attachment 2



misdemeanor.pdf

Attachment 3



Felony.pdf