

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 Committee on Children, Families, and Elder Affairs

BILL: CS/SB 744

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Detert

SUBJECT: Motor Vehicle Insurance and Driver Education for Children in Care

DATE: February 18, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Fav/CS
2.			TR	
3.			BI	
4.			AP	

<p>Please see Section IX. for Additional Information:</p> <p>COMMITTEE SUBSTITUTE - Technical Changes</p>
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I. Summary:

CS/SB 744 directs the Department of Children and Families (DCF or the department) to establish a statewide pilot program to pay specified costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a foster child who meets certain qualifications. The bill sets limits of the amount to be paid and requires payment to be made in the order of eligibility until funds are exhausted.

The bill further requires the department to contract with a qualified not-for-profit entity to operate and develop procedures for the program and requires an annual report to the Governor and the Legislature.

The bill removes the disability of nonage of minors for foster children for the purpose of obtaining motor vehicle insurance upon issuance of a court order. It also adds consideration of this action to the activities that occur at the special judicial review held when a child becomes 17 years of age.

The bill provides for preferential enrollment in driver education for specified children in the care of the department.

The bill provides for an appropriation of \$800,000 to fund the pilot program.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Foster Children

Young people in the foster care system often face barriers to participating in everyday life experiences common to others their age. These life experiences are important because they are a part of how all children are prepared for the responsibilities they will assume as adults. The Florida State Youth Advisory Board has long identified the barriers to driving an automobile that are experienced by the children in Florida's foster care system as a concern. The DCF staff concur that foster care children who are not able to learn or gain experience driving miss an important part of learning how to be independent, including being able to work.

Both statute and administrative code support the efforts of teens in foster care to engage in age-appropriate activities.¹ Departmental rules specifically require community-based lead agency service providers to support foster care teens that have demonstrated the appropriate level of maturity in their efforts to learn to drive, to obtain a learner's permit or driver's license, and to assist in obtaining automobile insurance for those children that are allowed to drive.²

At the end of January 2014, DCF reported that there were 385 15-year-olds, 458 16-year-olds, and 517 17-year-olds in foster care.³ The department has contracted with Cby25, a private not-for-profit corporation, to survey youth in foster care every six months and to publish reports.⁴ According to the most recent of these reports, published in the spring of 2013:

- 5 percent of 15-year-old respondents (11 children of 243 surveyed) had learner's permits;
- 8 percent of 16-year-olds (25 children of 300 surveyed) had learner's permits;
- 13 percent of 17-year-olds (52 children of 387 surveyed) had learner's permits; and
- 9 percent of the total number of children surveyed (88 of 930 surveyed) had learner's permits.

Children surveyed reported as following regarding drivers' licenses:

- 1 percent of 16-year-olds (4 children of 300 surveyed) had driver's licenses;
- 4 percent of 17-year-olds (16 children of 387 surveyed) had driver's licenses; and
- 3 percent of the total number of children surveyed (20 of 687 surveyed) had driver's licenses.⁵

¹ See s. 409.145(3), F.S.

² Rule 65C-30.007, F.A.C.

³ Email from Jane McElroy, DCF, (Feb. 12, 2014) (on file with the Senate Committee on Children, Families and Elder Affairs).

⁴ *My Services, Answers from Youth in Foster Care*, available on the DCF website at

<http://www.dcf.state.fl.us/programs/indliving/docs/MyServicesSpring2013SurveyReport.pdf> (last visited Feb. 13, 2014).

⁵ *Id.*, at 63.

Children in foster care are usually placed with a foster parent; however, they may also be placed in a group home or other residential facility⁶ or, upon turning 16, in an independent living setting which is subsidized by the department.⁷

Currently, foster parents (who are also referred to as licensed foster homes) receive payment from the state of a monthly board rate for caring for a foster child. The basic board rate for a child aged 13-21 is \$515.⁸

Driver's Licenses for Teens

A child who is 15 years of age is authorized to obtain a learner's driver's license (learner's permit) provided he or she meets the school attendance requirements of s. 322.091, F.S., and the application and testing requirements of s. 322.1615, F.S. Section 322.09, F.S., requires that when a child applies for a learner's permit, the application must be signed by a parent, guardian, or when there is no parent or guardian, some other responsible adult. The learner's permit is considered a restricted form of the regular driver's license, or Class E driver's license. This same section provides that any negligence or willful misconduct of the child operating a motor vehicle will be imputed to the adult who signed the application. That adult is jointly and severally liable with the child for any damages caused by the negligent or willful misconduct.

Special Driver's License Provisions for Foster Children and Foster Parents

Among the primary obstacles to these children being able to drive are the potential liability of the foster parents when the children drive vehicles owned by the foster parent and the attendant cost of insurance to protect foster parents from this liability.

In 2001, s. 322.09, F.S., was amended to provide that foster parents or authorized representatives of a residential group home who sign for a foster child's license do not become liable for any damages or misconduct of the child.⁹ While this provision relieves the foster parent of liability resulting directly from the signature on the driver's license application, it does not address any vicarious liability that the foster parent may have as a result of the foster parent's ownership of the vehicle which the child drives, *see Hertz Corp. vs. Jackson*, 617 So.2d 105 (Fla. 1993). This liability arises whenever an insured individual allows another to operate his or her motor vehicle and is independent of the provisions of s. 322.09, F.S. Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the child while operating the foster parent's vehicle, in the same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

Also in 2001, s. 627.746, F.S., was created and prohibited a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a child operating the vehicle while the child is holding a learner's permit.¹⁰ This prohibition is only applicable until the child obtains a regular driver's license.

⁶ Section 39.01(20), F.S.

⁷ Section 409.1451(3)(c), F.S.

⁸ Section 409.145(4), F.S.

⁹ Chapter 2001-83, Laws of Fla.

¹⁰ *Id.*

Costs Associated with Obtaining a Driver's License

Driver's education courses are offered free of charge through the public school system but enrollment may be limited. Some school districts offer a summer driver's education course, charging fees from \$50 to \$250.¹¹ Commercial courses are offered in some jurisdictions at prices ranging from \$300-\$5,000.¹²

The cost of obtaining a class E (regular) driver's license is \$48.¹³ The learner's permit is considered a restricted form of a class E license, requiring the payment of the \$48 fee, but no additional fee is required to upgrade from a learner's license to a class E license. In order to obtain a learner's license, the person applying must, among other requirements, have completed a traffic law and substance education course¹⁴ and have successfully completed a written examination.¹⁵¹⁶

The cost of obtaining insurance coverage for a teen driver varies widely, depending on the company underwriting the coverage, the geographic location of the family, the type and amount of coverage, the academic record of the child, and other factors. As a generic estimate, the Office of the Guardian ad Litem has used the figure of \$2,000 annually per child.¹⁷

Emancipation of Minors, Generally

All states have laws dealing with the "emancipation" of minors, which specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.¹⁸

Emancipation is the removal of "disability of nonage." Legally, in most instances, children lack the capacity that adults are assumed to have to perform certain activities, such as entering into binding contracts, making certain purchases, and being held responsible in the same way as adults for criminal offenses. This lack of capacity is termed the "disability of nonage."

Emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the right

¹¹ Florida Guardian ad Litem, *A Voice Heard: Keys to Independence*, available at http://guardianadlitem.org/news_main.asp (last visited Feb. 13, 2014).

¹² *Id.*

¹³ Section 322.21, F.S.

¹⁴ A representative cost for meeting this requirement is \$29.95, according to the Guardian ad Litem Program, *Voices, ibid.*

¹⁵ The cost for taking the examination is \$14.95, *Id.*

¹⁶ Section 322.1615, F.S.

¹⁷ E mail from Alan Abramowitz, Statewide Director, Guardian ad Litem Program, February 13, 2014 (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁸ A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors*, available at http://www.law.cornell.edu/wex/emancipation_of_minors (last visited Jan. 21, 2014).

to have their parents provide for them and the protection of the Department of Children and Family Services.¹⁹

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is age 16 or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. Subsequent to July 1, 2012, the petition may also be filed by the minor him or herself if the minor is a certified homeless and unaccompanied minor over the age of 16. The petition must contain the following information:²⁰

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides that:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;
- If the petition is filed by the guardian ad litem or next friend²¹, service of process must be perfected on the natural parents;
- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent;²²
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect. An order removing the disabilities of nonage has the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and authorizes the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older; and

¹⁹ A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide*, available at [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf) (last visited Jan. 21, 2014).

²⁰ Section 743.015, F.S.

²¹ A "next friend" is a person acting for the benefit of (an) infant, or other person not *sui juris* (person unable to look after his or her own interests or manage his or her own lawsuit) without being regularly appointed (as a) guardian, *Black's Law Dictionary*, 6th Edition, 1979.

²² Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.

- The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.²³

Special Provision Relating to Emancipation for Foster Children

Section 39.701(3), F.S., requires that the dependency court hold a judicial review within 90 days following the child's 17th birthday. At this hearing, the court is required to enter an order, separate from the judicial review order, that the disability of nonage for the child has been removed pursuant to s. 743.045, F.S.²⁴

Section 743.045, F.S. provides for the removal of the disability of nonage for foster children over the age of 17 for the purpose of executing contracts for a residential lease.

Additionally, s. 743.046, F.S., which is not referenced in s. 39.701(3), F.S., removes the disability of nonage for foster children over the age of 17 for the purpose of securing utility services at residential property.

Similarly, s. 743.044, F.S., which is also not referenced in s. 39.701(3), removes the disability of nonage for foster children over the age of 16 for the purpose of executing agreements for depository financial services. All three of these special provisions (ss. 743.044, 743.045, and 743.046, F.S.) require the entry of a court order to be effective.

III. Effect of Proposed Changes:

Section 1 amends s. 39.701(3), F.S. to add the removal of the disability of non-age for the purposes of obtaining motor vehicle insurance to the matters to be considered at the special judicial review scheduled at the time a child becomes 17 years of age.

Section 2 creates s. 409.1454, F.S., directing the department to establish a 3-year pilot program to pay the costs of driver education, licensure, and other costs incidental to licensure and motor vehicle insurance for children in licensed out of home care who have successfully completed a driver education program, to the extent that funding is available.

It limits the amount of the payments to the increase in cost attributable to the addition of the child to the policy. The bill directs that payments be made to eligible recipients in the order of eligibility until available funds are exhausted. It directs the department to contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the pilot program and requires the department to submit an annual report to the Governor and the Legislature in each year for the duration of the pilot project.

Section 3 creates s. 743.047, F.S., authorizing the court to remove the disability of nonage for minors for the purpose of obtaining motor vehicle insurance, providing that the child has reached 16 years of age, has been adjudicated dependent, is residing in an out-of-home placement, and has completed a driver education program. In order to execute the documents necessary for the

²³ Section 743.015, F.S.

²⁴ Section 39.701(1), F.S.

insurance, the child must present a court order removing the disability of nonage for this purpose.

Section 4 amends s. 1003.48, F.S., to require secondary schools offering driver's education courses to grant preferential enrollment to students in the custody of the department if the student maintains appropriate progress as required by the school.

Section 5 appropriates \$800,000 from the General Revenue Fund to the department for the purpose of implementing this act during FY 2014-2015.

Section 6 provides for an effective date of July 1, 2014.

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 bill may require some additional case work from community based care agency providers who assist children in obtaining motor vehicle insurance.

C. Government Sector Impact:

The cost of the bill is limited to the appropriation of \$800,000 for FY 2014-2015.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 1003.48 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: s. 409.1451 and s. 743.047.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 18, 2014:

- Amends s. 39.701(3), F.S., to add the emancipation of minors for the purpose of securing motor vehicle insurance to the matters to be considered at the special judicial review held for foster children reaching 17 years of age.
- Amends s. 409.1454, F.S., to clarify that the bill addresses only children in licensed out of home care.

B. Amendments:

None.