

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 795 Penalties for Violation of Traffic Laws
SPONSOR(S): Roads, Bridges & Ports Policy Committee, Jones and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1604

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	10 Y, 0 N, As CS	Brown	Miller
2)	Full Appropriations Council on Education & Economic Development	15 Y, 0 N	Rayman	Kramer
3)	Economic Development & Community Affairs Policy Council		Brown	Tinker
4)				
5)				

SUMMARY ANALYSIS

CS/HB 795 amends s. 318.14, F.S., to clarify that non-criminal traffic fines may be paid in installments using the payment plan mechanism currently contained in s. 28.246, F.S.

The bill also includes additional categories of drivers to a list of offenses for which a driver may provide “proof of compliance” to a clerk of court’s office and have adjudication withheld for the offense. The bill makes these changes in both Ch. 318 and Ch. 322, Florida Statutes. The bill also provides that if a driver labeled a Habitual Traffic Offender (HTO) is able to resolve fines through this process, he or she may have HTO status removed. (This option remains unavailable for criminal charges and driving-related infractions.)

The economic impact of CS/HB 795 is indeterminate, as additional revenue could be generated by an increase in payments from traffic offenders, but the number of offenders willing or able to comply with the provisions of the bill cannot be readily ascertained.

The bill has an effective date of October 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 318.14, F.S., permits traffic offenders to timely pay traffic fines by mail or in person. In doing so, the offender is deemed to have committed the infraction and waives his or her right to a hearing.

Section 28.246, F.S., authorizes clerks of court to implement payment plans for offenders deemed "indigent for costs."

Section 318.14, F.S., does not expressly permit traffic offenders to use the payment plan mechanism authorized in s. 28.246, F.S., and there appears to be an inconsistency between county traffic courts as to whether the payment plan mechanism is available for non-criminal traffic fines owed pursuant to s. 318.14, F.S.

Section 318.15, F.S., currently provides that if a traffic offender fails to timely pay a traffic fine, fails to appear at a subsequent hearing, or fails to attend a driver improvement school when required, the person shall have his or her driver's license administratively suspended by DHSMV.¹ After being suspended under this section, the offender must comply with all traffic-related obligations and penalties imposed before re-applying to the court for license re-instatement.

Section 322.245(5), F.S., provides requirements nearly identical to s. 318.15, F.S., regarding license suspension for failure to pay any previous fines outstanding by an offender for non-criminal traffic violations.

According to DHSMV, these license suspensions create a 'snowball' effect for repeat offenders unable to fully-pay a non-criminal traffic fine. A driver who is unable to pay (in full) a traffic fine, but needs to operate his or her vehicle in order to remain employed, may be subsequently cited for driving with a suspended license, thereby incurring an additional fine.

If a third violation occurs, the offender has his or her license administratively suspended for 5 years, pursuant to s. 322.264(1)(d), F.S. This statute determines that anyone driving on a suspended license three or more times in a 5-year period is a "habitual traffic offender," and is automatically subject to a 5 year license suspension.

¹ Section 318.15, F.S., provides that the clerk of court must notify DHSMV of the failure within 10 days, and DHSMV must suspend the license on the 20th day following the order to suspend.

Because convictions are dated from the date the citation is *paid*, drivers who are unable to make full payment for a non-criminal traffic citation face an open-ended period of time, not an actual 5-year period, during which they run the risk of receiving additional citations and being labeled a habitual traffic offender. DHSMV states that “[t]his process continues to put these drivers further behind and they are unable to ‘dig out’ from under the mountain of debt that arises.”²

A traffic court may withhold adjudication on a traffic offense of driving with a suspended license (s. 322.34, F.S.), but pursuant to the Supreme Court’s opinion in Raulerson v. State, 763 So.2d 285 (Fla. 2000), a withhold of adjudication is considered a conviction for purposes of the habitual traffic offender statute in Chapter 322, Florida Statutes.³

As mentioned above, s. 28.246, F.S., authorizes clerks to implement payment plans for offenders deemed “indigent for costs.” Under this statute a monthly payment amount, based on all fees and costs, is presumed to correspond to the person’s ability to pay if the amount does not exceed 2 percent of the person’s annual net income, divided by 12. The court is authorized to review the reasonableness of any such plan. To offset the costs of the payment plan, clerks are authorized to impose per-month or one-time “administrative processing service charges.”

Section 318.15, F.S., provides that a person’s failure to comply with civil penalty shall result in the person’s driver’s license being administratively suspended by DHSMV. In addition, if a person fails to make payments as required by s. 28.246, F.S., the clerk of courts is authorized to pursue the collection, including attorney’s fees and costs, by referring the account to any member of the Florida Bar or a collection agent registered in good standing pursuant to Chapter 559, Florida Statutes. These attorneys and collection agencies are entitled to collect up to an additional 40 percent of the amount owed at the time the account was referred.

Proposed Changes

CS/HB 795 amends s. 318.14, F.S., to expressly clarify that non-criminal traffic infraction fines may be paid using the clerk’s payment plan system implemented in s. 28.246, F.S., including the current requirement that the offender be found “indigent for costs.”

The bill includes additional offenses to the list in s. 318.14(10)(a), F.S., for which an offender can provide proof of compliance:

- Operating a motor vehicle with a license suspended for failure to pay child support or other financial obligations pursuant to s. 322.245, F.S. (but excluding criminal fines under s. 322.245(1), F.S.) and
- Operating a motor vehicle with a license suspended for failing to attend school.⁴

DHSMV has identified these additional categories as offenses that generally relate to financial concerns, not the driver’s actual ability to operate a motor vehicle. By granting these fiscally-challenged offenders an opportunity to provide “proof of compliance,” it is possible that offenders currently driving on suspended licenses will attempt to stop the ‘snowball’ effect by getting their overdue fines paid, re-registering their motor vehicles, and acquiring proper insurance.

The bill provides that if a driver labeled a Habitual Traffic Offender (HTO) is able to resolve fines through this process, he or she may have HTO status removed. (This option remains unavailable for criminal charges and driving-related infractions.) The bill also makes a conforming change to s.

² *Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971*, on file with the Roads, Bridges, and Ports Policy Committee.

³ The Raulerson court noted that pursuant to s. 318.14(11), F.S., withholding adjudication for violations of s. 318.14, F.S., “shall not constitute convictions.”

⁴ Section 322.091, F.S., generally requires minors to be enrolled in public or nonpublic school, or be enrolled in a home education program, in order to maintain a driver’s license.

318.15, F.S., to confirm that a person's failure to enter into or comply with the terms of a penalty payment plan with the clerk shall result in the person's driver's license being suspended by DHSMV.

B. SECTION DIRECTORY:

- Section 1 Amends s. 318.14, F.S.; providing for a person charged with a noncriminal traffic infraction to make periodic payments to pay civil penalties and fees; providing for certain persons cited for specific offenses to provide proof of compliance to a designated official; providing alternative citation disposition procedures for the offense of operating a motor vehicle with a license that has been suspended for failure to pay certain financial obligations or to comply with specified education requirements.
- Section 2 Amends s. 318.15, F.S.; providing for suspension of a driver's license for failure to enter into or make payments under a penalty payment plan; providing for reinstatement of the suspended license.
- Section 3 Amends s. 322.331, F.S.; providing for the removal of a habitual traffic offender designation upon proof of compliance with statutory provisions by certain offenders.
- Section 4 Amends s. 322.34, F.S.; providing alternative citation disposition procedures for the offense of knowingly operating a motor vehicle with a license that has been suspended for failure to pay certain financial obligations or failure to comply with specified education requirements; providing that adjudication shall be withheld under the alternative disposition and that such withholding of adjudication is not a conviction.
- Section 5 Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments, below.
2. Expenditures:
See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments, below.
2. Expenditures:
See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While not necessarily a measurable or "direct" impact, if the ultimate result of the bill is a decrease in the number of drivers who operate motor vehicles on a suspended license (and by definition, also without insurance), the public at large may see a positive economic impact.

D. FISCAL COMMENTS:

The bill could potentially result in additional revenue collected by state and local governments from traffic offenders considered "indigent" who would be willing to pay fines on a periodic basis, where they currently fail to pay at all. The number of drivers in this category cannot be readily ascertained.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Roads, Bridges, and Ports Policy Committee favorably adopted a strike-all amendment. The amendment:

- Allows citations penalized s. 318.14, F.S., to be paid pursuant to the existing payment plan process created by s. 28.246, F.S.
- Expands the number of categories of drivers to a list of offenses for which a driver may provide "proof of compliance" to a clerk of court's office and have adjudication withheld for the offense.
- Provides that if a driver labeled a Habitual Traffic Offender (HTO) is able to resolve fines through the "proof of compliance" process, he or she may have HTO status removed.

The bill as amended was reported favorably as a committee substitute.