

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 795 Penalties for Violation of Traffic Laws

**SPONSOR(S):** Jones and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1604

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Roads, Bridges & Ports Policy Committee		Brown	Miller
2)	Full Appropriations Council on Education & Economic Development			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

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**SUMMARY ANALYSIS**

HB 795 creates a new “payment plan” system allowing non-criminal traffic fines to be paid in installments. The bill allows clerks of court to implement these plans, and requires clerks to amend such plans based on the offender’s ability to pay. The bill also provides that when a court withholds adjudication on any offender’s violation of Ch. 322, Florida Statutes, such withholding shall not be considered a “conviction.”

The economic impact of 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 July 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.<sup>1</sup> 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.

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<sup>1</sup> 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 20<sup>th</sup> 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.”<sup>2</sup>

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.<sup>3</sup>

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.”

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

HB 795 creates a new subsection (14) in s. 318.14, F.S., requiring the clerks to establish a “system for accepting periodic payments,” and provides that the plans should provide for adjustment of payments without penalty, “due to changes in the ability of the payer.” The bill also amends s. 318.15, F.S., to add an offender’s failure to enter into or make timely payments on a payment plan to the existing list of actions which result in DHSMV suspending the offender’s license. Payments are deemed untimely if the clerk has not received a payment in the preceding 8 weeks.

The bill amends s. 322.01, F.S., providing that, with regard to driver’s license offenses, a judicial determination to withhold adjudication for violations is not a “conviction,” unless a given prohibition in Ch 322, Florida Statutes, expressly states that withholding adjudication is a conviction, for purposes of that prohibition.

## 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; directing the clerks of court to establish a system to accept such periodic payments; requiring the system to provide for adjustment of payments under certain circumstances; providing that the designated official hearing the case of a traffic law violation may withhold adjudication and that such action is not a conviction.

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.

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

<sup>3</sup> 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.”

Section 3 Amends s. 322.01, F.S.; providing that a judicial determination to withhold adjudication for a violation of specified provisions for driver licenses and identification cards is not a conviction.

Section 4 Provides an effective date of July 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.

In the event that a large number of traffic offenders choose to pay fines via a payment plan, the clerks of court may see an additional workload. However, the requirement of s. 28.246, F.S., that the court find offenders “indigent” may limit the number of offenders permitted to pay via payment plan.

## 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:**

The bill creates a new subsection (14), in s. 318.14, F.S., requiring the clerks to establish a “system for accepting periodic payments,” and provides that the plans should provide for adjustment of payments without penalty, “due to changes in the ability of the payor.” In light of the existing payment plans created by the clerks pursuant to s. 28.246, F.S., it may be advisable to amend the bill to reference the existing statutory system rather than create a second system with less legislative guidance.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**