

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 Transportation

BILL: CS/SB 1752

INTRODUCER: Transportation Committee and Senator Braynon

SUBJECT: Driver Licenses and Driving Privileges

DATE: March 14, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1752 authorizes performance of community service to satisfy the criminal penalties associated with certain criminal traffic offenses; revises provisions relating to driving while the driving license is canceled, suspended, or revoked; requires that a person's failure to pay financial obligations for any specified criminal offense be willful; and requires a court to find that a person has the ability to pay the financial obligations before the person's license can be administratively suspended.

This bill amends the following sections of the Florida Statutes: 318.18, 322.34, 322.245, 921.0022, and 932.701.

II. Present Situation:

Community Service

Section 318.18, F.S., provides penalties for noncriminal traffic infraction dispositions pursuant to s. 318.14, F.S., or a criminal offense listed in s. 318.17, F.S. With respect to a person ordered to pay a civil penalty for a noncriminal traffic infraction that is unable to comply with the court's order due to demonstrable financial hardship, s. 318.18(8)(b), F.S., directs a court to allow the

person to satisfy the civil penalty by participating in community service until the civil penalty is paid.

If a court orders a person to perform community service, the person receives credit for the civil penalty at the specified hourly credit rate¹ per hour of community service performed, and each hour of community service performed reduces the civil penalty by that amount until the civil penalty has been paid in full.

With respect to criminal offenses, those listed in s. 318.17, F.S., are:

- Fleeing and attempting to elude a police officer, in violation of s. 316.1935;
- Leaving the scene of a crash, in violation of ss. 316.027 and 316.061, punishable;
- Driving, or being in actual physical control of, any motor vehicle while under the influence of alcoholic beverages, any specified chemical or controlled substance, in violation of s. 316.193, or driving with an unlawful blood-alcohol level;
- Reckless driving, in violation of s. 316.192;
- Making false crash reports, in violation of s. 316.067;
- Willfully failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. 316.072(3);
- Obstructing an officer, in violation of s. 316.545(1); or
- Any other offense in ch. 316, F.S., which is classified as a criminal violation.

Chapter 316, F.S., classifies interference with official traffic control devices or railroad signs or signals as a criminal violation under s. 316.0775, F.S.

The classification of these offenses ranges from a second degree misdemeanor to a first degree felony, depending on the offense and the particular circumstances. The maximum sentence that can be imposed for these offenses is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is 60 days in a county jail; for a first degree misdemeanor, one year in a county jail; for a third degree felony, 5 years state imprisonment; for a second degree felony, 15-year state imprisonment; and for a first degree felony, generally 30-years state imprisonment.² Fines may also be imposed, and these fines escalate based on the degree of the offense.³ Enhanced penalties or mandatory minimum prison terms also apply in some cases.⁴

While community service may be ordered for these offenses in certain circumstances, current law makes no provision for allowing a person to perform community service to satisfy the criminal penalties associated with the offenses listed in s. 318.17, F.S.

¹ The “specified hourly credit rate” means the wage rate that is specified in 29 U.S.C. s. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that is then in effect, and that an employer subject to such provision must pay per hour to each employee subject to such provision, with exception for a person possessing a trade or profession for which there is a community service need, at the average prevailing wage rate for the trade or profession needed.

² Section 775.082, F.S.

³ Section 775.083, F.S.

⁴ Section 775.084, F.S.

Driving while License Suspended, Revoked, Canceled, or Disqualified

Under current law, any person, except a “habitual traffic offender,” whose driver’s license or driving privilege has been canceled, suspended, or revoked, and who drives a motor vehicle on the highways of this state while the license or privilege is canceled, suspended, or revoked is guilty of a moving violation, punishable as provided in ch. 318, F.S.⁵

A person whose driver’s license or driving privilege has been canceled, suspended, or revoked, except a habitual traffic offender, and who drives a motor vehicle *knowing* of the cancellation, suspension, or revocation, is guilty of:

- A second degree misdemeanor upon a first conviction;
- A first degree misdemeanor upon a second conviction; and
- A third degree felony upon a third or subsequent conviction,

all punishable as provided in s. 775.082 or s. 775.083, F.S., or the provisions of s. 775.084, F.S., for the third or subsequent conviction.⁶ The element of knowledge is satisfied if the person has been previously cited for driving a motor vehicle while the license is canceled, suspended, or revoked as a moving violation; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received the notice required in any judgment or order by a court or adjudicatory body or any uniform traffic citation that the license has been canceled, suspended, or revoked.⁷

A person whose driver’s license has been revoked as a habitual offender and who drives a motor vehicle on the highways of this state while the license is revoked is guilty of a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.⁸

Any person who operates a motor vehicle without having a driver’s license as required under s. 322.03, or while his or her driver’s license or driving privilege is canceled, suspended, or revoked pursuant to s. 316.655, s. 322.26(8), s. 322.27(2), or s. 322.28(2) or (4), and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being is guilty of a third degree felony, punishable as provided in s. 775.082 or s. 775.083, F.S.⁹

A person whose driver’s license or driving privilege has been canceled, suspended, revoked, or disqualified and who drives a commercial motor vehicle on the highways while the license or privilege is canceled, suspended, revoked, or disqualified is guilty of:

- A first degree misdemeanor upon a first conviction, punishable as provided in s. 775.082 or s. 775.083, F.S.; and
- A third degree felony upon a second or subsequent conviction, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.¹⁰

⁵ Section 322.34(1), F.S.

⁶ Section 322.34(2), F.S.

⁷ Section 322.34(4), F.S.

⁸ Section 322.34(5), F.S.

⁹ Section 322.34(6), F.S.

¹⁰ Section 322.34(7), F.S.

However, if a person does not have a prior forcible felony conviction and the person's driver's license is canceled, suspended, or revoked for:

- Failing to pay child support as provided in s. 322.245 or s. 61.13016;
- Failing to pay any other financial obligation as provided in s. 322.245 other than those specified in s. 322.245(1);¹¹
- Failing to comply with a civil penalty required in s. 318.15;
- Failing to maintain vehicular financial responsibility as required by chapter 324;
- Failing to comply with attendance or other requirements for minors as set forth in s. 322.091; or
- Having been designated a habitual traffic offender under s. 322.264(1)(d) as a result of suspensions of his or her driver's license or driver privilege for any underlying violation listed above,

the person commits:

- A second degree misdemeanor upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled, punishable as provided in s. 775.082 or s. 775.083; and
- A misdemeanor of the first degree upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled, punishable as provided in s. 775.082 or s. 775.083.¹²

A person who does not hold a commercial driver's license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed may, instead of paying the fine or appearing in court, enter a plea of nolo contendere and provide proof of compliance, in which case adjudication is withheld. A person may make this choice only if not previously made within the last year, and only three times in total.¹³

III. Effect of Proposed Changes:

Section 1: Provides a short title, "Driver's Accountability Act."

Section 2: Amends s. 318.18(8)(b), F.S., to authorize a court, if a person has been ordered to pay a criminal penalty, including court costs, fines, or fees associated with a criminal offense, and is unable to comply with the court's order due to demonstrable financial hardship, to allow the person to satisfy the criminal penalty by participating in community service until the penalty is paid. The bill also directs the court, in determining whether a person has the ability to pay the criminal penalty, to consider the financial resources of the person, the present and potential future financial needs and earning ability of the person and his or her dependents, and such other

¹¹ Section 322.245(1), F.S., specifies the criminal offenses listed in s. 318.17, F.S., authorizing a process for suspension of a person's driver's license, after notice, for failure to comply with all directives of a court within the time allotted.

¹² Section 322.34(10), F.S.

¹³ Section 322.34(11), F.S.

factors which the court deems appropriate. If the court finds the person has the inability to pay, the court may consider converting the outstanding penalty to community service.

Section 3: Amends s. 322.34, F.S., as follows:

- Provides in subsection (1) that any person whose driver license or driving privilege has been *canceled or suspended* who drives a vehicle on the highways of this state while the license or privilege is canceled or suspended, commits a moving violation punishable as provided in chapter 318, F.S., except as provided in subsection (2). Driving while a license or privilege is revoked is removed from this subsection.
- Provides in new subsection (2)(a) that any person whose license has been *suspended for failing to pay child support* as provided in s. 322.245 or s. 61.13016 who, knowing of such suspension, drives any motor vehicle on the highways of this state while such license or privilege is suspended is guilty of a second degree misdemeanor upon a first conviction, and is guilty of a first degree misdemeanor upon a second or subsequent conviction, both punishable as provided in s. 775.082 or s. 775.083. This language is relocated from s. 322.34(10), which is repealed by the bill.
- Provides in re-designated subsection (2)(b) that any person whose driver license or driving privilege has been *suspended under s. 322.2615, F.S.¹⁴ or revoked as provided by law*, except habitual traffic offenders, who drives any motor vehicle on the highways while such license or privilege is suspended or revoked commits the same second degree misdemeanor upon a first conviction under current law, the same first degree misdemeanor upon a second conviction, and the same third degree felony upon a third or subsequent conviction – still punishable as provided under current law.
- Provides in new subsection (3) that a person whose driver license or driving privilege has been *revoked as a habitual traffic offender* who, knowing of such revocation, drives any motor vehicle on the highways of this state while such license or privilege is revoked is guilty of:
 - a second degree misdemeanor upon a first conviction, punishable in the same fashion;
 - a first degree misdemeanor upon a second conviction, punishable in the same fashion;
 - upon a third or subsequent conviction,
 - ✓ a first degree misdemeanor, if the person’s designation as a habitual traffic offender is based only on the offenses of driving while a license is suspended or canceled under s. 322.34(1); or
 - ✓ a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person’s designation as a habitual traffic offender is based on any offense of driving while a license is suspended or revoked under new subsection (2).

¹⁴ Suspension by a law enforcement officer of the driving privilege of a person who is driving or in actual physical control of a motor vehicle and who has an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher, or of a person who has refused to submit to a urine test or a test of his or her breath-alcohol or blood-alcohol level.

As the same violation in all cases under current law is punishable as a third degree felony, these revisions have the effect of reducing the severity for any first or second conviction.

- Provides in new subsection (4) that any person whose driver license or driving privilege has been revoked as a habitual traffic offender for violations other than a violation of s. 322.264(1)(d) (driving a motor vehicle while his or her license is suspended or revoked), who, knowing of such revocation, drives any motor vehicle on the highways while such license or privilege is revoked commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- Provides in new subsection (5) that any person whose driver license or driving privilege has been revoked as a habitual traffic offender that has a prior forcible felony conviction as defined in s. 776.08 who, knowing of such revocation, drives any motor vehicle on the highways of this state while such license or privilege is revoked commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- Repeals current subsection (5) providing that any person whose driver's license has been revoked as a habitual offender and who drives a motor vehicle on the highways of this state while the license is revoked is guilty of a third degree felony.
- Repeals current subsection (10) providing alternative penalties for a person not having a prior forcible felony conviction.
- Removes knowledge of driving while a license is suspended, revoked, or canceled from the authorization to choose to enter of plea of nolo contendere for individuals who do not hold a commercial driver license and applies the authorization to all such offenses, not just those tied to the underlying violations listed in current subsection (10).
- Makes conforming cross-reference revisions and editorial and grammatical revisions.

Section 4: Amends s. 322.245(5), F.S., which directs the Department of Highway Safety & Motor Vehicles (DHSMV) to suspend the license of a person named in a notice received from a clerk of the court that a person licensed to operate a motor vehicle in this state has failed to pay financial obligations for any specified criminal offense, to require the person's failure to be willful and to require suspension of the person's driver license after a finding by the court that the person has the ability to pay.

Section 5. Amends s. 921.0022, the offense severity ranking chart, to correct a cross-reference.

Section 6: Amends s. 932.701, F.S., to correct a cross-reference.

Section 7: Provides the bill takes effect July 1, 2013.

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:**

The Revenue Estimating Conference has not yet analyzed the fiscal impact of this bill.

B. Private Sector Impact:

A person who is a habitual offender who, knowing of such revocation, drives any motor vehicle on the highways of this state while such license or privilege is revoked is guilty of a second degree misdemeanor upon a first conviction, and a first degree misdemeanor upon a second conviction, rather than a third degree felony.

C. Government Sector Impact:

Allowing a person to perform community service to satisfy payment of the criminal penalties associated with the offenses listed in s. 318.17, F.S., will have an indeterminate negative fiscal impact. Supervision of individuals allowed to perform such community service will have an impact on court resources.

Reduction of severity in offenses generally equates to lower penalties.

A determination that a person's failure to pay financial obligations for any specified criminal offense is willful will have an impact on court resources, as will the need to have a finding by a court that a person has the ability to pay the financial obligations before a person's license can be suspended upon notice from a court clerk.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 14, 2013:

The CS authorizes, rather than requires, a court to allow a person to satisfy a criminal penalty by participating in community service until the penalty is paid, if the person is unable to comply with the court's order to pay a criminal penalty; and authorizes, rather than requires, a court to consider converting the outstanding penalty to community service if the court finds that the person has the inability to pay.

- B. **Amendments:**

None.