

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 101 Habitual Traffic Offender Designations

SPONSOR(S): Jones and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N	Davy	Miller
2) Criminal Justice Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

This bill addresses certain persons who are currently unable to obtain a Florida driver license.

Current law requires any person whose record as maintained by Department of Highway Safety and Motor Vehicles (DHSMV), in a five year period, has three or more convictions for specific offenses to be designated a "habitual traffic offender" (HTO). The law further provides any person who, in a five year period, has fifteen convictions for moving traffic offenses for which points may be assessed must also be designated a HTO. The law requires DHSMV to revoke the license of any person designated a HTO and such a person is not eligible to be relicensed for a minimum of 5 years from the date of revocation. Currently, there is no provision for HTOs to provide proof of compliance and have their HTO designation removed.

The bill authorizes a person who has received a HTO designation and whose driver license has been revoked as a result of a third violation of driving a motor vehicle while his or her license is suspended or revoked (DWLSR) before July 1, 2014, to provide proof of compliance before July 1, 2016, to the clerk of court before the designated court date. Proof of compliance includes a valid, renewed, or reinstated driver license or registration certificate and proper proof of maintenance of security as required by s. 316.646, F.S. Upon receipt of proof of compliance, the bill requires the clerk of court to submit an amended disposition to remove the HTO designation.

To the extent that individuals provide proof of compliance, the bill may have an insignificant positive impact on state fee revenue associated with court costs. Similarly, to the extent that the department issues new licenses to individuals with suspensions or revocations from other states, the bill may have an insignificant positive impact on state driver license fee revenue. See fiscal comments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Habitual Traffic Offenders

Currently, s. 322.264(1), F.S., requires any person whose record as maintained by DHSMV shows three or more convictions in a five year period for specific offenses to be designated as a HTO. These offenses include:

- voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;
- any violation of Driving Under the Influence in violation of s. 316.193, F.S.;
- any felony in the commission of which a motor vehicle is used;
- driving a motor vehicle while his or her license is suspended or revoked;
- failing to stop and render aid as required under the laws of the state in the event of a motor vehicle crash resulting in the death or personal injury of another; or
- driving a commercial motor vehicle while his or her privilege is disqualified.¹

Section 322.264(2), F.S., further provides any person who, in a five year period, has fifteen convictions for moving traffic offenses for which points may be assessed is also designated as a HTO.²

A HTO who drives a motor vehicle while his or her license is revoked is guilty of a felony of the third degree, punishable by imprisonment of up to five years and a fine up to \$5,000.³

Section 322.27(5), F.S., requires DHSMV to revoke the license of any person designated a HTO and such a person is not eligible to be relicensed for a minimum of 5 years from the date of revocation.⁴

Proof of Compliance

Currently, a person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for the following offenses, may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau:

- operating a motor vehicle without a valid driver license in violation of s. 322.03, F.S., s. 322.065, F.S., or s. 322.15(1), F.S., or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to s. 322.291, F.S.;
- operating a motor vehicle without a valid registration in violation of s. 320.0605, F.S., s. 320.07, F.S., or s. 320.131, F.S.;
- operating a motor vehicle without proof of security in violation of s. 316.646, F.S.;
- operating a motor vehicle with a license that has been suspended under s. 61.13016, F.S., or s. 322.245, F.S., for failure to pay child support or for failure to pay any other financial obligation as provided in s. 322.245, F.S.; however, this subparagraph does not apply if the license has been suspended pursuant to s. 322.245(1), F.S.; and
- operating a motor vehicle with a license that has been suspended under s. 322.091, F.S., for failure to meet school attendance requirements.⁵

In such case, adjudication is withheld. A person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not

¹ Section 322.264(1), F.S.

² Section 322.264(2), F.S.

³ Section 322.24(5), F.S.

⁴ Section 322.27 (5), F.S.

⁵ Section 318.14(10)(a), F.S.

make more than three elections under this subsection.⁶ Currently, if a defendant in a civil case of unknowingly DWLSR provides proof of compliance and pleas nolo contendere, the court will withhold adjudication, and the citation will not count toward the three total offenses resulting in a HTO designation. Currently, a withhold of adjudication for a criminal DWLSR offense constitutes a conviction and, therefore, counts toward one of the three offenses to receive an HTO designation.⁷

During the 2010 regular legislative session, CS/HB 795 was passed and signed into law, which among other things authorized individuals who had received a HTO designation and whose driver license has been revoked as a result of a third violation of driving a motor vehicle while his or her license is suspended or revoked to provide proof of compliance. The provision was only effective between July 1, 2010 and July 1, 2011.^{8,9}

Currently, any individual who pays a citation of DWLSR or provides proof of compliance for the underlying cause of the suspension receives one of the three convictions needed to receive a HTO designation. The offender has no incentive to take care of the outstanding obligations causing their suspension and provide proof of compliance. A HTO designation cannot be removed by taking care of the outstanding obligations causing the suspension and providing proof of compliance.

Many of the underlying license suspensions in DWLSR cases generally relate to financial concerns, not the driver's actual ability to operate a motor vehicle. As a result, they can create a "snowball" effect for repeat offenders unable to fully-pay a non-criminal traffic fine or other legal financial obligations. A driver who is unable to pay 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 or revoked license, thereby incurring an additional fine. By granting these fiscally-challenged HTOs an opportunity to provide "proof of compliance," it is possible that HTOs currently driving on revoked licenses will attempt to stop the "snowball" effect by paying their overdue fines, acquiring proper insurance, and taking care of other legal obligations.

Effect of Proposed Changes

The bill authorizes a person who has received a HTO designation and whose license has been revoked under s. 322.27(5), F.S., as a result of a third violation of driving with a motor vehicle while his or her license is suspended or revoked, to provide proof of compliance to the clerk of court before their designated court date as provided in s. 318.14(10)(a), F.S. Proof of compliance consists of a valid, renewed, or reinstated driver license registration certificate and proper proof of maintenance of security as required by s. 316.646, F.S., before the scheduled court appearance date as provided in statute. The bill provides that if a driver labeled a Habitual Traffic Offender is able to resolve fines through this process, he or she will have their HTO status removed. In such an instance, the clerk of court will submit an amended disposition to remove the HTO designation, which will allow the person to apply for reinstatement of their driver license.

B. SECTION DIRECTORY:

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| Section 1: | Amends s. 318.14, F.S.; providing for the removal of a habitual traffic offender designation upon proof of compliance with statutory provisions by certain offenders. |
| Section 2: | Provides the bill takes effect upon becoming law. |

⁶ *Id.*

⁷ *Raulerson v. State*, 763 So.2d 285, (Fla 2000).

⁸ According to DHSMV, during the effective period 4,046 records were reviewed, due to customers calling/writing into DHSMV. Out of the 4,046 reexaminations, 1,549 were approved for reinstatement, 1,711 were not eligible for reinstatement, and 786 reinstated their license. Information received from DHSMV (12/13/13), on file with the Transportation and Highway Safety Subcommittee.

⁹ Chapter 2010-107, Laws of Florida.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have a positive impact on HTOs who regain their driving privileges. 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. As a result, individuals who regain their privilege to drive will be able to have greater access to employment opportunities and play a more active role in the economy.

D. FISCAL COMMENTS:

Any person establishing proof of compliance will be assessed court costs of \$25. The \$25 court cost assessment is distributed as follows:

- One dollar of such costs shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund of the Department of Children and Family Services.
- One dollar of such costs shall be distributed to the Department of Juvenile Justice for deposit into the Juvenile Justice Training Trust Fund.
- Fourteen dollars of such costs shall be distributed to the municipality and \$9 shall be deposited by the clerk of the court into the fine and forfeiture fund established pursuant to s. 142.01, F.S., if the offense was committed within the municipality.¹⁰

If the offense was committed in an unincorporated area of a county or if the citation was for a violation of s. 316.646(1)-(3), F.S.¹¹, the entire amount shall be deposited by the clerk of the court into the fine and forfeiture fund established pursuant to s. 142.01, F.S., except for the moneys to be deposited into the Child Welfare Training Trust Fund and the Juvenile Justice Training Trust Fund.¹²

To the extent that HTOs provide proof of compliance and pay the \$25 court cost, the bill could have a positive fiscal impact on the state trust funds and local governments to whom the funds are distributed.

¹⁰ Section 318.14 (10)(b), F.S.

¹¹ Section 316.646 (1)-(3), F.S., mandates the requirement for an owner and operator of a motor vehicle to maintain proof of property damage liability security, liability security for bodily injury or death, or personal injury protection security. A law enforcement officer may require the operator display the required proper proof of security. A person who fails to provide the required proof of security commits a moving violation subject to the penalty provided in chapter 318, F.S., and will be required to furnish proof of security.

¹² *Id.*

Any person who applies for reinstatement following the end of their HTO designation and revocation of the person's driver license must pay a service fee of \$75, which is in addition to the fee for a license. Of the \$75 fee received from a licensee for reinstatement following a revocation or disqualification, the department must deposit \$35 in the General Revenue Fund and \$40 in the Highway Safety Operating Trust Fund.¹³

An original Class E or motor cycle driver license is \$48, which includes the fee for driver education provided by s. 1003.48, F.S.¹⁴ To the extent that the department issues new licenses to individuals with suspensions or revocations from other states, the bill may have an insignificant positive impact on state driver license fee revenue, which is deposited into the General Revenue Fund.¹⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹³ Section 322.21(8), F.S.

¹⁴ Section 322.21 (1), F.S.

¹⁵ Section 322.21(5), F.S.