

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1173 Driver Licensing and Infractions
SPONSOR(S): Transportation & Infrastructure Subcommittee; Cortes, B.
TIED BILLS: IDEN./SIM. **BILLS:** SB 1574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill amends several provisions of law relating to driver licensing and infractions.

The bill provides that if the amount of a penalty on a traffic citation is determined subsequent to issuance to be incorrect, the person has 30 days from the date the notification of the error was mailed to pay the correct amount.

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to immediately suspend the motor vehicle registration for the first offense of failing to comply with a civil traffic infraction. The bill keeps the existing driver license suspension penalty for a subsequent offense.

The bill allows the clerk of the court to authorize community service for indigent applicants for noncriminal traffic infractions and provides guidelines for authorizing community service. Courts can currently authorize community service if a person shows demonstrable financial hardship.

The bill requires motor vehicle dealers to verify the driver license of persons purchasing a motor vehicle. If the purchaser does not have a valid driver license, the purchaser is required to attest that the motor vehicle will be driven by a licensed driver. The bill also provides that motor vehicle dealers who attempt to verify the status of a driver license are not liable for any action by a purchaser who has an invalid driver license.

State and local governments may experience a reduction in revenues associated with the expanded use of community service in lieu of paying a traffic citation. The state may see an increase in expenditures associated with allowing motor vehicle dealers to check the validity of a driver license and the clerks of the court may incur some expenditures associated with determining if someone is indigent for purposes of providing community service in lieu of paying a traffic citation. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill amends various provisions relating to driver licensing and infractions. For ease of understanding, this analysis is arranged by topic.

Noncriminal Traffic Infractions (Section 1)

Current Situation

Section 318.14, F.S., relates to noncriminal traffic infractions. Section 318.14(4)(a), F.S., provides except as provided in s. 318.14(12), F.S., relating to toll violations, any person charged with a noncriminal traffic infraction who does not elect to appear must, within 30 days after the date the citation is issued:

- Pay the civil penalty and delinquent fee, if applicable, either by mail or in person; or
- Enter into a payment plan in accordance with s. 28.246, F.S.,¹ with the clerk of the court to pay the civil penalty and delinquent fee, if applicable.

Occasionally a law enforcement officer miscalculates the amount owed for the traffic citation, and the person pays the amount on the citation. The clerk of the court subsequently notifies the person of the additional amount owed; however, the notification may not provide enough time to pay the citation within 30 days. Subsequently, the person's driver license is suspended for nonpayment of the penalty.

Proposed Changes

The bill amends s. 318.14(4)(a), F.S., providing that if the amount of the penalty indicated on the citation is determined to be incorrect after the issuance of the citation, the clerk of the court is required to notify the person within 10 days after such determination, by mail to the address indicated on the citation, of the correct civil penalty. The person has 30 days from the date the notification is mailed to pay the correct amount.

Failure to Comply with a Civil Penalty or To Appear (Section 2)

Current Situation

Section 318.15, F.S., relates to a person's failure to comply with a civil traffic penalty or failure to appear. Section 318.15(1)(a), F.S., provides that if a person fails to comply with the civil penalties provided in s. 318.18, F.S.,² within the time period specified in s. 318.14(4), F.S., fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14, F.S., and 28.246, F.S., fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court must notify the Department of Highway Safety and Motor Vehicles (DHSMV) of such failure within 10 days after such failure.

Upon receiving such notice, DHSMV immediately issues an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6), F.S. Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside Florida, remains on DHSMV records for seven years from the date imposed and is removed from the records after the expiration of seven years from the date it is imposed. DHSMV may not accept the resubmission of such suspension.

Proposed Changes

The bill amends s. 318.15(1)(a), F.S., providing that for a first offense for failure to comply with a civil penalty DHSMV is required to immediately suspend the registration of all motor vehicles registered in

¹ Section 28.246, F.S., relates to the payment of court-related fines and other monetary penalties, fees, charges, and costs.

² Section 318.18, F.S., provides the amount of penalties for various traffic infractions.

the person's name. For a second or subsequent offense DHSMV issues an order suspending the person's driver license.

Amount of Penalties (Section 3)

Current Situation

Section 318.18, F.S., provides the amount of penalties for various traffic infractions. Section 318.18(8)(b), F.S., provides that if a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and the person is unable to comply with the court's order due to demonstrable financial hardship, the court is required 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 rate³ per hour of community service performed, and each hour of community service performed will reduce the civil penalty by that amount. However, if a person ordered to perform community service has a trade or profession for which there is a community service need, the specified hourly credit rate for each hour of community service performed by that person will be the average prevailing wage rate for the trade or profession that the community service agency needs.

Proposed Changes

The bill amends s. 318.18(8)(b), F.S., providing that a person who has been ordered to pay a civil penalty for a noncriminal traffic infraction may apply to the clerk of the court for permission to satisfy the civil penalty by participating in community service. The person is directed to use an application form developed by the Florida Clerk of Court Operations Corporation with final approval by the Florida Supreme Court. The application must include, at a minimum, the following financial information:

- Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
- Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rents, trusts, and gifts.
- Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or other tangible property.
- All liabilities and debts.

The application is required to be signed by the applicant attesting to the truthfulness of the information provided. The application must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent.

The bill requires the clerk to assist a person appearing before him or her requesting assistance in completing the application, and notify the court if a person is unable to complete the application after the clerk has provided assistance.

The clerk of the court is required to determine whether an applicant seeking permission to perform community service is indigent based on the information provided in the application and the following criteria:

- An applicant, including a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed by the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.

³ Section 318.08(8)(b)2.a., F.S., defines "specified hourly credit rate" as 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.

- There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of a person's homestead and one vehicle having a net value not exceeding \$5,000.
- Notwithstanding the information provided by the applicant, the clerk may conduct a review of the property records for the county in which the applicant resides and the state's motor vehicle title records to identify any property interest of the applicant. The clerk may evaluate and consider the results in making a determination of whether a person is indigent. If the review is conducted, the clerk is required to maintain the results in a file with the application and provide the file to the court of the applicant seeks court review of the clerk's determination of indigent status.

The clerk's duty in determining whether an applicant is indigent is limited to receiving the application and comparing the information provided in the application to the criteria provided in statute. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or an exercise of independent judgement by the clerk. The clerk may contract with third-parties to perform these functions.

If the clerk of the court determines that the applicant is indigent and therefore unable to comply with the court's order, the clerk of the court is required to allow the applicant to satisfy the civil penalty by participating in community service until the civil penalty is paid.

If the clerk of the court determines that the applicant is not indigent, the applicant may seek review of the clerk's determination by filing a written motion with the court and submitting the completed application. In reviewing the motion, the court considers the extent to which the applicant's income equals or exceeds the income criteria described above. The court makes a final determination of indigent status and, if the court determines that the applicant is indigent, the court orders the applicant to perform community service until the penalty is paid.

The bill also makes other conforming changes to s. 318.18(8)(b), F.S.

Motor Vehicle Dealers (Section 6)

Current Situation

Section 320.27, F.S., relates to motor vehicle dealers.⁴ The statute addresses issues such as licensing, applications and fees, recordkeeping requirements, penalties, and the denial, suspension, or revocation of licenses. Nothing in Florida law currently requires motor vehicle dealers to determine whether or not the motor vehicle is being sold to a licensed driver.

Proposed Changes

The bill creates s. 320.27(8), F.S., providing that notwithstanding any other provision of law to the contrary, before finalizing the sale of a motor vehicle, a motor vehicle dealer is required to record the

⁴ Section 320.27(1)(c), F.S., defines "motor vehicle dealer" as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms "selling" and "sale" include lease-purchase transactions. A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchised agreement as defined in s. 320.60(1), to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle; provided this limitation shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. The transfer of a motor vehicle by a dealer not meeting these qualifications shall be titled as a used vehicle.

driver license number of the purchaser and verify that the driver license is valid. DHSMV is required to provide motor vehicle dealers with access to driver license records for the purposes of verification. If the driver license is suspended, revoked, or otherwise invalid, the dealer is required to obtain an attestation by the purchaser on a DHSMV developed form indicating the motor vehicle will be operated by a licensed driver.

A motor vehicle dealer complying with the above is not liable for any action of a purchaser or operator of a motor vehicle who has a suspended, revoked, or otherwise invalid driver license.

The bill also amends s 320.27, F.S., making grammatical and conforming changes.

Conforming Changes (Sections 4, 5, and 7)

The bill amends ss. 320.03, 320.131, and 938.30, F.S., making conforming changes.

B. SECTION DIRECTORY:

Section 1 amends s. 318.14, F.S., relating to noncriminal traffic infractions.

Section 2 amends s. 318.15, F.S., relating to failure to comply with a civil penalty or failure to appear.

Section 3 amends s. 318.18, F.S., relating to the amount of penalties.

Sections 4 and 5 amends ss. 320.03 and 320.131, F.S., conforming cross-references.

Section 6 amends s. 320.27, F.S., relating to motor vehicle dealers.

Section 7 amends s. 938.30, F.S., conforming cross-references.

Section 8 provides a July 1, 2017 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Making it easier for indigent persons to undertake community service in lieu of paying a traffic fine will reduce the state's revenues associated with traffic fines. These revenues are deposited into multiple state trust funds. However, it is not clear how many violators will now participate in community service; therefore, the fiscal impact is indeterminate.

2. Expenditures:

DHSMV may incur some costs associated with allowing motor vehicle dealers check the validity of a driver license prior to the sale of the motor vehicle.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Municipalities and counties, including the clerks of the court, will see a reduction in traffic fine revenues associated with allowing indigent violators to undertake community service in lieu of paying a traffic fine. However, it is not clear how many violators will now participate in community service; therefore the fiscal impact is indeterminate.

2. Expenditures:

The clerks of the court may incur some additional expenditures associated with the ministerial task of determining if someone is indigent for purposes of determining eligibility for community service.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indigent persons may find it easier to provide community service in lieu of paying the fine associated with a traffic infraction.

Motor vehicle dealers may incur some costs associated with checking the validity of a driver license prior to selling a motor vehicle.

D. FISCAL COMMENTS:

There may be a shift in revenues associated with using motor vehicle registration holds in lieu of driver license suspensions. However, the fiscal impact is not known at this time.

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:

Single Subject

Article III, s. 6 of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith...” The Florida Supreme Court has defined the single subject provision as containing three requirements. Each law must embrace only one subject, the law may include any matter that is properly connected with the subject, and the subject must be briefly expressed in the title.⁵ The test is whether the bill is designed to accomplish separate objectives that have no natural or logical connection to each other.⁶ Where an act contains two subjects that “are designed to accomplish separate and disassociated objects of legislative effort,” the act violates single subject.⁷ However, an act may contain various subtopics without violating the single-subject requirement.⁸ This bill, which relates to driver licensing and infractions, revises provisions related to noncriminal traffic infractions and associated civil penalties, and establishes a process by which the clerk of court may determine that a person is deemed indigent for purposes of waiving the fines. The bill also establishes a new requirement for motor vehicle dealers to verify that the purchaser of a vehicle has a valid driver license.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁵ *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).

⁶ *Board of Pub. Instruction v. Doran*, 224 So.2d 693 (Fla. 1969).

⁷ *State ex rel. Landis v. Thompson*, 163 So. 270, 283 (Fla. 1935).

⁸ *Burch v. State*, 558 So.2d 1 (Fla. 1990).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the short title of the bill from “motor vehicles” to “driver licensing and infractions” to more accurately reflect what is contained in the bill.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.