

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 302

INTRODUCER: Transportation Committee and Senator Brandes and others

SUBJECT: Penalties and Fees

DATE: February 27, 2017 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Jones | Miller | TR | Fav/CS |
| 2. | Harkness | Sadberry | ACJ | Pre-meeting |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 302 makes numerous changes to law relating to driver license (DL) suspensions and revocations, and the penalties and fees associated with them. Specifically, the bill:

- Removes suspension and revocation penalties for a number of specified non-driving-related offenses;
- Reduces the length of mandatory DL suspension for drug convictions from one year to six months;
- Allows individuals whose licenses are suspended for failure to comply with a court order or failure to pay court financial obligations, under ss. 318.15 or 322.245, F.S., to apply for a hardship license issued by the Department of Highway Safety and Motor Vehicles;
- Requires the court to inquire about a person’s financial ability to pay a fine at the time a civil penalty is ordered in court;
- Prohibits a DL from being suspended solely for inability to pay a financial penalty or court obligation if the individual demonstrates to the court that he or she cannot pay;
- Adds criteria of what evidence demonstrates to the court that a person is unable to pay;
- Prohibits court-approved payment plans from exceeding two percent of an applicant’s income, unless approved by the applicant;
- Requires clerks of the circuit court (clerks) to competitively bid for collection agents or private attorneys taking over unpaid accounts, and:
 - Prohibits the clerk from adding collection fees to the unpaid accounts for transferring the account to an agent or attorney; and

- Prohibits the collections agent or attorney to add additional fees to the account other than the contractually agreed upon surcharge;
- Requires uniform traffic citations include information regarding the option of a payment plan and community service;
- Requires, in criminal cases, that the public defender request forms include the option to elect or refuse community service, if it is offered by the court; and
- Allows the court to use the information provided on the public defender request form to determine the person's inability to pay court financial obligations for the purpose of converting financial obligations into court-ordered community service.

The bill has an indeterminate negative fiscal impact on state and local government. *See* Section V. Fiscal Impact Statement for details.

The bill has an effective date of October 1, 2017.

II. Present Situation:

Driver license (DL) revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.¹ Although initially used to address poor driving behavior, DL sanctions are now commonly used to punish individuals engaged in behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related suspensions and revocations.

According to the American Association of Motor Vehicle Administrators (AAMVA), "[s]ome studies have shown that suspending driving privileges for non-highway safety-related reasons is not effective."² Enforcing non-driving-related suspensions is costly and detracts from highway safety priorities. Licenses being suspended for non-driving-related reasons have caused the seriousness of DL suspensions to become lessened in the minds of law enforcement, the courts, and the public, even though data shows drivers with suspensions for traffic-safety-related reasons are three times more likely to be involved in a crash than drivers suspended for other reasons.³

It is estimated that as many as three-fourths of drivers with suspended or revoked licenses continue to drive, indicating DL suspensions may not effectively force compliance.⁴ According to the Transportation Research Board of the National Academies, one out of five traffic fatalities nationally involves a driver who is operating a vehicle without a valid license.⁵

DL suspension and revocation penalties are used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Furthermore, penalties for driving with a DL that is suspended or revoked increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating

¹ Sections 322.01(36) and (40), F.S.

² AAMVA, *Best Practices Guide to Reducing Suspended Drivers*, (Feb. 2013), available at <http://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723> at p. 2 (last visited Jan. 30, 2017).

³ *Id.*

⁴ *Id.*

⁵ See *Id.* at p. 6.

cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally travel to and from work. If they are caught driving while the DL is suspended or revoked, they will incur additional court costs and penalties. Additionally, these drivers are not allowed to obtain a hardship license, restricted to business or employment purposes only⁶, even though this option is available for numerous driving-related suspensions, including DUIs.⁷ A driver whose DL is suspended for inability to pay penalties or court financial obligations needs to pay reinstatement fees in addition to outstanding obligations to legally drive.

Clerks of the Court (clerks) use DL sanctions as a means to improve collections of fines and fees and have indicated that DL sanctions are their most effective tool to increase collections.⁸ However, a 2007 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicated, of the 67 clerks they surveyed, there was no meaningful difference between the average revenue collected overall and clerks' use of any particular collection method.⁹ According to a 2004 OPPAGA *Information Brief*, some clerks and judges both indicated that imposing sanctions against a DL for non-traffic-related offenses would not be appropriate since the punishment did not fit the crime; licenses were already overburdened with penalties; and sanctions would result in more unlicensed drivers on Florida's roadways as well as potentially more court cases.¹⁰

Non-Driving-Related DL Suspensions and Revocations

Generally, the threat of losing one's driving privilege has been used to combat truancy, theft, vandalism, illegal possession of drugs, alcohol, tobacco, and firearms, and a number of other non-driving-related offenses. Relevant non-driving offenses are detailed below.

School Attendance Requirements

A minor is not eligible for driving privileges unless that minor:

- Is enrolled in a public school, nonpublic school, home education program, or other educational activities and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;
- Has been issued a certificate of exemption¹¹ from the district school superintendent; or

⁶ Section 322.271(1)(c), F.S., defines a "business purposes only" restricted driving privilege as limited to driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes. An "employment purposes only" restricted driving privilege is limited to driving to and from work and necessary on-the-job driving.

⁷ DHSMV, *Hardship Reinstatement Eligibility Requirements*, (Revised May 12, 2014) (on file with the Senate Committee on Transportation).

⁸ OPPAGA, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No. 14-07, (Feb. 2014), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last visited Jan. 31, 2017).

⁹ OPPAGA, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 07-21, (Mar. 2007), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0721rpt.pdf> at p. 4 (last visited Jan. 31, 2017).

¹⁰ OPPAGA, *Information Brief: Court Fine and Fee Collections Can Increase*, Report No. 04-07, (Jan. 2004), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0407rpt.pdf> at p. 5 (last visited Jan. 31, 2017).

¹¹ See s. 1003.21(3), F.S.

- Has been issued a hardship waiver.¹²

In Fiscal Year 2015-2016, the Department of Highway Safety and Motor Vehicles (DHSMV) issued approximately 4,050 DL sanctions for non-compliance with school attendance requirements.¹³ Approximately 60 percent of DL suspensions for non-compliance with school attendance requirements are reinstated in less than one year; however, the majority of the reinstatements are for individuals who reached their eighteenth birthday and were thus, no longer subject to the requirements.¹⁴ As of 2013, 29 states linked minors' driving privileges to school enrollment, attendance, academic performance, or behavior.¹⁵

Worthless Check - Failure to Appear

The court may order the suspension or revocation of a DL if the licensee is being prosecuted for giving worthless checks, drafts, or debit card orders under s. 832.05, F.S., and fails to appear before the court after having been previously adjudicated guilty under the same section.¹⁶ The DHSMV issued 66 DL sanctions in Fiscal Year 2015-2016 for failing to appear on a worthless check charge.¹⁷ The driving privilege is suspended until full payment of any court financial obligations incurred as a result of the warrant or capias issued is received, the cancellation of the warrant or capias from the Department of Law Enforcement is recorded, and a payment of a \$10 fee in addition to the suspension or revocation fee is paid to the DHSMV.¹⁸

Misdemeanor Theft

The court has the option to suspend the DL of a person adjudicated guilty of any misdemeanor violation of theft regardless of the value of the property stolen.¹⁹ The first suspension following an adjudication of guilt for theft is for a period of six months, and a second or subsequent suspension is for a period of one year.²⁰ The DHSMV issued 508 DL sanctions in 2014 for theft.²¹

The court may also suspend, revoke, or withhold issuance of a DL of a minor found guilty of a violation of theft²² as an alternative to sentencing the minor to probation, commitment to the Department of Juvenile Justice, community control, or incarceration if the minor has never previously been convicted of or adjudicated delinquent for any criminal offense.²³

¹² Section 322.091, F.S.

¹³ DHSMV, *Sanctions Created/Effective for FY 15/16* (January 9, 2017) (on file with the Senate Committee on Transportation).

¹⁴ OPPAGA 2014 Report *supra* note 8.

¹⁵ National Conference of State Legislatures (NCSL), *State Statutes Linking Driver's Licenses to School Enrollment, Attendance, Academic Performance, or Behavior* (2013), <http://www.ncsl.org/documents/transportation/DLsgradesattend.pdf> (last visited Jan. 30, 2017).

¹⁶ Section 832.09, F.S., provides the individual is also issued a warrant or capias for failure to appear by the court.

¹⁷ *Supra* note 13.

¹⁸ See s. 322.251(7)(a), F.S., and DHSMV website, *Fee Schedule*, <http://www.flhsmv.gov/fees/> (last visited Jan. 30, 2017).

¹⁹ Section 812.0155, F.S., allows the suspension for a misdemeanor violation under ss. 812.014 or 812.015, F.S.

²⁰ *Id.*

²¹ DHSMV, PowerPoint Presentation to the Florida Senate Committee on Transportation (Sept. 16, 2015). *available at* http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3156_2.pdf at p. 35 (last visited Jan. 30, 2017).

²² Violation of ss. 812.014 or 812.015, F.S.

²³ Section 812.0155(2), F.S.

Providing Alcohol to Persons Under 21

The court has discretion to order the DHSMV to withhold the issuance of, or suspend or revoke the DL of a person found guilty of violating s. 562.11(1), F.S., which prohibits a person from selling, giving, serving, or permitting service of alcoholic beverages to a person under the age of 21 or permitting a person under the age of 21 to consume an alcoholic beverage on a licensed premise.²⁴ Additionally, a person found guilty of violating this prohibition commits a second-degree misdemeanor, and a person who violates this prohibition a second or subsequent time within one year after a prior conviction commits a first-degree misdemeanor.

Minor Guilty of Certain Alcohol, Drug, or Tobacco Offenses

Section 322.056, F.S., requires a mandatory suspension, revocation, or withholding of a DL for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses. This penalty is in addition to any other penalty imposed by law.

Alcohol and Drug Offenses

The court must direct the DHSMV to revoke or withhold the issuance of driving privileges if a minor, who is eligible by reason of age for driving privileges, is guilty of:

- A violation of s. 562.11(2), F.S., misrepresenting his or her age or the age of another for the purpose of obtaining alcoholic beverages;
- A violation of s. 562.111, F.S., possession of alcoholic beverages by a person under age 21; or
- A violation of the Florida Comprehensive Drug Abuse Prevention and Control Act.²⁵

The DL or driving privilege is revoked or withheld for not less than six months or more than one year for a first violation, and two years for a second or subsequent violation. However, the court may direct the DHSMV to issue a hardship license if the person is otherwise qualified for such a license.²⁶

Tobacco and Nicotine Offenses

Section 569.11, F.S., prohibits a minor from knowingly possessing any tobacco product or misrepresenting his or her age to obtain a tobacco product. Additionally, a minor is prohibited from possessing nicotine products, possessing nicotine-dispensing devices, or misrepresenting age to obtain these products or devices.²⁷ A violation of these sections is a noncriminal violation punishable by:

- For a first violation or subsequent violation not within 12 weeks of the first: 16 hours of community service or a \$25 fine, and the minor must attend a school-approved anti-tobacco and nicotine program, if locally available;
- For a second violation within 12 weeks of the first: A \$25 fine, and
- For a third or subsequent violation within 12 weeks of the first violation: Suspension or withholding issuance of a DL or driving privilege for 60 consecutive days.

²⁴ Section 322.057, F.S.

²⁵ Chapter 893, F.S.

²⁶ Section 322.056(1), F.S.

²⁷ Sections 877.112(6) and (7), F.S.

If a minor, eligible by reason of age for driving privileges, fails to comply with the penalty, the court must revoke or withhold issuance of the driving privilege of the minor for a period of:²⁸

- 30 days for the first violation or a subsequent violation not within 12 weeks of the first;
- 45 days for a second violation within 12 weeks of the first; or
- 60 consecutive days for a third violation within 12 weeks of the first.

A Minor Guilty of Unlawful Possession of Firearms

Section 790.22, F.S., prohibits a minor from possessing certain weapons and firearms. A person under the age of 18 may not possess a loaded firearm, unless the minor is at least 16 years of age or being supervised by an adult, and engaged in lawful hunting, marksmanship competitions or practice, or other lawful recreational shooting activities. A minor who violates this prohibition commits a first degree misdemeanor for the first offense and may serve a detention period of up to three days, shall be required to perform community service, and have his or her DL or privilege to drive revoked or withheld for up to one year. A second or subsequent offense is a third degree felony, and up to a 15-day detention period, community service, and DL or privilege to drive is revoked or withheld for up to two years.

A minor who commits any other offense involving the use or possession of a firearm, in addition to the penalties provided by that offense and the penalties in s. 790.22(9), F.S., will also have his or her DL or privilege to drive revoked or withheld for up to one year for a first offense and up to two years for a second or subsequent offense.²⁹

Graffiti

A minor found to have illegally placed graffiti on any public or private property, in addition to any other penalty provided by law, will have his or her DL or privilege to drive revoked or withheld for a period of not more than one year.³⁰

Drug Convictions

Federal Law requires the state to enact and enforce “[A] law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception...” the driver license of any individual convicted of any drug offense be suspended for at least six months.³¹ A percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the State Governor submits both written certification stating he is opposed to the enforcement of this law and certification from the State Legislature that it has adopted a resolution expressing opposition to the law. As of December 2016, 38 states either have eliminated automatic driver license suspensions for drug convictions or have passed a resolution to opt-out of this law.³²

²⁸ Sections 322.056(2) and (3), F.S.

²⁹ Section 790.22(10), F.S.

³⁰ Section 806.13(7), F.S.

³¹ 23 U.S.C. s. 159 (2011).

³² Prison Policy Initiative, *Reinstating Common Sense: How driver’s license suspensions for drug offenses unrelated to driving are falling out of favor* (Dec. 2016) available at https://www.prisonpolicy.org/driving/national.html#recent_reforms (last visited Jan. 31, 2017).

Under Florida Law, the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the DL of a person 18 years or older who is convicted of a drug offense.³³ The privilege to drive is unavailable for one year or until the person is evaluated for and, if deemed necessary, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. The court has the discretion to direct the DHSMV to issue a hardship license, which is available after six months of suspension of the driving privilege, or a driver may petition the DHSMV for restoration of restricted or unrestricted driving privileges after six months.

In 2014, the Legislature passed a bill, which was signed into law, reducing the length of suspension of a DL from two years to one year for individuals convicted of drug offenses.³⁴

The DHSMV issued approximately 17,809 DL sanctions for violation of a controlled substance in Fiscal Year 2015-2016.³⁵

Suspensions Initiated by the Clerk of Court

The majority, over 1.5 million in 2014 and 1.35 million in Fiscal Year 2015-2016, of notices of suspension issued by the DHSMV are a result of requests initiated by a clerk of the court.³⁶ Most originate from “failure to comply” or “failure to pay” offenses, actions that are not necessarily indicative of the violator’s ability to operate a motor vehicle safely.

Suspension for Failure to Comply with Civil Penalties or to Appear

An individual who is issued a noncriminal traffic citation, who is not required to appear before the court, has 30 days to comply with the penalty (i.e., pay the fine), enter into a penalty payment plan with the clerk of court, or request a hearing before the court.³⁷

If an individual does not comply with the civil penalty, enter into a payment plan, attend driver improvement school (if ordered), or appear at a scheduled hearing, the clerk of court must issue notice of failure to the DHSMV within 10 days.³⁸ Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.³⁹ The DL and driving privilege are suspended until the driver meets the court requirements for reinstatement, and pays a \$60 reinstatement fee.⁴⁰

Section 322.245, F.S., provides that the clerk of court shall mail a notice of failure, within five days after the failure, to a person charged with a violation of any criminal offense enumerated in

³³ Section 322.055, F.S.

³⁴ See ch. 2014-216, s. 28, Laws of Fla.

³⁵ DHSMV, *Sanctions Created/Effective for FY 15/16* (January 9, 2017) (on file with the Senate Committee on Transportation).

³⁶ See *Id.* and DHSMV PowerPoint Presentation, *supra* note 21 at p. 33.

³⁷ Section 318.14, F.S.

³⁸ Section 318.15, F.S.

³⁹ Notice of cancellation, suspension, revocation, or disqualification of a driver license must be mailed in accordance with s. 322.251, F.S.

⁴⁰ DHSMV PowerPoint, *supra* note 21 at p. 30.

s. 318.17, F.S., or a misdemeanor offense under chs. 320 or 322, F.S., who fails to comply with all directives of the court within the time allotted. The notice indicates the individual has 30 days from the date of the notice to comply with the court directives and pay a delinquency fee up to \$25, or his or her DL will be suspended. Upon failure to comply with the court directives within the 30-day period, the clerk of court must notify the DHSMV of such failure within 10 days. Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.

In Fiscal Year 2015-2016, 750,772 DL sanctions were issued for “failure to comply”. As of January 1, 2017, 421,070 of these were reinstated.⁴¹

Suspension for Failure to Pay Court Financial Obligations

When a clerk of court provides notification to the DHSMV that a person has failed to pay financial obligations for *any* criminal offense, in full or in part under a payment plan with the clerk of court, the DHSMV will suspend the DL of the person until:⁴²

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering reinstatement of the DL.

OPPAGA reported that a large percentage of licenses suspended for failure to pay court obligations are not reinstated for at least two years, and some are not reinstated in over five years.⁴³ In Fiscal Year 2015-2016, approximately 91,834 DL sanctions were issued for financial obligations.

Payment Plans

The clerk of court is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan.⁴⁴ The court may review the reasonableness of the payment plan. A monthly payment amount is “presumed to correspond to the person’s ability to pay if the amount does not exceed two percent of the person’s annual net income,” divided by 12.⁴⁵ The Brennan Center for Justice has indicated this presumption is often ignored and payment levels are set at fixed amounts.⁴⁶ Payment plan fees are \$5 per transaction or a \$25 one-time set-up fee.⁴⁷

⁴¹ DHSMV, *Sanctions Created/Effective for FY 15/16* (January 9, 2017) (on file with the Senate Committee on Transportation).

⁴² Section 322.245(5), F.S.

⁴³ OPPAGA 2014 report, *supra* note 8 at p. 8.

⁴⁴ Section 28.246(4), F.S.

⁴⁵ *Id.*

⁴⁶ Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, (2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> at p. 14 (last visited Jan. 30, 2017).

⁴⁷ Section 28.24(26), F.S.

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens

Section 28.246(6), F.S., provides a clerk of court must pursue the collection of any unpaid financial obligations to the court which remain unpaid after 90 days by referring the account to a private attorney or collection agent.⁴⁸ The clerk of court must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process established by the court prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee may be added to the balance owed of up to 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

Penalties and Fees

Driving While License is Suspended or Revoked (DWLSR) Penalties

Section 322.34, F.S., provides penalties for individuals driving while their DL is suspended, revoked, canceled, or disqualified. A person, excluding a habitual traffic offender⁴⁹, whose DL has been canceled, suspended, or revoked is guilty of a moving violation if driving a motor vehicle while *unaware* of the DL sanction. A person, excluding a “habitual traffic offender,” who *knowingly* drives a motor vehicle while his or her DL is invalid is guilty of:

- A second degree misdemeanor for the first conviction;
- A first degree misdemeanor for a second conviction; and
- A third degree felony for a third or subsequent conviction.

However, if a person does not have a prior forcible felony⁵⁰ conviction, and knowingly drives with a DL that is canceled, suspended, or revoked for failing to:

- Pay child support or certain financial obligations;
- Comply with a civil penalty required in s. 318.15, F.S.;
- Maintain adequate automobile insurance as required in ch. 324, F.S.; or
- Comply with attendance requirements;

then the person may be penalized with a second-degree misdemeanor, which is increased to a first-degree misdemeanor for a second or subsequent conviction.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a DL suspension or revocation to pay a service fee of \$45 following a suspension and \$75 following a revocation, in addition to the \$25 fee to replace their license if necessary. “Failure to comply”

⁴⁸ A private attorney must be a member in good standing with The Florida Bar, and the collection agent must be registered and in good standing pursuant to ch. 559, F.S.

⁴⁹ Section 322.264, F.S., defines a “habitual traffic offender” as having at least three convictions arising out of separate acts of: manslaughter resulting from the operation of a motor vehicle; driving under the influence; any felony offense using a motor vehicle; driving while license is suspended or revoked; failing to stop and render aid as required; or driving a commercial motor vehicle while privilege is disqualified; or has accumulated 15 convictions of moving traffic offenses for which points may be assessed within a five-year period.

⁵⁰ Section 776.08, F.S., defines “forcible felony” as “treason; murder; manslaughter; sexual battery; carjacking; home invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.”

suspensions require a \$60 reinstatement fee. Additionally, the county tax collectors are required to charge a service fee of \$6.25, when providing services in ch. 322, F.S., including DL reinstatements.⁵¹

Community Service Option in Lieu of Payment

A person ordered to pay a civil penalty for a noncriminal traffic infraction who is unable to comply with the court's order due to demonstrable financial hardship must be allowed, by the court, to satisfy the civil penalty by participating in community service.⁵² The penalty is reduced based on the hourly rate of community service performed. The specified hourly credit rate is the federal minimum wage⁵³, currently \$7.25, or the average prevailing wage rate for a trade or profession that the community service agency needs.⁵⁴

Similarly, the court may require a person liable for payment of a financial obligation in a criminal case to appear before the court and be examined under oath concerning the person's ability to pay the obligation. The court may convert statutory financial obligations into community service after determining the person's inability to pay.⁵⁵

The Florida Court Clerks and Comptrollers reported in Fiscal Year 2015-2016, that \$5,473,066 of the \$828,941,077 court-related fines, fees, penalties, charges, or costs assessed by the courts statewide had been converted to community service.⁵⁶

III. Effect of Proposed Changes:

The bill makes changes to the Florida Statutes in order to reduce the amount of driver license (DL) suspensions and revocations for non-driving-related offenses, reduce the financial burden of DL suspensions, and reduce the severity of suspension-related penalties.

Non-Driving-Related DL Suspensions and Revocations

The bill removes suspension or revocation of a DL from the potential penalties that may be applied for the following offenses:

- A minor who does not meet school attendance requirements;
- A person who fails to appear in a worthless check case;
- A person found guilty of misdemeanor theft;
- A person who provides alcohol to anyone under 21 years of age;
- A minor possessing alcohol, tobacco, tobacco products, or nicotine products, or misrepresenting age to obtain them;

⁵¹ Section 322.135(1)(c), F.S.

⁵² Section 318.18(8)(b), F.S.

⁵³ As specified in 29 U.S.C. s. 206(a)(1) under the Federal Fair Labor Standards Act of 1938.

⁵⁴ Section 318.18(8)(b)2., F.S.

⁵⁵ Section 938.30(2), F.S.

⁵⁶ Florida Court Clerks and Comptrollers, *2016 Annual Assessments and Collections Report*, available at http://www.flclerks.com/resource/resmgr/publicationsanddocuments/2016_Fl_Court_Clerks_and_Com.zip at p. 8 (last visited Jan. 31, 2017).

- A minor illegally possessing a firearm; and
- A minor found guilty of graffiti.

The bill retains the 30-day and 45-day DL suspension for minors who do not comply with the penalties for tobacco and nicotine offenses, however, this penalty is at the court's discretion rather than mandatory.

Drug Convictions

The bill reduces the length of the suspension period for a drug conviction from one year to six months for persons over the age of 18, and reduces the suspension period to six months for minors convicted of drug offenses.

The bill deletes provisions allowing individuals to petition the DHSMV for a hardship license after six months of their suspension because the bill reduces the suspension period to six months.

Failure to Comply and Failure to Pay Court Financial Obligations Suspensions

Sections 318.15 and 322.245, F.S., are amended to provide that a person's DL may not be suspended solely for failure to pay a penalty or court financial obligation if the person demonstrates to the court that he or she is unable to pay. The person must provide evidence he or she is unable to pay after receiving the penalty, but prior to the suspension taking place in order to avoid suspension. A person is considered unable to pay if the person:

- Receives temporary cash assistance pursuant to ch. 443, F.S.;
- Is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income or Social Security Disability programs;
- Is making payments in accordance with a confirmed bankruptcy plan under chs. 11, 12, or 13 of the United States Bankruptcy Code;
- Has been placed on a payment plan or plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4), F.S.; or
- Has been determined indigent after filing an application with the clerk of court in accordance with ss. 27.52 or 57.082, F.S.

The bill excludes failure to pay child support in non-IV-D cases from this change because a similar process already exists for individuals involved in such cases to prove inability to pay using the criteria bulleted above.⁵⁷

The bill also allows a person whose DL or privilege to drive has been suspended under either of these sections, with the exception of suspensions related to non-payment of child support, to apply to the DHSMV to have his or her DL reinstated on a restricted basis. The restricted license is valid until the seven-year suspension period ends for failure to pay or comply penalties under s. 318.15, F.S., or until the debt is paid.

⁵⁷ See s. 61.13016, F.S.

Payment Plans with the Clerk of the Circuit Court (Clerk of Court)

Section 28.246(4), F.S., is amended to provide that a monthly payment plan with the clerk of court may not exceed two percent of the person's annual net income, divided by 12, without the consent of the applicant.

In addition, the bill requires that uniform traffic citation forms must include language indicating that a person may enter into a payment plan with the clerk of court to pay the penalty.

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens by Clerk of Court

The bill amends s. 28.246(6), F.S., regarding referring accounts to private attorneys or collection agents. The clerk of court must competitively bid a contract to procure a collection agent or private attorney by considering all pertinent criteria, including, but not limited to, performance quality and customer service. The contract with a collection agent or private attorney may be in effect for no longer than three years with the opportunity to make a maximum of two one-year extensions. The clerk of court is prohibited from assessing any collection surcharges to the account, and the collection agent or private attorney may not impose any additional fees or surcharges other than the contractually agreed upon surcharge.

Community Service Option in Lieu of Payment

The bill adds that the uniform traffic citation form must include language indicating that a person ordered to pay a noncriminal traffic infraction penalty who is unable to comply due to demonstrable hardship will be allowed by the court to satisfy payment by participating in community service. Additionally, if a person is ordered to pay a civil penalty for a noncriminal infraction in court, the court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

The bill amends s. 27.52, F.S., concerning the application a person claiming indigent status makes to the clerk of court in order to receive a public defender. The bill provides that the person must make an election of or refusal of the option to fulfill any court-ordered financial obligation associated with his or her case by completion of community service if offered by the court. For financial obligations in criminal cases, the judge *may* rely on this information as a factor in determining the person's inability to pay court financial obligations when converting statutory financial obligations into court-ordered community service.

Effective Date

Information regarding payment plans and community service options to be added to the uniform traffic citation form will be added upon the creation of new inventory, which allows the DHSMV to deplete the current stock.

The bill takes effect October 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Florida Constitution, provides that a mandate may exist if a law reduces the authority that counties or municipalities have to raise revenues in the aggregate. Local government tax collectors and clerks retain a portion of driver license (DL) reinstatement fees for DL suspensions and revocations possibly eliminated or reduced by this bill. However, the bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will have a positive impact on individuals who may have otherwise had their driver license (DL) suspended or revoked, or who will be eligible to receive a hardship license if their DL is suspended.

C. Government Sector Impact:

The bill will have an indeterminate negative fiscal impact to state and local government.

The Revenue Estimating Conference estimated the removal of suspension penalties for non-driving-related offenses (sections 7-10, 12, and 15-22) will reduce state and local government revenues by \$1.5 million each year for Fiscal Years 2017-2018 through 2020-2021, which will affect the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds.⁵⁸

The Office of Economic and Demographic Research was unable to determine the impact of the bill on suspensions for “failure to comply” and “failure to pay court obligations”

⁵⁸ The Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference, CS SB 302*, (March 31, 2017). <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/pdf/Impact0331.pdf> (Last visited Apr. 6, 2017).

(sections 4 and 11). The Revenue Impact Conference determined that these two sections will reduce state and local revenues by an indeterminate amount.⁵⁹

The bill's sections related to the community service option in lieu of payment (sections 1, 3, 5 and 23) and payment plans (section 2) will have an indeterminate impact on clerk revenues, according to the Revenue Impact Conference. If more individuals opt to participate in community service rather than pay penalties, the bill will reduce revenues to the clerks who retain a portion of DL reinstatement fees, in addition to other fees associated with DL suspensions and revocations. The Revenue Impact Conference was unable to quantify the potential reduction in clerk revenues due to the community service provisions. Additionally, it is unknown how the bill's provisions strengthening payment plans and the competitive bidding process for collection agents or attorneys will affect the clerks' revenues.

In its analysis of last year's version of this bill, the clerks estimated that the annual loss of revenue, based on County Fiscal Year 2014-2015 revenue figures, would range from \$24.7 million to \$82.4 million, depending on assumptions regarding what percentage of collections fail to be paid (15% to 50% nonpayment). For instance, if 15% of collections are lost because individuals extend payment plans or participate in community service in lieu of paying fees, the clerks of court could lose an estimated \$24.7 million in revenues.⁶⁰ Clerks were unable to estimate the percentage of nonpayment associated with the bill.

In addition, the clerks estimated that the cost to comply with the provisions of last year's bill related to the monitoring and management of the payment plans would be approximately \$7.5 million in additional full time equivalent positions (FTEs) and IT costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.246, 316.650, 318.15, 318.18, 322.055, 322.056, 322.09, 322.245, 322.251, 322.271, 322.34, 562.11, 562.111, 569.11, 790.22, 806.13, 877.112, 938.30, and 1003.27.

⁵⁹ *Id.*

⁶⁰ Letter from the Florida Court Clerks and Comptrollers (January 12, 2016) (on file with the Senate Committee on Transportation).

This bill amends the following sections of the Florida Statutes to conform to changes made by this act: 318.14, 322.05, 322.27, and 1003.01.

This bill repeals the following sections of the Florida Statutes: 322.057, 322.091, 812.0155, and 832.09.

IX. 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 February 7, 2017:

The CS makes changes to the bill regarding referring unpaid accounts to private attorneys or collection agents. Specifically, the CS:

- Removes from the bill that the clerk of court *may* pursue collections for an account by referring the account to a private attorney or collection agent, only after first attempting to collect the unpaid amount through other collection processes;
- Removes “collection fees” as being one criteria clerks must consider when evaluating competitive bids to procure collection agents or private attorneys; and
- Removes from current law that the collection fee, which may not exceed 40 percent, includes any attorney fees paid to an attorney or collection agent, since the bill adds that the private attorney or collection agent may not impose any additional fees other than the contractually agreed-upon amount.

- B. **Amendments:**

None.