

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: SB 1270

INTRODUCER: Senators Brandes and Rouson

SUBJECT: Penalties and Fees

DATE: January 18, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1270 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 suspensions for drug convictions from a one year period 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 and provides documentation that he or she is unable to pay and meets specified requirements;
- Prohibits court-approved payment plans from exceeding two percent of an applicant's income, or \$25 per month, whichever is greater;
- 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 application forms (for determination of indigent status) include the option to fulfill any court-ordered financial obligation by enrolling in a payment plan or completing community service if ordered by the court;
- Provides that the clerk may use any readily ascertainable or publicly available information to determine whether an applicant is indigent, and may refer any application believed to be fraudulent to the court for review; and
- Allows the court to use the information provided on the application 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 revenues and expenditures. *See* Section V. Fiscal Impact Statement for details.

The bill has an effective date of October 1, 2018.

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 DL 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 DL 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,

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. 11, 2018).

³ *Id.*

⁴ *Id.*

⁵ See *Id.* at p. 6.

causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to travel legally 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 only,⁶ 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:¹¹

- 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;

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. 11, 2018).

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. 11, 2018).

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. 11, 2018).

¹¹ Section 322.091(1), F.S.

- Has been issued a certificate of exemption¹² from the district school superintendent; or
- Has been issued a hardship waiver under s. 322.091, F.S.

In Fiscal Year 2016-2017, the Department of Highway Safety and Motor Vehicles (DHSMV) issued approximately 4,786 DL suspension 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 According to the National Conference of State Legislatures, 29 states link 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 32 DL sanctions in Fiscal Year 2016-2017 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 In Fiscal Year 2016-2017, the DHSMV issued 185 DL sanctions for theft pursuant to s. 812.0155, F.S.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 See s. 1003.21(3), F.S.

¹³ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

¹⁴ OPPAGA 2014 Report *supra* note 8.

¹⁵ NCSL, *State Statutes Linking Driver's Licenses to School Enrollment, Attendance, Academic Performance, or Behavior* (Jan. 4, 2018), <http://www.ncsl.org/research/transportation/teen-drivers-statutes-chart.aspx> (last visited Jan. 15, 2018).

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

¹⁷ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

¹⁸ See s. 322.251(7)(a), F.S., and DHSMV website, *Fee Schedule*, <http://www.flhsmv.gov/fees/> (last visited Jan. 11, 2018).

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, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

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., underage possession of alcoholic beverages; or
- A violation of the Florida Comprehensive Drug Abuse Prevention and Control Act.²⁵

The DL or driving privilege is revoked or withheld for six months to 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 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, a detention period of up to 15 days, 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

Sexting

A minor who is issued a citation for committing a first violation of sexting³¹, and who fails to comply with the citation, may have his or her DL or driving privilege withheld or suspended for 30 consecutive days by order of the court.³²

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.³³ A

²⁸ Sections 322.056(2) and (3), F.S.

²⁹ Section 790.22(10), F.S.

³⁰ Section 806.13(7), F.S.

³¹ Section 847.0141(1), F.S., provides that a minor commits the offense of sexting if he or she knowingly electronically transmits or distributes to another minor any photograph or video of any person which depicts nudity and is harmful to minors. A minor also commits the offense of sexting if he or she possesses a photograph or video transmitted or distributed by another minor which depicts nudity and is harmful to minors, unless the minor did not solicit the photograph or media, took reasonable steps to report the photograph or video, and did not transmit or distribute it to a third party.

³² Section 847.0141(3)(a)3., F.S.

³³ 23 U.S.C. s. 159 (2012).

percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the governor submits both written certification stating he is opposed to the enforcement of this law and certification from the 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.³⁴

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 possession or sale or, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance.³⁵ 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.³⁶

The DHSMV issued approximately 17,558 DL sanctions for violations concerning a controlled substance in Fiscal Year 2016-2017.³⁷

Suspensions Initiated by the Clerk of Court

The majority, over 1.3 million in Fiscal Year 2016-2017, of notices of suspension issued by the DHSMV are a result of requests initiated by a clerk of the court.³⁸ Most originate from “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.³⁹

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.⁴⁰ Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective

³⁴ 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. 11, 2018).

³⁵ Section 322.055, F.S.

³⁶ See ch. 2014-216, s. 28, Laws of Fla.

³⁷ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

³⁸ *See Id.*

³⁹ Section 318.14, F.S.

⁴⁰ Section 318.15, F.S.

20 days after the order of suspension is mailed to the individual.⁴¹ The DL and driving privilege are suspended until the driver meets the court requirements for reinstatement, and pays a \$60 reinstatement fee.⁴²

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 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.

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:⁴³

- 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.⁴⁴

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.⁴⁵ 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 12.⁴⁶ The Brennan Center for Justice has indicated this

⁴¹ Notice of cancellation, suspension, revocation, or disqualification of a driver license must be mailed in accordance with s. 322.251, F.S.

⁴² Section 322.29, F.S.

⁴³ Section 322.245(5), F.S.

⁴⁴ OPPAGA 2014 report, *supra* note 8 at p. 8.

⁴⁵ Section 28.246(4), F.S.

⁴⁶ *Id.*

presumption is often ignored and payment levels are set at fixed amounts.⁴⁷ Payment plan fees are \$5 per transaction or a \$25 one-time set-up fee.⁴⁸

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 that remain unpaid after 90 days by referring the account to a private attorney or collection agent.⁴⁹ 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 offender⁵⁰, 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 felony⁵¹ 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;

⁴⁷ 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. 11, 2018).

⁴⁸ Section 28.24(26), F.S.

⁴⁹ 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.

⁵⁰ 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.

⁵¹ 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.”

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” suspensions require a \$60 reinstatement fee.⁵² 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.⁵³

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.⁵⁴ The penalty is reduced based on the hourly rate of community service performed. The specified hourly credit rate is the federal minimum wage⁵⁵, currently \$7.25, or the average prevailing wage rate for a trade or profession that the community service agency needs.⁵⁶

Similarly, the court may require a person liable for payment of a financial obligation in a criminal case to appear before the court to 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.⁵⁷

The Florida Court Clerks and Comptrollers reported in Fiscal Year 2016-2017 that \$4,205,169 of the \$1,060,302,959 court-related fines, fees, penalties, charges, or costs assessed by the courts statewide had been converted to community service.⁵⁸

III. Effect of Proposed Changes:

The bill makes changes to the Florida Statutes in order to reduce the number 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.

⁵² Section 322.29, F.S.

⁵³ Section 322.135(1)(c), F.S.

⁵⁴ Section 318.18(8)(b), F.S.

⁵⁵ As specified in 29 U.S.C. s. 206(a)(1) under the Federal Fair Labor Standards Act of 1938.

⁵⁶ Section 318.18(8)(b)2., F.S.

⁵⁷ Section 938.30(2), F.S.

⁵⁸ Florida Court Clerks and Comptrollers, *2017 Annual Assessments and Collections Report*, available at http://www.flclerks.com/resource/resmgr/public_documents/Final_2017_A_C_Report_Circui.zip at p. 8 (last visited Jan. 15, 2018).

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;
- A minor illegally possessing a firearm;
- A minor found guilty of graffiti; and
- A minor who does not comply with a citation for the offense of sexting.

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, and:

- Receives reemployment assistance or unemployment compensation pursuant to ch. 443, F.S.;
- Receives benefits under the federal Supplemental Security Income or Social Security Disability Insurance programs;
- Receives temporary cash assistance pursuant to ch. 414, F.S.;
- Is making payments in accordance with a confirmed bankruptcy plan under chs. 11, 12, or 13 of the United States Bankruptcy Code;
- Is on a payment plan or plans with the clerk of court pursuant to s. 28.246(4), F.S.;
- Has been determined indigent after filing an application with the clerk of court in accordance with ss. 27.52 or 57.082, F.S.; or
- Is incarcerated.

The bill requires the person to provide the clerk with updated documentation every 90 days that he or she meets the above criteria. If the person fails to provide the necessary documentation or no longer meets the criteria, he or she must begin paying the owed fees, service charges, fines, or

penalties within 30 days. If the person fails to begin payments, the clerks must notify the DHSMV of such failure within 10 days after the failure occurs, and the DHSMV must immediately issue an order suspending the DL and driving privilege of such person effective 20 days after the date the order of suspension is mailed.

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.⁵⁹

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 7-year suspension period ends for failure to pay or comply with penalties under s. 318.15, F.S., or until the debt is paid.

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, or \$25 per month, whichever is greater.

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 1-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.

⁵⁹ See s. 61.13016, F.S.

Public Defender Application – Determination of Indigent Status

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 application must provide the applicant the option to fulfill court-ordered financial obligations by enrolling in a payment plan or completing community service if ordered 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.

Additionally, the bill provides that the clerk may use any readily ascertainable or publicly available information to determine whether an applicant is indigent, and may refer any application believed to be fraudulent to the court for review.

Effective Date

Information regarding payment plans and community service options to be added to the uniform traffic citation form will be added upon the adoption by rule of new forms, which allows the DHSMV to deplete the current stock. DHSMV is required to notify the Division of Law Revision and Information upon the adoption of new uniform citation forms.

The bill takes effect October 1, 2018.

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 (REC) reviewed a similar bill (HB 1095) on January 12, 2018.⁶⁰ The REC estimates the removal of suspension penalties for non-driving-related offenses will reduce state and local government revenues by \$1.5 million annually beginning in Fiscal Year 2018-2019 which will affect the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds.

The REC was unable to determine the impact of the bill on suspensions for “failure to comply” and “failure to pay court obligations” initiated by the clerks. The REC determined that these changes will reduce state and local revenues by an indeterminate amount.

The REC concluded that the bill’s sections related to community service, payment plans, and collection agents will have an indeterminate impact on clerk revenues. 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 REC was unable to quantify the potential reduction in clerk revenues due to the community service provisions. Additionally, the clerks will likely incur costs related to the monitoring and management of the payment plans and documentation requirements of the bill.

The Clerks of Court Operations Corporation concluded that the bill’s sections related to community service, payment plans, indigence application and prohibiting DL suspensions solely for inability to pay would reduce revenues accruing to the clerks by \$27 to \$55 million.⁶¹ The corporation bases its estimates on the assumption that between 20% and 40% of current revenue would be lost due to individuals who opt to participate in community service rather than pay fines and individuals who choose not to pay fines because license suspension is no longer a penalty. The corporation also reports that clerk

⁶⁰ The Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference, HB 1095*, (Jan. 12, 2018), http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page288-294.pdf (last visited Jan. 15, 2018).

⁶¹ The Clerks of Court Operations Corporation, *CCOC Bill Analysis, SB 1270* (January 2018) (on file with the Senate Subcommittee on Criminal and Civil Justice Appropriations).

offices are staffed insufficiently to implement and monitor an increase in the use of payment plans.

While the bill may reduce clerk fee revenue, the corporation's estimate of the magnitude of the bill's impact is questionable. The bill analysis does not provide evidence to justify its 20% to 40% estimate of revenue loss, as it assumes that great numbers of individuals will forgo paying fees and opt for community service, or not pay fees at all without the threat of DL suspension. The bill targets those "unable to comply due to demonstrable financial hardship" and would not likely affect the vast majority of individuals who currently comply with state law and pay traffic infraction penalties. Similarly, provisions that protect the financially vulnerable from DL suspension target those least able to pay fees, fines and penalties anyway and would seem unlikely to reduce clerks' revenues significantly.

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, 57.082, 316.650, 318.15, 318.18, 322.055, 322.056, 322.057, 322.09, 322.091, 322.245, 322.251, 322.271, 322.34, 562.11, 562.111, 569.11, 790.22, 806.13, 812.0155, 832.09, 847.0141, 877.112, 938.30, 1003.27, 318.14, 322.05, 322.27, and 1003.01.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.