

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 943 Driver License Reinstatement Days

**SPONSOR(S):** LaMarca and other

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Bruno	Hall
2) Appropriations Committee	28 Y, 0 N	Cobb	Pridgeon
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) may, at the request of a clerk of court, suspend or revoke the driver license of a person for certain financial reasons, such as failure to pay court costs associated with a criminal case or civil penalties for a traffic violation. Upon referral to collections, an outstanding obligation may also accumulate a collections surcharge of up to 40 percent. A person with a suspended or revoked license cannot drive or obtain motor vehicle insurance, which can inhibit his or her ability to work and further compound the problem of outstanding financial obligations.

Several counties have held events to assist individuals whose driver licenses are suspended for financial reasons related to civil penalties in traffic court or criminal financial obligations. In April 2015, 60 out of 67 counties participated in Operation Green Light, a short-term event during which the clerks of court waived the 40 percent collections surcharge in exchange for full payment of outstanding financial obligations, resulting in license reinstatement. The total statewide cost for the event was \$132,707.21; the clerks collected \$5,414,069.35 and reinstated 1,851 licenses. Several counties have since conducted similar events.

HB 943 requires each judicial circuit to establish a Driver License Reinstatement Days program for reinstating suspended driver licenses. The court must work collaboratively with DHSMV, the state attorney's office, the public defender's office, the circuit and county courts, the clerk of court, and any interested community organization. The program must occur at least once a year, and the bill encourages clerks to offer the event outside of regular business hours or on a weekend. Participants must pay the full license reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate license reinstatement.

A person is eligible for the Driver License Reinstatement Days program if his or her driver license or driving privilege was suspended for:

- Driving without a valid license;
- Driving with a suspended license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with directives for a traffic infraction or driver license offense.

A person is not eligible for reinstatement under the program if his or her driver license or driving privilege is suspended or revoked for enumerated reasons, including failure to pay child support and serious traffic offenses such as driving under the influence and traffic felonies.

The bill may have an indeterminate positive fiscal impact to state and local government revenues, and an indeterminate, though likely insignificant negative fiscal impact to DHSMV, the state attorney's office, the public defender's office, and circuit and county courts. See Fiscal Comments.

The bill has an effective date of July 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0943c.APC

**DATE:** 3/19/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Florida Driving Privileges and Driver Licenses

Florida law requires a person to hold a driver license<sup>1</sup> or be exempted from licensure to operate a motor vehicle on the state's roadways.<sup>2</sup> Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government employees operating a government vehicle for official business, and people operating a road machine,<sup>3</sup> tractor, or golf cart.<sup>4</sup> Both licensed drivers and exempted individuals have a driving privilege in Florida.<sup>5</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) can revoke or suspend a driver license or driving privilege for several driving-related and non-driving-related reasons. Revocation means a termination of the privilege to drive,<sup>6</sup> while suspension means the temporary withdrawal of the privilege to drive.<sup>7</sup> Both revocations and suspensions can be indefinite or for a defined period of time, but only revocations in certain circumstances can be permanent.<sup>8</sup> The base fee for driver license reinstatement after revocation is \$75; the fee for reinstatement after suspension is \$45.<sup>9</sup> As both revocations and suspensions functionally prohibit a person from driving, the terms are often used interchangeably in statute.

Driving-related bases for driver license or driving privilege suspension or revocation include:

- A fleeing or attempting to elude a law enforcement officer conviction;<sup>10</sup>
- Certain noncriminal traffic infractions, such as those causing death or serious bodily injury;<sup>11</sup>
- Driving under the influence (DUI);<sup>12</sup>
- Habitual traffic offender<sup>13</sup> classification;<sup>14</sup>
- Refusal to submit to a lawful breath, blood, or urine test in a DUI investigation;<sup>15</sup>
- Accumulation of points<sup>16</sup> on a driving record;<sup>17</sup> and
- Incompetency to drive a motor vehicle.<sup>18</sup>

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<sup>1</sup> Driver license means a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. S. 322.01(17), F.S.

<sup>2</sup> S. 322.03(1), F.S.

<sup>3</sup> Road machines are road construction equipment. *Marrero v. State*, 921 So.2d 748, 750 (Fla. 5th DCA 2006).

<sup>4</sup> S. 322.04, F.S.

<sup>5</sup> *State v. Miller*, 227 So.3d 562, 564 (Fla. 2017) ("the Legislature's use of 'driving privilege' refers to all individuals who may lawfully operate vehicles on Florida's roads, even if they do not possess a Florida driver license").

<sup>6</sup> S. 322.01(36), F.S.

<sup>7</sup> S. 322.01(40), F.S.

<sup>8</sup> Ss. 322.26(1)(a) and 322.26(2), F.S.

<sup>9</sup> Department of Highway Safety and Motor Vehicles, *Fees*, <https://www.flhsmv.gov/fees/> (last visited Mar. 1, 2018).

<sup>10</sup> S. 316.1935(5), F.S.

<sup>11</sup> S. 318.14, F.S.

<sup>12</sup> Ss. 322.26, 322.271, and 322.28, F.S.

<sup>13</sup> A person is designated a habitual traffic offender after accumulating three or more enumerated traffic convictions or 15 or more other moving violation convictions within a five year period. S. 322.264, F.S.

<sup>14</sup> S. 322.27(5)(a), F.S.

<sup>15</sup> S. 322.2615(1)(b), F.S.

<sup>16</sup> There is an established point system for evaluating traffic violations to determine a person's continuing qualification to operate a motor vehicle. S. 322.27(3), F.S.

<sup>17</sup> S. 322.27(3) F.S.

<sup>18</sup> S. 322.27(1)(c), F.S.

Non-driving-related bases for driver license or driving privilege suspension or revocation include:

- Failure to comply with a civil penalty, traffic court directive, or criminal financial obligation;<sup>19</sup>
- Support delinquency;<sup>20</sup>
- Truancy;<sup>21</sup>
- Adjudication of guilt for misdemeanor theft;<sup>22</sup>
- Graffiti by a minor;<sup>23</sup> and
- A drug conviction.<sup>24</sup>

The penalties for driving while license suspended or revoked (DWLSR) range from a moving traffic violation<sup>25</sup> to a third degree felony.<sup>26</sup> Generally, a person can be charged with a felony for DWLSR if:

- He or she knows<sup>27</sup> of the suspension or revocation and has at least two prior convictions for DWLSR.<sup>28</sup>
- He or she qualifies as a habitual traffic offender.<sup>29</sup>
- His or her license has been permanently revoked.<sup>30</sup>

However, a person whose suspension or revocation is due to financial reasons and who does not have any prior forcible felony<sup>31</sup> convictions only faces misdemeanor DWLSR charges.<sup>32</sup>

### *Failure to Meet Court-Imposed Obligations*

The clerk of court can notify DHSMV to suspend a license for several reasons, including failure to comply with civil penalties,<sup>33</sup> failure to appear,<sup>34</sup> and failure to pay criminal financial obligations.<sup>35</sup> These suspensions last until the individual is compliant with the court's requirements for reinstatement<sup>36</sup> or, in the case of criminal financial obligations, the court grants relief from the suspension.<sup>37</sup> In FY 2017-18, over 1.25 million driver license suspensions were initiated by clerks of court for failure to meet court-imposed obligations.<sup>38</sup>

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<sup>19</sup> Ss. 318.15 and 322.245, F.S.

<sup>20</sup> S. 322.058, F.S.

<sup>21</sup> S. 322.091, F.S.

<sup>22</sup> S. 812.0155, F.S.

<sup>23</sup> S. 806.13, F.S.

<sup>24</sup> S. 322.055, F.S.

<sup>25</sup> S. 318.18, F.S.

<sup>26</sup> Ss. 322.34 and 322.341, F.S.

<sup>27</sup> The element of knowledge is satisfied if the person has been previously cited for driving while license suspended; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice of the cancellation, suspension, or revocation. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation. S. 322.34(2), F.S.

<sup>28</sup> S. 322.34(2)(c), F.S.

<sup>29</sup> S. 322.34(5), F.S.

<sup>30</sup> S. 322.341, F.S.

<sup>31</sup> "Forcible felony" means 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. S. 776.08, F.S.

<sup>32</sup> S. 322.34(1), F.S.

<sup>33</sup> S. 318.15, F.S.

<sup>34</sup> S. 318.15, F.S.

<sup>35</sup> S. 322.245, F.S.

<sup>36</sup> Ss. 318.15(2) and 322.245(5), F.S.

<sup>37</sup> S. 322.245(5), F.S.

<sup>38</sup> Department of Highway Safety and Motor Vehicles, *Sanctions Created/Effective for FY 17/18* (Jan. 8, 2019).

## Payment Plans, Community Service Options, and Collections

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.<sup>39</sup> 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 2 percent of the person's annual net income, divided by 12.<sup>40</sup>

The court may convert a statutory financial obligation in a criminal case or a noncriminal traffic infraction into a requirement to perform community service.<sup>41</sup> The hourly conversion rate for community service is equal to the federal minimum wage,<sup>42</sup> unless the person performing the community service has a trade or profession for which there is a community service need, in which case the rate is the prevailing wage rate for that trade or profession.<sup>43</sup>

The clerk of court must pursue the collection of any financial obligations that remain unpaid after 90 days by referring the account to a private attorney or collection agent.<sup>44</sup> The clerk must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process prior to referring the account for collection, find the referral to be cost-effective, and follow any applicable procurement processes.<sup>45</sup> A collection fee of up to 40 percent of the amount owed at the time the account is referred may be added to the outstanding balance.<sup>46</sup>

### Reinstatement Clinics

A person with a suspended or revoked license cannot drive or obtain motor vehicle insurance, which can inhibit his or her ability to work and further compound the problem of outstanding financial obligations. Several counties have held events to assist individuals whose licenses are suspended for financial reasons related to civil penalties or criminal financial obligations. In April 2015, 60 out of 67 counties participated in Operation Green Light, a short-term event during which clerks of court waived the 40 percent collections surcharge in exchange for full payment of outstanding financial obligations, resulting in reinstatement.<sup>47</sup> The total statewide cost for the event was \$132,707.21; the clerks collected \$5,414,069.35 and reinstated 1,851 licenses.<sup>48</sup> Several counties have since conducted similar events.<sup>49</sup>

### Effect of Proposed Changes

HB 943 requires each judicial circuit to establish a Driver License Reinstatement Days program for reinstating suspended driver licenses. The court must work collaboratively with DHSMV, the state attorney's office, the public defender's office, the circuit and county courts, the clerk of court, and any interested community organization. The program must occur at least once a year, and the bill encourages clerks to offer the event outside of regular business hours or on a weekend. Participants

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<sup>39</sup> S. 28.246(4), F.S.

<sup>40</sup> S. 28.246(4), F.S.

<sup>41</sup> Ss. 938.30(2) and 318.18(8)(b)1.a., F.S.

<sup>42</sup> 29 U.S.C. § 206 (2018).

<sup>43</sup> S. 318.18(8)(b)1.b., F.S.; Bureau of Labor Statistics, *May 2016 National Occupational Employment and Wage Estimates: United States*, [https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000) (last visited Mar. 1, 2019) (e.g. the mean hourly wage for an electrician is \$27.24).

<sup>44</sup> S. 28.246(6), F.S.

<sup>45</sup> S. 28.246(6), F.S.

<sup>46</sup> S. 28.246(6), F.S.

<sup>47</sup> Harrison Barrus, *Operation green light gives ticket payers a break*, NEWS 4 JAX, <https://www.news4jax.com/news/local/operation-green-light-gives-ticket-payers-a-break> (last visited Mar. 1, 2019).

<sup>48</sup> Florida Clerks of Court Operations Corporation, *Operation Green Light Success Story* (Summer 2015) on file with the Transportation and Tourism Appropriations Subcommittee.

<sup>49</sup> Wayne K. Roustan, *Operation Green Light to offer amnesty on unpaid fines, fees in Broward*, Sun Sentinel (Apr. 21, 2017), <http://www.sun-sentinel.com/news/transportation/fl-sb-broward-ticket-amnesty-20170421-story.html> (last visited Mar. 1, 2019); Karl Eppers, *Clinic hopes to restore driver's licenses*, Tallahassee Democrat (May 30, 2017), <http://www.tallahassee.com/story/news/2017/05/30/clinic-hopes-restore-drivers-licenses/102055664/> (last visited Mar. 1, 2019).

must pay the full license reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate reinstatement.

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- Failing to appear in court for a traffic violation; or
- Failing to comply with directives for a traffic infraction or driver license offense.

A person is not eligible for reinstatement under the program if his or her driver license or driving privilege is suspended or revoked:

- Because the person failed to fulfill a court-ordered child support obligation;
- For driving under the influence;
- Because the person has not completed a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- For a traffic-related felony; or
- Because the person is a habitual traffic offender.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 322.75, F.S., relating to Driver License Reinstatement Days.

**Section 2:** Provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may have an indeterminate, positive impact to state revenues. For driver license suspensions, individuals must pay a \$45 fee, of which \$15 is deposited into the General Revenue Fund and \$30 into the Highway Safety Operating Trust Fund when the reinstatement is performed by DHSMV. For driver license revocations, individuals must pay a \$75 fee, of which \$35 is deposited into the General Revenue Fund and \$40 into the Highway Safety Operating Trust Fund when the reinstatement is performed by DHSMV. It is unknown how many individuals will take advantage of the license reinstatement days who would not otherwise pay to have their licenses reinstated during the same fiscal year; therefore, the positive fiscal impact to state revenues is indeterminate. Additionally, to the extent that additional court fees are collected for reinstatements, there may be an indeterminate, positive fiscal impact to the State Attorney Trust Fund, Indigent Criminal Defense Trust Fund, and the State Courts Revenue Trust Fund.

##### 2. Expenditures:

The bill will require additional hours to be worked by DHSMV staff in order to facilitate the driver license reinstatement days. Additionally, the bill requires the cooperation of the state attorney's office, public defender's office, and circuit courts, which will likely require additional hours to be worked by staff. This workload is indeterminate but expected to be minimal and should be absorbed within existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may assist the clerks in recouping outstanding court costs and fees not otherwise recoverable. The bill also allows the clerks to reduce or waive fees and costs to facilitate reinstatement; therefore, the total impact to local government revenues is indeterminate.

2. Expenditures:

The bill will likely result in an increased workload for county courts and Clerks of Court, and any other local government entities that participate in the driver license reinstatement days.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill helps individuals with financially-based driver license revocations or suspensions reinstate their licenses, purchase motor vehicle insurance, and travel to work.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The county/municipal mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires a county to fund a driver license reinstatement event; however, funding the event once a year has an insignificant fiscal impact, particularly in light of the potential for recouping outstanding obligations.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**