

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 977 Motor Vehicle Insurance & Driver Education For Children In Foster Care

**SPONSOR(S):** Health Care Appropriations Subcommittee; Albritton

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N	Entress	Brazzell
2) Health Care Appropriations Subcommittee	13 Y, 0 N, As CS	Fontaine	Pridgeon
3) Health & Human Services Committee	17 Y, 0 N	Entress	Calamas

### SUMMARY ANALYSIS

The bill removes the disability of nonage of minors for foster children for the purpose of obtaining motor vehicle insurance. The foster child must be 16 years of age, been adjudicated dependent, residing in an out-of-home placement, and have completed a driver education course. The disability of nonage for a minor may also be removed pursuant to a court order.

The bill provides for preferential enrollment in driver education for specified children in the care of the department.

The bill does not appear to have a fiscal impact.

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Foster Children

Young people in the foster care system often face barriers to participating in everyday life experiences common to others their age. These life experiences are important because they are a part of how all children are prepared for the responsibilities they will assume as adults.

Both statute and administrative code support the efforts of teens in foster care to engage in age-appropriate activities.<sup>1</sup> Departmental rules specifically require community-based lead agency service providers to assist teens in foster care who have demonstrated the appropriate level of maturity in obtaining a learner's permit or driver's license and automobile insurance.<sup>2</sup>

As of January 31, 2014, the Department of Children and Families (DCF) reported that there were 385 15-year-olds, 458 16-year-olds, and 517 17-year-olds in foster care.<sup>3</sup> A survey of youth in foster care published in the spring of 2013 indicated:

- 5 percent of 15-year-old respondents (11 children of 243 surveyed) had learner's permits;
- 8 percent of 16-year-olds (25 children of 300 surveyed) had learner's permits;
- 13 percent of 17-year-olds ( 52 children of 387 surveyed) had learner's permits; and
- 9 percent of the total number of children surveyed (88 of 930 surveyed) had learner's permits.
- 1 percent of 16-year-olds (4 children of 300 surveyed) had driver's licenses;
- 4 percent of 17-year-olds (16 children of 387 surveyed) had driver's licenses; and
- 3 percent of the total number of children surveyed (20 of 687 surveyed) had driver's licenses.<sup>4</sup>

##### Driver's Licenses

A child who is 15 years of age is authorized to obtain a learner's driver's license (learner's permit) provided he or she meets the school attendance requirements of s. 322.091, F.S., and the application and testing requirements of s. 322.1615, F.S.<sup>5</sup> Section 322.09, F.S., requires that when a child applies for a learner's permit, the application must be signed by a parent, guardian, or when there is no parent or guardian, some other responsible adult. This same section provides that any negligence or willful misconduct of the child operating a motor vehicle will be imputed to the adult who signed the application.<sup>6</sup> That adult is jointly and severally liable with the child for any damages caused by the negligent or willful misconduct.<sup>7</sup>

##### Special Driver's License Provisions for Foster Children and Foster Parents

Among the primary obstacles to these children in care of DCF being able to drive is the potential liability of the foster parents when the children drive vehicles owned by the foster parent and the attendant cost of insurance to protect foster parents from this liability.

In 2001, s. 322.09, F.S., was amended to provide that foster parents or authorized representatives of a residential group home who sign for a foster child's license do not become liable for any damages or

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<sup>1</sup> See s. 409.145(3), F.S.

<sup>2</sup> Rule 65C-30.007, F.A.C.

<sup>3</sup> The Department of Children and Families Analysis of HB 977, February 1, 2014, on file with committee staff.

<sup>4</sup> My Services, Answers from Youth in Foster Care, the Department of Children and Families, *accessible at*: <http://www.dcf.state.fl.us/programs/indliving/docs/MyServicesSpring2013SurveyReport.pdf> (last visited March. 18, 2014).

<sup>5</sup> S. 322.05, F.S.

<sup>6</sup> S. 322.09(2), F.S.

<sup>7</sup> S. 322.09(2), F.S.

misconduct of the child.<sup>8</sup> While this provision relieves the foster parent of liability resulting directly from the signature on the driver's license application, it does not address any vicarious liability that the foster parent may have as a result of the foster parent's ownership of the vehicle which the child drives, see *Hertz Corp. v. Jackson*, 617 So.2d 1051 (Fla. 1993). This liability arises whenever an insured individual allows another to operate his or her motor vehicle and is independent of the provisions of s. 322.09, F.S. Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the child while operating the foster parent's vehicle, in the same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

Also in 2001, s. 627.746, F.S., was created and prohibited a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a child operating the vehicle while the child is holding a learner's driver's license. This prohibition is only applicable until the child obtains a regular driver's license.<sup>9</sup>

### Costs Associated with Obtaining a Driver's License

Driver's education courses are offered free of charge through the public school system but enrollment may be limited. Some school districts offer a summer driver's education course, charging fees from \$50 to \$250.<sup>10</sup> Commercial courses are offered in some jurisdictions at prices ranging from \$300-\$5,000.<sup>11</sup>

The fee for obtaining a class E (regular) driver's license is \$48.13.<sup>12</sup> In order to obtain a learner's driver's license, the person applying must, among other requirements, have completed a traffic law and substance education course and have successfully completed a written examination.<sup>13</sup>

### Emancipation of Minors

All states have laws dealing with the "emancipation" of minors, which specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.<sup>14</sup>

Emancipation is the removal of "disability of nonage." Emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the right to have their parents provide for them and the protection of the Department of Children and Family Services.<sup>15</sup>

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is age 16 or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem.<sup>16</sup> The petition may also be filed by the minor, if the minor is a certified homeless and unaccompanied minor over the age of 16.<sup>17</sup> The petition must contain the following information:

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<sup>8</sup> Chapter 2001-83, Laws of Fla.

<sup>9</sup> Chapter 2001-83, Laws of Fla.

<sup>10</sup> Florida Guardian ad Litem, A Voice Heard: Keys to Independence, available at [http://guardianadlitem.org/news\\_main.asp](http://guardianadlitem.org/news_main.asp) (last visited March 5, 2014).

<sup>11</sup> Florida Guardian ad Litem, A Voice Heard: Keys to Independence, available at [http://guardianadlitem.org/news\\_main.asp](http://guardianadlitem.org/news_main.asp) (last visited March 5, 2014).

<sup>12</sup> S. 322.21, F.S.

<sup>13</sup> S. 322.1615(1), F.S.

<sup>14</sup> See, Cornell University of Law, Legal Information Institute, *Emancipation of Minors*, available at: [http://www.law.cornell.edu/wex/emancipation\\_of\\_minors](http://www.law.cornell.edu/wex/emancipation_of_minors) (last visited March 18, 2014).

<sup>15</sup> See, Volusia County Law Library, Emancipation in Florida Research Guide, available at: [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf) (last visited March 18, 2014).

<sup>16</sup> S. 743.015, F.S.

<sup>17</sup> S. 743.067, F.S.

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.<sup>18</sup>

If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage.<sup>19</sup> If the petition is filed by the guardian ad litem or next friend,<sup>20</sup> service of process must be perfected on the natural parents.<sup>21</sup> If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent.<sup>22</sup>

The court is required to consider the petition and receive such evidence as it deems necessary to rule on the petition.<sup>23</sup> If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect.<sup>24</sup> An order removing the disabilities of nonage has the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and authorizes the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older.<sup>25</sup> The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.<sup>26</sup>

### Emancipation of Foster Children

Section 39.701(3), F.S., requires that the dependency court hold a judicial review within 90 days following the child's 17th birthday. At this hearing, the court is required to enter an order, separate from the judicial review order, that the disability of nonage for the child has been removed pursuant to s. 743.045, F.S.<sup>27</sup>

Section 743.045, F.S. provides for the removal of the disability of nonage for foster children over the age of 17 for the purpose of executing contracts for a residential lease. Section 743.046, F.S., which is not referenced in s. 39.701(3), F.S., removes the disability of nonage for foster children over the age of 17 for the purpose of securing utility services at residential property.

Similarly, s. 743.044, F.S., which is also not referenced in s. 39.701(3), removes the disability of nonage for foster children over the age of 16 for the purpose of executing agreements for depository financial services. Each of these special provisions (ss. 743.044, 743.045, and 743.046, F.S.) require the entry of a court order to be effective.

### **Effect of Proposed Changes**

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<sup>18</sup> S. 743.015(2), F.S.

<sup>19</sup> S. 743.015, F.S.

<sup>20</sup> A "next friend" is a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit and is not appointed as a guardian, Black's Law Dictionary, 9th Edition, 2009.

<sup>21</sup> S. 743.015, F.S.

<sup>22</sup> S. 743.015, F.S.

<sup>23</sup> S. 743.015(6), F.S.

<sup>24</sup> S. 743.015(6), F.S.

<sup>25</sup> S. 743.015(6), F.S.

<sup>26</sup> S. 743.015(8), F.S.

<sup>27</sup> S. 39.701(1), F.S.

### Disability of Nonage

The bill requires that for purposes of ensuring that a child in foster care is able to secure motor vehicle insurance, the disability of nonage (disability) of minors must be removed in certain cases. This requires the disability to be removed for a child that is 16 years old, has been adjudicated dependent, is residing in an out-of-home placement, and has completed a driver education course.

The bill specifies that a court of competent jurisdiction may issue an order removing the disability and authorizing a child to make and execute all contracts or agreements necessary for obtaining insurance as if the child were otherwise competent to make and execute contracts. The bill specifies that execution of any contract or agreement for insurance must have the same effect as if it were the act of a person who is not a minor. The bill specifies that a child seeking to enter into contracts or agreements or execute other necessary instruments incidental to obtaining motor vehicle insurance must present to the other contracting party an order from a court of competent jurisdiction removing the disability.

### Driver Education Course

The bill requires school boards to provide preferential enrollment to a student in DCF custody for a course of study and instruction in safe and lawful operation of a motor vehicle, as long as the student maintains appropriate progress as required by the educational institution.

#### B. SECTION DIRECTORY:

- Section 1:** Creates s. 743.047, F.S., related to removal of disabilities of minors.  
**Section 2:** Amends s. 1003.48, F.S., related to instruction in operation of motor vehicles.  
**Section 3:** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:  
None.
2. Expenditures:  
None.

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

1. Revenues:  
None.
2. Expenditures:  
None.

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

None.

#### D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable. This bill does not appear to affect county or municipal governments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 8, 2014, the Health Care Appropriations Subcommittee adopted one amendment that:

- Removes the creation of a pilot program within DCF that pays for costs associated with driver education, driver licensing, and motor vehicle insurance for children in foster care having successfully completed a driver's education course;
- Removes the requirement that DCF pay for the incremental cost increase of a policy holder's motor vehicle insurance when a foster child is added to a caregiver, or to an individual or not-for-profit entity approved by the caregiver; and,
- Removes an appropriation of \$1,500,000 to the department to implement the provisions of the bill.

This analysis is drafted to the committee substitute.