

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1095 Penalties and Fees
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N	Roth	Vickers
2) Appropriations Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill makes numerous changes to law relating to driver license suspensions and revocations, and the penalties and fees associated with them. Specifically, the bill:

- Revises the application for obtaining a public defender in a criminal case.
- Revises provisions regarding payment plans for court-related fines and other monetary penalties, fees, charges, and costs.
- Requires clerks of court wishing to pursue collections using a collection agent or private attorney to competitively bid the contract and consider certain criteria.
- Requires traffic citations to contain language regarding payment plans and community service for noncriminal traffic infractions.
- Provides that a driver license may not be suspended solely for failure to pay a penalty if a person demonstrates an inability to pay, and meets specified requirements.
- Requires the court to inquire about a person's ability to pay at the time a civil penalty is ordered for a noncriminal traffic infraction.
- Revises the period of revocation, extension of a revocation, suspension, or withholding the issuance of a driver license for persons convicted of certain drug offenses 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 to apply for a hardship license under specified circumstances.
- Repeals the discretionary revocation or suspension of a driver license for persons who provide alcohol to persons under 21 years of age.
- Repeals school attendance requirements for minors to be eligible for a driver license.
- Repeals the driver license suspension for possession of tobacco products for persons under 18 years of age.
- Repeals the driver license suspension for minors placing graffiti on public or private property.
- Repeals driver license suspension in theft and worthless check cases.

The bill has an indeterminate negative fiscal impact to state and local government. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Driver license suspensions¹ and revocations² take away a person's privilege to drive. Although originally intended as a sanction to address poor driving behavior, driver license suspensions and revocations are often used as a means to penalize individuals engaged in behavior unrelated to the operation of a motor vehicle.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), there were approximately 1.7 million driver license sanction notices issued in Fiscal Year 2016-2017.³ While most of these sanctions were for driving-related reasons, included in the total were approximately 171,000 for child support delinquency and 103,000 for failure to pay a court fine or obligation. Other offenses that generated driver license sanctions included theft, possession of alcohol by a minor, certain controlled substance violations, and truancy.⁴

Drug Offenses

In 1992, Congress amended the Federal Highway Apportionment Act to encourage states to enact and enforce driver license suspensions or revocations for drug offenders.⁵ The law withholds a portion of federal highway funds from any state that fails to adopt a law that enforces driver license suspensions or revocations for drug offenders.⁶ The federal law requires participating states to provide a suspension or revocation of at least six months.⁷ However, a governor may submit written certification to the Secretary of the United States Department of Transportation that she or he opposes the revocation or suspension of driver licenses for certain drug offenses and that the state legislature has adopted a resolution expressing opposition to this law and still qualify for full federal funding.⁸

Child Support Enforcement

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996⁹ requires states to have (and use in appropriate cases) the authority to withhold, suspend or restrict the use of driver licenses of individuals owing past-due child support. The United States Department of Health and Human Services Office of Child Support Enforcement is a federal-state program that provides funding to child support agencies in states to help develop, manage and operate their programs effectively and according to federal law.¹⁰ Florida's Child Support Program is administered by DOR, who provides services under the federally required program in 65 counties and through contracts in the remaining two counties.¹¹

Driver License Reinstatement Fees

A person who applies for reinstatement following suspension or revocation of his or her driver license must pay a service fee of \$45 following a suspension, and \$75 following a revocation, in addition to the

¹ Section 322.01(40), F.S., defines "suspension" as "the temporary withdrawal of a licensee's privilege to drive a motor vehicle."

² Section 322.01(36), F.S., defines "revocation" as "termination of a licensee's privilege to drive."

³ It should be noted that approximately 662,000 of these sanctions were restored prior to becoming effective.

⁴ Department of Highway Safety and Motor Vehicles, spreadsheet on driver license sanctions created/effective in Fiscal Year 2016-2017 (copy on file with Transportation & Infrastructure Subcommittee).

⁵ Title 23 U.S.C. § 159 and 23 CFR Part 192.

⁶ *Id.*, at Part 192.9.

⁷ *Id.*, at Part 192.4(a)(1)(i).

⁸ *Id.*, at Part 192.4(c)(2).

⁹ P.L. 104-193

¹⁰ See additional information on the federal Child Support Enforcement Program, at <http://www.acf.hhs.gov/programs/css/about>. (Last visited January 8, 2018).

¹¹ Florida Department of Revenue, http://dor.myflorida.com/dor/childsupport/about_us.html. (Last visited January 8, 2018). Miami-Dade County cases are handled by the state attorney's office, and the Manatee County Clerk of Court handles Manatee County cases.

fee for a license.¹² Of the \$45 fee, DHSMV deposits \$15 into General Revenue and \$30 into the Highway Safety Operating Trust Fund. Of the \$75 fee, DHSMV deposits \$35 into General Revenue and \$40 into the Highway Safety Operating Trust Fund. In addition, county tax collectors are required to charge a service fee of \$6.25 for driver license services, including driver license reinstatements.¹³

OPPAGA Report

According to a February 2014 Office of Program Policy Analysis & Government Accountability (OPPAGA) report, in fiscal year 2012-2013, DHSMV suspended or revoked approximately 1.3 million driver licenses. Of this amount, more than 167,000 were for non-driving-related reasons.¹⁴ These reasons included the failure to pay child support, failure to pay court financial obligations, conviction of drug-related offenses, non-compliance with school attendance requirements, failure to appear in court for a worthless check offense, and conviction of misdemeanor theft offenses.¹⁵

As a result of its findings, OPPAGA provided the following legislative alternatives to modify the use of driver license sanctions for non-driving-related reasons:

- Leave driver license suspension for failure to appear in court on a worthless check, and for a conviction of misdemeanor theft offense charge, at the court's discretion.
- Explore modifying or opting out of Florida's implementation of the federal mandate requiring driver license suspension for drug convictions.
- Codify Department of Revenue (DOR) child support enforcement practices regarding the use of driver license suspensions.
- Evaluate the effectiveness of driver license suspension for school truancy.¹⁶

2014 Legislative Changes

In 2014, the Legislature passed CS/CS/HB 7005,¹⁷ revising provisions related to driver license suspensions and revocations for non-driving-related reasons. Specifically, that bill addressed suspension practices resulting from criminal violations and several practices resulting from child support enforcement policies. In summary the bill:

- Authorized the court to suspend the driver license of a person who fails to appear in court for a worthless check charge only when the person is a previous offender;
- Authorized, rather than required, the court to suspend the driver license of a person guilty of any offense of misdemeanor theft;
- Reduced the length of driver license revocation for drug related convictions from two years to one year;
- Required a court that orders a driver license suspension or revocation for a drug related offense to determine whether the issuance of a business purposes only driver license is appropriate in each case;
- Authorized the issuance of a business purpose only driver license for persons who have had their driver license suspended for violations related to selling, giving, or serving alcohol to minors, or for misdemeanor theft;
- Allowed a child support obligor to avoid the suspension of his or her driver license or motor vehicle registration if extenuating circumstances can be proven;
- Provided that if a child support obligor who seeks to satisfy the extenuating circumstances conditions does not provide applicable documentation or proof to the depository or clerk of court within 20 days after the date the delinquency notice is mailed, DOR or the clerk of court may file notice with DHSMV to suspend his or her driver license or motor vehicle registration.

¹² Section 322.21(8), F.S.

¹³ Section 322.135(1)(c), F.S.

¹⁴ OPPAGA report, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, p. 3 (February 2014) (copy on file with Transportation & Infrastructure Subcommittee).

¹⁵ *Id.*

¹⁶ *Id.*, pp. 9-11.

¹⁷ Chapter 2014-216, L.O.F. CS/CS/HB 7005 was a comprehensive bill related to transportation.

Specific Provisions in HB 1095

The bill makes numerous statutory changes to reduce the number of driver license suspensions and revocations for non-driving related offenses, reduce the financial burden associated with driver license suspensions, and reduce the severity of suspension-related penalties.

Public Defender Financial Application Form

Current Situation

Section 27.52, F.S., provides for the determination of indigent status for obtaining a public defender. Section 27.52(1), F.S., provides provisions regarding the application to the clerk of the court regarding indigent status. The statute provides that a person seeking a public defender¹⁸ based upon an inability to pay must apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerk of Courts Operations Corporation with final approval from the Florida Supreme Court. The application, at a minimum, must include the following financial information:

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

Proposed Changes

The bill creates s. 27.52(1)(a)6., F.S., requiring the financial information on the application for a public defender to include the election or refusal of the option to fulfill any court-ordered financial obligation associated with the case by completing community service as ordered by the court.

Payment of Court Related Fines and Fees

Current Situation

Section 28.246, F.S., relates to the payment of court-related fines and fees. Section 28.246(4), F.S., requires the clerk of the circuit court to accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court is required to apply to the clerk of the circuit court for enrollment in a payment plan. The clerk of the circuit court is required to enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, 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,¹⁹ divided by 12. The court may review the reasonableness of the payment plan.

Section 28.246(6), F.S., requires a clerk of court to pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs,²⁰ which remain unpaid after 90 days by referring the account to a private attorney or collection agent.²¹ In pursuing the collection of unpaid financial obligations through a private attorney or collection agent, the clerk of the court must

¹⁸ The appointment of a public defender is pursuant to s. 27.51, F.S.

¹⁹ Annual net income is defined in s. 27.52(1), F.S.

²⁰ This is pursuant to s. 938.29, F.S., relating to legal assistance; lien for payment of attorney's fees or costs.

²¹ Collection agents are required to be registered and in good standing.

attempt to collect the unpaid amount through a collection court, collections docket, or other collections process. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

Proposed Changes

The bill amends s. 28.246(4), F.S., removing a provision requiring the clerk of court to enter into a payment plan with an individual whom the court determines is indigent for costs. This allows clerks of court to enter into payment plans with anyone. The bill also provides that the monthly payment amount may not exceed two percent of the person's annual net income, divided by 12, without the person's consent. The bill amends s. 28.246(6), F.S., keeping the current requirement that the clerk of court pursue the collection of certain unpaid fees. In pursuing the collection through a private attorney or collection agency, the clerk must comply with specified procurement practices, including:

- Soliciting competitive bids from private attorneys or collection agents that will be in effect for no longer than three years, with a maximum of two one-year extensions.
- Considering all pertinent criteria when considering bids, including performance quality and customer service.
- Prohibiting the clerk from assessing any surcharge to refer the account to a private attorney or collection agent.
- Prohibiting the collection agent or private attorney from imposing any additional fees or surcharges other than the contractually agreed upon amounts.

Traffic Citations

Current Situation

Section 316.650(1)(a), F.S., requires DHSMV to prepare and supply to every traffic enforcement agency an appropriate traffic citation form containing a notice to appear meeting the requirements of the Florida Uniform Traffic Control Law²² or any Florida laws regulating traffic, and consistent with the state traffic court rules and DHSMV established procedures.

Proposed Changes

The bill creates s. 316.650(1)(b), F.S., requiring the traffic citation form to include language indicating that a person may enter into a payment plan with the clerk of court to pay a penalty, or if able to prove financial hardship, satisfy payment by participating in community service.²³ The bill provides that the changes to s. 316.650, F.S., take effect upon the depletion of the inventory of uniform traffic citation forms and the adoption by rule of new uniform traffic citation. DHSMV must notify the Division of Law Revision and Information upon the adoption of the new forms.

Failure to Pay a Penalty

Current Situation

Section 318.15, F.S., provides penalties for failure to comply with civil penalties or failure to appear as it relates to traffic infractions. If a person fails to comply with the civil penalties²⁴ within the time period specified,²⁵ fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court,²⁶ fails to attend driver improvement school, or fails to appear at a scheduled hearing; the clerk of the court notifies DHSMV of such failure within 10 days. Upon receiving such notice, DHSMV immediately issues an order suspending the driver license effective 20 days after the date the order of suspension is mailed.²⁷ Any such suspension of the driving privilege,²⁸ which has not been reinstated,

²² Chapter 316, F.S.

²³ The participation in community service is pursuant to s. 318.18(8)(b), F.S.

²⁴ Civil penalties for traffic infractions are provided for in s. 318.18, F.S.

²⁵ The time period is specified in s. 318.14(4), F.S.

²⁶ Penalty payment plans with the clerk of court are in accordance with ss. 318.14 and 28.246, F.S.

²⁷ The order of suspension is mailed in accordance with ss. 322.251(1), (2), and (6), F.S.

²⁸ The terms "driver license" and "driving privilege" appear to be used interchangeably throughout the statutes.

(including a similar suspension imposed outside Florida), remains on DHSMV's records for seven years from the date imposed and is removed from DHSMV's records after the expiration of seven years.²⁹

A person who elects to attend driver improvement school and pays the civil penalty,³⁰ but fails to attend the driver improvement school is deemed to have admitted to the infraction and is adjudicated guilty. The clerk of the court notifies DHSMV of the person's failure to attend driver improvement school and points are assessed to the person's driver license.^{31, 32}

A person charged with a traffic infraction may request a hearing within 180 days after the date of the violation, regardless of any action taken by the court or DHSMV to suspend the person's driving privilege, and, upon request, the clerk of the court must set the case for hearing. This does not affect the assessment of late fees as otherwise provided in Ch. 318, F.S.³³

After the suspension of a person's driver license and privilege to drive, the driver license and driving privilege may not be reinstated until the person complies with the terms of a payment plan with the clerk of the court or with all obligations and penalties.³⁴ The individual must then present to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of \$60³⁵ or present a certificate of compliance and pay the service charge to the clerk of the court or a driver-licensing agent³⁶ clearing such suspension. Such person must also comply with statutory requirements related to driver licenses³⁷ before reinstatement.³⁸

The clerk of court notifies DHSMV of persons who were mailed a notice of violation related to running a red light³⁹ and failed to enter into or comply with the terms of a payment plan, order, or failed to appear at a scheduled hearing. The clerk must reference the person's driver license number, or in the case of a business entity, vehicle registration number. Upon receiving such notice, DHSMV may not issue a license plate or revalidation sticker for any motor vehicle owned or co-owned by that person⁴⁰ until the amounts assessed have been fully paid. If the person's license plate or revalidation sticker is withheld,⁴¹ the person may challenge the withholding of the license plate or revalidation sticker only on the basis that the outstanding fines and civil penalties have been paid.⁴²

Proposed Changes

The bill creates s. 318.15(4), F.S., providing that notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty if the person requests a hearing, and demonstrates to the court before the suspension takes place, that the person is unable to pay the penalty.

Inability to Pay a Civil Penalty

Current Situation

Section 318.18, F.S., provides penalties for noncriminal and criminal traffic infractions. Specifically, s. 318.18(8)(b), F.S., provides that if a person has been ordered to pay a civil penalty for a noncriminal

²⁹ Section 318.15(1)(a), F.S.

³⁰ The civil penalty is provided in s. 318.14(9), F.S.

³¹ Points are assessed pursuant to s. 322.27, F.S.

³² Section 318.15(1)(b), F.S.

³³ Section 318.15(1)(c), F.S.

³⁴ Obligations and penalties are imposed under s. 318.18, F.S.

³⁵ The service charge is imposed under s. 322.29, F.S.

³⁶ Driver licensing agents are authorized under s. 322.135, F.S.

³⁷ Chapter 322, F.S.

³⁸ Section 318.15(2), F.S.

³⁹ Section 316.074(1) or 316.075(1)(c)1., F.S.

⁴⁰ This is pursuant to s. 320.03(8), F.S.

⁴¹ The withholding of the license plate or revalidation sticker is pursuant to s. 318.15(2)(a), F.S.

⁴² Section 318.15(3), F.S.

traffic infraction, and the person demonstrates he or she is unable to comply with the court's order, the court must allow the person to satisfy the civil penalty by participating in community service.⁴³

Proposed Changes

The bill creates s. 318.18(8)(b)1.b. F.S., requiring the court inquire at the time the civil penalty is ordered whether the person is able to pay the penalty.

Penalties for Minors Convicted of Drug Offenses

Current Situation

Section 322.055, F.S., provides that upon the conviction of a person 18 or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court may direct DHSMV to revoke the person's driver license. The period of revocation is one year, or until the person is evaluated for and completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families (DCF). However, the court may direct DHSMV to issue a license for driving privilege restricted to business⁴⁴ or employment purposes only.⁴⁵ A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S.,⁴⁶ may, petition DHSMV after six months for restoration of driving privileges on a restricted or unrestricted basis.

Proposed Changes

The bill amends s. 322.055(1) through (4), F.S., changing the period of suspension or revocation for each of the circumstances provided above from one year to six months. Therefore, the bill removes the provision under which the driver may petition DHSMV to restore his or her driving privilege on a restricted or unrestricted basis after six months.

Penalties for Minors Found Guilty of Certain Offenses

Current Situation

Section 322.056, F.S., provides that if a person under 18 is found guilty or delinquent of violating certain drug, alcohol, and tobacco offenses DHSMV may revoke or withhold issuance of his or her driver license for a period of six months to one year for the first violation, and two years for a subsequent violation. However, the court may direct DHSMV to issue a license for driving privileges restricted to business or employment purposes only.⁴⁷

If a person under 18 is found by the court to have committed a noncriminal violation of certain drug, alcohol, or tobacco offenses, and the person fails to comply with community service requirements, fails to pay the applicable fine, or fails to attend a locally available anti-tobacco program; DHSMV may revoke or withhold issuance of his or her driver license for a period of 30 days for a first violation, and 45 days for a second violation occurring within 12 weeks of the first violation. Any second violation for the same offense not within the 12-week period after the first violation is treated as a first violation and in the same manner as above.⁴⁸

If a person under 18 is found by the court to have committed a third violation of drug, alcohol, or tobacco offenses within 12 weeks of the first violation, the court directs DHSMV to suspend or withhold issuance of his or her driver license or driving privilege for 60 consecutive days. Any third violation of

⁴³ Section 318.18(8)(b)1.a., F.S.

⁴⁴ Section 322.271(1)(c)1., F.S., defines "a driving privilege restricted to business purposes only" as "a driving privilege that is limited to any 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 for medical purposes."

⁴⁵ Section 322.271(1)(c)2., F.S., defines "a driving privilege restricted to employment purposes only" as "a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation."

⁴⁶ Section 322.056, F.S. relates to the mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses; prohibition.

⁴⁷ Section 322.056(1), F.S.

⁴⁸ Section 322.056(2), F.S.

certain drug, alcohol, or tobacco offenses, not within the 12-week period after the first violation is treated as a first violation and in the same manner as above.⁴⁹

The suspension or revocation of a person's driver license pursuant to s. 322.056(2) or (3), F.S., does not result in an increase of the convicted person's, or his or her parent's or legal guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.⁵⁰

Proposed Changes

The bill amends s. 322.056, F.S., removing the mandatory revocation, suspension, or delay of eligibility for a driver license for persons under age 18 found guilty of certain alcohol or tobacco offenses. For persons found guilty of certain drug offenses, the bill provides for a loss in driving privilege for a period of six months. The bill also removes the court's discretion to issue a license for business or employment purposes only.

Additionally, the bill repeals s. 322.056(5), F.S., providing that the suspension or revocation of a person's driver license does not result in or cause an increase in automobile insurance rates or premium or points assessed on a person's driving record.

Penalties for Persons who Provide Underage Persons Alcohol

Current Situation

Section 322.057, F.S., provides penalties for persons who serve individuals under 21 years of age alcohol. DHSMV may be authorized to withhold the issuance of, or suspend or revoke, the driver license of a person who is found guilty of selling or serving alcohol to a minor for three to six months for a first violation and for one year for any subsequent violation. The law authorizes the court to direct DHSMV to issue a driver license restricted to business or employment purposes only, to a person who is otherwise qualified for a license.⁵¹

Proposed Changes

The bill repeals s. 322.057, F.S., relating to the discretionary revocation or suspension of a driver license for certain persons who provide alcohol to persons under 21.

School Attendance for Minors

Current Situation

Section 322.09, F.S., provides the application process for minors to obtain a driver license. Section 322.09(3), F.S., prohibits DHSMV from issuing a driver license or learner's driver license to any applicant under 18 who does not comply with the school attendance requirements.⁵²

Section 322.091, F.S., provides school attendance requirements for minors to receive a driver license. Current law provides that a minor is not eligible for driving privileges unless that minor:

- Is enrolled in school;
- Has received a high school diploma or equivalent;
- Is enrolled in and attends a study course in preparation for the high school equivalency exam;
- Is enrolled in and attends other approved educational activities;
- Has been issued a certificate of exemption;⁵³ or
- Has received a hardship waiver.⁵⁴

⁴⁹ Section 322.056(3), F.S.

⁵⁰ Section 322.056(5), F.S.

⁵¹ Section 322.057(2), F.S.

⁵² Section 322.091, F.S.

⁵³ A certificate of exemption is issued pursuant to s. 1003.21(3), F.S.

⁵⁴ Hardship waivers are issued pursuant to s. 322.091, F.S.

DHSMV may not issue a driver license or learner's driver license to, or must suspend the driver license or learner's driver license of, any minor in noncompliance with school attendance requirements.⁵⁵

Section 1003.27, F.S., provides the court procedure and penalties for the enforcement of required school attendance. Section 1003.27(2)(b), F.S., requires each public school principal to notify the district school board of each minor student under its jurisdiction who accumulates 15 unexcused absences in a period of 90 calendar days. The district school superintendent must provide DHSMV the legal name, sex, date of birth, and social security number of each minor student who has been reported and fails to satisfy school attendance requirements. DHSMV may not issue a driver license or learner's driver license to, and must suspend any previously issued driver license or learner's driver license of, any such minor student who violates the school attendance requirements.

Section 318.14(10)(a), F.S., provides that any person who does not hold a commercial driver license and is cited while driving a noncommercial motor vehicle for an offense listed below, may in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court. In such case, adjudication is withheld. However, a person may not make an election if the person has made an election in the preceding 12 months, and a person may not make more than three elections in a lifetime. This applies to the offense of operating a motor vehicle with a license that is suspended for failure to meet school attendance requirements.⁵⁶

Proposed Changes

The bill repeals s. 322.09(3), F.S., which prohibits DHSMV from issuing a driver license or learner's driver license to any applicant under the age of 18 years who does not comply with the school attendance requirements to obtain a driver license. The bill repeals s. 322.091, F.S., which provides school attendance requirements for a minor to receive a driver license.

The bill repeals s. 1003.27(2)(b), F.S., relating to school attendance penalties.

The bill repeals s. 318.14(10)(a)5., F.S., removing the applicability of s. 318.14(10)(a), F.S., to the offense of operating a motor vehicle without a license that has been suspended for failure to meet school attendance requirements.

Failure to Pay Child Support

Current Situation

For child support enforcement in non-IV-D cases, if a person fails to pay child support⁵⁷ and the obligee requests it, the clerk of the court is required to mail a notice.⁵⁸ The notice will notify the obligor that if he or she does not comply with the notice and pay a delinquency fee⁵⁹ of \$25 to the clerk of the court, his or her driver license and motor vehicle registration will be suspended. If the obligor fails to comply with the notice within the time period, the clerk of the court electronically notifies DHSMV of such failure within 10 days. Upon receipt of the notice, DHSMV immediately issues an order suspending the person's driver license effective 20 days after the date the order of suspension is mailed.^{60, 61}

DHSMV reinstates the driving privilege when the clerk of the court provides an affidavit to DHSMV stating that:

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;

⁵⁵ Section 322.091(1), F.S.

⁵⁶ Section 318.14(10)(a), F.S.

⁵⁷ Child support is provided for in Ch. 61, F.S.

⁵⁸ Section 61.13016, F.S., relates to the suspension of driver license and motor vehicle registrations for non-payment of child support.

⁵⁹ The delinquency fee is imposed by s. 322.245(1), F.S.

⁶⁰ The order of suspension is mailed in accordance with s. 322.251(1), (2), and (6), F.S.

⁶¹ Section 322.245(3), F.S.

- 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 the reinstatement of the license.⁶²

Proposed Changes

The bill creates s. 322.245(6), F.S., providing that a person's driver license may not be suspended solely for failure to pay a penalty or court obligation if the person requests a hearing and demonstrates to the court, before the suspension takes place, that the person is unable to pay the penalty.

Penalties for Worthless Checks

Current Situation

Section 322.251(7), F.S., provides that a person whose driving privilege is suspended or revoked in a worthless check case⁶³ must be given notice and may not have his or her driving privilege reinstated for any reason other than:

- Full payment of any restitution, court costs, and fees incurred;
- The cancellation of the warrant or capias from the Department of Law Enforcement; and
- The payment of an additional fee of \$10 to DHSMV to be paid into the Highway Safety Operating Trust Fund; or
- DHSMV has modified the suspension or revocation of the license restoring the driving privilege solely for business or employment purposes.⁶⁴

Section 832.09, F.S., provides that the court may order the suspension or revocation of the driver license of a person who is being prosecuted for passing a worthless check and is issued a warrant for failure to appear after being previously adjudicated guilty of passing a worthless check.

Within five working days after the court orders the suspension of a driver license pursuant to s. 832.09(1), F.S., the clerk of the court in the county where the warrant or capias is issued shall notify DHSMV by the most efficient method available of the action of the court.

Proposed Changes

The bill repeals s. 322.251(7), F.S., relating to the suspension or revocation of driving privilege in worthless check cases. Additionally, the bill repeals s. 832.09, F.S., relating to the suspension of a driver license after a warrant or capias is issued in a worthless check case.

DHSMV Authority to Modify Orders

Current Situation

Section 322.271, F.S., authorizes DHSMV to modify driver license revocation, cancellation, or suspension orders under specified circumstances.

Proposed Changes

The bill creates s. 322.271(8), F.S., providing that a person whose driver license or driving privilege has been suspended under s. 318.15, F.S.,⁶⁵ or s. 322.245, F.S.,⁶⁶ with the exception of any suspension related to s. 61.13016, F.S.,⁶⁷ may have his or her driver license or driving privilege reinstated on a

⁶² Section 322.245(5)(b), F.S.

⁶³ Worthless check cases are pursuant to s. 832.09, F.S.,

⁶⁴ Section 322.251(7)(a), F.S.

⁶⁵ Section 318.15, F.S., relates to failure to comply with a civil penalty as it relates to traffic violations.

⁶⁶ Section 322.245, F.S., relates to the suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or chapter 322 to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

⁶⁷ Section 61.13016, F.S., relates to the suspension of driver licenses and motor vehicle registrations for nonpayment of child support.

restricted basis. The restricted license is valid until the seven year suspension period expires⁶⁸ or until the debt is paid.

Driving while License is Suspended, Revoked, Canceled, or Disqualified

Current Situation

Section 322.34, F.S., provides penalties for driving while a license is suspended, revoked, canceled, or disqualified, and provides various penalties for different circumstances. Section 322.34(10), F.S., provides that if a person does not have a prior forcible felony⁶⁹ conviction, certain penalties apply if a person's driver license is canceled, suspended, or revoked for:

- Failing to pay child support;⁷⁰
- Failing to pay any other financial obligation as provided in s. 322.245, F.S.;⁷¹
- Failing to comply with a civil penalty;⁷²
- Failing to maintain vehicular financial responsibility;⁷³
- Failing to comply with school attendance⁷⁴ or other requirements for minors; or
- Having been designated as a habitual traffic offender⁷⁵ because of suspensions of his or her driver license for any underlying violation listed above.⁷⁶

Upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled, a person commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment⁷⁷ or a fine of up to \$500.^{78, 79} Upon a second or subsequent conviction for the offense of knowingly driving while his or her license is suspended, revoked, or canceled a person commits a misdemeanor of the first degree, punishable by up to one year imprisonment⁸⁰ or a fine of up to \$1,000.^{81, 82}

Proposed Changes

The bill amends s. 322.34(10)(a), F.S., removing a portion of the failure to pay financial obligation and school attendance requirements as offenses for which a person's driver license may be suspended or revoked. The bill also makes conforming changes to s. 322.34(10)(b), F.S.

Serving Alcohol to Underage Persons

Current Situation

Section 562.11(1)(a), F.S., provides that a person may not sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or permit a person under 21 years of age to consume alcoholic beverages on a licensed premises. A violation is a misdemeanor of the second

⁶⁸ The seven year suspension period is provided in s. 318.15, F.S.

⁶⁹ 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.

⁷⁰ Failure to pay child support is provided in s. 322.245, F.S., or s. 61.13016, F.S.

⁷¹ Section 322.245, F.S., relates to the suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case

⁷² Compliance with civil penalties is required in s. 318.15, F.S.

⁷³ Vehicle financial responsibility is provided for in Ch. 324, F.S.

⁷⁴ Attendance requirements are set forth in s. 322.091, F.S.

⁷⁵ Habitual traffic offenders are designated under s. 322.264(1)(d), F.S.

⁷⁶ Section 322.34(10)(a), F.S.

⁷⁷ Section 775.082, F.S.

⁷⁸ Section 775.083, F.S.

⁷⁹ Section 322.34(10)(b)1., F.S.

⁸⁰ Section 775.082, F.S.

⁸¹ Section 775.083, F.S.

⁸² Section 322.34(10)(b)2., F.S.

degree. A second or subsequent violation within one year after a prior conviction commits a misdemeanor of the first degree.⁸³

In addition, the court may order DHSMV to withhold the issuance of, or suspend or revoke, the driver license or driving privilege of any violator. A court that withholds the issuance of, or suspends or revokes, the driver license of a person may direct DHSMV to issue the person a license for driving privilege restricted to business purposes only.⁸⁴

Proposed Changes

The bill repeals ss. 562.11(1)(a)2. and 3. and 562.11(2)(c)2., F.S., removing the court's authority to order DHSMV to withhold the issuance of or suspend or revoke a person's driver license.

Possession of Alcohol by Underage Persons

Current Situation

Section 562.111, F.S., provides that it is unlawful for any person under the age of 21 to possess an alcoholic beverage. The statute also provides certain exceptions. Section 562.111(3), F.S., provides that the court is required to direct DHSMV to withhold issuance of, or suspend or revoke, the violator's driver license.⁸⁵

Proposed Changes

The bill repeals s. 562.111(3), F.S., which requires the court to direct DHSMV to withhold the issuance of, suspend, or revoke the violator's driver license.

Possession of Tobacco Products by Minors

Current Situation

Section 569.11, F.S., provides that it is unlawful for any person under 18 to knowingly possess any tobacco product and provides penalties for violation. Section 569.11(1), F.S., provides that any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation. Upon a third violation within 12 weeks of the first violation, the court must direct DHSMV to withhold issuance of, suspend, or revoke the person's driver license.⁸⁶

Section 569.11(2), F.S., provides that it is unlawful for any person under 18 to misrepresent his or her age or military service for the purpose of obtaining any tobacco product. Any person under 18 who violates s. 569.11(2), F.S., commits a noncriminal violation. A third violation within 12 weeks of the first violation, the court is required to direct DHSMV to withhold issuance of, suspend, or revoke the person's driver license.

Section 877.112, F.S., prohibits the sale of nicotine products and nicotine dispensing devices to persons under 18 and prohibits those persons from purchasing or possessing those products. Section 877.112(6), F.S., provides that it is unlawful for any person under 18 to knowingly possess any nicotine product or a nicotine-dispensing device. Any person under 18 who violates this subsection commits a noncriminal violation.⁸⁷ The court must direct DHSMV to withhold, suspend, or revoke a minor's driver license who violates this statute for a third or subsequent time within 12 weeks of a first violation.

Section 877.112(7), F.S., provides that it is unlawful for any person under 18 to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing

⁸³ Section 562.11(1)(a)1., F.S.

⁸⁴ Section 562.11(1)(a)3., F.S.

⁸⁵ Section 562.111(3), F.S.

⁸⁶ This is provided in s. 322.056, F.S.

⁸⁷ Section 775.08(3), F.S., defines "noncriminal violation" as "any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. The term "noncriminal violation" shall not mean any conviction for any violation of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal or county ordinance."

devices to sell the minor nicotine. The court must direct DHSMV to withhold, suspend, or revoke a minor's driver license who violates this statute for a third or subsequent time within 12 weeks of a first violation.

Section 877.112(8)(c), F.S., provides that if a person under 18 is found by the court to have committed a first noncriminal violation and that person has failed to complete community service, pay the required fine, or attend a school-approved anti-tobacco and nicotine program, the court must direct DHSMV to withhold issuance of or suspend the driver license of that person for 30 consecutive days. If a person under 18 is found by the court to have committed a second noncriminal violation under this section and that person has failed to pay the applicable fine, the court must direct DHSMV to withhold issuance of or suspend the driver license of that person for 45 consecutive days.

Proposed Changes

The bill repeals ss. 569.11(1)(c) and (2)(c), F.S., removing the provision that for a third or subsequent violation within 12 weeks of the first violation, the court directs DHSMV to suspend or revoke a person's driver license.

The bill amends s. 877.112, F.S., relating to the prohibition of minors to possess nicotine products and nicotine dispensing devices. Specifically, the bill amends ss. 877.112(6) and (7), F.S., removing the requirement that the court, for a third or subsequent violation within a 12 week period, direct DHSMV to withhold the issuance of, suspend, or revoke the person's driver license. Additionally, the current penalty of a \$25 fine for a subsequent violation now becomes the penalty for a second or subsequent violation.

The bill also amends ss. 877.112(8)(c) and (d), F.S., making it permissive, rather than mandatory, that a court direct DHSMV to withhold issuance of or suspend the driver license or driving privilege for failure to comply with certain penalties provided in s. 877.112, F.S.

Possession of Firearms by Minors

Current Situation

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 driver license 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 driver license 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 driver license 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.⁸⁸

Proposed Changes

The bill repeals ss. 790.22(5)(a)1. through 3. and (5)(b) 1. through 3., F.S, relating to the revocation, suspension or revocation or the withholding of the issuance of a minor's driver license for a minor possessing a loaded firearm in his or her home under certain circumstances. The bill also repeals s. 790.22(10), F.S., regarding the revocation, suspension, or withholding of a driver license for a minor convicted of an offense involving the use or possession of a firearm.

⁸⁸ Sections 322.056(2) and (3), F.S.
STORAGE NAME: h1095a.TIS
DATE: 1/30/2018

Penalties for Graffiti

Current Situation

Section 806.13, F.S., provides that a person commits criminal mischief if he or she willfully and maliciously injures or damages any real or personal property belonging to another, including, but not limited to, the placement of graffiti or other acts of vandalism. Section 806.13(7), F.S., provides that if a minor is found to have committed a delinquent act for placing graffiti on any public property or private property, the minor will have his or her driver license or privilege to drive revoked or withheld for a period of not more than one year.

Proposed Changes

The bill repeals ss. 806.13(7) and (8), F.S., relating to the suspension of driver licenses for placing graffiti on public or private property.

Penalties for Theft

Current Situation

Section 812.0155, F.S., provides that the court may order the suspension of the driver license of each person adjudicated guilty of any misdemeanor theft,⁸⁹ regardless of the value of the property stolen. Upon ordering the suspension of the driver license of the person adjudicated guilty, the court forwards the driver license of the person adjudicated guilty to DHSMV.⁹⁰ The first suspension of a driver license under this provision is for a period of up to six months.⁹¹ A second or subsequent suspension of a driver license is for one year.⁹²

Proposed Changes

The bill repeals s. 812.0155, F.S., relating to the suspension of driver license following the adjudication of guilt for theft.

Financial Obligations in Criminal Cases

Current Situation

Any person liable for payment of any financial obligation in any criminal case is subject to s. 938.30, F.S., and courts operating under s. 938.30, F.S., have jurisdiction over such financial obligations to ensure compliance.⁹³ The court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation.⁹⁴ The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service, subject to the provisions of s. 318.18(8), F.S., after examining a person under oath and determining the person's inability to pay. Any person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.⁹⁵

Proposed Changes

The bill amends s. 938.30(2), F.S., providing that determining a person's ability to pay financial obligations in a criminal case may rely on information provided under s. 27.52(1)(a)6., F.S., relating to the election or refusal of the option to fulfill any court-ordered financial obligation associated with the case by the completion of community service as ordered by the court.

Cross-References

The bill amends ss. 322.05, 322.27, and 1003.01, F.S., conforming cross-references.

⁸⁹ Sections 812.014 and 812.015, F.S.

⁹⁰ Section 812.0155(1), F.S.

⁹¹ Section 812.0155(1)(a), F.S.

⁹² Section 812.0155(1)(b), F.S.

⁹³ Section 938.30(1), F.S.

⁹⁴ Section 938.30(2), F.S.

⁹⁵ Section 938.30(2), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 27.52, F.S., relating to the determination of indigent status.

Section 2: Amends s. 28.246, F.S., relating to the payment of court-related fines and other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.

Section 3: Amends s. 316.650, F.S., relating to traffic citations.

Section 4: Amends s. 318.15, F.S., relating to failure to comply with civil penalty or to appear; penalty.

Section 5: Amends s. 318.18, F.S., relating to amount of penalties.

Section 6: Amends s. 322.055, F.S., relating to revocation or suspension of, or delay of eligibility for, driver license for persons 18 years of age or older convicted of certain drug offenses.

Section 7: Amends s. 322.056, F.S., relating to mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses; prohibition.

Section 8: Repeals s. 322.057, F.S., relating to discretionary revocation or suspension of driver license for certain persons who provide alcohol to persons under 21 years of age.

Section 9: Amends s. 322.09, F.S., relating to the application to minors; responsibility for negligence or misconduct of minor.

Section 10: Repeals s. 322.091, F.S., relating to attendance requirements.

Section 11: Amends s. 322.245, F.S., relating to suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

Section 12: Repeals subsection (7) of s. 322.251, F.S., relating to notice of cancellation, suspension, revocation, or disqualification of license.

Section 13: Creates subsection (8) of s. 322.271, F.S., relating to the authority to modify revocation, cancellation, or suspension order.

Section 14: Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 15: Amends s. 562.11, F.S., relating to selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.

Section 16: Repeals subsection (3) of s. 562.111, F.S., relating to possession of alcoholic beverages by persons under age 21 prohibited.

Section 17: Amends s. 569.11, F.S., relating to possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines.

Section 18: Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.

Section 19: Amends s. 806.13, F.S., relating to criminal mischief; penalties; penalty for minor.

Section 20: Repeals s. 812.0155, F.S., relating to suspension of driver license following an adjudication of guilt for theft.

Section 21: Repeals s. 832.09, F.S., relating to suspension of driver license after warrant or capias is issued in worthless check case.

Section 22: Amends s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.

Section 23: Amends s. 938.30, F.S., relating to financial obligations in criminal cases; supplementary proceedings.

Section 24: Amends s. 1003.27, F.S., relating to court procedures and penalties.

Section 25: Amends s. 318.14, F.S., relating to noncriminal traffic infractions; exception; procedures.

Section 26: Amends s. 322.05, F.S., relating to persons not to be licensed.

Section 27: Amends s. 322.27, F.S., relating to authority of department to suspend or revoke driver license or identification card.

Section 28: Amends s. 1003.01, F.S., relating to definitions.

Section 29: Provides for applicability.

Section 30: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) reviewed this bill on January 12, 2018. REC estimates the removal of suspension penalties for non-driving related offenses will reduce state and local government revenues by \$1.5 million each year for Fiscal Years 2018-2019 through 2022-2023 and will impact the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds. Additionally, REC noted that limiting driver license suspensions as an enforcement tool may limit the clerk of court's ability to collect outstanding fines, fees, and charges, which may result in a higher fiscal impact.⁹⁶

2. Expenditures:

The Clerk of Court Operations Corporation and the Supreme Court may incur some expenses associated with updating and approving the application form for persons seeking indigent status as provided in section 1 of the bill.⁹⁷

⁹⁶ Revenue Estimating Impact Conference, *2018 Analysis of HB 1095*, p. 293 (January 12, 2018) (copy on file with Transportation & Infrastructure Subcommittee).

⁹⁷ Office of the State Courts Administrator, *2018 Judicial Impact Statement SB 1270*, p. 1 (January 16, 2018), available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=26771> (last visited January 22, 2018).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On January 12, 2018, REC estimates the removal of suspension penalties for non-driving related offenses will reduce local government revenues by \$100,000 each year for Fiscal Years 2018-2019 through 2022-2023.⁹⁸

The bill's provisions related to community service, payment plans, and collection agents will have an indeterminate impact on clerks of court revenues. If more individuals opt to participate in community service rather than pay penalties, the bill will reduce revenues to the clerks of court who retain a portion of driver license reinstatement fees, in addition to other fees associated with driver license suspensions and revocations. The REC was unable to quantify the potential reduction in clerk of court revenues due to the community service provisions.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons whose fees are referred to collections may receive a reduction in collections surcharges with the requirement that the collections contract go to the bidder with the lowest surcharge.

The bill will significantly reduce the number of persons having their driver licenses suspended or revoked due to non-driving related reasons.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DHSMV has the authority to adopt by rule new uniform traffic citation forms.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁹⁸ *Supra* FN 96.
STORAGE NAME: h1095a.TIS
DATE: 1/30/2018