

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 386

INTRODUCER: Senator Wright

SUBJECT: Payments to Clerks of the Circuit Courts

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 386 limits the use of court-related driver license suspensions to driving-related offenses, encourages broader use of payment plans benefitting persons who cannot afford to immediately pay a traffic or criminal fine and court costs, and allows a court to waive or modify any fine or court cost for any indigent or any person unable to pay the fine. Specifically, the bill:

- Prohibits driver license suspension for nonpayment by an incarcerated person.
- Extends the time that a clerk has to refer a person for driver license suspension and makes the referral optional.
- Limits court-related driver license suspensions to those that are driving-related; and allows persons suspended as of July 11, 2021, for nonpayment related to an offense that is not driving-related to apply for reinstatement.
- Requires the clerks of court to create and use a statewide payment plan form.
- Requires a person who does not pay a court-related obligation upon assessment to enter into a payment plan within 30 days of imposition or release from incarceration.
- Repeals the option of the clerk to collect \$5 per payment, leaving the \$25 per payment plan fee, which may be waived by clerk should the payor agree to automatic debits.
- Requires a clerk of court to accept electronic payments.
- Limits the total of all payment plans being paid by an individual to a county to the greater of 2 percent of net income or \$10.
- Authorizes a trial court, when determining the reasonableness of a payment plan, to waive or modify the amount due and or convert the amount due to community service, upon a finding that the person is indigent or a finding of compelling circumstances.
- Requires that notice of the availability of a payment plan be given with every traffic citation.

The Revenue Estimating Conference found that this bill will have an indeterminate negative fiscal impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Clerks of the Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court¹ to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*"² clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."³ The traditional role of the clerk in collecting fines and fees owed to the county has been expanded to collecting the numerous state fines, fees, and charges that are related to the court system.

Driver License Suspension and Reinstatement

The state suspends driver licenses for numerous reasons. Three reasons are relevant to this bill: suspension for failure to respond to a noncriminal infraction; failure to comply with misdemeanor sentence requirement, financial or otherwise, under chs. 316, F.S. (traffic law), ch. 320, F.S. (motor vehicle licenses), or ch. 322, F.S. (driver licenses); and nonpayment of any financial obligation owed for any criminal offense. In 13 counties, more than 3 percent of the driver licenses in the county are suspended.⁴

Suspension for Noncriminal Citation

Section 318.15, F.S., requires that a person receiving a noncriminal citation (a traffic ticket) timely pay the statutory fine and costs, enter into a payment plan, elect to attend traffic school (and timely complete school and pay costs), or opt for a court hearing. If the person fails to do any of these, or defaults on the payment plan, the clerk must notify the Department of Highway Safety & Motor Vehicles (DHSMV) within 10 days. Upon receipt of the notice, the department must mail the driver notice that his or her license will be suspended 20 days after the mailing.

Related to citations, in 2019, there were 1,176,793 notices of suspension mailed, of which 555,060 were cleared before suspension. There were 621,733 suspensions and 396,670 licenses restored.

Suspension for Certain Misdemeanors

Section 322.245(1), F.S., governs suspension of a driver license upon the failure of the person charged with a misdemeanor offense under ch. 316, F.S. (traffic law), ch. 320, F.S. (motor vehicle licenses), or ch. 322, F.S. (driver licenses), to comply with directives ordered by a traffic court, or the nonpayment of fines and costs related to those offenses. The clerk must notify the

¹ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

² See BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.").

³ FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

⁴ DHSMV analysis of SB 356 (on file with the Judiciary Committee). The 13 counties are: Bradford, Broward, Duval, Glades, Hillsborough, Lee, Madison, Miami-Dade, Monroe, Orange, Palm Beach, Polk, and Union.

offender of the failure of such offender to pay monies owed or to otherwise comply with the judgment of the traffic court (such as a driving school requirement). The notice must inform the offender that he or she must comply within 30 days or his or her license will be suspended. If the offender fails to comply and fails to pay a delinquent fee of \$25, the clerk must notify the DHSMV and the license is suspended.

Related to criminal traffic offenses, in 2019, there were 112,213 notices of suspension mailed, of which 14,655 were cleared before suspension. There were 97,558 suspensions and 19,981 licenses restored.

Suspension for Failure to Pay Any Financial Obligation Owed in any Criminal Case

A criminal defendant found guilty or who has an adjudication withheld will owe various court costs and fees and may owe fines. The offender must pay in full or enter into a payment plan. Upon nonpayment of the financial obligation or default in the payment plan, the clerk may notify DHSMV. Upon receipt by DHSMV of the notice of default from the clerk, the offender's driver license is suspended.

Reinstatement of Driver License

A driver who has made payment of monies owed, or where applicable, has complied with the other terms that led to the suspension, may go to the clerk and receive a certificate of compliance. The driver must take that certificate to a driver license office.

A driver applying for reinstatement of a driver license following a driving-related suspension must pay the following fees:

\$45.00 reinstatement fee⁵
 \$ 6.25 county tax collector's fee⁶
\$25.00 delinquency fee⁷
 \$76.25 total

A driver applying for reinstatement of a driver license following suspension for nonpayment of a financial obligation in a criminal case must pay the following fees:

\$60.00 reinstatement fee⁸
 \$ 6.25 county tax collector's fee⁹
\$25.00 delinquency fee¹⁰
 \$91.25 total

Payment Plans with a Clerk of the Court

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay.

⁵ Section 322.21(8), F.S.

⁶ Section 322.135(1)(c), F.S.

⁷ Section 322.245(1), F.S.

⁸ Section 322.29(2), F.S.

⁹ Section 322.135(1)(c), F.S.

¹⁰ Section 322.245(1), F.S.

Section 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment plans with individuals who owe court-related fines or other monetary penalties, fees, charges and costs. Section 57.082(6), F.S., similarly authorizes a clerk to enter into a payment plan with a party who qualifies for civil indigent status and who owes reimbursement to the clerk. Both statutes require that a payment plan limit payments to those within the individual's ability to pay. Under either statute, monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.¹¹ The 2 percent limitation is calculated on a per-case basis. The clerk may elect whether to charge a \$5 processing fee for every partial payment or a one-time \$25 fee for setting up a payment plan.¹²

Current law is silent on which forms of payment a clerk must accept. Section 215.322, F.S., allows, but does not require, state and local governments to accept electronic payments. A clerk of court is allowed to surcharge the person who uses a credit card, charge card, bank debit card, or electronic funds transfer in payment of fines, civil penalties, court-ordered payments, or court costs, or other statutorily prescribed revenues an amount sufficient to pay the service fee charges by the financial institution or credit card company for such services.

The court may review the reasonableness of any payment plan.

Court-Related Fines, Penalties, Costs, and Fees Owed

As to any civil penalty for a noncriminal traffic infraction, the court may allow the driver to satisfy the civil penalty by participating in community service until the civil penalty is paid. To qualify, the driver must show "demonstrable financial hardship."¹³

As to any financial obligation owed in any criminal case, the trial court may convert the statutory financial obligation into community service upon a finding that the offender has an "inability to pay" the obligation.¹⁴ The criminal court may convert any financial obligation to a civil judgment.¹⁵

III. Effect of Proposed Changes:

Driver License Suspension and Reinstatement

The bill amends ss. 28.246(4) and 318.15(1)(a), F.S., to provide that a clerk may not refer a person to the Department of Highway Safety and Motor Vehicles (DHSMV) for suspension of his or her driver license while that person is incarcerated.

The bill amends s. 318.15(1)(a), F.S., to change the time for a clerk to report nonpayment of a traffic infraction fine and costs to the DHSMV for suspension of the driver license. The change is from a mandatory 10 days to an optional 30 days. The extended time does not apply to notice regarding persons who elect traffic school or court hearing options.

¹¹ An unmarried individual earning the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deduction would pay no more than \$26.80 a month on a clerk's payment plan.

¹² Section 28.24(26), F.S.

¹³ Section 318.18(8)(b)1.a., F.S.

¹⁴ Section 938.30(2), F.S.

¹⁵ Section 938.30(6), F.S.

The bill amends s. 322.245(1), F.S., to amend driver license suspension for failure to comply with sentencing requirements of any misdemeanor offense under chs. 316, 320, or 322, F.S., to only apply to “driving-related” offenses.

The bill amends s. 322.245(5), F.S., to limit driver license suspension for nonpayment of any criminal offense to criminal offenses involving operation of a motor vehicle by the person. The bill also adds s. 322.245(5)(a), F.S., to provide that any individual whose driver license was suspended before July 1, 2021, solely for nonpayment of fines, fees, or costs in a criminal case not involving operation of a motor vehicle is eligible to apply for license reinstatement, which must be granted if the individual is otherwise eligible and pays the reinstatement fee.

The terms used in the bill of “driving-related criminal case,” “driving-related offense,” “criminal case not involving operation of a motor vehicle,” and “criminal offense involving operation of a motor vehicle” are not defined, but presumably would apply in the same manner.

Payment Plans with a Clerk of the Court

The bill amends s. 28.42, F.S., to require the Florida Court Clerks & Comptrollers and the Florida Clerks of Court Operations Corporation to create a uniform payment plan form. The form must be created by October 1, 2021, and must be used by each clerk starting January 1, 2022.

The bill amends s. 28.246(4), F.S., to require a person owing court-related monies who cannot pay those monies in full at time of assessment to enter into a payment plan within 30 days, unless incarcerated. If incarcerated, the offender must meet with the clerk and set up a payment plan within 30 days of release. The bill requires the courts and clerks to work together to develop a process for directing persons who owe money to the clerk to meet with the clerk to either pay in full or set up a payment plan.

The bill amends the fee schedule at s. 28.24, F.S., to repeal the clerk’s option to collect a \$5 service fee from each partial payment under a payment plan. The \$25 fee to set up a payment plan remains in statute, the bill adding that the payor may split the \$25 fee into no more than five equal payments. The bill amends s. 28.246(5), F.S., to allow a clerk to waive the \$25 fee for a debtor who enrolls in an automatic electronic debit payment plan.

The bill amends s. 28.246(4), F.S., to require partial payments to a clerk to be “scheduled,” which will have the effect of prohibiting the clerk from accepting a partial payment unless a payment plan is in place.

The bill amends s. 28.246(4), F.S., to require the clerk to accept payments under a payment plan electronically, by mail, or in person. For a person making payments electronically, the clerk must enroll the person for automatic electronic payments or debits.

The bill amends ss. 28.246(4) and 57.082(6), F.S., to change the 2 percent of income per case limit to limit all payments owed in the county to no more than 2 percent of income or \$10, whichever is greater.¹⁶

In determining the reasonableness of a payment plan, the bill gives the trial court the power, on its own motion or by petition, to waive, modify, or convert the outstanding fines, fees, costs, or service charges to community service if the court determines that the individual is indigent or, due to compelling circumstances, is unable to comply with the terms of the payment plan.

The bill amends traffic law at s. 318.20, F.S., to require notice of the availability of payment plans through the clerk of court. The notice must be appended to a traffic infraction citation.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁶ The \$10 minimum payment would only impact a person earning less than \$500 a month net.

C. Government Sector Impact:

On March 19, 2021, the Revenue Estimating Impact Conference evaluated SB 386 and determined that overall this bill has an indeterminate negative fiscal impact.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.24, 28.246, 28.42, 57.082, 318.15, 318.20, and 322.245.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Office of Economic and Demographic Research, Revenue Estimating Impact Conference, page 199.