

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 Community Affairs Committee

BILL: CS/SB 1604

INTRODUCER: Transportation Committee and Senator Smith

SUBJECT: Violation of Traffic Laws/Penalties

DATE: April 7, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	Howes	Yeatman	CA	Favorable
3.			JU	
4.			TA	
5.				
6.				

I. Summary:

The Committee Substitute (CS) for Senate Bill 1604 amends s. 318.14, F.S., to clarify non-criminal traffic fines may be paid in installments using the payment plan mechanism currently contained in s. 28.246, F.S.

The CS also includes additional categories of drivers to a list of offenses for which a driver may provide “proof of compliance” to a clerk of court’s office and have adjudication withheld for the offense. The bill makes these changes in both chs. 318 and 322, F.S. The bill also provides that if a driver labeled a Habitual Traffic Offender (HTO) is able to resolve fines through this process, he or she may have HTO status removed. (This option remains unavailable for criminal charges and driving-related infractions.)

This CS substantially amends ss. 318.14, 318.15, 322.331, and 322.34 of the Florida Statutes.

II. Present Situation:

Section 28.246(4), F.S., provides the following: “the clerk of the circuit court shall 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 under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall 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 2 percent of the person’s annual net income, as defined in s. 27.52(1), F.S., divided by 12. The court may review the

reasonableness of the payment plan.” An order of distribution of funds received via partial payment plans is established as follows:

- the portion of revenues to be remitted to the state for deposit into the General Revenue Fund;
- the portion of revenues required to be retained by the clerk of court or deposited into the Clerk of Court Trust Fund;
- the portion of revenues payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds; and
- the portion of revenues payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all recipients.

The clerks are authorized to impose a per-month service charge pursuant to s. 28.24(26) (b), F.S., or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(c), F.S.

Section 318.14(4), F.S., provides any person charged with a noncriminal infraction, who does not elect to appear, must pay the civil penalty and delinquent fee, if applicable, either by mail or in person, within 30 days after the date of issuance of the citation. Section 318.14(10)(a), F.S., provides any person cited for a listed offense, in lieu of payment of the fine or county appearance, may elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of court or authorized operator of traffic violations bureau. In such case, adjudication shall be withheld; however, no election shall be made if the person has made an election in the past 12 months and no person may make more than three elections. Presently, a withhold of adjudication for a non-criminal traffic infraction¹ is not a “conviction.”² However, a withhold for criminal traffic offenses is considered a “conviction.”³ An infraction is defined as “a non-criminal violation that may require community service hours under s. 316.027(4), F.S., but is not punishable by incarceration and for which there is not right to a trial by jury or a right to court-appointed counsel.”

Section 318.14, F.S., does not expressly permit traffic offenders to use the payment plan mechanism authorized in s. 28.246, F.S., and there appears to be an inconsistency between county traffic courts as to whether the payment plan mechanism is available for non-criminal traffic fines owed pursuant to s. 318.14, F.S.

Section 318.15, F.S., currently provides if a traffic offender fails to timely pay a traffic fine, fails to appear at a subsequent hearing, or fails to attend a driver improvement school when required, the person shall have his or her driver’s license administratively suspended by the Department of Highway Safety and Motor Vehicles (DHSMV).⁴ After being suspended under this section, the

¹ s. 318.14(1), F.S.

² s. 318.14(11), F.S.

³ *Raulerson v. State*, 763 So.2d 285, 290-291 (Fla. 2000).

⁴ Section 318.15, F.S., provides the clerk of court must notify DHSMV of the failure within 10 days, and DHSMV must suspend the license on the 20th day following the order to suspend.

offender must comply with all traffic-related obligations and penalties imposed before re-applying to the court for license re-instatement.

Section 322.34(2), F.S., provides criminal penalties for knowingly driving with a suspended, revoked, or canceled license. Any person whose driver's license or driving privilege has been suspended, revoked, or canceled (except a habitual traffic offender) who drives with knowledge of such suspension, revocation, or cancellation, commits a second degree misdemeanor on the first conviction (up to 30 days in jail and a \$500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a \$1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a \$5,000 fine). (Subsection (1) of this section provides it is a moving violation if a person does not have knowledge of the suspension and drives with a suspended, revoked, or canceled license.)

Section 322.245(5), F.S., provides requirements nearly identical to s. 318.15, F.S., regarding license suspension for failure to pay any previous fines outstanding by an offender for non-criminal traffic violations.

According to DHSMV, these license suspensions create a 'snowball' effect for repeat offenders unable to fully-pay a non-criminal traffic fine. A driver who is unable to pay (in full) a traffic fine, but needs to operate his or her vehicle in order to remain employed, may be subsequently cited for driving with a suspended license, thereby incurring an additional fine.

If a third violation occurs, the offender has his or her license administratively suspended for 5 years, pursuant to s. 322.264(1)(d), F.S. This statute determines that anyone driving on a suspended license three or more times in a 5-year period is a "habitual traffic offender," and is automatically subject to a 5 year license suspension.

Because convictions are dated from the date the citation is paid, drivers who are unable to make full payment for a non-criminal traffic citation face an open-ended period of time, not an actual 5-year period, during which they run the risk of receiving additional citations and being labeled a habitual traffic offender. DHSMV states that "[t]his process continues to put these drivers further behind and they are unable to 'dig out' from under the mountain of debt that arises."⁵

A traffic court may withhold adjudication on a traffic offense of driving with a suspended license (s. 322.34, F.S.), but pursuant to the Supreme Court's opinion in *Raulerson v. State*, 763 So.2d 285 (Fla. 2000), a withhold of adjudication is considered a conviction for purposes of the habitual traffic offender statute in ch. 322, F.S.⁶

As mentioned above, s. 28.246, F.S., authorizes clerks to implement payment plans for offenders deemed "indigent for costs." If a person fails to make payments as required by s. 28.246, F.S., the clerk of courts is authorized to pursue the collection, including attorney's fees and costs, by referring the account to any member of the Florida Bar or a collection agent registered in good

⁵ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971.

⁶ The *Raulerson* court noted pursuant to s. 318.14(11), F.S., withholding adjudication for violations of s. 318.14, F.S., "shall not constitute convictions."

standing pursuant to ch. 559, F.S. These attorneys and collection agencies are entitled to collect up to an additional 40 percent of the amount owed at the time the account was referred.

III. Effect of Proposed Changes:

The CS amends s. 318.14, F.S., to expressly clarify non-criminal traffic infraction fines may be paid using the clerk's payment plan system implemented in s. 28.246, F.S., including the current requirement the offender be found "indigent for costs."

The CS includes the following additional offenses to the list in s. 318.14(10)(a), F.S., for which an offender can provide proof of compliance:

- Operating a motor vehicle with a license suspended for failure to pay any other financial obligations pursuant to s. 322.245, F.S., other than those (criminal fines) specified in s. 322.245(1), F.S.
- Operating a motor vehicle with a license suspended for failure to pay child support pursuant to s. 322.245, F.S., or s. 61.13016, F.S.
- Operating a motor vehicle with a license suspended for failing to attend school.⁷

The CS provides if a driver labeled a HTO is able to resolve fines through this process, he or she may have HTO status removed. (This option remains unavailable for criminal charges and driving-related infractions.) The CS also makes a conforming change to s. 318.15, F.S., to confirm that a person's failure to enter into or comply with the terms of a penalty payment plan with the clerk shall result in the person's driver's license being suspended by DHSMV.

This CS amends s. 322.34, F.S., to provide a person who does not hold a commercial driver license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled and the underlying suspension, revocation, or cancellation is non-driving related 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, designated official or authorized operator of a traffic violations bureau. This section is further amended to allow adjudication to be withheld; however, a person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections. If adjudication is withheld, such action is not considered a conviction.

DHSMV has identified these additional categories as offenses that generally relate to financial concerns, not the driver's actual ability to operate a motor vehicle. By granting these fiscally-challenged offenders an opportunity to provide "proof of compliance," it is possible offenders currently driving on suspended licenses will attempt to stop the 'snowball' effect by getting their overdue fines paid, re-registering their motor vehicles, and acquiring proper insurance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ Section 322.091, F.S., generally requires minors to be enrolled in public or nonpublic school, or be enrolled in a home education program, in order to maintain a driver's license.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While not necessarily a measurable or “direct” impact, if the ultimate result of the CS is a decrease in the number of drivers who operate motor vehicles on a suspended license (and by definition, also without insurance), the public at large may see a positive economic impact.

C. Government Sector Impact:

The following was provided by DSHMV⁸

- This CS could have a negative fiscal impact on DHSMV and state funds. Currently any person who fails to pay civil penalties resulting from traffic citations within the 30-day period must pay an additional late payment penalty of \$16, of which \$6.50 is deposited in the General Revenue Fund, and \$9.50 is deposited in the Highway Safety Operating Trust Fund. The DHSMV expects to collect \$19.8 million in late payment penalties in Fiscal Year 2010-11 of which \$8 million would be deposited in the General Revenue Fund and \$11.8 million in the Highway Safety Operating Trust Fund. Entrance into a payment plan to pay civil penalties resulting from traffic citations could reduce the number of civil penalties paid late and the subsequent late payment penalty revenues collected. The revenue impact as a result of entrance into a payment plan is unknown.
- The Department currently includes adjudication withheld by a judge for driving with knowledge that the license is suspended, in the process of determining Habitual Traffic Offender revocations. The fee to reinstate a HTO revocation is \$75, of which \$35 is deposited into the General Revenue Fund and \$40 in the Highway Safety Operating Trust Fund. If such a determination by the judge of adjudication withheld for driving while license is suspended is no longer considered a conviction, the result could be a decrease in the number of HTO revocations and the subsequent reinstatement fees, the actual impact on revenues cannot be determined.

⁸ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 795, Amendment 1 (on file with the Transportation Committee).

The Revenue Estimating Impact Conference met on March 19, 2010, and estimates CS/HB 795, which is similar to this CS (with an effective date of October 1, 2010) will reduce general revenue fund collections by \$6.3 million in Fiscal Year 2010-11 and estimates an indeterminate effect thereafter.

In the event a large number of traffic offenders choose to pay fines via a payment plan, the clerks of court may see an additional workload. However, the requirement of s. 28.246, F.S., that the court find offenders “indigent” may limit the number of offenders permitted to pay via payment plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 24, 2010:

- Clarifies non-criminal traffic infraction fines may be paid using the clerk’s existing payment plan process created by s. 28.246, F.S.
- Expands the number of categories of drivers to a list of offenses for which a driver may provide “proof of compliance” to a clerk of court’s office and have adjudication withheld for the offense.
- Provides if a driver labeled a HTO is able to resolve fines through the “proof of compliance” process, he or she may have HTO status removed.

B. Amendments:

None.