

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1017 Penalties and Fees  
**SPONSOR(S):** Transportation & Infrastructure Subcommittee; Ingram  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	15 Y, 0 N, As CS	Johnson	Vickers
2) Appropriations Committee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

In general, the bill relates to driver licenses, with a primary focus on reducing the number of driver license suspensions for non-driving related reasons. In summary, 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. This is effective upon the creation of a new inventory of traffic citations.
- Provides that a driver license may not be suspended if a person demonstrates an inability to pay a penalty.
- 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 or suspension, or withholding the issuance of a driver license for persons convicted of certain drug offenses from one year to six months.
- Repeals the discretionary revocation or suspension of a driver license for certain persons who provide alcohol to persons under 21 years of age.
- Repeals school attendance requirements for minors to be eligible for a driver license.
- Provides that a driver license may not be suspended solely for failure to pay a penalty or court obligation if the person demonstrates that he or she is unable to pay.
- Repeals the driver license suspension for a third or subsequent violation within 12 weeks of the first violation for possession, or the misrepresentation of age or military service to purchase tobacco products or the possession of nicotine or nicotine dispensing products for persons under 18 years of age.
- Repeals the driver license suspension for minor placing graffiti on public or private property.
- Repeals driver license suspension in theft and worthless check cases.

The bill is expected to have a negative fiscal impact to the state, tax collectors, and the clerks of the court. The revenue estimating conferences has yet to review the bill and the exact fiscal impact is unknown at this time. See Fiscal Comments for additional details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Driver license suspensions<sup>1</sup> and revocations<sup>2</sup> take away a person's privilege to drive. Although originally intended as a sanction to address poor driving behavior, driver's license suspensions and revocations are now often used as a means to punish individuals engaged in non-driving related behavior.

The majority, over 1.5 million in 2014 and 1.35 million in 2015, of notices of suspension issued by the DHSMV are a result of requests initiated by a clerk of the court.<sup>3</sup> Most originate from "failure to comply" or "failure to pay" offenses, actions that are not necessarily indicative of the violator's ability to operate a motor vehicle safely.

##### OPPAGA Report

According to a February 2014 Office of Program Policy Analysis & Government Accountability (OPPAGA) report entitled "Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons," in fiscal year 2012-2013, the DHSMV suspended or revoked approximately 1.3 million driver licenses. Of this amount, more than 167,000 were for non-driving-related reasons.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

##### 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.<sup>7</sup> 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.<sup>8</sup> The federal law requires participating states to provide a suspension or revocation of at least six months.<sup>9</sup> 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

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

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

<sup>3</sup> See *Id.* and DHSMV PowerPoint Presentation, *supra* note 21 at p. 33.

<sup>4</sup> The OPPAGA report (January 2014), *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, at page 2. This document is on file with the Highway & Waterway Safety Subcommittee.

<sup>5</sup> The OPPAGA report (January 2014), *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, at page 2. This document is on file with the Highway & Waterway Safety Subcommittee.

<sup>6</sup> The OPPAGA report (January 2014), *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, at pages 9-11. This document is on file with the Highway & Waterway Safety Subcommittee.

<sup>7</sup> Title 23 U.S.C. § 159 and 23 CFR Part 192.

<sup>8</sup> *Id.*, at Part 192.9.

<sup>9</sup> *Id.*, at Part 192.4(a)(1)(i).

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.<sup>10</sup>

### Child Support Enforcement

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 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 (OCSE) 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.<sup>11</sup> Florida's Child Support Program is administered by the Department of Revenue (DOR), who provides services under the federally required program in 65 counties and through contracts in two counties.<sup>12</sup>

### 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 fee for a license.<sup>13</sup> Of the \$45 fee, DHSMV deposits \$15 into General Revenue (GR) and \$30 into the Highway Safety Operating Trust Fund (HSOTF). Of the \$75 fee, DHSMV deposits \$35 into GR and \$40 into the HSOTF. In addition, county tax collectors are required to charge a service fee of \$6.25 for driver license services, including driver license reinstatements.<sup>14</sup>

### 2014 Legislative Changes

In 2014, the Legislature passed CS/CS/HB 7005,<sup>15</sup> 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.

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<sup>10</sup> Id., at Part 192.4(c)(2).

<sup>11</sup> See additional information on the federal Child Support Enforcement Program, at <http://www.acf.hhs.gov/programs/css/about>. (Last visited December 14, 2015).

<sup>12</sup> Florida Department of Revenue, [http://dor.myflorida.com/dor/childsupport/about\\_us.html](http://dor.myflorida.com/dor/childsupport/about_us.html) (Last visited December 10, 2015).

Miami-Dade County cases are handled by the state attorney's office, and Manatee County cases are handled by the Manatee County Clerk of Court.

<sup>13</sup> Section 322.21(8), F.S.

<sup>14</sup> Section 322.135(1)(c), F.S.

<sup>15</sup> Chapter 2014-216, F.S. CS/CS/HB 7005 was a comprehensive bill related to transportation.

## HB 1017

The bill is a comprehensive bill relating to penalties and fees, for ease of understanding this bill analysis is arranged by topic.

### Determination of Indigent Status (Section 1)

#### *Current Situation*

Section 27.52, F.S., provides for the determination of indigent status for the purpose of 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 defender<sup>16</sup> based upon an inability to pay applies 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, is required to 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 provide and complete community service as ordered by the court in lieu of fulfilling any court-ordered financial obligation.

### Payment of Court Related Fines and Fees (Section 2)

#### *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,<sup>17</sup> 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,<sup>18</sup> which remain unpaid after 90 days by referring the account to a private attorney or collection agent.<sup>19</sup> In pursuing the collection of unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other

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<sup>16</sup> The appointment of a public defender is pursuant to s. 27.51, F.S.

<sup>17</sup> Annual net income is defined in s. 27.52(1), F.S.

<sup>18</sup> This is pursuant to s. 938.29, F.S., relating to legal assistance; lien for payment of attorney's fees or costs.

<sup>19</sup> Collection agents are required to be registered and in good standing.

collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. 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 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 consent of the applicant.

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. If the initial collection attempt is unsuccessful, the clerk pursues collection through a private attorney or collection agent. In pursuing the collection through a private attorney or collection agency comply with any applicable procurement practices.

- In retaining a collection agent or private attorney, the clerk is required to solicit competitive bids from collection agents or private attorneys. The contract awarded to the successful bidder may be in effect for no longer than three years, with a maximum of two one-year extensions.
- The clerk is required to consider all pertinent criteria when considering bids, including, but not limited to, performance quality and customer service. However, the collection fee paid to a private attorney or collection agent may be added to the balance owed not to exceed 40 percent of the amount owed at the time the account is referred to the private attorney or collection agent.
- The clerk may not assess any surcharge to refer the account to a private attorney or collection agent.
- The collection agent or private attorney may not impose any additional fees or surcharges other than the contractually agreed upon amounts.
- The clerk is required to give the private attorney or collection agent the application for appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

#### Traffic Citations (Sections 3 and 29)

##### *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 Law<sup>20</sup> 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. The traffic citation form is also required to indicate that a person ordered to pay a penalty for a noncriminal traffic infraction who is unable to comply due to demonstrable financial hardship will be allowed by the court to satisfy payment by participating in community service.<sup>21</sup>

The bill provides that the changes to s. 316.650, F.S., only apply upon the creation of a new inventory of uniform traffic citation forms.

#### Failure to Comply with Civil Penalty or to Appear (Section 4)

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<sup>20</sup> Chapter 316, F.S.

<sup>21</sup> The participation in community service is pursuant to s. 318.18(8)(b), F.S.

### *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 penalties<sup>22</sup> within the time period specified,<sup>23</sup> fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court,<sup>24</sup> 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 and privilege to drive of such person effective 20 days after the date the order of suspension is mailed.<sup>25</sup> Any such suspension of the driving privilege<sup>26</sup> which has not been reinstated, 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.<sup>27</sup>

However, a person who elects to attend driver improvement school and has paid the civil penalty,<sup>28</sup> but subsequently 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 the DHSMV of the person's failure to attend driver improvement school and points are assessed to the person's driver license.<sup>29 30</sup>

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 is required to set the case for hearing. This does not affect the assessment of late fees as otherwise provided in Ch. 318, F.S.<sup>31</sup>

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 periodic payment plan or a revised payment plan with the clerk of the court or with all obligations and penalties<sup>32</sup> and presents to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of \$60<sup>33</sup> or presents a certificate of compliance and pays the service charge to the clerk of the court or a driver licensing agent<sup>34</sup> clearing such suspension. Such person must also comply with statutory requirements related to driver licenses<sup>35</sup> before reinstatement.<sup>36</sup>

The clerk of court notifies DHSMV of persons who were mailed a notice of violation related to running a red light<sup>37</sup> pursuant to the Mark Wandall Traffic Safety Program,<sup>38</sup> and failed to enter into, or comply with the terms of, a penalty payment plan, or order with the clerk to the local hearing officer, or failed to appear at a scheduled hearing within 10 days after such failure, and must reference the person's driver license number, or in the case of a business entity, vehicle registration number.

- Upon receiving such notice, DHSMV, or an authorized agent of DHSMV, may not issue a license plate or revalidation sticker for any motor vehicle owned or co-owned by that person<sup>39</sup> until the amounts assessed have been fully paid.

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<sup>22</sup> Civil penalties for traffic infractions are provided for in s. 318.18, F.S.

<sup>23</sup> The time period is specified in s. 318.14(4), F.S.

<sup>24</sup> Penalty payment plans with the clerk of court are in accordance with ss. 318.14 and 28.246, F.S.

<sup>25</sup> The order of suspension is mailed in accordance with ss. 322.251(1), (2), and (6), F.S.

<sup>26</sup> The terms "driver license" and "driving privilege" appear to be used interchangeably throughout the statutes.

<sup>27</sup> Section 318.15(1)(a), F.S.

<sup>28</sup> The civil penalty is provided in s. 318.14(9), F.S.

<sup>29</sup> Points are assessed pursuant to s. 322.27, F.S.

<sup>30</sup> Section 318.15(1)(b), F.S.

<sup>31</sup> Section 318.15(1)(c), F.S.

<sup>32</sup> Obligations and penalties are imposed under s. 318.18, F.S.

<sup>33</sup> The service charge is imposed under s. 322.29, F.S.

<sup>34</sup> Driver licensing agents are authorized under s. 322.135, F.S.

<sup>35</sup> Chapter 322, F.S.

<sup>36</sup> Section 318.15(2), F.S.

<sup>37</sup> Section 316.074(1) or 316.075(1)(c)1., F.S.

<sup>38</sup> Section 316.0083, F.S.

<sup>39</sup> This is pursuant to s. 320.03(8), F.S.

- After the issuance of the person's license plate or revalidation sticker is withheld,<sup>40</sup> 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.<sup>41</sup>

### 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 demonstrates to the court that he or she is unable to pay, as evidenced by the person providing documentation to the appropriate clerk of court that:

- The person receives reemployment assistance<sup>42</sup> or unemployment compensation;<sup>43 44</sup>
- The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;
- The person receives temporary cash assistance;<sup>45</sup>
- The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code;<sup>46</sup>
- The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan;<sup>47</sup> or
- The person has been determined to be indigent after filing an application with the clerk of court.<sup>48</sup>

### Amount of Penalties for Traffic Infractions (Section 5)

#### *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 traffic infraction, and the person is unable to comply with the court's order due to demonstrable financial hardship, the court is required to allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.<sup>49</sup>

#### *Proposed Changes*

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

### Revocation or Suspension of Driver License for Persons 18 or Older Convicted of Certain Drug Offenses (Section 6)

#### *Current Situation*

<sup>40</sup> The withholding of the license plate or revalidation sticker is pursuant to s. 318.15(2)(a), F.S.

<sup>41</sup> Section 318.15(3), F.S.

<sup>42</sup> Section 443.036(37), F.S., defines "reemployment assistance" as cash benefits payable to individuals with respect to their unemployment pursuant to the provisions of this chapter. Where the context requires, reemployment assistance also means cash benefits payable to individuals with respect to their unemployment pursuant to 5 U.S.C. ss. 8501-8525, 26 U.S.C. ss. 3301-3311, 42 U.S.C. ss. 501-504, 1101-1110, and 1321-1324, or pursuant to state laws which have been certified pursuant to 26 U.S.C. s. 3304 and 42 U.S.C. s. 503. Any reference to reemployment assistance shall mean compensation payable from an unemployment fund as defined in 26 U.S.C. s. 3306(f).

<sup>43</sup> Section 443.051(1)(a), F.S., defines "reemployment assistance" or "unemployment compensation" means any compensation payable under state law, including amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances for unemployment.

<sup>44</sup> Unemployment compensation and reemployment assistance are pursuant to Ch. 443, F.S.

<sup>45</sup> Temporary cash assistance is provided pursuant to Ch. 414, F.S.

<sup>46</sup> 11 U.S.C. ss. 101 et seq.

<sup>47</sup> Reasonable payment plans are determined pursuant to s. 28.246(4), F.S.

<sup>48</sup> Indigent status for criminal proceedings is determined pursuant to s. 27.52, F.S. Civil indigent status is determined pursuant to s. 57.082, F.S.

<sup>49</sup> Section 318.18(8)(b)1a, F.S.

Section 322.055, F.S., provides that notwithstanding s. 322.28, F.S.,<sup>50</sup> 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 directs DHSMV to revoke the driver license or driving privilege of the person. The period of revocation is **one year**, or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families (DCF). However, the court may, in its sound discretion, direct the DHSMV to issue a license for driving privilege restricted to business<sup>51</sup> or employment purposes only<sup>52</sup>, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S.,<sup>53</sup> may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or revocation. In no case will a restricted license be available until six months of the suspension or revocation period has expired.<sup>54</sup>

If a person 18 or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is eligible by reason of age for a driver license or privilege, the court directs the DHSMV to withhold issuance of such person's driver license or driving privilege for a period of **one year** after the date the person was convicted or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the DCF. However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privilege restricted to business or employment purposes only, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S. or s. 322.056, F.S., may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case will a restricted license be available until six months of the suspension or revocation period has expired.<sup>55</sup>

If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, and such person's driver license or driving privilege is already under suspension or revocation, the court directs DHSMV to extend the period of such suspension or revocation by an additional period of **one year** or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the DCF. However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privilege restricted to business or employment purposes only, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S., may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case will a restricted license be available until six months of the suspension or revocation period has expired.<sup>56</sup>

If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is ineligible by reason of age<sup>57</sup> for a driver license or driving privilege, the court directs DHSMV to withhold issuance of the

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<sup>50</sup> Section 322.28, F.S., relates to the period of driver license suspension or revocation.

<sup>51</sup> 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."

<sup>52</sup> 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."

<sup>53</sup> 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.

<sup>54</sup> Section 322.055(1), F.S.

<sup>55</sup> Section 322.055(2), F.S.

<sup>56</sup> Section 322.055(3), F.S.

<sup>57</sup> Section 322.05, F.S., prohibits DHSMV from issuing a license to a person under age 16, except that a learner's driver license may be issued to a person at least 15 years of age who meets certain requirements.

person's driver license or driving privilege for a period of **one year** after the date that he or she would otherwise have become eligible or until he or she becomes eligible by reason of age for a driver license and is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by DCF. However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privilege restricted to business or employment purposes only if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S., may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case will a restricted license be available until six months of the suspension or revocation period has expired.<sup>58</sup>

### *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. The bill removes the provision where the driver may after six months petition DHSMV to restore his or her driving privilege on a restricted or unrestricted bases. Additionally, the bill changes from six months to three months the length of time that a restricted license is not available.

### Mandatory Revocation or Suspension of, Driver License for Persons under 18 Found Guilty of Certain Offenses (Section 7)

#### *Current Situation*

Section 322.056, F.S., provides that notwithstanding the provisions of s. 322.055, F.S., if a person **under 18** is found guilty of or delinquent for a violation of certain drug and alcohol and tobacco offenses and:

- The person is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or to withhold issuance of his or her driver license or driving privilege for a period of:
  - Not less than six months and not more than one year for the first violation.
  - Two years, for a subsequent violation.
- The person's driver license or driving privilege is under suspension or revocation for any reason, the court directs DHSMV to extend the period of suspension or revocation by an additional period of:
  - Not less than six months and not more than one year for the first violation.
  - Two years, for a subsequent violation.
- The person is ineligible by reason of age for a driver license or driving privilege, the court directs DHSMV to withhold issuance of his or her driver license or driving privilege for a period of:
  - Not less than six months and not more than one year after the date on which he or she would otherwise have become eligible, for the first violation.
  - Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.

However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privileges restricted to business or employment purposes only if the person is otherwise qualified for such a license.<sup>59</sup>

If a **person under 18** is found by the court to have committed a noncriminal violation of certain drug, alcohol, or tobacco offenses, and that person has failed to comply with statutorily established procedures by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved anti-tobacco program, and:

- The person is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or to withhold issuance of his or her driver license or driving privilege as follows:

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<sup>58</sup> Section 322.055(4), F.S.

<sup>59</sup> Section 322.056(1), F.S.

- For the first violation, for 30 days.
- For the second violation within 12 weeks of the first violation, for 45 days.
- The person's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period as follows:
  - For the first violation, for 30 days.
  - For the second violation within 12 weeks of the first violation, for 45 days.
- The person is ineligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to withhold issuance of his or her driver license or driving privilege as follows:
  - For the first violation, for 30 days.
  - For the second violation within 12 weeks of the first violation, for 45 days.

Any second violation for the same offense not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.<sup>60</sup>

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 certain drug, alcohol, or tobacco offenses, not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in s. 322.056(2), F.S.<sup>61</sup>

A penalty imposed under s. 322.056, F.S., is in addition to any other penalty imposed by law.<sup>62</sup>

The suspension or revocation of a person's driver license imposed pursuant to s. 322.056(2) or (3), F.S., does not result in or be cause for 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.<sup>63</sup>

#### *Proposed Changes*

The bill amends s. 322.056, F.S., removing the mandatory revocation or 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 if the person otherwise qualifies for a driver license.

The bill also repeals s. 322.056(5), F.S., providing that the suspension or revocation of a person's driver license imposed under certain subsections of s. 322.056, F.S., do not result in or cause an increase in automobile insurance rates or premium or points assessed a person's driving record.

#### Discretionary Revocation or Suspension of Driver License for Certain Persons who Provide Alcohol to Persons under 21 (Section 8)

##### *Current Situation*

Section 322.057, F.S., provides that notwithstanding s. 322.28, F.S.,<sup>64</sup> the court may order DHSMV 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 or permitting an underage person to consume alcohol on a licensed premises<sup>65</sup> for not less than three months and not more than six months for a first violation and for one year for any subsequent violation. Section 322.057(1), F.S., does not apply to a licensee who

<sup>60</sup> Section 322.056(2), F.S.

<sup>61</sup> Section 322.056(3), F.S.

<sup>62</sup> Section 322.056(4), F.S.

<sup>63</sup> Section 322.056(5), F.S.

<sup>64</sup> Section 322.28, F.S., relates to the period of driver license suspension or revocation.

<sup>65</sup> Section 562.11(1)(a), F.S.

sells or serves alcohol to a minor or permitting an underage person to consume alcohol on a licensed premises while acting within the scope of his or her license or an employee or agent of a licensee who violates the alcohol statute while engaged within the scope of his or her employment or agency.<sup>66</sup>

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.<sup>67</sup>

#### *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.

#### Application of Minors; Responsibility for Negligence or Misconduct of Minor (Section 9)

##### *Current Situation*

Section 322.09, F.S., provides for the application of any person under 18 for 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 is not in compliance with the school attendance requirements for obtaining a driver license.<sup>68</sup>

##### *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 is not in compliance with the school attendance requirements to obtain a driver license.

#### School Attendance Requirements (Section 10)

##### *Current Situation*

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 a public school, nonpublic school, or home education program and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;
- Is enrolled in other educational activities approved by the district school board and satisfies relevant attendance requirements;
- Has been issued a certificate of exemption;<sup>69</sup> or
- Has received a hardship waiver.<sup>70</sup>

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 concerning whom DHSMV receives notification of noncompliance with the requirements of s. 322.091, F.S.<sup>71</sup>

Section 322.091, F.S., contains provisions regarding notifying the minor and the minor's parent or guardian of the intent to suspend the minor's driving privilege, provides for a hardship waiver and appeals process, provides for verification of compliance and reinstatement, and requires quarterly reporting from DHSMV to each school district.

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<sup>66</sup> Section 322.057(1), F.S.

<sup>67</sup> Section 322.057(2), F.S.

<sup>68</sup> Section 322.091, F.S.

<sup>69</sup> A certificate of exemption is issued pursuant to s. 1003.21(3), F.S.

<sup>70</sup> Hardship waivers are issued pursuant to s. 322.091, F.S.

<sup>71</sup> Section 322.091(1), F.S.

### *Proposed Changes*

The bill repeals s. 322.091, F.S., which provides school attendance requirements for a minor to receive a driver license.

### Suspension of License upon Failure of Person charged with Specified Offense or Failure to Pay Child Support or Failure to Pay any Financial Obligation in other Criminal Case (Section 11)

#### *Current Situation*

Section 322.245, F.S., provides for the suspension of a driver license for certain offenses, failure to comply with directives of traffic court, or failure to pay child support in certain cases, or failure to pay any financial obligation in any other criminal case.

For child support enforcement, in non-IV-D cases, if a person fails to pay child support,<sup>72</sup> and the obligee so requests, the depository<sup>73</sup> or the clerk of the court is required to mail a notice specified in s. 61.13016, F.S.,<sup>74</sup> notifying him or her that if he or she does not comply with the requirements of s. 61.13016, F.S., and pay a delinquency fee of \$25 to the depository or the clerk of the court, his or her driver license and motor vehicle registration will be suspended. The delinquency fee may be retained by the depository or the office of the clerk of the court to defray the operating costs of the office.<sup>75</sup>

If the person in a non-IV-D case fails to comply with the requirements of s. 61.13016, F.S., within time the period, the depository or 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 and privilege to drive effective 20 days after the date the order of suspension is mailed.<sup>76</sup>

After suspension of the driver license, the driver license may not be reinstated until the person complies with all court directives imposed upon him or her, including payment of the delinquency fee,<sup>78</sup> and presents certification of such compliance to a driver licensing office and complies with the statutory requirements relating to driver license,<sup>79</sup> or, in the case of a license suspended for nonpayment of child support in non-IV-D cases, until the person complies with the reinstatement provisions of s. 322.058, F.S.<sup>80</sup> and makes payment of the delinquency fee.<sup>81 82</sup>

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;
- 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.<sup>83</sup>

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<sup>72</sup> Child support is provided for in Ch. 61, F.S.

<sup>73</sup> Section 61.046(4), F.S., defines "depository" as "the central governmental depository established pursuant to s. 61.181, created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit."

<sup>74</sup> Section 61.13016, F.S., relates to the suspension of driver license and motor vehicle registrations for non-payment of child support.

<sup>75</sup> Section 322.245(2), F.S.

<sup>76</sup> The order of suspension is mailed in accordance with s. 322.251(1), (2), and (6), F.S.

<sup>77</sup> Section 322.245(3), F.S.

<sup>78</sup> The delinquency fee is imposed by s. 322.245(1), F.S.

<sup>79</sup> Chapter 322, F.S.

<sup>80</sup> Section 322.058, F.S., relates to the suspension of driving privilege due to support delinquency; reinstatement.

<sup>81</sup> The delinquency fee is imposed by s. 322.245(2), F.S.

<sup>82</sup> Section 322.245(4), F.S.

<sup>83</sup> Section 322.245(5)(b), F.S.

DHSMV is not liable for any license suspension resulting from the discharge of its duties under s. 322.245, F.S.<sup>84</sup>

### *Proposed Changes*

The bill creates s. 322.245(6), F.S., providing that notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty or court obligation if the person demonstrates to the court, after the court orders the penalty or obligation and before the suspension takes place, that he or she is unable to pay the penalty or court obligation. This does not apply to failure to pay child support in non-IV-D cases.<sup>85</sup> A person is considered unable to pay if the person provides documentation to the appropriate clerk of court evidencing that:

- The person receives reemployment assistance or unemployment compensation;<sup>86</sup>
- The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or the Social Security Disability Insurance Program;
- The person receives temporary cash assistance;<sup>87</sup>
- The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code;
- The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan.; or
- The person has been determined to be indigent after filing an application with the clerk of court;

### Notice of Cancellation, Suspension, Revocation, or Disqualification of License (Section 12)

#### *Current Situation*

Section 322.251, F.S., provides for the notice of cancellation, suspension, revocation, or disqualification of a driver license. Section 322.251(7), F.S., provides that a person whose driving privilege is suspended or revoked in a worthless check case<sup>88</sup> is required to be notified, and the notification directs the person to surrender himself or herself to the sheriff who entered the warrant to satisfy the conditions of the warrant. A person whose driving privilege is suspended or revoked under s. 322.251(7), F.S., may not have his or her driving privilege reinstated for any reason other than:

- Full payment of any restitution, court costs, and fees incurred as a result of a warrant or capias being issued pursuant to s. 832.09; F.S.;
- The cancellation of the warrant or capias from the Department of Law Enforcement (FDLE) recorded by the entering agency; 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 pursuant to s. 322.271, F.S.,<sup>89</sup> restoring the driving privilege solely for business or employment purposes.<sup>90</sup>

FDLE is required to provide DHSMV with electronic access for the purpose of identifying any person who is the subject of an outstanding warrant or capias for passing worthless bank checks.<sup>91</sup>

#### *Proposed Changes*

The bill repeals s. 322.251(7), F.S., which relates to the suspension or revocation of driving privilege in worthless check cases.

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<sup>84</sup> Section 322.245(5)(c), F.S.

<sup>85</sup> This is provided in Ch. 61, F.S.

<sup>86</sup> Reemployment assistance and unemployment compensation is provided pursuant to Ch. 443, F.S.

<sup>87</sup> Temporary cash assistance is provided pursuant to Ch. 414, F.S.

<sup>88</sup> Worthless check cases are pursuant to s. 832.09, F.S.,

<sup>89</sup> Section 322.271, F.S., relates to the authority to modify revocation, cancellation, or suspension order.

<sup>90</sup> Section 322.251(7)(a), F.S.

<sup>91</sup> Section 322.251(7)(b), F.S.

## Authority to Modify Revocation, Cancellation, or Suspension Order (Section 13)

### *Current Situation*

Section 322.271, F.S., provides DHSMV with the authority 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.,<sup>92</sup> or s. 322.245, F.S.,<sup>93</sup> with the exception of any suspension related to s. 61.13016, F.S.,<sup>94</sup> may have his or her driver license or driving privilege reinstated on a restricted basis in accordance with s. 322.271, F.S. The restricted license is valid until the seven year suspension period ends<sup>95</sup> or until the debt is paid.

## Driving while License is Suspended, Revoked, Canceled, or Disqualified (Section 14)

### *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 notwithstanding any other provision of s. 322.34, F.S., if a person does not have a prior forcible felony<sup>96</sup> conviction, the penalties provided in s. 322.34(10)(b), F.S., apply if a person's driver license or driving privilege is canceled, suspended, or revoked for:

- Failing to pay child support;<sup>97</sup>
- Failing to pay any other financial obligation as provided in s. 322.245, F.S.,<sup>98</sup> other than those specified in s. 322.245(1), F.S.;
- Failing to comply with a civil penalty;<sup>99</sup>
- Failing to maintain vehicular financial responsibility;<sup>100</sup>
- Failing to comply with attendance<sup>101</sup> or other requirements for minors; or
- Having been designated as a habitual traffic offender<sup>102</sup> as a result of suspensions of his or her driver license or driver privilege for any underlying violation listed above.<sup>103</sup>

Upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed above, a person commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment<sup>104</sup> or a fine of up to \$500.<sup>105 106</sup>

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<sup>92</sup> Section 318.15, F.S., relates to failure to comply with a civil penalty as it relates to traffic violations.

<sup>93</sup> 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.

<sup>94</sup> Section 61.13016, F.S., relates to the suspension of driver licenses and motor vehicle registrations for nonpayment of child support.

<sup>95</sup> The seven year suspension period is provided in s. 318.15, F.S.

<sup>96</sup> 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.

<sup>97</sup> Failure to pay child support is provided in s. 322.245, F.S., or s. 61.13016, F.S.

<sup>98</sup> 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

<sup>99</sup> Compliance with civil penalties is required in s. 318.15, F.S.

<sup>100</sup> Vehicle financial responsibility is provided for in Ch. 324, F.S.

<sup>101</sup> Attendance requirements are set forth in s. 322.091, F.S.

<sup>102</sup> Habitual traffic offenders are designated under s. 322.264(1)(d), F.S.

<sup>103</sup> Section 322.34(10)(a), F.S.

<sup>104</sup> Section 775.082, F.S.

<sup>105</sup> Section 775.083, F.S.

<sup>106</sup> Section 322.34(10)(b)1., F.S.

Upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed above a person commits a misdemeanor of the first degree, punishable as by up to one year imprisonment<sup>107</sup> or a fine of up to \$1,000.<sup>108 109</sup>

#### *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 items for whom someone's driver license may be suspended or revoked. The bill also makes conforming changes to s. 322.34(10)(b), F.S.

### Selling, Giving, or Serving Alcoholic Beverages to Persons 21 (Section 15)

#### *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 person violating this provision commits a misdemeanor of the second degree. A person who violates this provision a second or subsequent time within one year after a prior conviction commits a misdemeanor of the first degree.<sup>110</sup>

In addition to any other penalty imposed for a violation of s. 562.11(1)(a)1., F.S., the court may order DHSMV to withhold the issuance of, or suspend or revoke, the driver license or driving privilege, as provided in s. 322.057, F.S.,<sup>111</sup> of any person who violates s. 562.11(1)(a)1., F.S. Section 562.11(1)(a)2., F.S., does not apply to a licensee,<sup>112</sup> who violates s. 562.11(1)(a)1., F.S., while acting within the scope of his or her license or an employee or agent of a licensee who violates s. 562.11(1)(a)1, F.S., while engaged within the scope of his or her employment or agency.<sup>113</sup>

A court that withholds the issuance of, or suspends or revokes, the driver license or driving privilege of a person pursuant to s. 562.11(1)(a)2., F.S., may direct the DHSMV to issue the person a license for driving privilege restricted to business purposes only if he or she is otherwise qualified.<sup>114</sup>

#### *Proposed Changes*

The bill repeals ss. 532.11(1)(a)2. and 3., F.S., removing the authority for the court to order DHSMV to withhold the issuance of, suspend or revoke the driver license or driving privilege of a person selling, giving, serving, or permitting to be served alcohol to persons under 21 years of age or permitting a person under 21 years of age to consume an alcoholic beverage on a licensed premises. The bill also removes the authorization that under these circumstances the court may direct DHSMV to issue a business purposes only driver licenses.

### Possession of Alcoholic Beverages by Persons under 21 (Section 16)

#### *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 to the law. Section 562.111(3), F.S., provides that in addition to any other penalty imposed for a violation of the alcoholic beverage statute

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<sup>107</sup> Section 775.082, F.S.

<sup>108</sup> Section 775.083, F.S.

<sup>109</sup> Section 322.34(10)(b)2., F.S.

<sup>110</sup> Section 562.11(1)(a)1., F.S.

<sup>111</sup> Section 322.057, F.S., relates to the discretionary revocation or suspension of driver license for certain persons who provide alcohol to persons under 21 years of age.

<sup>112</sup> Section 561.01(14), F.S., defines "licensee" as "a legal or business entity, person, or persons that hold a license issued by the division and meet the qualifications set forth in s. 561.15, F.S."

<sup>113</sup> Section 562.11(1)(a)2., F.S.

<sup>114</sup> Section 562.11(1)(a)3., F.S.

by persons under the age of 21, the court is required to direct DHSMV to withhold issuance of, or suspend or revoke, the violator's driver license or driving privilege, as provided in s. 322.056, F.S.<sup>115</sup>

### *Proposed Changes*

The bill repeals s. 562.111(3), F.S., which requires the court to direct the DHSMV to withhold the issuance of, suspend, or revoke the driver license of those convicted of the possession of alcohol by those under the age of 21.

## Possession and Purchase of Tobacco Products by Persons under 18 (Section 17)

### *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 it is unlawful for any person under 18 to knowingly possess a tobacco product. Any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available;
- For a second violation within 12 weeks of the first violation, a \$25 fine; or
- For a third violation within 12 weeks of the first violation, the court directs DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege.<sup>116</sup>

A subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

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 inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 18 who violates s. 569.11(2), F.S., commits a noncriminal violation punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available;
- For a second violation within 12 weeks of the first violation, a \$25 fine; or
- For a third violation within 12 weeks of the first violation, the court is required to direct DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

Section 569.11(5)(a), F.S., provides that if a person under 18 is found by the court to have committed a noncriminal violation s. 569.11, F.S., and that person has failed to complete community service, pay the fine or attend a school-approved anti-tobacco program, if locally available, the court directs DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.<sup>117</sup>

Section 569.11(5)(b), F.S., provides that if a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 569.11, F.S., and that person has failed to pay the applicable fine, the court directs DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 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

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<sup>115</sup> Section 562.111(3), F.S.

<sup>116</sup> This is provided in s. 322.056, F.S.

<sup>117</sup> Section 562.11(5)(a), F.S.

driver license or driving privilege. The bill also adds “or subsequent” to ss. 569.11(1)(b) and (2)(b), F.S., providing that the penalty for a subsequent violation within a 12 week period carries the same penalty as a second violation.

The bill also amends ss. 569.11(5)(a) and (b), F.S., allowing, instead of requiring, the court to direct DHSMV to withhold the issuance or suspend the driver license of a person who committed a noncriminal violation under s. 569.11, F.S., and failed to meet certain conditions required by the court.

### Use of Certain Weapons or Devices by Persons Under 16; Possession of Firearms by Persons Under 18 (Section 18)

#### *Current Situation*

Section 790.22, F.S., contains provisions regarding the use of various types of firearms by minors. Section 790.22(3), F.S., provides that a minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless:

- The minor is engaged in a lawful hunting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor’s parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.

Section 790.22(5), F.S., provides that a minor who violates s. 792.22(3), F.S., commits a misdemeanor of the first degree; for a first offense, may serve a period of detention of up to 3 days in a secure detention facility; and, in addition to any other penalty provided by law, is required to perform 100 hours of community service; and:

- If the minor is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or to withhold issuance of the minor’s driver license or driving privilege for up to one year.
- If the minor’s driver license or driving privilege is under suspension or revocation for any reason, the court directs DHSMV to extend the period of suspension or revocation by an additional period of up to one year.
- If the minor is ineligible by reason of age for a driver license or driving privilege, the court directs DHSMV to withhold issuance of the minor’s driver license or driving privilege for up to one year after the date on which the minor would otherwise have become eligible.<sup>118</sup>

For a second or subsequent offense, a minor who violates s. 790.22(3), F.S., commits a felony of the third degree, and is required to serve a period of detention of up to 15 days in a secure detention facility and perform not less than 100 nor more than 250 hours of community service, and:

- If the minor is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or to withhold issuance of the minor’s driver license or driving privilege for up to two years.
- If the minor’s driver license or driving privilege is under suspension or revocation for any reason, the court directs DHSMV to extend the period of suspension or revocation by an additional period of up to two years.
- If the minor is ineligible by reason of age for a driver license or driving privilege, the court directs DHSMV to withhold issuance of the minor’s driver license or driving privilege for up to two years after the date on which the minor would otherwise have become eligible.<sup>119</sup>

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<sup>118</sup> Section 790.22(5)(a), F.S.

<sup>119</sup> Section 790.22(5)(b), F.S.

Notwithstanding s. 985.245, F.S.,<sup>120</sup> if the minor is found to have committed an offense that involves the use or possession of a firearm, other than a violation of s. 790.22(3), F.S., or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Juvenile Justice (DJJ), in addition to any other punishment provided by law, the court is required to order:

- For a first offense, that the minor serves a minimum period of detention of 15 days in a secure detention facility; and
  - Perform 100 hours of community service; and may
  - Be placed on community control or in a nonresidential commitment program.
- For a second or subsequent offense, that the minor serves a mandatory period of detention of at least 21 days in a secure detention facility; and
  - Perform not less than 100 nor more than 250 hours of community service; and may
  - Be placed on community control or in a nonresidential commitment program.

If a minor is found to have committed an offense under s. 790.22(9), F.S., the court imposes the following penalties in addition to any penalty imposed under s. 790.22(9)(a), F.S. or s. 790.22(9)(b), F.S.:

- For a first offense:
  - If the minor is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or to withhold issuance of the minor's driver license or driving privilege for up to one year.
  - If the minor's driver license or driving privilege is under suspension or revocation for any reason, directs DHSMV to extend the period of suspension or revocation by an additional period for up to one year.
  - If the minor is ineligible by reason of age for a driver license or driving privilege, the court directs the DHSMV to withhold issuance of the minor's driver license or driving privilege for up to one year after the date on which the minor would otherwise have become eligible.
- For a second or subsequent offense:
  - If the minor is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or to withhold issuance of the minor's driver license or driving privilege for up to two years.
  - If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court directs DHSMV to extend the period of suspension or revocation by an additional period for up to two years.
  - If the minor is ineligible by reason of age for a driver license or driving privilege, the court directs DHSMV to withhold issuance of the minor's driver license or driving privilege for up to two years after the date on which the minor would otherwise have become eligible.<sup>121</sup>

### *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 an offense involving the use or possession of a firearm.

### Criminal Mischief (Section 19)

#### *Current Situation*

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<sup>120</sup> Section 985.245, F.S., provides a risk assessment instrument.

<sup>121</sup> Section 790.22(10), F.S.

Section 806.13, F.S., provides that a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages, by any means, any real or personal property belonging to another, including, but not limited to, the placement of graffiti or other acts of vandalism.<sup>122</sup> Section 806.13(7), F.S., provides that in addition to any other penalty provided by law, if a minor is found to have committed a delinquent act for placing graffiti on any public property or private property, and:

- The minor is eligible by reason of age for a driver license or driving privilege, the court directs DHSMV to revoke or withhold issuance of the minor's driver license or driving privilege for not more than one year.
- The minor's driver license or driving privilege is under suspension or revocation for any reason, the court directs DHSMV to extend the period of suspension or revocation by an additional period of not more than one year.
- The minor is ineligible by reason of age for a driver license or driving privilege, the court directs DHSMV to withhold issuance of the minor's driver license or driving privilege for not more than one year after the date on which he or she would otherwise have become eligible.<sup>123</sup>

A minor whose driver license or driving privilege is revoked, suspended, or withheld pursuant to s. 806.13(7), F.S., may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of one day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court is required to order the minor to perform community service<sup>124</sup> and reduce the period of revocation, suspension, or withholding at the rate of one day for each hour of community service performed.<sup>125</sup>

#### *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.

#### Suspension of Driver License following an Adjudication of Guilt for Theft (Section 20)

##### *Current Situation*

Section 812.0155, F.S., provides that except as provided in ss. 812.0155(2) and (3), F.S., the court may order the suspension of the driver license of each person adjudicated guilty of any misdemeanor theft,<sup>126</sup> 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.<sup>127</sup> The first suspension of a driver license under this provision is for a period of up to six months.<sup>128</sup> A second or subsequent suspension of a driver license is for one year.<sup>129</sup>

The court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who is adjudicated guilty of theft, as an alternative to sentencing the person to:

- Probation<sup>130</sup> or commitment to DJJ, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

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<sup>122</sup> Section 806.13(1)(a), F.S.

<sup>123</sup> Section 806.13(7), F.S.

<sup>124</sup> For purposes of s. 806.13(7), F.S., "community service" means "cleaning graffiti from public property."

<sup>125</sup> Section 806.13(8), F.S.

<sup>126</sup> Sections 812.014 and 812.015, F.S.

<sup>127</sup> Section 812.0155(1), F.S.

<sup>128</sup> Section 812.0155(1)(a), F.S.

<sup>129</sup> Section 812.0155(1)(b), F.S.

<sup>130</sup> Section 985.03(41), F.S., defines "probation" as "the legal status of probation created by law and court order in cases involving a child who has been found to have committed a delinquent act. Probation is an individualized program in which the freedom of the child is limited and the child is restricted to noninstitutional quarters or restricted to the child's home in lieu of commitment to the custody of the department. Youth on probation may be assessed and classified for placement in day-treatment probation programs

- Probation commitment to DJJ, probation<sup>131</sup> community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.<sup>132</sup>

A court that revokes, suspends, or withholds issuance of a driver license under s. 812.0155(2), F.S., is required to:

- If the person is eligible by reason of age for a driver license or driving privilege, direct DHSMV to revoke or withhold issuance of the person's driver license or driving privilege for not less than six months and not more than one year;
- If the person's driver license is under suspension or revocation for any reason, direct DHSMV to extend the period of suspension or revocation by not less than six months and not more than one year; or
- If the person is ineligible by reason of age for a driver license or driving privilege, direct the DHSMV to withhold issuance of the person's driver license or driving privilege for not less than six months and not more than one year after the date on which the person would otherwise become eligible.<sup>133</sup>

Sections 812.0155(2) and (3), F.S., do not preclude the court from imposing any sanction specified or not specified in section 812.0155(2) or (3), F.S.<sup>134</sup>

A court that suspends a driver license pursuant to s. 812.0155(1), F.S., may direct DHSMV to issue the person a license for driving privilege restricted to business purposes only if he or she is otherwise qualified.<sup>135</sup>

#### *Proposed Changes*

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

#### Suspension of Driver License in a Worthless Check Case (Section 21)

##### *Current Situation*

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 who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court if the person has previously been adjudicated guilty of a violation of s. 832.05, F.S.<sup>136</sup>

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 the DHSMV by the most efficient method available of the action of the court.<sup>137</sup>

##### *Proposed Changes*

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.

#### Nicotine Products; Prohibitions for Minors (Section 22)

designed for youth who represent a minimum risk to themselves and public safety and do not require placement and services in a residential setting.”

<sup>131</sup> Section 948.001(8), F.S., defines “probation” as “a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S..”

<sup>132</sup> Section 812.0155(2), F.S.

<sup>133</sup> Section 812.0155(3), F.S.

<sup>134</sup> Section 812.0155(4), F.S.

<sup>135</sup> Section 812.0155(5), F.S.

<sup>136</sup> Section 832.09(1), F.S.

<sup>137</sup> Section 832.09(2), F.S.

### *Current Situation*

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<sup>138</sup> punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person is required to attend a school-approved anti-tobacco and nicotine program, if locally available;
- For a second violation within 12 weeks of the first violation, a \$25 fine; or
- For a third or subsequent violation within 12 weeks of the first violation, the court directs DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.<sup>139</sup>

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 devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. Any person under 18 who violates this subsection commits a noncriminal violation punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person is required to attend a school-approved anti-tobacco and nicotine program, if available;
- For a second violation within 12 weeks of the first violation, a \$25 fine; or
- For a third or subsequent violation within 12 weeks of the first violation, the court is required to direct the DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.<sup>140</sup>

Section 877.112(8)(c), F.S., provides that if a person under 18 is found by the court to have committed a noncriminal violation under s. 877.112, F.S., and that person has failed to complete community service, pay the fine as required by s. 877.112(6)(a) or (7)(a), F.S., or attend a school-approved anti-tobacco and nicotine program, if locally available, the court is required to direct the DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for 30 consecutive days.<sup>141</sup>

Section 877.112(8)(d), F.S., provides that if a person under 18 is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by s. 877.112(6)(b) or (7)(b), F.S., the court directs DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for 45 consecutive days.<sup>142</sup>

### *Proposed Changes*

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<sup>138</sup> 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."

<sup>139</sup> Section 877.112(6), F.S.

<sup>140</sup> Section 877.112(7), F.S.

<sup>141</sup> Section 877.112(8)(c), F.S.

<sup>142</sup> Section 877.112(8)(d), F.S.

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 or driving privilege. 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.

### Financial Obligations in Criminal Cases (Section 23)

#### *Current Situation*

Section 938.30, F.S., provides that any person liable for payment of any financial obligation in any criminal case is subject to the provisions of s. 938.30, F.S. Courts operating under the provisions of s. 938.30, F.S., have jurisdiction over such financial obligations to ensure compliance.<sup>143</sup>

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. 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.<sup>144</sup>

#### *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.

### Court Procedure and Penalties-School Attendance (Section 24)

#### *Current Situation*

Section 1003.27, F.S., provides the court procedure and penalties for the enforcement of the provisions of part II of Ch. 1003, F.S., relating to compulsory school attendance.

Section 1003.27(2)(b), F.S., requires each public school principal or the principal's designee 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. Each designee of the governing body of each private school, and each parent whose child is enrolled in a home education program, may provide the DHSMV with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091, F.S. The district school superintendent must provide the DHSMV the legal name, sex, date of birth, and social security number of each minor student who has been reported who fails to otherwise satisfy the requirements of s. 322.091, F.S. DHSMV may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to the provisions of s. 322.091.<sup>145</sup>

#### *Proposed Changes*

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

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<sup>143</sup> Section 938.30(1), F.S.

<sup>144</sup> Section 938.30(2), F.S.

<sup>145</sup> Section 1003.27(2)(b), F.S.

## Noncriminal Traffic Infractions (Section 25)

### *Current Situation*

Section 318.14, F.S., provides certain procedures regarding noncriminal traffic infractions. Section 318.14(10)(a), F.S., provides that any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for an offense listed under s. 318.14(10), F.S., 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. In such case, adjudication is withheld; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than three elections under this subsection. This applies to the following offenses:

- Operating a motor vehicle without a valid driver license in violation of s. 322.03, F.S., s. 322.065, F.S., or s. 322.15(1), F.S., or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to s. 322.291, F.S.
- Operating a motor vehicle without a valid registration in violation of s. 320.0605, F.S., s. 320.07, F.S., or s. 320.131, F.S.
- Operating a motor vehicle in violation of s. 316.646, F.S.
- Operating a motor vehicle with a license that has been suspended under s. 61.13016, F.S., or s. 322.245, F.S., for failure to pay child support or for failure to pay any other financial obligation as provided in s. 322.245; F.S.; however, this does not apply if the license has been suspended pursuant to s. 322.245(1), F.S.
- Operating a motor vehicle with a license that has been suspended under s. 322.091, F.S., for failure to meet school attendance requirements.<sup>146</sup>

### *Proposed Changes*

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.

### Cross-References (Sections 26, 27, and 28)

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

## 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, 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 penalties or to appear.

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.

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<sup>146</sup> Section 318.14(10)(a), F.S.  
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**DATE:** 3/14/2017

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 school 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 amends s. 322.251, F.S., relating to notice of cancellation, suspension, revocation, or disqualification of license.

Section 13 amends 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 amends 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.

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.

Section 23 amends s. 938.30, F.S., relating to financial obligations in criminal cases.

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.

Sections 26 through 28 amend ss. 322.05, 322.27 and 1003.01 to conform cross-references.

Section 29 provides for applicability.

Section 30 provides an effective date of October 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference (REC) has not yet reviewed this bill; however, the REC reviewed a similar bill on January 14, 2016. The REC estimated that last year's bill would have reduced state revenues in Fiscal Year 2017-2018 by \$0.6 million in recurring general revenue, \$0.8 million in recurring trust funds, and reduced local government revenues by \$0.1 million recurring. The REC adopted this estimate as the minimum impact of the bill, but recognized "behavioral shifts related to the changed incentives may make the impact higher than adopted."<sup>147</sup>

#### 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.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill will likely have a negative impact on local tax collectors and clerks of the circuit court who retain a portion of revenues from certain driver license sanctions when issuing reinstatements, in addition to other fees retained by them associated with driver license suspensions and revocations. Additionally, it is indeterminate how the bill will impact the clerks of court regarding the competitive bidding process for collection agents or attorneys, and any impact associated with an increased use of clerk of court-approved payment plans.

In 2016, the clerks of court estimated that the cost to comply with the provisions of last year's bill related to the monitoring and management of the payment plans would be approximately \$7.5 million in additional full time equivalent positions (FTEs) and IT costs. In addition, the clerks of court's annual loss of revenue, based on County Fiscal Year 2014-2015 revenue figures, would range from \$24.7 million to \$82.4 million, depending on assumptions regarding what percentage of collections fail to be paid (15% to 50% nonpayment). For instance, if 15% of collections are lost because individuals extend payment plans or participate in community service in lieu of paying fees, the clerks of court could lose an estimated \$24.7 million in revenues.<sup>148</sup> Clerks of court were unable to estimate the percentage of nonpayment associated with the bill.

In addition, the costs associated with the process of suspending and revoking licenses, the loss of revenue associated with drivers being unable to drive legally, and the costs of individuals continuing to drive without a valid license is unknown.

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<sup>147</sup> Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference, SPB 7046* (Jan. 14, 2016) <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page319-329.pdf> (last visited Jan. 31, 2016).

<sup>148</sup> Letter from the Florida Court Clerks and Comptrollers (January 12, 2016) (on file with the Senate Committee on Transportation).

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 persons having their driver licenses suspended or revoked due to non-driving related reasons. This will likely increase these individual's ability to obtain and maintain employment. Additionally, these persons will not have to pay the fees associated with driver license reinstatement.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised provisions regarding the clerks of the court referring accounts to collection agents or private attorneys to keep it mandatory and provides that quality is a factor to be considered when contracting with a private attorney or collection agency. The amendment also removed a requirement that the clerk of court must first attempt to collect the unpaid amount through other collection processes before pursuing the collection through a private attorney or collection agency.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.