

**Please Support HB18-1406 (Reps. Foote & Weissman):**

**Purpose of HB 1406**

- **Limit suspension / non-renewal of driver licenses** to where traffic safety requires it
- **End an ineffective government mechanism** of collecting unpaid traffic judgments
  - 34% of total judgment balance from 1/2015 to 12/2017 still outstanding
  - \$8.7M in outstanding judgments from 2010 to 2016
  - \$23M in outstanding judgments dating back to 1975
- **Avoid disparate impact** on people in rural areas; who drive for a living; are low income
- **Preserve Coloradans' liberty interest** in driving for work, family & other purposes

**Summary of HB 1406**

- § 1 – limit non-renewal / non-obtaining of licenses to outstanding **warrants**
  - not **judgments** for traffic infractions or violations of municipal ordinances
- § 2 – conforming amendment for **application** for license
- § 3 – conforming amendment for **renewal** of license
- § 4 – conforming amendment for **cancellation** of license
- § 5 – conforming amendment for **probationary license** in case of child support orders

**Reasons to Support HB 1406**

- **Constitutional Due Process concern**
  - In Jan. 2018 6<sup>th</sup> Circuit issued an injunction against Michigan law for suspension of licenses until notice and hearing deficiencies in the law are addressed
- **Other states have already ended the practice** of license suspension for traffic judgments
  - 2017 – Louisiana Act 260
  - 2017 – Mississippi Department of Public Safety policy change to re-instate 100,000 licenses suspended solely for monetary non-payment
  - 2017 – California SB 185
- **License suspension for non-safety reasons is against recommended best practices**
  - “It is the recommendation of the Suspended / Revoked Working Group that legislatures repeal laws requiring the suspension of driving privileges for non-highway safety related violations.” – *American Association of Motor Vehicle Administrators*, 2013

**What HB 1406 does not change**

- **Suspension** of license due to outstanding **warrant** for a serious traffic offense
- **Non-renewal** of license due to outstanding **warrant** for serious traffic offense
- **Collection of judgments by other means** – e.g. collections, tax intercept; wage garnishment

# ACLU Colorado

## SUPPORT HB 18-1406 TO END COLORADO'S LICENSE-FOR-PAYMENT SCHEME

### COLORADO'S LICENSE-FOR-PAYMENT SYSTEM IS COUNTERPRODUCTIVE AND CRUEL

- In 2017 alone, about **60,000** Colorado driving licenses were cancelled due to unpaid traffic tickets.<sup>i</sup> Such cancellations are used to coerce full payment of debts owed.<sup>ii</sup> But—the fact is—not everyone can afford to pay in full and on time.
- License cancellations for unpaid tickets happen *without* due process. No precautions are taken to ensure that licenses are not stripped simply because a person is poor, nor are affected individuals entitled to a hearing.
- If accountability is the goal, license cancellations are the wrong approach, making it *harder for people to pay their debt*. Perversely, license cancellations often make it less likely that people can pay their debt. Cancellations unfairly deprive people of their livelihood, make it harder to travel to court, and cripple people's ability to care for their families.
- License suspensions hit commercial drivers the hardest—*harming Colorado's economy*. For commercial drivers in particular, license suspensions result in unemployment.
- Cancelling driving licenses because of unpaid tickets *strains budgets*. Suspensions due to unpaid tickets are costly. The DMV estimates that suspending driver's licenses for offenses unrelated to driving consumes 8,566 hours per year of staff time.<sup>iii</sup>
- Non-driving related cancellations *undermine public safety interests*—diverting law enforcement resources away from safety-related activities. As the American Association of Motor Vehicle Administrators recommends, *driver's license suspensions should be reserved for bad driving, not debt collection*.<sup>iv</sup>

### LICENSE SUSPENSIONS FOR INABILITY TO PAY DEBT ARE UNCONSTITUTIONAL

- The U.S. Constitution requires due process before a license is cancelled.<sup>v</sup> However, current Colorado law ignores the right to due process—licenses are cancelled without defendants ever having the opportunity to explain their inability to pay.
- The U.S. Department of Justice urged states to abandon license-for payment schemes, stressing that "[c]ourts must not use... license suspensions as a means of coercing the payment of court debt," and that doing so "may be unlawful if the defendant was deprived of his due process right to establish inability to pay."<sup>vi</sup>
- Nationwide, there growing momentum challenging license-for-payment schemes as unconstitutional in violation of both the Equal Protection and Due Process Clauses.
  - States like Louisiana and Mississippi have ended license cancellations for those unable to pay court debt.<sup>vii</sup>
  - Litigation is pending in at least 5 states challenging license-for-payment schemes—most recently, in January 2018, a preliminary injunction was entered by the 6<sup>th</sup> Circuit enjoining Michigan state from suspending licenses without considering ability to pay.<sup>viii</sup>

### WHAT WOULD HB 18-1406 DO?

- The bill would appropriately limit driver's license cancellations to circumstances *when public safety requires it*. By narrowly prohibiting cancellations for unpaid tickets, the bill retains the authority to cancel driver's licenses for reasons such as dangerous driving or outstanding warrants.
- The bill would bring Colorado in line with the Constitution and fundamental fairness. Rather than using license suspensions as an unconstitutional tool to coerce payments, the bill will reserve license suspensions as a punishment for those who pose a risk to public safety or who fail to appear in court.
- Without license cancellations, how do we hold defendants accountable? Courts already have many methods in place to collect debt—including payment plans, traditional collections, wage garnishment, and the contempt of court process. When a driver is able to retain their license and their livelihood, these collection methods are even more effective.

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<sup>i</sup> In 2017, a total 86,926 licenses were cancelled due to an "OJW" (Outstanding Judgment or Warrant). See Colorado Department of Revenue, 2017 Annual Report, at [https://www.colorado.gov/pacific/sites/default/files/2017\\_Annual\\_Report.pdf](https://www.colorado.gov/pacific/sites/default/files/2017_Annual_Report.pdf). About 70% of all OJWs are due to Unpaid Tickets (Outstanding Judgments).

<sup>ii</sup> See "Outstanding Judgment or Warrant Fee (OJWF)" policy, provided to the ACLU by the Colorado State Judiciary in June 2016. Pursuant to this policy, coming into compliance with a payment plan is not enough to avoid cancellation or qualify for reinstatement—instead, the debt must be *paid in full*.<sup>ii</sup>

<sup>iii</sup> ALEC, "Resolution in Support of Limiting Driver's License Suspensions to Violations that Involve Dangerous Driving" (finalized January 20, 2018).

<sup>iv</sup> AAMVA, "Best Practices Guide to Reducing Suspended Drivers," pp. 2-3.

<sup>v</sup> See, e.g. *Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that driver's licenses "may become essential in the pursuit of a livelihood" and thus "are not to be taken away without that procedural due process required by the Fourteenth Amendment")

<sup>vi</sup> See "Dear Colleague" letter, Civil Rights Division of the U.S. Department of Justice (March 14, 2016).

<sup>vii</sup> Louisiana 2017 Act No. 260; see also <https://law.olemiss.edu/splc-macarthur-justice-center-and-department-of-public-safety-announce-that-mississippi-will-reinstate-thousands-of-drivers-licenses-suspended-for-failure-to-pay-fines/>

<sup>viii</sup> See *Fowler v. Johnson*, Case No. 17-cv-11441, Doc No. 35. Litigation is also pending in Montana, Pennsylvania, California, and Tennessee.



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# RESOLUTION IN SUPPORT OF LIMITING DRIVER'S LICENSE SUSPENSIONS TO VIOLATIONS THAT INVOLVE DANGEROUS DRIVING

## *Policy Status*

Type: Model Resolution   Status: Final   Date Introduced: December 8, 2017   Date Finalized: January 20, 2018

## *Issues*

- Criminal Justice

## *Task Forces*

- Criminal Justice

## *Tags*

- SNPS 2017

## *Summary*

A person whose driver's license is suspended will often find it more difficult to earn a living and therefore pay the debt they owe to the government. The number of individuals with a suspended license also places a burden on the limited resources of law enforcement. This resolution encourages state policymakers to revise laws to limit driver's license suspensions imposed for violations against the government to conduct that involves offenders with dangerous driving such as drunk driving or multiple moving violations.

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## **RESOLUTION IN SUPPORT OF LIMITING DRIVER'S LICENSE SUSPENSIONS TO VIOLATIONS THAT INVOLVE DANGEROUS DRIVING**

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### **Summary:**

A person whose driver's license is suspended will often find it more difficult to earn a living and therefore pay the debt they owe to the government. The number of individuals with a suspended license also places a burden on the limited resources of law enforcement. This resolution encourages state policymakers to revise laws to limit driver's license suspensions imposed for violations against the government to conduct that involves offenders with dangerous driving such as drunk driving or multiple moving violations.

### **Model Resolution:**

**WHEREAS**, driving a vehicle is critically important in the daily lives of most Americans and often essential for getting to work, taking care of a family, and getting groceries; and

**WHEREAS**, in many small cities, towns, and rural areas that do not have public transportation and ride-sharing alternatives, driving is often the only realistic means of transportation; and

**WHEREAS**, drunk and dangerous driving is one of the nation's leading causes of death and serious bodily injury and promoting safety on the roads is a legitimate, necessary, and core governmental function; and

**WHEREAS**, in Virginia alone nearly 1,000,000 people, or one out of six adults, have suspended driver's licenses for unpaid court fines and fees; and

**WHEREAS**, in Texas some 1,800,000 people, have had their driver's licenses suspended for failure to pay court fines and fees; and

**WHEREAS**, in California more than 17% of adults have their driver's licenses suspended; and

**WHEREAS**, between 2010 and 2017 all but three states increased the amount of fines and fees for civil and criminal violations; and

**WHEREAS**, nationally 40% percent of all driver license suspensions are issued for conduct that was unrelated to driving; and

**WHEREAS**, a person whose driver's license is suspended will often find it more difficult to earn a living and therefore pay the debt they owe to the government; and

**WHEREAS**, Washington State in 2015 calculated that state troopers spent 70,848 hours dealing with license suspensions for non-driving offenses; and

**WHEREAS**, the American Association of Motor Vehicle Administrators estimated that arresting someone for driving with a suspended license can take 9 hours of an officer's time, including waiting for a tow-truck, transporting an individual to jail, filling out paperwork, making a court appearance, and other administrative duties and accordingly Washington State Patrol Chief John Batiste called non-driving suspensions "a drain on the system as a whole"; and

**WHEREAS**, the Colorado Department of Motor Vehicles determined that suspending driver's licenses for offenses unrelated to driving consumed 8,566 hours per year of its staff time; and

**WHEREAS**, many states impose a significant fee for reinstating a suspended driver's license, such as Alabama where the fee is \$275; and

**WHEREAS**, to the extent people break the law and drive with a suspended license, it is more likely they are also driving without insurance, thereby placing a greater financial burden on other drivers when they cause an accident; and

**WHEREAS**, in 2012 the state of Washington enacted legislation to stop suspending driver's licenses for failure to pay non-moving traffic violations; and

**WHEREAS**, Congress is considering the Better Drive Act cosponsored by lawmakers such as Congressman James Sensenbrenner, Congresswoman Mia Love, and Congressman Justin Amash that would repeal a federal law that undermines the Tenth Amendment by imposing a federal mandate on

driver's license suspensions for drug offenses that is enforced through withholding federal transportation funds; and

**THEREFORE BE IT RESOLVED** that the American Legislative Exchange Council encourages state policymakers to revise laws to limit driver's license suspensions imposed for violations against the government to conduct that involves offenders with dangerous driving such as drunk driving or multiple moving violations.

# Executive Summary

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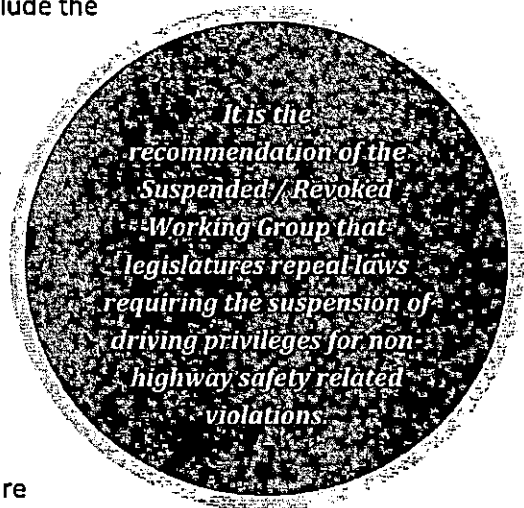
The suspension of driving privileges has been used for decades to address poor driving behavior, and research has proven that it can be effective in reducing traffic crashes. However, what was originally intended as a sanction to address poor driving behavior is now used as a mechanism to gain compliance with non-highway safety, or social non-conformance, reasons. Across the country, at any given time, approximately seven percent of drivers are suspended. In 2002, drivers suspended for social non-conformance reasons represented 29 percent of all suspended drivers. By 2006, this group represented 39 percent of all suspended drivers. Drivers are now commonly suspended for reasons such as bounced checks, fuel theft, truancy, vandalism and many more.

Some studies<sup>1</sup> have shown that suspending driving privileges for non-highway safety related reasons is not effective. The costs of arresting, processing, administering, and enforcing social non-conformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities.

When licenses are suspended for social non-conformance reasons, the suspension is “watered down” in value; it becomes less serious in the minds of law enforcement, the courts and the public. It was estimated that as many as three-fourths of suspended or revoked drivers continue to drive. This fact indicates that driver license suspension is no longer the solution to force compliance. Data shows that drivers suspended for traffic safety related reasons are three times more likely to be involved in a crash than drivers suspended for social non-conformance reasons; therefore, our limited resources should be focused on dangerous drivers. To best serve the community, the penalties for social non-conformance violations should not include the suspension of an individual’s driving privileges.

Eliminating driver license suspensions for non-highway safety violations will significantly reduce the burden on departments of motor vehicles (DMV’s), law enforcement, the courts and society. DMV’s for example, incur exorbitant costs to create, program systems and process these newly legislated suspension types:

When a law enforcement officer encounters a suspended driver, their ability to help ensure the safety of drivers on the roadways and their availability to respond to calls for service are reduced. The officer must take appropriate action for the violation and later appear in court for adjudication of the ticket(s). While the officer is in court, there may be little or no enforcement presence in their patrol area. Officers are made unavailable for 911



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<sup>1</sup> See <http://apps.dmv.ca.gov/about/profile/rd/r d report/Section 6/S6-238.pdf>

responses, crash investigation, criminal interdiction, and other enforcement activities, potentially increasing the threat to public safety.

Eliminating 39 percent of suspended drivers will result in fewer citations for driving while under suspension and partially alleviate clogged court dockets. Individuals whose offense is unrelated to highway safety will retain their driving privileges, their ability to earn a living, and their ability to contribute to the economy.

Whereas government has a legitimate interest in seeking methods to gain social compliance in a wide variety of areas, this report provides analysis and alternatives to driver license sanctioning. These alternatives pose significantly less burden on the entities charged with safeguarding highway safety while still meeting the needs of our communities.

It is the recommendation of the Suspended/Revoked Working Group that legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations.

### **Colorado**

The Colorado Motor Vehicle Division (MVD) completed an analysis of their cost to create and administer a new non-driving suspension code. The MVD projected that 8,566 hours of manual employee processing time is needed on an annual basis to process 16,800 anticipated suspensions. That equates to 4.22 full time employees (FTE). A breakdown of required effort follows.

Administrative Processing Task	FTE Hours/Year
analyze and data enter the documents	480
reinstate the suspension	2,244
answer telephone inquiries	1,680
respond to subpoenas	1,232
mail verifications	60
issue probationary license	2,856
document scanning	14
<i>Total Hours</i>	<i>8,566</i>
<i>FTE</i>	<i>4.2197</i>

In addition to processing staff, Colorado projected that 10,080 hours of hearing officer time would be needed on an annual basis to hold hearings and issue findings. That total is based on the assumption that 60 percent of suspended drivers will request a hearing and that each hearing is an hour in length. That equates to 4.84 hearing officers.

Information technology staff is required to enhance the driver license computer system to create the new suspension action and accommodate data entry, data access, and forms generation. It is estimated that 200 hours of IT staff time is required to create the action.

DMVs do not always receive the funding necessary to implement and support new suspensions. Even when funded, these costs pose a significant burden on the state. Suspending licenses for non-driver related reasons is a problem that extends beyond motor vehicle departments.

### **Missouri**

The Missouri Department of Revenue Drivers License Bureau employs two full-time staff to process non-traffic related suspensions. Processing responsibilities include examination of the non-compliance documents, keying information into the computer system, mailing information, processing reinstatements, and handling phone calls and written inquiries. In addition to staff salaries and supervisory support, the Department spends \$21,000 each year on postage, envelopes, and paper to communicate with drivers suspended for social non-conformance violations.

### **Arkansas**

The Arkansas Department of Finance and Administration processed nearly 42,000 suspensions for non-highway safety related violations in 2010. Nearly four FTEs were required to process related paperwork and more than \$20,000 was spent in postage alone.