

# Department of Finance and Administration

## Legislative Impact Statement

**Bill:** HB1990

**Amendment Number:** H1 (3/16/15 Engrossment)

**Bill Subtitle:** ALLOWING FOR INCREASING THE RANGE OF SENTENCING FOR TRAFFIC OFFENSES AND INSURING FAIRNESS FOR COMMERCIAL DRIVERS.

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**Basic Change :** Sponsor: Rep. Wright

Amendment 1 amends a shell bill to delete Arkansas code § 27-23-128 Deferment of sentence and restrictions for a commercial driver. Current state law was implemented to follow federal law which prohibits a court from postponing judgment; suspending or dismissing a case before judgment; implementing probation instead of a judgment; expungement of a commercial driver's conviction; or any other diversion program that would keep a traffic violation from being listed on the driver's record. Passage of this bill will place Arkansas in non-compliance with federal law. Failure to follow federal law for commercial drivers could result in federal highway funds being withheld from the Arkansas Highway and Transportation Department (AHTD) in the amount of \$ 18 million the first year of non-compliance and \$24 million the second year of non-compliance.

**Revenue Impact :**

If this bill is passed, the AHTD federal highway funds could be reduced by \$18 million the first year and \$24 million the second year of non-compliance.

**Taxpayer Impact :**

Commercial drivers who receive a traffic conviction could have their sentence deferred.

**Resources Required :**

If this bill is passed, the Governor will receive a letter from the Federal Motor Carrier Safety Administration (FMCSA) declaring the state in non-compliance and requesting an action plan with deadlines to come into compliance with the federal law. Reports will then be required at least quarterly to update FMCSA on progress made for the state to become compliant. Programming will also be needed if this bill is passed.

**Time Required :**

No additional time is required if this bill is passed.

**Procedural Changes :**

Procedures will need to be developed for actions to be removed from the driving records of commercial drivers when courts postpone judgments, suspend or dismiss cases before judgment, implement probation , expunge the record or enter into diversion programs.

**Legal Analysis :**

HB1990 repeals § 27-23-128 in an attempt to provide that an Arkansas trial court could defer the imposition of sentence in a circumstance where a CDL holder was charged with traffic violation. The State of Arkansas must comply with the Federal Motor Carrier's Safety Regulations (FMCSA), 49 C.F.R. §§ 350-399, in order to receive highway funding from the federal government. With regards to recording and maintaining records of convictions for a holder of a commercial driver's license (CDL), 49 C.F.R. § 384.225(a) mandates the State of Arkansas to "[r]ecord and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle." In addition, 49 C.F.R. § 384.226 prohibits the "masking" of convictions for traffic violations of CDL holders as follows:

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. § 27-23-128 mirrors the federal "masking" prohibition. A repeal of § 27-23-128 would violate 49 C.F.R. §§ 384.225 and 384.226, which possibly could cause the State of Arkansas to lose federal highway funds as a result of noncompliance with the Federal Motor Carrier Safety Regulations.