

STORAGE NAME: h1547a.jud

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1547

RELATING TO: Driving Offenses/Liabilities

SPONSOR(S): Rep. Kyle & others

COMPANION BILL(S): SB 1322(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 8 NAYS 0
 - (2) LAW ENFORCEMENT & CRIME PREVENTION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill repeals current section 316.066, F.S., which confers the accident report privilege. Currently, information provided to law enforcement for the purpose of completing an accident report is "without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal."

The act is scheduled to take effect October 1 of the year of enactment.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 316.066(4) of the Florida Statutes creates an evidentiary privilege for written reports made by persons involved in motor vehicle accidents in Florida and for any statement made by such persons to a law enforcement officer for the purpose of completing an accident report as required by Section 316.066, F.S. The purpose of the current accident report privilege is to encourage people to make an accurate report of the circumstances surrounding an accident so that the state can use the information to make the highways safer for society. Section 316.066, F.S., compels a report when there is a total of apparent damage of at least \$500 or if a person dies or suffers bodily injury or death. The Florida Legislature has previously recognized the constitutional mandate against self-incrimination and immunized the report and any accompanying statements from use against the person making them.

B. EFFECT OF PROPOSED CHANGES:

Despite the repeal of the accident privilege, the Fifth Amendment privilege against self-incrimination will still apply in all criminal matters. Consequently, if an investigating officer gives any indication that a person involved in an accident must respond to questions concerning the investigation of the accident, there must be an express statement by the law enforcement official to the individual, "this is now a criminal investigation," followed by Miranda warnings before any statement by the defendant may be admitted.

The change would require the accident report to be made, but not confer immunization upon the information in civil proceedings. In order to avoid potential liability, individuals filling out accident reports might no longer supply complete information.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. Currently, in auto accident reports and civil suits arising therefrom, individuals are able to correctly and completely fill out the required accident report without the information subsequently being made available to others. Under the proposed legislation, the individual will still be required to fill out the report, but no privilege against self incrimination will exist. Individuals will now have less freedom in that they will now need to refuse to fill in certain sections of the report which might potentially be used against them in subsequent litigation.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The lawful activity of fully and completely filling out an accident report without the information subsequently being used against you in civil actions will be curtailed.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 316.066 (4).

E. SECTION-BY-SECTION ANALYSIS:

Please see II.B. above

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate

2. Recurring Effects:

The time law enforcement officers spend completing traffic reports may increase because individuals may not complete portions of the reports.

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Please see A.2. above

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Insurer costs may increase because some individuals may continue to make statements which will now be admissions against interest and the insurance company may be required to pay a higher total or number of claims.

2. Direct Private Sector Benefits:

Insurer costs for litigation may decrease because of the statements which may be made on the report and subsequently introduced as evidence.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The purpose of the current accident report privilege is to encourage people to make an accurate report of the circumstances surrounding an accident so that the state can use the information to make highways safer for society. In considering the abrogation of the privilege, the cost to society of no longer receiving full and accurate information concerning accidents must be weighed against the benefit received by withdrawing the privilege.

At the current time a Committee of the Florida Bar has requested permission to advocate a position in this matter.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

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