

STORAGE NAME: h1837s1a.jud

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 1837

RELATING TO: Child Restraint Requirements/Comparative Negligence

SPONSOR(S): Committee on Judiciary and Rep. Bilirakis

COMPANION BILL(S): SB 334(i)

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

- (1) JUDICIARY YEAS 7 NAYS 0
 - (2) TRANSPORTATION
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 1837 will allow a party to a lawsuit to raise the issue of comparative negligence relating to the failure of an operator to place a child aged of 5 years or younger in a child restraint device. The bill will allow admission of such failure into evidence in a civil action for negligence. The bill also corrects a reference to the Department of Children and Family Services.

The bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, s. 316.613(3), F.S., provides as follows:

“The failure to provide and use a child passenger restraint shall not be considered comparative negligence, nor shall such failure be admissible as evidence in the trial of any civil action with regard to negligence.”

The law presently bars the introduction of the issue of an operator’s failure to use a child restraint with respect to comparative negligence or simple negligence claims. See *Parker v. Montgomery*, 529 So. 2d 1125 (Fla. 1st DCA 1988), *rev. denied*, 531 So. 2d 1354.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1837 will allow a party to a lawsuit to raise the issue of comparative negligence relating to the failure of an operator to place a child aged of 5 years or younger in a child restraint device. The bill will allow admission of such failure into evidence in a civil action for negligence. The bill also corrects a reference to the Department of Children and Family Services.

The bill will have the effect of treating children aged 5 years or younger the same way as children over that age are currently treated regarding seat belt use and comparative negligence.

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?

The bill will allow persons to raise the issue of comparative negligence and to introduce evidence of the failure to use a child restraint at trial, thereby increasing the authority of courts to weigh evidence and to adjudicate related negligence claims.

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

No.

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

No.

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?

The bill does not eliminate or reduce any agency or program.

(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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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.

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

No.

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

(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?

The bill may have the effect of shifting responsibility for a child's injury to the operator of an automobile, who will usually be the parent, in cases where the child is not restrained and suffers injury resulting from an accident.

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?

The bill does not create or change a program providing services to families or children.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 316.613, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Allows a party to a lawsuit to raise the issue of comparative negligence relating to the failure of an operator to place a child aged of 5 years or younger in a child restraint device. In addition, the bill will allow admission of such failure into evidence in a civil action for negligence. The bill also corrects a reference to the Department of Children and Family Services.

Section 2. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not affect the revenue raising authority of a city or county.

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

The bill will not affect the amount of state tax shared with counties and municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted an amendment and made the bill a committee substitute. The amendment 's provisions are included in this analysis.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson

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