

STORAGE NAME: h0927c.cp

DATE: March 18, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 927

RELATING TO: Florida Safety Belt Law

SPONSOR(S): Representatives Cantens, Effman, Jones, and others

COMPANION BILL(S): SB 90 (s)

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

- (1) TRANSPORTATION YEAS 10 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 5 NAYS 1
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Current law requires a motor vehicle operator, front seat passengers, and all passengers under 16 years of age to wear seat belts. However, an officer is not permitted to stop a motorist solely for a seat belt violation. Instead, if an officer stops a motorist for a suspected violation of state traffic, motor vehicle, or driver license laws, the officer can then issue a uniform traffic citation for failure to wear a seat belt.

This bill amends the Florida Safety Belt Law to provide for primary enforcement of the seat belt law. Under this bill, law enforcement officers would be authorized to stop motorists and issue citations when an operator, front seat passenger, or a passenger under 16 years of age is not using a seat belt.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Seat Belt Law

Section 316.614, the "Florida Safety Belt Law" provides that it is unlawful for a person to operate a motor vehicle unless the driver, any passenger under sixteen years old and any passenger in the front seat is wearing a seat belt. However, the section provides that the "Florida Safety Belt Law" is only enforceable as a secondary offense. In other words, law enforcement officers cannot stop motorists solely for not using their seat belts. Instead, if the officer stops a motorist for a suspected violation of chapter 316, 320, or 322, F.S., the officer can then issue a uniform traffic citation for failure to wear a seat belt.

Passengers Under Age 16

Section 316.613 requires that all children three years of age or younger being transported in a motor vehicle be secured in a "separate carrier" or a "integrated child seat". A child four or five years of age must be secured in a separate carrier, an integrated child seat or a seat belt. The child restraint requirements of this section are enforceable as a primary offense.

Exceptions to Seat Belt Requirement

There are exceptions when seat belts are not required to be worn. For example, a person who delivers newspapers on home delivery routes are not required to wear seat belts during the course of their employment.

Penalty for Violation

Section 316.614 provides that a violation of the seat belt law is a "nonmoving violation" punishable as provided in chapter 318. Section 318.18(2) provides that the penalty for a nonmoving traffic violation is thirty dollars.

Statistics Regarding Seat Belt Use

The Florida Department of Highway Safety and Motor Vehicle's records indicate that 226,948 citations were issued for seat belt violations during calendar year 1995.

In December 1996, the National Highway Traffic Safety Administration reported to Congress that "...the manner in which the law is enforced also affects use rates. ... The average use rate in the eleven states which have laws that permit primary enforcement is 14 percentage points higher than the average of those states which permit only secondary enforcement. The average use rate among primary law enforcement states in 1995 was 75 percent. The average use rate among secondary law enforcement states in 1995 was 61 percent."

Further, the National Highway Traffic Safety Administration reported that the most recent average seat belt use rate in Florida was 59 percent. This rate appears to be consistent with a 1994 statewide seat belt use survey by AAA. AAA had determined that Florida's statewide seat belt use rate for front seat passengers was 65.4 percent.

Traffic Stop and Search

A police officer is not permitted to search a vehicle merely based on a traffic infraction such as speeding. Knowles v. Iowa, 119 S.Ct. 484 (1998). Violations of traffic offenses are generally non-criminal infractions for which a person cannot be arrested. Thomas v. State, 614 So.2d 468 (Fla. 1993). However, during a valid traffic stop, a police officer is entitled to ask the driver for consent to search the vehicle, even if the officer does not have probable cause to believe that the vehicle contains evidence of a crime. State v. Cromatie, 668 So.2d 1075 (Fla. 2nd DCA 1996). Further, if during the course of the traffic stop, the officer observes something which gives him or her probable cause to search the vehicle, the officer may do so without obtaining a search warrant.

B. EFFECT OF PROPOSED CHANGES:

This bill amends the Florida Safety Belt Law to delete the provision that the law can only be enforced as a secondary offense. Under this bill, law enforcement officers would be authorized to stop motorists and issue traffic citations when an operator, front seat passenger, or a passenger under 16 years of age is not using a seat belt.

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?

No.

(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?

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?

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?

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?

No.

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:

s. 316.614, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Revises the Florida Safety Belt Law to eliminate the requirement that the law be enforced as a secondary action when a driver of a motor vehicle has been detained for another violation.

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

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

See fiscal comments.

D. FISCAL COMMENTS:

To the extent that this bill increases seat belt use in Florida, it should decrease the severity of crash related injuries, as well as decrease medical and insurance costs related to motor vehicle crashes and thus have a positive fiscal impact. If, as a result of the bill, law enforcement officers stop more motorists, the bill will have a fiscal impact on law enforcement and the courts.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce anyone's revenue raising authority.

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

The committee substitute does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the Committee on Transportation adopted one amendment to HB 927. The amendment would add the following language to the seat belt statute:

A law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this section.

Connecticut has a statute which provides that a violation of a seat belt statute shall not constitute probable cause for a law enforcement officer to conduct a search of a vehicle and its contents. C.G.S.A. Sec. 54-33m. The Connecticut Supreme Court has interpreted that statute as a codification of search and seizure law that does not address a situation where there exists additional factors warranting a search.

As discussed earlier, a police officer is not permitted to search a vehicle based solely on a traffic violation. However, the amendment adopted in the Committee on Transportation includes language providing that an officer may not "inspect" a motor vehicle solely because of a seat belt violation. The term "inspection" is not defined in Florida Statutes for the purpose of a traffic stop. A police officer is permitted to allow a dog sniff around the exterior of a vehicle stopped for a traffic violation during the time that it takes to issue the citation. *State v. Brown*, 691 So.2d 637 (Fla. 5th DCA 1997) It is possible that a court would interpret this statute as placing limits on an officer's right to conduct this type of inspection.

On March 18, 1999, the Committee on Crime and Punishment adopted an amendment offered by Representative Harrington and Representative Crady which amends 316.614(6)(b). The statute currently provides that the number of front seat passengers of a pickup truck required to wear a seat belt shall not exceed the number of safety belts which were installed in the front seat of the pickup truck by the manufacturer. The amendment changes this language to provide that the number of passengers of a motor vehicle required to wear a safety belt pursuant to this section shall not exceed the number of safety belts which were installed in the motor vehicle.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Thomas E. Duncan

Staff Director:

John R. Johnston

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Trina Kramer

Staff Director:

J. Willis Renuart