

STORAGE NAME: h0043s1a.cp

DATE: April 11, 2000

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

BILL #: CS/HB 43

RELATING TO: Vehicles/Driving With Unsecured Load

SPONSOR(S): Committee on Transportation and Rep. Villalobos

TIED BILL(S): None

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

- (1) TRANSPORTATION YEAS 9 NAYS 0
- (2) JUDICIARY YEAS 7 NAYS 2
- (3) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
- (5)

I. SUMMARY:

This bill increases the civil penalties and creates a criminal penalty for driving a vehicle with an unsecured load:

- The noncriminal traffic penalty is increased from \$60 to \$100, and the driver's license may be suspended for up to 1 year for a second offense within 5 years of a first offense. This offense is classified as a nonmoving violation.
- The bill also provides a criminal penalty when the violation causes personal injury or property damage greater than \$1,000. Punishment for the criminal offense is up to 1 year in jail and up to a \$1,000 fine. This criminal offense is also classified as a moving violation.

In addition, the bill expands the types of loads that have to be appropriately covered when being hauled on a public road to include any inanimate objects. Commercial motor vehicle drivers are exempted under certain situations where the owner of the vehicle is responsible for not securing the load. This will be determined by the court.

The bill has an estimated positive fiscal impact of \$128,000. The Highway Safety Operating Trust Fund will receive all fines collected and this money is to be used for public education regarding the hazards of driving with unsecured loads. The state and local fiscal impact of criminalization of unsecured load violations causing bodily injury or property damage is unknown. See Fiscal Comments, under part III. D., for details.

A STRIKE-EVERYTHING AMENDMENT WAS ADOPTED BY THE COMMITTEE ON JUDICIARY AND IS TRAVELING WITH THE BILL. SEE SECTION VI FOR AN ANALYSIS OF THE AMENDMENT.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Currently, s. 316.520, F.S., provides that no vehicle shall be driven or moved on the highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing or otherwise escaping. It is the responsibility of every owner and driver severally to prevent the loss of dirt, sand, limerock, gravel, silica, or other similar aggregate or trash, garbage, or any similar material on a vehicle by covering or securing the load with a close-fitting tarpaulin or other appropriate cover.

Penalties for a violation of this section are punishable as a noncriminal, moving traffic infraction which is punishable by a \$60 fine. According to the 1998 Florida Uniform Traffic Citation statistics, there were 3,988 citations issued for load violations of which 3,196 resulted in payment of a civil penalty.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 316.520, F.S., to emphasize that owners and drivers are jointly responsible for appropriately covering loads consisting of dirt, sand, limerock, gravel, silica, or other similar aggregate or trash, garbage, or any similar material, including preventing hazardous materials to leak. In addition, this provision requiring that certain loads have a close-fitting tarpaulin or appropriate cover is expanded to include loads consisting of any inanimate objects.

This bill also amends s. 318.18, F.S., to increase the minimum civil penalty to \$100 for unsecured load violations. This bill authorizes the Department of Highway Safety & Motor Vehicles (DHS&MV) to suspend the person's driver license for up to one year for a second or subsequent offense within five years.

The bill provides that any person who commits an unsecured load violation, which results in personal injury to an individual or property damage that exceeds \$1,000 will be punishable as a criminal traffic offense and as a moving violation. Punishment may include imprisonment up to one year and a fine not to exceed \$1,000. Section 318.19, F.S., is also amended by the bill to require a mandatory court hearing for violations that result in personal injury or property damage in excess of \$1,000.

The driver of a commercial motor vehicle is exempted by the bill from being cited for an unsecured load violation if: 1) the vehicle owner fails to provide appropriate covers or devices to secure loads; 2) the vehicle is improperly loaded through no fault of the driver, or; 3) the driver is prevented by the owner from properly securing the load. Under these three conditions as determined by the court, the owner is deemed responsible for the violation.

The bill adds a new subsection which provides that the statutory provision is not intended to create a private cause of action. Further, convictions and assessment of fines or other penalties are made inadmissible in all civil court proceedings. A party who attempts to bring such a civil action or to introduce such inadmissible evidence is required to pay the opposing party's costs and attorney fees associated with defending or opposing these attempts.

In addition, the bill amends s. 318.21, F.S., which relates to disposition of civil penalties, to provide that each fine collected for an unsecured load violation be paid to the Highway Safety Operating Trust Fund and used to educate the public regarding the hazards of driving with unsecured loads.

According to DHS&MV, there has been an increasing number of serious injuries and deaths attributed to loads falling from vehicles in areas of Florida. This bill provides criminal penalties for violations of this section if serious injuries or property damage result from falling loads; and increases the non-criminal penalty for violations not resulting in personal injury or property damage.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D. Fiscal Comments below.

2. Expenditures:

See D. Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See D. Fiscal Comments below.

2. Expenditures:

See D. Fiscal Comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A driver or vehicle owner violating traffic laws related to unsecured loads would be subject to increased civil penalties, and under certain circumstances, to criminal penalties. In addition, expanding the types of loads that have to be covered could result in increased compliance costs for the private sector.

Proposed subsection (5) of s. 316.520, F.S., provides for the payment of attorney's fees and costs by any person who attempts to use evidence of a violation of this section in a subsequent

civil action. There is an indeterminate economic impact on opposing parties, witnesses and other persons depending on how this proposed provision is interpreted. See the discussion of this proposed subsection in "Other Comments" for a more detailed discussion of the possible scenarios.

D. FISCAL COMMENTS:

1. This bill has not been reviewed by the Revenue Estimating Conference. According to DHS&MV 1998 Florida Uniform Traffic Citation statistics, there were 3,988 citations issued for load violations of which 3,196 resulted in payment of a civil penalty. Assuming the same annual number of citations resulting in payment of the increased penalty, the bill has an estimated positive fiscal impact of \$128,000. The Highway Safety Operating Trust Fund will receive the fines collected and this money is to be used for public education regarding the hazards of driving with unsecured loads. All costs for modifications to the driver license software system related to the mandatory license suspension will be absorbed by DHS&MV.
2. Due to a lack of information regarding the number of unsecured load violations causing bodily injury or property damage which could be charged as a criminal violation, the fiscal impacts resulting from criminalization of these offenses are unknown.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of any city or county.

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

This bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Bringing criminal charges under this bill's provisions may be difficult unless the object causing the bodily injury or property damage can be connected with a specific violator. This would appear to require either an eyewitness to the object falling off of a vehicle or some other method of specifically identifying the object so as to connect it with a particular vehicle.

Proposed subsection (2) of s. 316.520, F.S., imposes a joint duty on both the owner and driver to use the appropriate cover or load securing device when hauling any of the items enumerated in this subsection.

Proposed subsection (3)(b) of s. 316.520, F.S., sets forth criminal penalties for a violation to include imprisonment "for a period not to exceed 1 year, or by fine not to exceed \$1,000, or by both such fine and imprisonment." These are the same penalties for a first degree misdemeanor and for sake of consistency are usually cited ". . . is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."

Proposed subsection (4) of s. 316.520, F.S., enumerates three instances when the owner is the party responsible for the violation and not the driver. While subsections (a) and (c) of subsection (4) address acts or omissions of the owner for which he could be found culpable, subsection (b) makes the owner the responsible party whenever the "vehicle is improperly loaded through no fault of the driver". This proposed language does not limit the owner's culpability to instances where the owner was the person who loaded the vehicle. Under this language, an owner could be criminally charged with a violation of this section even if an unrelated third party was responsible for loading the vehicle. There are concerns whether such a criminal charge could be successfully prosecuted.

Proposed subsection (4) of s. 316.520, F.S., goes on to require that "[t]he court shall determine whether the driver or owner is responsible." In a typical criminal case, the state attorney decides who to charge. If, for instance, the driver was charged in a particular case, the court could not decide at the end of the trial that the owner was at fault because the owner was not charged with a crime. The only proper question before the trial judge in this instance would be "is the person charged (the driver) guilty of this offense," not "who is guilty of the offense."

Proposed subsection (5) of s. 316.520, F.S., specifies that it is not intended to create a private cause of action. The subsection goes on to state that "any conviction, assessment of a fine, or other penalty is inadmissible for any purpose in any civil proceeding." Adoption of this provision would make this section unique in Chapter 316, F.S. While statements made to an officer for purposes of compiling an accident report are deemed privileged and inadmissible in any subsequent civil or criminal proceeding (s. 316.066(4), F.S.), no other section involving traffic violations prohibits their use in subsequent proceedings.

The general rule of law is that "a person's violating a traffic regulation is admissible evidence only if it tends to prove that that person has negligently operated a motor vehicle." *Brackin v. Boles*, 452 So. 2d 540, 545 (Fla. 1984). The proposed language in this bill would exclude this evidence even when directly relevant to prove negligence.

Proposed subsection (5) of s. 316.520, F.S., further provides that "[a]ny person who attempts to bring a civil action or attempts to admit in to evidence any conviction, imposition of a fine or other penalty, or any other finding under this section is required to pay all attorney's fees and costs incurred by any opposing party in defending or opposing this action." The phrase "or any other finding under this section" is not defined. Usually, sworn testimony in one proceeding may be used to impeach a witness who gives inconsistent testimony in a subsequent court

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proceeding. It is unclear whether this language would effect this rule of evidence. Also, courts already have the authority to sanction attorneys or parties who advance a claim when they know or should know that the claim is not supported by existing law. See s. 57.105(1), F.S. It is unusual for a substantive traffic statute to attempt to sanction a person for actions relating to the admissibility of evidence.

There are concerns over the scope of the provision for the payment of attorney's fees and costs by a person who attempts to admit into evidence the fact that a defendant was cited civilly, or convicted criminally, for violating this section. If a non-party witness mentions the traffic case in a subsequent civil action is that witness then responsible for the defendant's attorney's fees and costs? What if the defendant "opens the door" to this evidence by mentioning the traffic case himself? Is a plaintiff then allowed to use this evidence or would he still be liable for the defendant's attorney's fees and costs?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

House Bill 43 was considered by the Committee on Transportation on March 14, 2000, and a strike everything amendment was adopted which rewrote the bill. The amendment made the following major changes to the bill as originally filed:

- Increased the amount of property damage necessary for a criminal offense from \$500 to \$1,000.
- Changed the mandatory requirement that the person's driver license be suspended for a minimum of 180 days and a maximum of one year for a second offense to authorization for DHS&MV to suspend the license for up to one year for a second offense.
- Deleted the requirement for a mandatory court hearing for all unsecured load violations; and instead required a mandatory hearing for violations that result in personal injury or property damage in excess of \$1,000.
- Added a provision which exempts commercial motor vehicle drivers from being cited under certain situations where the owner of the vehicle is responsible for not securing the load.
- Added a provision which provides that the statutory provision is not intended to create a private cause of action; and that convictions and assessment of fines or other penalties are inadmissible in all civil court proceedings.
- Changed a requirement that 25 dollars of every fine collected be used for an education program to require that the entire fine be used for the education program.

The bill as amended was reported favorably as a committee substitute.

On April 4, 2000, the Committee on Judiciary considered this bill and adopted a strike-everything amendment. The strike-everything amendment is now traveling with the bill and makes the following changes to CS/HB 43 as reported out by the Committee on Transportation:

- One technical change is made on Page 2, Line 9 that changes the word "joint" to "jointly".
- Clarifies that the use of a load securing-device meeting the requirements of 49 C.F.R. 393.100 constitutes compliance with this section.
- Adds language requiring a person to have acted "knowingly or with reckless disregard" in order to be found guilty of a crime under this section.
- Deletes the provision that made it a criminal violation to cause damage to another motor vehicle or other damage in excess \$1,000. The bill now only provides for criminal penalties if the violation resulted in bodily injury or death to an individual.

- Clarifies that a criminal violation of this section constitutes a first degree misdemeanor, punishable as provided in s. 775.082 or s.775.083, F.S.
- Deletes the provision that provided that an owner was automatically responsible for a violation of this section under the provisions of proposed subsection (4) of s. 316.520, F.S. This provision was deleted to specifically address the ambiguity of subsection (4)(b) that made an owner responsible whenever the “vehicle is improperly loaded through no fault of the driver”. This provision seemed to make an owner responsible for an improperly loaded vehicle even if the vehicle was loaded by an unrelated third person.
- Deletes the provision requiring a court to determine whether the driver or owner is responsible for a violation. For criminal violations, a prosecutor decides who to charge with the offense. The court then decides whether the person charged is guilty or not guilty. It is not the role of the court to figure out who is responsible for the offense if only one person is charged.
- Deletes the provision that made any conviction, assessment of a fine or other penalty inadmissible for any purpose for any civil proceeding, as well as the language imposing attorney’s fees and costs upon any person who even attempted to introduce this information into evidence. A violation of this section will now be subject to the same exclusions and other rules of evidence as other sections which fall under the Florida Uniform Traffic Control Law, Chapter 316, F.S.

VII. SIGNATURES:

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