

STORAGE NAME: h0043s1a.tr

DATE: March 17, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
ANALYSIS**

BILL #: Committee Substitute for House Bill 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
 - (3) CRIME & PUNISHMENT
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill increases the penalties 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.

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"/> |

For any principle that received a "no" above, please explain:

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. Increasing penalties can have a deterrent effect on these violations which may promote a safer driving environment for Florida motorists.

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.

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:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

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.

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.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Staff Director:

Phillip B. Miller

John R. Johnston