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DATE: March 12, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: CS/HB 11

RELATING TO: Drivers/Secondary Activity

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative Heyman

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 1
 - (2) TRANSPORTATION YEAS 11 NAYS 3
 - (3) FISCAL POLICY & RESOURCES
 - (4) COUNCIL FOR HEALTHY COMMUNITIES
 - (5)
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I. SUMMARY:

Committee Substitute for HB 11 would double the amount of the civil penalty for any driver who commits a moving violation in violation of Chapter 316, F.S., when the driver is "engaged in a secondary activity which results in driver distraction". The committee substitute also provides for distribution of the enhanced penalty to several specified trust funds.

This bill has an unknown fiscal impact.

Note: Please see part VI. Amendments or Committee Substitute Changes, below for the effect of an amendment adopted by the Committee on Transportation which is traveling with the bill.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Chapter 316 is titled the "Florida Uniform Traffic Control Law". Offenses contained within the chapter include both criminal offenses and noncriminal traffic infractions which are classified as either moving violations or nonmoving violations. For example, fleeing or eluding an officer is considered a criminal violation, driving at an unlawful speed is considered a moving violation while having improper window sunscreening material is considered a nonmoving violation. (ss. 316.1935, 316.183 and 316.2956, F.S.)

The "careless driving" statute provides as follows:

(1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

(2) Any person who violates this section shall be cited for a moving violation, punishable as provided in chapter 318.

Sec. 316.1925, F.S.

The "reckless driving" statute provides as follows:

Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Sec. 316.192, F.S.

Section 318.18, F.S., lists the penalties which are to be imposed for violations of Chapter 316, F.S. With certain exceptions, a sixty dollar fine is imposed for all moving violations. Section 318.21, F.S., specifies how the civil penalties received pursuant to Chapter 318, F.S., are to be distributed as follows:

- One dollar from each civil penalty to the Department of Children and Family Services for deposit into the Child Welfare Training Trust Fund. This fund is to be used for the purpose of "funding a comprehensive system of child welfare training". (s. 402.40, F.S.)

- One dollar to the Department of Juvenile Justice for deposit into the Juvenile Justice Training Trust Fund. (s. 985.406, F.S.)

The remainder is distributed as follows:

- 5.6 percent to the General Revenue Fund of the state.
- 7.2 percent to the Emergency Medical Services Trust Fund. This trust fund is administered by the Department of Health and the money must be used to improve and expand “prehospital emergency medical services in the state as provided in s. 401.113, F.S.
- 5.1 percent to the Additional Court Cost Clearing Trust Fund for criminal justice purposes (s. 938.01, F.S.)
- 8.2 percent to the Brain and Spinal Cord Injury Rehabilitation Trust Fund. The Department of Health administers this trust fund in order to provide the cost of care “for brain or spinal cord injuries as a payor of last resort to residents of this state”. (s. 381.79, F.S.)
- 2 percent to the endowment fund of the Florida Endowment Foundation for Vocational Rehabilitation. This fund is administered by the Division of Vocational Rehabilitation within the Department of Labor in order to “encourage public and private support to enhance vocational rehabilitation and employment of citizens who are disabled”. (s. 413.615, F.S.)
- 0.5 percent to the clerk of the court for administrative costs.
- 56.4 percent to the county or municipality in which the violation took place.
- 15 percent to the County Article V Trust Fund.

A recent brochure by the American Automobile Association (AAA) Foundation for Traffic Safety, entitled “CELL PHONES & DRIVING: DRIVE NOW. TALK LATER.” (available at the AAA website, http://www.aaasouth.com/acs_news/aaa.asp), breaks down the types of driver distractions that are associated with crashes. They are: smoking related, 1%; adjusting climate control, 1%; using other devices, 1%; cell phone, 2%; passengers, 9%; tuning radio, 11%; eating and drinking, 19%; outside objects, 20%; other (medical problems, reaching for an object, glare, looking down inside the vehicle at objects, and looking outside the vehicle at road signs and store windows), 33%; and object in car, 3%. “Obviously, drivers are distracted when they take their hands off the wheel or their eyes off the road. Equally as troubling, is the fact that drivers are also distracted when they take their mind off driving — when they’re *thinking* about things other than the road in front of them and the vehicles around them. Whether talking on the phone or eating a sandwich in the car, drivers are distracted.”

C. EFFECT OF PROPOSED CHANGES:

The committee substitute creates s. 316.655(3), F.S., to provide that any operator of a motor vehicle who commits a moving violation when the operator is engaged in a “secondary activity” which results in “driver distraction” shall be subject to double the amount of the usual penalty for the offense.

The committee substitute creates s. 318.211, F.S. which provides that money collected for violations described in s. 316.655(3), F.S. shall be distributed as follows:

1. 45 percent of the enhanced penalty amount shall be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund and shall be divided evenly between the University of Miami's Miami Project to Cure Paralysis, the University of South Florida's Spinal Cord and Head Injury Program, and the University of Florida's McKnight Brain Institute's Neurotrauma Program.
2. 25 percent of the enhanced penalty amount shall be paid to the Department of Children and Family Services for deposit into the Child Welfare Training Trust fund pursuant to s. 402.40, F.S. in memory of Helen Marie Witty.
3. 10 percent of the enhanced penalty amount shall be deposited into the County Article V Trust Fund of the county in which the penalty was collected.
4. 10 percent of the enhanced penalty amount shall be deposited in the endowment fund of the Florida Endowment Foundation for Vocational Rehabilitation established pursuant to s. 413.615, F.S.
5. 10 percent of the enhanced penalty amount shall be deposited in the Criminal Justice Standards and Training Trust Fund created pursuant to s. 943.25(2), F.S.

The committee substitute requires that the standard fine for the traffic violation be distributed as provided in section 318.21, F.S. The enhanced part of the fine that is imposed as a result of "driver distraction" would be distributed as provided in newly created section 318.211, F.S.

D. **SECTION-BY-SECTION ANALYSIS:**

Section 1: Amends s. 316.655, F.S., to double the penalty for moving violation of chapter when the operator of motor vehicle is engaged in secondary activity which results in driver distraction.

Section 2: Creates s. 318.211, F.S., to provide for distribution of enhanced fines collected.

Section 3: Provides effective date of January 1, 2002.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

This committee substitute may increase civil fine revenues as a result of drivers being cited with driver distraction. According to the Department of Highway Safety and Motor Vehicles, the amount of this increase is unknown.

2. **Expenditures:**

The Department of Highway Safety and Motor Vehicles reports that the committee substitute would "require approximately 230 hours of contracted programming at an estimated cost of \$31,050 to modify the Driver License Software System."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This committee substitute may increase the amount of money deposited into the County Article V Trust Fund of the county in which the penalty was collected.

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Department of Health provided the following analysis on CS/HB 11 regarding the specific allocation to the University of Miami's Miami Project to Cure Paralysis, the University of South Florida's Spinal Cord and Head Injury Program and the University of Florida's McKnight Brain Institute's Neurotrauma Program within the Brain and Spinal Cord Injury Rehabilitation Trust Fund:

While the Department recognizes the efforts of these three universities, the Department would prefer that seventy-five percent of the forty-five percent of enhanced penalty funds be distributed to the universities and twenty-five percent remain in the [Brain and Spinal Cord Injury Program] Rehabilitation Trust Fund for the purposes set forth in s. 381.79, F.S., including direct client services and expansion of the Brain and Spinal Cord Injury Program Medicaid Home and Community Based Waiver.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the revenue raising authority of any city or county.

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

The committee substitute does not reduce the amount of state tax shared with a county or city.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The committee substitute may be subject to legal challenge in that neither a definition for "secondary activity" nor a standard for determining "driver distraction" is provided. The Florida Supreme Court has held that a statute is unconstitutionally vague when it "fails to give adequate

notice of what conduct is prohibited...it invites arbitrary and discriminatory enforcement.” *Whyce v. Florida* 619 So.2d 231, 236 (Fla. 1993). In addition, the U.S. Supreme Court has held that if a statute fails to provide fair warning of what constitutes unlawful conduct it is vague and, as a result, “impermissible delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis” leading to arbitrary and discriminatory application. *Grayned v. City of Rockford* 408 U.S. 104, 108-109 (1972).

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

As discussed above, the committee substitute provides for an enhanced fine if an operator of a motor vehicle commits a moving violation of Chapter 316, F.S., “when the operator is engaged in a secondary activity which results in driver distraction”. This language could apply to a broad range of activities such as use of a cellular phone, eating food, drinking a beverage, personal grooming and changing a radio station while driving. The terms “secondary activity” and “driver distraction” are not defined in the bill or elsewhere in Florida Statutes. It is not clear how prolonged or serious a lapse in driver concentration would be needed to constitute “driver distraction”. The law enforcement officer writing the ticket would have the discretion to determine whether the driver had been involved in a secondary activity and had been distracted. The committee substitute does not appear to require that the driver distraction actually cause the moving violation in order to enhance the penalty for the offense.

According to the bill analysis provided by the Department of Highway Safety and Motor Vehicles on the original bill:

Increasing traffic fines for violations involving secondary inattentiveness creates an environment where law enforcement officers will be required to monitor all activities occurring in vehicles. This will undoubtedly result in questions about the driver’s right to privacy in vehicles. Increasing traffic fines in the past has not always resulted in increased enforcement by officers. If enacted, this bill would create confusion in enforcement activities as well as possibly increasing the number of violators appearing in infraction hearings in various courts throughout Florida. There are a number of professions, which require operators to perform secondary activities while operating motor vehicles, such as refuse collection and delivery of merchandise.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Crime Prevention, Corrections & Safety: Representative Heyman offered a strike-everything amendment in the February 6, 2001 meeting of Committee on Crime Prevention, Corrections & Safety. The original bill provided that “any operator of a motor vehicle operating a motor vehicle in violation of this chapter, when the operator is engaged in a secondary activity which results in driver inattention, shall be subject to penalty enhancement of double the amount of the fine established under s. 318.18.” The amendment provided that any operator of a motor vehicle who commits a moving violation rather than any violation of chapter 316, “when the operator is engaged in a secondary activity which results in driver distraction” shall be subject to double the amount of the usual penalty for the offense.

In the original bill, forty-five percent of the enhanced penalty amount was to be deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. The amendment specifies that these funds are to be

distributed evenly between the University of Miami's Miami Project to Cure Paralysis, the University of South Florida's Spinal Cord and Head Injury Program, and the University of Florida's McKnight Brain Institute's Neurotrauma Program.

The amendment also changes the effective date of the bill from October 1, 2001 to January 1, 2002. The strike everything amendment was adopted by the committee and the bill was made a committee substitute.

Committee on Transportation: An amendment to CS/HB 11 was adopted by the Committee on Transportation when the bill was considered on February 21, 2001. This amendment reduced the distribution of enhanced penalty amounts from 25 percent to 15 percent for the Child Welfare Training Program in the Department of Children & Families, and provided that 10 percent of the enhanced penalty amounts are to be deposited in the Transportation Disadvantaged Trust Fund created in Chapter 427, F.S.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

AS REVISED BY THE COMMITTEE ON TRANSPORTATION:

Prepared by:

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W. Timothy Weekley

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AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

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Greg Turbeville