

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 846

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Felony Offenses

DATE: April 24, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 846 provides that a person who flees or attempts to elude a law enforcement officer in a law enforcement vehicle, and who causes a serious bodily injury in the course of this violation, commits a first degree felony.

The CS further provides it is a third degree felony for a mover to refuse to relinquish to a shipper any of the shipper’s household goods, or fail to place household goods inside a shipper’s dwelling. The mover does not commit a criminal offense, as provided, if the shipper has failed to tender payment in an amount specified in a written contract or estimate signed by the shipper, or if the mover has conspicuously disclosed in a written estimate or contract the methods of payment the mover accepts.

The CS does not preempt any ordinance or regulation of a municipality, county, or political subdivision, relating to moving and storage of household goods.

This CS creates s. 812.158, F.S.; substantially amends ss. 316.1935, 812.014, and 812.16; and reenacts ss. 318.17 and 322.61, F.S., to incorporate the amendments to s. 316.1935, F.S., in reference thereto.

II. Present Situation:

Fleeing or Eluding a Law Enforcement Officer

Section 316.1935, F.S., provides, in part, that it is a second degree felony to willfully flee or attempt to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with

siren and lights activated, and during the course of the fleeing or attempted eluding drive at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property.

This offense is ranked in level 4. s. 921.0022(3)(d), F.S.

Further, this section provides, in part, that a person commits aggravated fleeing or eluding, a second degree felony, if the person, in the course of unlawfully leaving or attempting to leave the scene of a crash, having knowledge of an order to stop by an authorized law enforcement officer:

- ▶ Willfully refuses or fails to stop in compliance with such order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer; and
- ▶ As a result of such fleeing or eluding, causes injury to another person or causes damage to any property belonging to another person.

This offense is ranked in level 5. s. 921.0022(3)(e), F.S.

Mover's Refusal to Relinquish or Place Household Goods

Presumably, a mover would be subject in limited instances to criminal liability, such as being charged with theft of property or obtaining personal property by fraud. However, more likely a mover's liability, if any, would be civil in nature, such as through breach of contract.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 846 amends s. 316.1935, F.S., to provide that a person who violates s. 316.1935(3)(a), F.S., and who causes a serious bodily injury in the course of this violation, commits a first degree felony, ranked in level 7 of the Criminal Punishment Code offense ranking chart.

The offense in paragraph (3)(a) of the CS is the current offense in subsection (3), which provides that it is a second degree felony to willfully flee or attempt to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated, and during the course of the fleeing or attempted eluding drive at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property.

The effect of the CS is to create a second offense of aggravated fleeing or eluding. The offense is unranked. An unranked first degree felony defaults to level 7. Thus, this offense is ranked higher than the current offense of aggravated fleeing or eluding, which is a second degree felony and appears to involve less serious conduct than the new offense.

The CS reenacts ss. 318.17 and 322.61, F.S., relating respectively to offenses excepted from motor vehicle licenses and disqualifications from operating a commercial motor vehicle, to incorporate the amendments to s. 316.1935, F.S., in reference thereto.

The CS further creates s. 812.158, F.S., which provides that it is a third degree felony for a mover to refuse to relinquish to a shipper any of the shipper's household goods, or fail to place household goods inside a shipper's dwelling. While one offense relates to a mover's refusal to relinquish to a shipper any of the shipper's household goods, or failure to place household goods inside a shipper's dwelling, based upon the mover's refusal to accept a particular form of payment, this offense appears to be subsumed within another offense relating generally to a mover's refusal to relinquish to a shipper any of the shipper's household goods, or failure to place household goods inside the shipper's dwelling.

The mover does not commit a criminal offense, as provided, if the shipper has failed to tender payment in an amount specified in a written contract or estimate signed by the shipper, or if the mover has conspicuously disclosed in a written estimate or contract the methods of payment the mover accepts. The exception provided to the more general prohibition (shipper's failure to tender payment) appears to apply with equal force to the more narrow prohibition, and the exception provided to the more narrow prohibition (conspicuous disclosure of payment options) appears to apply with equal force to the more general prohibition.

The third degree felony offense is not specifically ranked so it defaults to a level 1 ranking.

The CS defines the terms "estimate," "household goods," "mover," and "shipper."

The CS does not preempt any ordinance or regulation of a municipality, county, or political subdivision, relating to moving and storage of household goods.

The CS takes effect July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not yet reviewed this CS or estimated its potential prison bed impact, if any.

VI. Technical Deficiencies:

There may be a single subject issue in that the only interrelatedness between the sections fleeing or eluding offense and the offenses relating to movers are criminal offenses. *See Florida Consumer Action Network v. The Honorable John Ellis (“Jeb”) Bush, In His Official Capacity as Governor and Chief Executive Officer of the State of Florida; and the State of Florida*, 8 Fla. L. Weekly Supp. 233, 234 (2nd Cir. February 9, 2001) (stating that the court is required to determine whether sections have a natural or logical connection). Generally, a broad relating clause in itself is not enough to save legislation if there is a single subject problem. *Id.*, at 235. (“Merely describing an act as one ‘relating to the justice system’ does not authoritatively meld all of the diverse subjects into a single subject. Likewise, merely describing an act as one ‘relating to civil actions’ does not make the varying and diverse topics cogent, interrelated, naturally or logically connected.”)

As previously noted in the “Effect of Proposed Changes” section, although two criminal acts appear to be delineated in the CS, one appears to be subsumed within the other and exceptions that appear to apply to one act also appear to apply to the other and visa versa. This awkward construction may create confusion in interpreting what precisely is intended to be criminalized. A remedy may be to remove the narrower offense if it is determined that it is subsumed in the broader offense.

VII. Related Issues:

None.

VIII. Amendments:

None.