

STORAGE NAME: h0015b.tr.doc
DATE: December 18, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION
ANALYSIS**

BILL #: HB 15
RELATING TO: Uniform Traffic Control -- Enhanced Penalties
SPONSOR(S): Representative(s) Heyman
TIED BILL(S): None

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

- (1) COMMITTEE ON TRANSPORTATION YEAS 1 NAYS 13
 - (2) COMMITTEE ON FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

HB 15 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 bill also provides for distribution of the enhanced penalty to several pre-existing specified trust funds.

This bill has an unknown fiscal impact.

On November 27, 2001, the Committee on Transportation adopted a "strike everything" amendment. For a description of the amendment, see section V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES, below.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

Less Government

Though the bill only enhances the penalties for violation of certain existing regulations, it indirectly regulates a separate set of motorist behaviors (secondary activity) by attaching enhanced penalties to violations of existing laws when the motorist engages in those separate behaviors resulting in driver distraction.

Lower Taxes

With regard to the principle of lower taxes, the bill does not increase taxes or fees. The bill states that "Any operator of a motor vehicle who commits a moving violation in violation of this chapter, when the operator is engaged in a secondary activity which results in driver distraction, shall be subject to penalty enhancement of double the amount of the fine established under s. 313.18." If these enhanced fines are viewed as a source of money for state government, then they may also be viewed as a form of burden and an assessment that is placed on individuals.

Individual Freedom

The enhanced penalties created by the bill may prevent individuals from engaging in behavior which is currently lawful while operating their motor vehicles.

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 (s. 316.1925, F.S.) 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.

The "reckless driving" statute (s. 316.192, F.S.) 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.

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.

C. EFFECT OF PROPOSED CHANGES:

The bill 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 bill creates s. 318.211, F.S. which provides that enhanced penalty 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 bill requires that the standard fine for the traffic violation be distributed as is currently 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.

As discussed above, the bill 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 bill does not appear to require that the driver distraction actually cause the moving violation in order to enhance the penalty for the offense.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates subsection (3) of section 316.655, F.S., providing for an enhanced fine for motorists who commit moving violations while engaged in a secondary activity that results in his or her distraction.

Section 2. Creates s. 318.211, F.S., providing for distribution of the enhanced fines collected pursuant to s. 316.655(3), F.S. (For a more detailed description of the method of distribution, see C. EFFECT OF PROPOSED CHANGES above).

Section 3. Provides an effective date of January 1, 2003.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill 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 because it is impossible to predict the number of motorists who will be cited under the enhanced penalty provisions.

2. Expenditures:

The Department of Highway Safety and Motor Vehicles reports that the bill 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 bill 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motorists found to have been distracted while committing a moving violation and engaging in a secondary activity will be required to pay fines that are double the current amount for that moving violation.

D. FISCAL COMMENTS:

The Department of Health provided the following analysis on last session's CS/HB 11 (identical to this bill) 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 bill 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 bill does not reduce the revenue raising authority of any city or county.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill 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:

The bill does not expand or contract the rule-making authority of any state agency.

C. OTHER COMMENTS:

DHSMV Analysis

According to the analysis provided by the Department of Highway Safety and Motor Vehicles on last session's HB 11 (substantially similar):

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.

Frequency of Certain Driver Distractions

A recent University of North Carolina Highway Safety Research Center study commissioned by the AAA Foundation for Traffic Safety identifies the various types of driver distractions that are associated with crashes nationwide, and their frequency: Outside person, object or event – 29.4%; Adjusting radio, cassette, CD – 11.4%; Other occupant in vehicle – 10.9%; Moving object in vehicle – 4.3 %; Other device/object brought into vehicle – 2.9%; Adjusting vehicle/climate controls – 2.8%; Eating or drinking – 1.7%; Using/dialing cell phone – 1.5%; Smoking related – 0.9%; Other distraction – 25.6%; Unknown distraction – 8.6%. The study analyzed 1995-1999 Crashworthiness Data System (CDS) data obtained from National Highway Traffic Safety Administration's National Center for Statistics and Analysis.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On November 27, 2001, the Committee on Transportation adopted a strike-everything amendment offered by Rep. Heyman that:

1. Eliminates the requirement that a secondary activity result in driver distraction before the motorist becomes liable for the enhanced penalty. Under the amendment, if a driver commits a moving violation while engaging in secondary activity the enhanced penalty applies;
2. Changes the enhanced penalty from double the amount of the original fine to \$50 in addition to the original fine;
3. Changes the way in which enhanced fine money is distributed. Sixty, rather than forty percent goes to the brain and spine rehab trust fund. Twenty, rather than ten percent goes to Fla. Endowment Foundation for Vocational Rehab fund. Twenty, rather than 10 percent goes to the Criminal Justice Standards and Training Trust Fund. Under the amendment, no enhanced penalty money is distributed to the county Article V Trust Fund or the Child Welfare Training Trust Fund; and
4. Preempts to the state regulation of secondary activities by motorists.

The Committee then voted to report the bill unfavorably. A motion to reconsider and leave the motion pending was made by a member of the prevailing side. The motion to reconsider left pending will be a special and continuing order of business for the next Committee meeting.

On December 18, 2001, the Committee on Transportation met, and the motion to reconsider this bill left pending on November 27, 2001, was abandoned.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Staff Director:

William C. Garner

Phillip B. Miller