

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 137                      Offenses Committed While Operating a Motorcycle

**SPONSOR(S):** Lopez-Cantera

**TIED BILLS:**    **IDEN./SIM. BILLS:** 802

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>9 Y, 1 N</u>	<u>Brown</u>	<u>Miller</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u></u>	<u>Brown</u>	<u>Tinker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

The bill provides additional penalties for certain offenses committed by a motorcyclist. These penalties include seizure and forfeiture of the vehicle for reckless driving or exceeding the speed limit beyond 30 miles per hour, and, upon conviction, revocation of motorcycle licensure for a period of 10 years. The bill may generate an indeterminate amount of revenue based on property forfeiture, and will have a minimal fiscal impact to the Department of Highway Safety and Motor Vehicles.

The bill takes effect October 1, 2008.

**Note: A strike-all amendment was adopted for HB 137. Please see Section IV for a summary of the strike-all.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill increases law enforcement authority to arrest persons, seize property for forfeiture, and restrict drivers' licenses under certain conditions.

**Promote Personal Responsibility** – The bill increases criminal and non-criminal penalties for motorcyclists committing certain unlawful or injurious behaviors.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

An individual wishing to operate a motorcycle<sup>1</sup> in Florida is required to obtain a specific endorsement on his or her driver's license.<sup>2</sup> Offenses committed by motorcycle operators are generally treated in the same manner as offenses committed by operators of other motor vehicles.

##### **Current Offenses – Reckless Driving**

“Reckless driving” is a criminal traffic violation defined in section 316.192, F.S., and is applicable to operators of all vehicles, including motorcycles. It includes “driv[ing] any vehicle in willful or wanton disregard for the safety of persons or property,” as well as fleeing from a law enforcement officer in a motor vehicle. If the reckless driving does *not* involve damage to persons or property, a first offense is punishable by up to 90 days' imprisonment, a fine of \$25 to \$500, or both.<sup>3</sup> Subsequent offenses may be punished by up to 6 months' imprisonment, a fine of \$50 to \$1,000, or both.<sup>4</sup> When the offense causes damage to property or persons, the penalty for such offenses ranges from a first degree misdemeanor<sup>5</sup> to a third degree felony. (Reckless driving may lead to a third-degree felony conviction if the offense involved “serious bodily injury to another.”<sup>6</sup>)

##### **Current Offenses – Excessive Speed**

Pursuant to sections 316.183, 316.187, and 316.189, F.S., exceeding the speed limit is a moving violation punishable as provided by Chapter 318, F.S. Among the penalties provided by Chapter 318 is the requirement that driving in excess of 30 miles per hour over the posted speed limit triggers a

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<sup>1</sup> A motorcycle is specifically defined by section 322.01(25), F.S. as “a motor vehicle powered by a motor with a displacement of more than 50 cubic centimeters, having a seat or saddle for the use of the rider, and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or moped.”

<sup>2</sup> Section 322.57(1)(g), F.S. This section also clarifies that if the applicant passes the required tests but has no other driver's license, the applicant is granted a license for motorcycle operation only.

<sup>3</sup> Section 316.192(2)(a), F.S.

<sup>4</sup> Section 316.192(2)(b), F.S.

<sup>5</sup> First degree misdemeanors are punishable pursuant to section 775.082 and 775.083, F.S.; these statutes generally provide for a period of imprisonment not to exceed one year for such offense.

<sup>6</sup> Pursuant to section 775.082 and 775.083, F.S., a third degree felony is punishable by a term of imprisonment not exceeding five years and a fine not to exceed \$5,000.

mandatory hearing before a designated official.<sup>7</sup> As with the reckless driving offense discussed above, penalties for offenses regarding excessive speed are the same for motorcyclists and for operators of other motor vehicles.

### **Current Offenses – Racing**

Racing is a first-degree misdemeanor created by section 316.191, F.S. It is defined as, “the use of one or more motor vehicles in an attempt to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.” The offense also includes knowingly being a passenger in a race, participating in, coordinating, collecting money, or stopping traffic in order to facilitate a race.<sup>8</sup>

As a first degree misdemeanor, racing is punishable by a fine of \$500 to \$1,000.<sup>9</sup> In addition, the Department of Highway Safety and Motor Vehicles is required to suspend the offender’s license for one year upon conviction.<sup>10</sup> A subsequent conviction within 5 years suspends the offender’s license for 2 years.<sup>11</sup>

An officer may immediately arrest and take into custody a person engaged in racing.<sup>12</sup> The court may subsequently enter an impoundment or immobilization on the vehicle, and the clerk of court must then send notice to the registered owner (if other than the offender), and any person claiming a lien against the vehicle. If the vehicle is owned by someone other than the offender, the agency must release the vehicle to that person if that person can show that he or she was not aware of the vehicle’s use in racing.<sup>13</sup>

If the vehicle is owned by the offender, the vehicle may be held for 10 days. If the offense is a second offense, occurring within 5 years of a prior conviction for racing, the vehicle may be seized and forfeited pursuant to the Florida Contraband Forfeiture Act.<sup>14</sup>

### **Florida Contraband Forfeiture Act**

The Florida Contraband Forfeiture Act is codified in sections 932.701 – 932.707, F.S. The Act contains the following policy statement regarding use and potential misuse of the Act:

It is the policy of this state that law enforcement agencies shall utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders and to authorize such law enforcement agencies to use the proceeds collected under the Florida Contraband Forfeiture Act as supplemental funding for authorized purposes. The potential for obtaining revenues from forfeitures must not override fundamental

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<sup>7</sup> Section 318.19(5), F.S. This mandatory hearing eliminates an offender’s option to simply plead guilty by signing the summons and paying a fine by mail. (See generally subsections 318.14(2), (4), and (9), F.S., which are specifically denied to an offender exceeding the speed limit by more than 30 mph.)

<sup>8</sup> Section 316.191(2)(a)1. – 4., F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 316.191(2)(a), F.S.

<sup>11</sup> Section 316.191(2)(b), F.S.

<sup>12</sup> Section 316.191(3), F.S.

<sup>13</sup> The specific release criteria are contained in the DUI statute, section 316.193(6)(e) – (h), F.S.

<sup>14</sup> Section 316.191(4), F.S.

considerations such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity. It is also the policy of this state that law enforcement agencies ensure that, in all seizures made under the Florida Contraband Forfeiture Act, their officers adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, including, but not limited to, the illegal use of stops based on a pretext, coercive-consent searches, or a search based solely upon an individual's race or ethnicity.

The Act is currently used to impound and sell vehicles used to transport illegal drugs<sup>15</sup> and a myriad of other illegal or unlicensed items, from gambling paraphernalia<sup>16</sup> to cigarettes<sup>17</sup> to undocumented cars,<sup>18</sup> boats,<sup>19</sup> and planes.<sup>20</sup> As mentioned above, section 316.191, F.S. permits (but does not require) law enforcement to use the Florida Contraband Forfeiture Act to seize motor vehicles involved in racing, when the offender has previously been convicted of racing and is the owner of the vehicle.<sup>21</sup>

### **License Revocation**

Section 322.27, F.S., provides the Department of Highway Safety and Motor Vehicles with authority to suspend or revoke licenses for various reasons. These include, but are not limited to, offenses involving death, bodily injury, or significant property damage,<sup>22</sup> incompetency,<sup>23</sup> license fraud or misrepresentation,<sup>24</sup> and passing a school bus unlawfully more than once in five years.<sup>25</sup> The Department may also revoke a license for those offenses that specifically mandate license forfeiture upon conviction. As mentioned above, the crime of racing requires mandatory revocation for one year on first offense, two years if a subsequent offense occurs within 5 years.<sup>26</sup>

Section 322.27, F.S. also creates a 'point system' for common offenses and provides for suspension of a license upon reaching 12 points.<sup>27</sup> Reckless driving is currently a '4 point' offense,<sup>28</sup> as is exceeding the speed limit by more than 15 miles per hour.<sup>29</sup>

### **Crash Data**

Data collected by the Department of Highway Safety and Motor Vehicles indicates that there were 5,075 motorcycle crashes in 2000.<sup>30</sup> This number increased to 8,990 in 2006.<sup>31</sup> In 2000, there were approximately 195,300 motorcycles registered in the State. By 2006 the number of motorcycles nearly

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<sup>15</sup> Section 893.12, F.S.

<sup>16</sup> Section 849.36, F.S.

<sup>17</sup> Section 210.185, F.S.

<sup>18</sup> Section 320.20, F.S.

<sup>19</sup> Section 328.07, F.S.

<sup>20</sup> Section 329.11, F.S.

<sup>21</sup> Section 316.191(4), F.S.

<sup>22</sup> Section 322.27(1)(b), F.S.

<sup>23</sup> Section 322.27(1)(c), F.S.

<sup>24</sup> Section 322.27(1)(d), F.S.

<sup>25</sup> Section 322.27(1)(f), F.S.

<sup>26</sup> Section 316.191(2), F.S.

<sup>27</sup> Section 322.27(3), F.S.

<sup>28</sup> Section 322.27(3)(d)1., F.S.

<sup>29</sup> Section 322.27(3)(d)5.b., F.S.

<sup>30</sup> 2006 Florida Traffic Crash Statistics, available online at <http://www.hsmv.state.fl.us/hsmvdocs/CS2006.pdf>

<sup>31</sup> *Id.*

tripled, rising to 579,275.<sup>32</sup> Data collected by the Department does not make it possible to calculate the number of 'vehicle miles travelled' specifically for motorcycles, therefore the increase in motorcycle crashes cannot be compared with the change in miles travelled by motorcycles for the 2000 – 2006 time period.

### Proposed Changes

The bill creates a new section 316.1926, F.S. The new section provides that a law enforcement officer shall arrest any motorcyclist charged with reckless driving or exceeding the speed limit by 30 miles per hour, and shall impound the motorcycle for forfeiture under the Florida Contraband Forfeiture Act. The new section also requires that, upon conviction, the cyclist's license shall be revoked for a period of ten years. This revocation does not affect the offender's ability to drive a vehicle other than a motorcycle under a Class A, B, C, or E license.

#### C. SECTION DIRECTORY:

**Section 1** – Creates a new section 316.1926, F.S., providing additional penalties for reckless driving or exceeding the speed limit by more than 30 miles per hour while operating a motorcycle and provides for a 10-year license revocation period.

**Section 2** – Provides an effective date of October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues: See Fiscal Comments, below.
2. Expenditures: The Department of Highway Safety and Motor Vehicles reports that the bill would require some programming changes to the Department's Florida Driver License Information System, however the expense for such changes could be "absorbed within existing resources."

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: See Fiscal Comments, below.
2. Expenditures: None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>32</sup> This data was inferred from the Department's Revenue Report for the fiscal year 2000, available online at <http://www.hsmv.state.fl.us/html/revrpts.html>. The report documents the number of "transactions" per vehicle type, and indicates 195,306 transactions for motorcycles. This is not an exact count of the number of motorcycles, as a vehicle that is bought new, then sold (and thus re-registered), in the same year would be counted twice in the annual "transaction" field.

- D. FISCAL COMMENTS: The Department of Highway Safety and Motor Vehicles suggests that implementation of this bill may generate an indeterminate amount of revenue for law enforcement agencies resulting from the sale of forfeited vehicles.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A/

B. RULE-MAKING AUTHORITY:

N/A.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2008, the Committee on Infrastructure favorably reported the bill with a strike-all amendment, and an amendment to the strike-all amendment. The amendment creates a new s. 316.1926, F.S., which provides that violations of s. 316.2085(2) or (3), F.S., regarding motorcycle operation, or violations of the speeding laws in s. 316.183(2), 316.187, and 316.189, F.S., in excess of 50 miles per hour over the limit, are moving violations punishable as provided in Chapter 318.

The amendment subsequently amends 318.14, F.S., to provide “tiered” penalties for violations of the newly created s. 316.1926, F.S. A first violation is subject to a fine of \$1,000; a second violation is subject to a fine of \$2,500 and a one-year suspension of the offender’s driver’s license; and a third violation is a third degree felony resulting in forfeiture of the vehicle and license suspension for ten years.

The amendment clarifies that both wheels must be on the ground at all times when operating a motorcycle, but it is not a violation if a wheel loses contact with the ground briefly as a result of the road’s surface or other circumstance beyond the control of the operator.

The amendment to the strike-all amendment removes the phrase “horizontally to the ground” in the statute requiring license tags to be permanently affixed to the motorcycle or moped.