

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 802

INTRODUCER: Transportation Committee and Senator Garcia

SUBJECT: Motorcycles or Mopeds/Reckless Driving

DATE: April 1, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.			CJ	
3.			TA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

Committee Substitute for SB 802 (CS) creates a new s. 316.1926, F.S., regarding additional offenses. The new section provides violations of s. 316.2085(2) and (3), F.S., regarding motorcycle operation, violations of the speeding laws in ss. 316.183(2), 316.187, and 316.189, F.S., in excess of 50 miles per hour over the speed limit, are moving violations punishable as provided in ch. 318, F.S.

The CS amends s. 316.2085(2), F.S., to include the requirement that a person riding a motorcycle or moped must have both wheels on the ground at all times; however, an exception is added to provide it is not a violation if the wheels of the motorcycle or moped lose contact with the ground briefly due to the condition of the road surface or other circumstances beyond the control of the operator.

A new subsection (3) is added to s. 316.2085, F.S., to require the license tag of a motorcycle or moped be permanently affixed horizontally to the ground and may not be adjusted or capable of being flipped up.

In addition, the CS amends s. 318.14, F.S., to provide “tiered” penalties for violations of the newly created s. 316.1926, F.S. The penalties are as follows:

- A person cited for a violation shall, in addition to any other requirements, pay a fine of \$1,000. This fine is in lieu of the fine required under s. 318.18(3)(b), F.S., if the person is cited for violation of s. 316.1926(2).
- A person cited for a second violation shall, in addition to any other requirements, pay a fine of \$2,500. This fine is in lieu of the fine required under s. 318.18(3)(b), F.S., if the person is cited for violation of s. 316.1926(2), F.S. In addition, the court shall revoke the person's authorization and privilege to operate a motor vehicle for a period of 1 year and order the person to surrender his or her driver's license.
- A person cited for a third violation commits a felony of the third degree, punishable as provided in ss. 775.082, s. 775.083, or s. 775.084, F.S. Upon conviction, the court shall seize the vehicle, which shall be subject to forfeiture under the Florida Contraband Forfeiture Act, revoke the person's authorization and privilege to operate a motor vehicle for a period of 10 years, and order the person to surrender his or her driver's license.

The bill takes effect October 1, 2008.

This bill creates s. 316.1926, F.S., and amends ss. 316.2085, and 318.14, F.S.

II. Present Situation:

An individual wishing to operate a motorcycle¹ in Florida is required to obtain a specific endorsement on his or her driver's license.² Also, s. 316.2085, F.S., requires a person to ride upon a motorcycle or moped only while sitting astride the seat, facing forward, with one leg on each side. Offenses committed by motorcycle operators are generally treated in the same manner as offenses committed by operators of other motor vehicles.

Excessive Speed

Section 316.183, F.S., provides no person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Section 316.183(2), F.S., also provides on all streets or highways, the maximum speed limits for all vehicles must be 30 mph in business or residence districts, and 55 mph at any time at all other locations. However, with respect to a residence district, a county or municipality may set a maximum speed limit of 20 or 25 mph on local streets and highways after an investigation determines such a limit is reasonable. The minimum speed limit on all highways that comprise a part of the National System of Interstate and Defense Highways and have not fewer than four lanes is 40 mph, except when the posted speed limit is 70 mph the minimum speed limit is 50 mph.

Section 316.187, F.S., provides for the establishment of state speed zones. Specifically:

¹ 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.”

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

- The maximum allowable speed limit on limited access highways is 70 mph.
- The maximum allowable speed limit on any other highway which is outside an urban area of 5,000 or more persons and which has at least four lanes divided by a median is 65 mph.
- The Department of Transportation (DOT) is authorized to set such maximum and minimum speed limits for travel over other roadways under its authority as it deems safe and advisable, not to exceed as a maximum limit 60 mph.

Section 316.189, provides for the establishment of municipal and county speed zones. The maximum speed within any municipality is 30 mph. With respect to residence districts, a municipality may set a maximum speed limit of 20 or 25 mph on local streets and highways. A municipality may set speed zones altering the speed limit, both as to maximum, not to exceed 60 mph, and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the DOT, except that no changes shall be made on state highways or connecting links or extensions thereof, which shall be changed only by the DOT.

Pursuant to ss. 316.183, 316.187, and 316.189, F.S., exceeding the speed limit is a moving violation punishable as provided by ch. 318, F.S. Among the penalties provided by ch. 318, F.S., is the requirement that driving in excess of 30 mph over the posted speed limit triggers a mandatory hearing before a designated official.³

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 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 drugs⁴ and a myriad of other illegal or unlicensed items.

³ 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.)

⁴ Section 893.12, F.S.

License Revocation

Section 322.27, F.S., provides the Department of Highway Safety and Motor Vehicles (department) 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, incompetency, license fraud or misrepresentation, and passing a school bus unlawfully more than once in five years. The department may also revoke a license for those offenses that specifically mandate license forfeiture upon conviction.

Section 322.27, F.S. also creates a “point system” for common offenses. Section 322.27(3), F.S., provides when a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days. When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than 3 months. When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than 1 year. Specifically s. 322.27(3)(d)1., F.S., provides reckless driving is currently a “4 point” offense.

Crash Data

Data collected by the department indicates there were 5,075 motorcycle crashes in 2000.⁵ This number increased to 8,990 in 2006.⁶ In 2000, there were approximately 195,300 motorcycles registered in the State.⁷ According to the department, by 2006, the number of motorcycles almost tripled, rising to 543,606.

III. Effect of Proposed Changes:

Section 1 creates a new s. 316.1926, F.S., regarding additional offenses. The new section provides violations of s. 316.2085(2) and (3), F.S., regarding motorcycle operation, violations of the speeding laws in ss. 316.183(2), 316.187, and 316.189, F.S., in excess of 50 miles per hour over the speed limit, are moving violations punishable as provided in ch. 318, F.S.

Section 2 amends s. 316.2085(2), F.S., to include the requirement that a person riding a motorcycle or moped must have both wheels on the ground at all times; however, an exception is added to provide it is not a violation if the wheels of the motorcycle or moped lose contact with the ground briefly due to the condition of the road surface or other circumstances beyond the control of the operator.

A new subsection (3) is added to s. 316.2085, F.S., to require the license tag of a motorcycle or moped be permanently affixed horizontally to the ground and may not be adjusted or capable of being flipped up.

⁵ 2006 Florida Traffic Crash Statistics, available online at <http://www.hsmv.state.fl.us/hsmvdocs/CS2006.pdf>

⁶ *Id.*

⁷ 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.

Section 3 amends s. 318.14, F.S., to provide “tiered” penalties for violations of the newly created s. 316.1926, F.S. The penalties are as follows:

- A person cited for a violation shall, in addition to any other requirements, pay a fine of \$1,000. This fine is in lieu of the fine required under s. 318.18(3)(b), F.S., if the person is cited for violation of s. 316.1926(2).
- A person cited for a second violation shall, in addition to any other requirements, pay a fine of \$2,500. This fine is in lieu of the fine required under s. 318.18(3)(b), F.S., if the person is cited for violation of s. 316.1926(2), F.S. In addition, the court shall revoke the person's authorization and privilege to operate a motor vehicle for a period of 1 year and order the person to surrender his or her driver's license.
- A person cited for a third violation commits a felony of the third degree, punishable as provided in ss. 775.082, s. 775.083, or s. 775.084, F.S. Upon conviction, the court shall seize the vehicle, which shall be subject to forfeiture under the Florida Contraband Forfeiture Act, revoke the person's authorization and privilege to operate a motor vehicle for a period of 10 years, and order the person to surrender his or her driver's license.

Section 4 provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Violators will be subject to penalties that include increased fines. In addition, a second violation also includes the revocation of his or her driver’s license for one year. Violators cited for a third violation: commit a 3rd degree felony, punishable by a fine up to \$5,000 and imprisonment not to exceed five years; and are subject to seizure and forfeiture of the motor vehicle and revocation of driver licensure for a period of 10 years.

C. **Government Sector Impact:**

The department reports the CS would require some programming modifications to the department's Florida Driver License Information System; however, the expense of such changes would be "absorbed within existing resources."

The department also suggests implementation of this CS may generate an indeterminate amount of revenue for law enforcement agencies resulting from the sale of forfeited vehicles.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on April 1, 2008:

The CS creates a new s. 316.1926, F.S., which provides violations of s. 316.2085(2) or (3), F.S., regarding motorcycle operation, or violations of the speeding laws in ss. 316.183(2), 316.187, and 316.189, F.S., in excess of 50 mph over the limit, are moving violations punishable as provided in ch. 318, F.S.

The CS amends s. 318.14, F.S., to provided "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 CS clarifies 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.

B. **Amendments:**

None.