

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161 Traffic Offenses

SPONSOR(S): Evers

TIED BILLS: IDEN./SIM. BILLS: SB 968

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	17 Y, 2 N	Brown	Miller
2)	Public Safety & Domestic Security Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

HB 1161 creates enhanced penalties for operators of motor vehicles who commit moving violations that cause serious bodily injury or death to a person operating or riding on a motorcycle or a person operating or riding in a motor vehicle.

A driver committing a moving violation that causes serious bodily injury to a person riding on a motorcycle or in a motor vehicle commits a second-degree misdemeanor punishable by at least \$500, incarceration for 30 days, attendance at a driver improvement course, and license suspension for 30 days.

A driver committing a moving violation that causes the death of a person riding on a motorcycle or in a motor vehicle commits a first-degree misdemeanor punishable by a fine of at least \$1,000, incarceration for at least 90 days, attendance at a driver improvement course, and a license suspension for at least one year.

The bill has an Effective Date of October 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Penalties for Causing Death or Injury

Applicable to Non-Criminal or Non-Criminal Behavior

A mandatory hearing before the court is required for any infraction or criminal violation of Chapter 316 that causes serious bodily injury or death.¹ Any person committing a traffic infraction causing death *may* be directed by a judge to perform 120 community service hours in a trauma center, pursuant to s. 316.027(4), F.S.²

For any traffic infraction or criminal offense causing death, injury, or property damage, the Department of Highway Safety and Motor Vehicles (DHSMV) may require re-examination of the offender's ability to drive. DHSMV may subsequently suspend the offender's license.³ Refusal to submit to retesting is grounds to suspend the offender's license.⁴ The court may suspend the driver's license for any criminal violation.⁵

Applicable to Criminal Behavior Only

For any criminal traffic offense causing death or an injury sufficient to require medical transport, the department shall mandate a driver-improvement course (in addition to any other applicable penalties). Failure to attend results in cancellation of the offender's license until the course is completed.⁶ If the criminal offense is murder, manslaughter, or a second DUI manslaughter conviction, the department

¹ Sec. 318.19(1)-(2), F.S.

² The permissive 120 hours of community service are referenced twice in Chapter 318:

318.14(1), F.S.: "If another person dies as a result of the noncriminal infraction, the person cited may be required to perform 120 community service hours under s. [316.027\(4\)](#), in addition to any other penalties."

318.18(8)(c), F.S.: "If the noncriminal infraction has caused or resulted in the death of another, the person who committed the infraction may perform 120 community service hours under s. [316.027\(4\)](#), in addition to any other penalties."

³ Sec. 322.221(2)(a), F.S.

⁴ Sec. 322.221(3), F.S.

⁵ Sec. 316.655(2), F.S.

⁶ Sec. 322.0261(2), F.S.

shall revoke the offender's license.⁷ License suspension for a manslaughter conviction may not be lifted unless the offender has completed a driver improvement or substance abuse program.⁸

A reckless driver causing injury or death commits a third-degree felony, punishable separately from fines related to reckless driving.⁹ If the court reasonably believes alcohol was involved, the court shall order the offender to attend a substance abuse program.¹⁰

A drunk driver who causes injury or death commits a third-degree felony, punishable separately from the potential fine and/or incarceration related to the DUI.¹¹

A person driving without a valid license who negligently causes death or serious injuries is guilty of a third-degree felony.¹²

Moving Violations, Generally

Under Chapters 316 and 318, all moving violations are considered non-criminal infractions and are generally punishable by a fine as provided by s. 318.18, F.S. This section provides a baseline fine of \$60 for all moving violations,¹³ although county-by-county fees and surcharges raise the total amount paid. The section also provides tiered fines from \$25 to \$250 for moving violations involving excessive speed.¹⁴

Moving violations also typically result in points assessed against an operator's driver's license pursuant to s. 322.27(3)(d), F.S.

Proposed Changes

HB 1161 creates a new s. 316.195, F.S., providing enhanced penalties for certain moving violations if such violations result in serious bodily injury or death to a person operating or riding on a motorcycle or in a motor vehicle.

A driver committing any moving violation that causes serious bodily injury to a person operating or riding on a motorcycle or in a motor vehicle commits a second-degree misdemeanor punishable by at least \$500, incarceration for 30 days, attendance at a driver improvement school, and license suspension for 30 days.

A driver committing any moving violation that causes the death of a person operating or riding on a motorcycle or in a motor vehicle commits a first-degree misdemeanor punishable by a fine of at least \$1,000, incarceration for at least 90 days, attendance at a driver improvement school, and a license suspension for at least one year.

HB 1161 also provides that the enhanced penalties contained in the bill do not prohibit an offender with being charged with, or convicted of, any other violation of law.

B. SECTION DIRECTORY:

Section 1 Creates s. 318.195, F.S., providing enhanced penalties for moving violations that result in serious bodily injury or death to a person operating or riding on a motorcycle or a

⁷ Sec. 322.26, F.S.(1)(a)-(b), F.S.

⁸ Sec. 322.291(1)(a)3., F.S.

⁹ Sec. 316.192(3)(c)2., F.S.

¹⁰ Sec. 316.192(5), F.S.

¹¹ Sec. 316.193(3)(c)2., F.S.

¹² Sec. 322.34(6)(a)-(b), F.S. In a related offense, if a person knowingly loans a vehicle to a person whose license is suspended, and the borrower causes death or injury, the owner's license is suspended for one year (322.36, F.S.).

¹³ Sec. 318.18(3)(a), F.S.

¹⁴ Sec. 318.18(3)(b), F.S.

person operating or riding in a motor vehicle; providing that such penalties do not prohibit the application of other penalties.

Section 2 Provides an Effective Date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill could result in an indeterminate amount of revenue collected by fines levied under the bill.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill could result in an indeterminate amount of revenue collected by fines levied under the bill.

2. Expenditures:

The bill requires imprisonment for a range of offenses that do not currently warrant imprisonment under the Florida Statutes. This could potentially have a significant impact on county jails. (The Criminal Justice Impact Conference has not yet published an analysis of the bill's potential impact.)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would have a negative fiscal impact on motor vehicle operators who commit traffic infractions that cause injury to motorcyclists or persons in motor vehicles. Beyond the fine itself and costs of driving school, many violators would also presumably lose part of their earnings if unable to work while incarcerated for the minimum required sentence.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 11, 2009, the Roads, Bridges, and Ports Policy Committee reported the bill favorably with no amendments.