

**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.)

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Prepared By: The Professional Staff of the Transportation Committee

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BILL: SB 2596

INTRODUCER: Senator Crist

SUBJECT: Smoking In Vehicles/Minor Passengers

DATE: March 30, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	<b>Favorable</b>
2.			CJ	
3.			TA	
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 2596 creates a new noncriminal traffic infraction. The bill prohibits a person from operating or having actual physical control of a motor vehicle, if a minor under the age of 16 is present in the vehicle, and if a person in the vehicle is smoking.

The infraction is committed regardless of whether the motor vehicle is in operation or parked. The bill permits an officer to issue a warning in lieu of a citation, and to issue materials relating to the dangers of smoking in a vehicle with children present.

The bill provides for secondary enforcement of the infraction, and creates a \$100 “enhanced penalty” for all nonmoving and moving violations that are committed by operating a motor vehicle while a person in the vehicle is smoking and a minor is present.

This bill substantially amends ss. 316.6135, and 318.18, F.S., and creates an undesignated section of law.

**II. Present Situation:**

Section 316.6135, F.S., prohibits a parent, legal guardian, or other person responsible for a child under the age of six years from leaving the child unattended or unsupervised in a motor vehicle for a period in excess of 15 minutes. If the motor vehicle is running or the health of the child is in danger, such persons are prohibited from leaving a child unattended or unsupervised for any period of time.

A violation of the '15 minute' prohibition is a second degree misdemeanor, punishable by potential imprisonment up to 60 days and/or a fine not exceeding \$500.<sup>1</sup> A violation of the 'engine-running' prohibition is a non-criminal traffic infraction punishable by a fine of not less than \$50 and not to exceed \$500. Additionally, if a violation of either prohibition results in great bodily harm, permanent disability, or permanent disfigurement to a child, the penalty is a third degree felony, punishable by potential imprisonment up to 5 years and/or a fine not exceeding \$5,000.<sup>2</sup>

Law enforcement officers are authorized to use any means necessary to protect the child or remove the child from the vehicle if a child is found unattended or unsupervised in violation of this provision. If a child who is removed from the vehicle is also removed from the immediate area, notification is to be placed on the vehicle. If law enforcement is unable to locate the parent or person responsible for the child, the child is to be placed in the custody of the Department of Children and Families, pursuant to ch. 39, F.S., which sets forth the provisions pertaining to child protection and dependency proceedings.

Chapter 318, F.S., provides for the disposition of traffic infractions. Currently, there is no prohibition or penalty for persons smoking in the presence of a minor in a motor vehicle.

### **III. Effect of Proposed Changes:**

This bill amends s. 316.6135, F.S., to create a prohibition regarding persons smoking in the presence of a minor, in a motor vehicle.

The bill prohibits any person from driving or having actual physical control of a motor vehicle, if:

- A minor under 16 years of age is present in the vehicle, and
- If any person in the vehicle is smoking.

The bill provides this infraction is committed regardless of whether the motor vehicle is in operation or parked.

The bill permits a law enforcement officer to issue a warning in lieu of a citation. The bill also provides the officer may elect to provide a violator with:

- Materials relating to the dangers of smoking in a vehicle with children present, or
- Available smoking cessation programs.

The bill provides for secondary enforcement of the infraction.

A violation of the infraction results in a \$100 "enhanced penalty" for all nonmoving and moving violations that are committed by operating a motor vehicle while a person in the vehicle is smoking and a minor is present. The bill states, notwithstanding any other provision of law, no enhanced penalty may be assessed for the new infraction committed before January 1, 2011.

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<sup>1</sup> s. 775.082 or s. 775.083, F.S.

<sup>2</sup> s. 775.082, s. 775.083, or s. 775.084, F.S.

The effective date of the bill is October 1, 2010.

**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:

The bill would have a negative fiscal impact on drivers who operate or take actual physical control of a motor vehicle while a minor under 16 is in the vehicle and a person is smoking in the vehicle.

C. Government Sector Impact:

There could be an increase in revenue based on citations issued for violations of the infraction. The number of potential citations is indeterminate and based on future behavior by motor vehicle operators.

**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.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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