

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 Health Regulation Committee

BILL: CS/SB 482

INTRODUCER: Health Regulation Committee and Senator Bennett

SUBJECT: Highway Safety Act

DATE: March 29, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Fav/2 amendments
2.	<u>Harper</u>	<u>Wilson</u>	<u>HR</u>	Fav/CS
3.	_____	_____	<u>WPSC</u>	_____
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:

This bill, known as the “Highway Safety Act,” declares the Legislature’s finding that road rage and aggressive driving are a growing threat to the public’s health, safety, and welfare, and the Legislature’s intent to reduce road rage and aggressive careless driving, minimize crashes, and promote the orderly free flow of traffic in Florida.

The bill:

- Directs the Department of Highway Safety and Motor Vehicles (DHSMV) to provide information about this act in driver’s license educational materials;
- Prohibits a driver from continuing to operate a vehicle in the left lane of a multi-lane highway when the driver knows, or should reasonably know, he or she is being overtaken (and establishes exceptions to this prohibition);
- Increases from two to three, the number of driving infractions committed simultaneously in order to qualify as aggressive careless driving;
- Includes failure to yield to overtaking vehicles to the infractions considered acts of aggressive careless driving;
- Establishes penalties for aggressive careless driving;

- Provides for the distribution of money received from increased fines associated with penalties, including financial support of trauma centers and emergency medical services organizations throughout Florida;
- Authorizes a civil liability cause of action against motor vehicle dealers and removes treble damage awards;
- Prohibits the licensing of any driver between the ages of 16 and 18 years old unless the applicant provides proof of successfully completing a basic driver improvement course (and establishes exceptions to this provision); and
- Mandates an assessment fee for attending a basic driver improvement course.

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.083, 316.1923, 318.1451, 318.19, 320.697, and 322.05.

Section 316.650, F.S., is reenacted for the purpose of incorporating amendments made by this act.

The bill creates three undesignated sections of law.

II. Present Situation:

Road Rage and Aggressive Driving

According to the National Highway Traffic Safety Administration (NHTSA), “aggressive driving” comprises following too closely, driving at excessive speeds, weaving through traffic, running stoplights and signs, and other forms of negligent or inconsiderate driving.¹

Occasionally, aggressive driving transforms into confrontation, physical assault, and even murder. A study on road deaths and injuries shows that:

...road death and injury rates are the result, to a considerable extent, of the expression of aggressive behavior ...those societies with the greatest amount of violence and aggression in their structure will show this by externalizing some of this violence in the form of dangerous and aggressive driving...²

“Road Rage” is the label that has emerged to describe the angry and violent behaviors at the extreme of the aggressive driving continuum. A literature review commissioned by the American Automobile Association (AAA) Foundation for Traffic Safety defines road rage as:

...an incident in which an angry or impatient motorist or passenger intentionally injures or kills another motorist, passenger, or pedestrian, or attempts or threatens to injure or kill another motorist, passenger, or pedestrian.³

¹ NHTSA, “Aggressive Driving Enforcement: Evaluations of Two Demonstration Programs” (March 2004) DOT HS 809 707 Available at: <<http://www.nhtsa.dot.gov/people/injury/research/AggDrivingEnf/images/AggresDrvngEnforce-5.0.pdf>> (Last visited on March 24, 2010).

² Whitlock, F.A. *Death on the Road: A Study in Social Violence*. London: Tavistock Publications, 1971

³ AAA Foundation for Traffic Safety “Controlling Road Rage: A Literature Review and Pilot Study.” (June 1999).

Available at: <<http://www.aaafoundation.org/resources/index.cfm?button=roadrage>> (Last visited on March 24, 2010).

The willful intent to injure other individuals or to cause damage, although directed at a specific target, presents an immediate danger to all in the vicinity of those engaged in acts of road rage. There are numerous accounts in which road rage incidents inadvertently involve drivers or pedestrians not targeted in the incident.

Aggressive driving maneuvers, such as tailgating and speeding, can also be seen as the result of the driving environment, and they are also connected with the issue of congestion.⁴ Studies show most incidents happen between the hours of four and six o'clock in the evening, times in which traffic congestion is more than likely a factor or the primary cause of an accident. In addition, there is strong evidence correlating the number of lane change maneuvers to accidents, and speed to accidents. Some researchers have theorized the root cause of these aggressive behaviors is passive-aggressive driving, i.e., the failure to move to the right from a left lane of a multi-lane highway when being overtaken by faster traffic. The theory contends that because slower moving traffic often refuses to yield to vehicles wishing to pass, those faster moving vehicles resort to aggressive driving such as "bobbing and weaving" from lane to lane.

On most roads, drivers are made relatively equal by the prescribed limits of the law regardless of individual differences in capability and status. The vast majority of cars are fully capable of exceeding 70 mph, yet all cars are directed by law to adhere to the same upper and lower limits. Drivers must adhere to the limitations placed on their speed and movement, prescribed directly (by speed limits, or variations in the number of lanes available) and indirectly (by congestion). For this reason, it is easier for the driver to ascribe frustration at being impeded by an ambiguous source, especially if there is no logical reason for the obstruction (to the impeded driver).⁵ This is an example of the possible escalating frustration, which may transform from driving aggressively into an instance of road rage.

Current Florida law in relation to "driving on right side of roadway," does require vehicles moving at a lesser rate of speed to drive in the right hand lane as soon as it is reasonable to proceed into that lane. Exceptions and exemptions include: when overtaking and passing another vehicle proceeding in the same direction, when preparing for a left turn at an intersection or into a private road or driveway.⁶ Violations of this law are non criminal offenses; however, enforcement of these provisions has been minimal.

Another important distinction is that aggressive driving is considered a traffic violation, while road rage results in criminal offense(s). Currently nine states have laws pertaining to aggressive driving as described above (including Florida). The extent of the few road rage laws in existing statutes are limited to definition. Most, if not all acts under the umbrella of what is considered road rage, are labeled criminal offenses with applicable punishments. Road rage is not considered a punishable crime in any existing statute. Some crimes considered to be an act of road rage if carried out while driving include: *Criminal Damage, Using Threatening, Abusive, or Insulting Words or Behavior* (thereby causing fear or provocation), *Wounding with Intent*,

⁴ Connell, D., and M. Joint. "Driver Aggression" Road Safety Unit Group Public Policy (November 1996). Available at: < <http://www.aaafoundation.org/resources/index.cfm?button=agdrtext#Driver%20Aggression> > (Last visited on March 24, 2010).

⁵ Ibid.

⁶ Section 316.081(1), (2), and (3), F.S.

Common Assault, Assault with a Deadly Weapon, Murder, Manslaughter, and Vehicular Homicide.

Florida Aggressive Driving Laws

Section 316.1923, F.S., describes, “aggressive careless driving” as committing two or more of the following acts simultaneously or in succession:

- Exceeding the posted speed as defined in s. 322.27(3)(d)5.b, F.S.;
- Unsafely or improperly changing lanes as defined in s. 316.085, F.S.;
- Following another vehicle too closely as defined in s. 316.0895(1), F.S.;
- Failing to yield the right-of-way as defined in ss. 316.079, 316.0815, or 316.123, F.S.;
- Improperly passing as defined in ss. 316.083, 316.084, or 316.085, F.S.; or
- Violating traffic control and signal devices as defined in ss. 316.074 and 316.075, F.S.

These violations carry separate penalties for each offense. Section 316.1923, F.S., does not, however, provide for any penalties to be administered for the act of aggressive driving itself. Law enforcement officers, by law are to check off a box, which is included on a ticket or an accident report form, when the officer believes the traffic violation or crash was due to aggressive driving.⁷ The information is recorded and used by the DHSMV.

Section 316.003, F.S., provides a list of definitions for terms used in the chapter.

Section 316.083, F.S., provides that drivers overtaking other drivers must use the proper signal, and those being overtaken must yield the right of way to the overtaking vehicle. In addition, vehicles being overtaken may not increase speed until the attempted pass is complete or it is reasonably safe to do so.

Section 318.19, F.S., lists infractions requiring a mandatory court hearing.

Section 316.650, F.S., requires the DHSMV to include a box on all traffic citation tickets and accident report forms in which the issuing law enforcement officer is to check off if it is believed the traffic infraction or crash was a result of aggressive careless driving.

Motor Vehicle Dealers, Civil Liability

Section 320.60(11), F.S., defines “Motor vehicle dealer” to mean any person, firm, company, corporation, or other entity who:

- Is licensed pursuant to s. 320.27, F.S., as a “franchised motor vehicle dealer” and, for commission, money, or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to an agreement as defined in s. 320.60(1), F.S.;
- Sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles; or
- Is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation.

⁷ Section 316.650 F.S.

A “franchised motor vehicle dealer” is defined as “any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1).”⁸

Section 320.60(11)(b), F.S., specifies that any person who repairs or services three or more motor vehicles or used motor vehicles, or who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be a motor vehicle dealer. The terms “selling” and “sale” include lease-purchase transactions.

Section 320.60(11)(c), F.S., clarifies that “motor vehicle dealer” does not include:

- Public officers while performing their official duties;
- Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;
- Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; or
- Motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under s. 320.27, F.S.

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or line-make) that they manufacture, distribute, or import. The requirements regulating the business relationship between franchised motor vehicle dealers and licensees by the DHSMV are primarily in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).⁹

A motor vehicle dealer who can demonstrate a violation of, or failure to comply with, any of the provisions found in these sections, which violation or failure will or can adversely and pecuniarily affect the dealer, is entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697, F.S.

Section 320.695, F.S., allows for the grant of a temporary or permanent injunction by any circuit court of the state. Section 320.697, F.S., allows for recovery in circuit court of damages in the amount equal to three times the pecuniary loss, together with costs and attorney’s fees. The motor vehicle manufacturer has the burden of proof that such action is fair and not prohibited.

Currently, s. 320.697, F.S., provides that any person who has suffered pecuniary loss or who has been otherwise adversely affected because of a violation by a licensee of ss. 320.60-320.70, F.S.,

⁸ Section 320.27(1)(c)1., F.S.

⁹ *Motor Vehicle Dealers and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, Walter E. Forehand and John W. Forehand, available at: <<http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf>> No section of the statute provides a short title; however, some courts have referred to the provisions as such. See *Mike Smith Pontiac, GMC, Inc. v. Mercedes-Benz of N. Am., Inc.*, 32 F.3d 528, 529 (11th Cir. 1994). But see *Meteor Motors, Inc. v. Hyundai Motor Am. Corp.*, No. 97-8820-Civ., 1999 WL 1800074, at *2 (S.D. Fla. Mar. 9, 1999) (using the “Florida Motor Vehicle Dealer Protection Act”) (emphasis added).

(motor vehicle manufacturers; motor vehicle distributors; motor vehicle importers; or, factory branches maintained by a manufacturer, distributor, or importer), has a cause of action against the licensee for damages and may recover damages in an amount three times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. The statute does not hold motor vehicle dealers as liable for civil damages.

Driver Improvement Schools, Driver's License for Minors

Section 318.1451, F.S., authorizes the DHSMV to approve the courses of all driver improvement schools, as the courses relate to s. 318.14(9), F.S., (driver improvement schools for noncriminal traffic infractions), s. 322.0261, F.S., (mandatory driver improvement course for a crash involving death or a bodily injury requiring transport to a medical facility, and related crashes involving the same driver), and s. 322.291, F.S., (driver improvement schools or DUI programs for persons whose driving privileges have been revoked for certain reasons, including reckless driving).

Section 318.1451(4), F.S., provides, in addition to a regular course fee, an assessment fee in the amount of \$2.50, which must be collected by the school from each person who elects to attend a course. The \$2.50 assessment fee is remitted to the DHSMV and deposited into the Highway Safety Operating Trust Fund to administer the program and to fund the general operations of the DHSMV.

Section 322.05, F.S., outlines licensing limitations for persons below the age of 18 years of age. A person at least 16 years of age but under 18 years of age seeking a driver's license must:

- satisfy the school attendance requirement of s. 322.091, F.S;
- have held a valid learners driver's license for 1 year (with no moving traffic convictions or a conviction with adjudication withheld), or held an acceptable license from another jurisdiction; and
- have a parent, guardian, or other responsible adult certify the person has accompanied the applicant for at least 50 hours of experience behind the wheel (10 hours at night).

Persons under the age of 16 years may seek a learners driver's license, provided they satisfy the aforementioned school attendance requirements. (See s. 322.05(1), F.S.) Persons under the age of 18 years may not receive a commercial driver's license (class A, B, or C license). (See s. 322.05(4), F.S.)

Trauma Centers, Emergency Medical Services/ Funding From Traffic Violations

Funds credited to the Department of Health (DOH) Administrative Trust Fund, as codified in s. 20.435, F.S., are to be used for the purpose of supporting the regulatory activities of the DOH. Trauma centers are regulated by the DOH under part II of ch. 395, F.S.

Recognizing the Legislature's intent to provide financial support to current trauma centers and to provide incentives for the establishment of additional trauma centers, s. 395.4036, F.S, provides that the DOH is to utilize funds collected under s. 318.18(15), F.S., and deposited into the DOH Administrative Trust Fund to ensure availability and accessibility of trauma services throughout Florida.

Chapter 401, F.S., provides that it is the legislative intent that emergency medical services are essential to the health and well-being of all citizens and that private and public expenditures for adequate emergency medical services represent a constructive and essential investment in the future of the state and our democratic society. Section 401.113, F.S., specifies that existing sources of funding from traffic violations deposited into the Emergency Medical Services Trust Fund, as provided in ss. 316.061 (crashes involving damage to vehicle or property), 316.192 (reckless driving), 318.21, and 938.07 (driving under the influence), F.S., must be used solely to improve and expand prehospital emergency medical services in Florida.

III. Effect of Proposed Changes:

Section 1. Creates the “Highway Safety Act.”

Section 2. Provides the legislative intent of the Highway Safety Act to reduce road rage and aggressive careless driving, reduce the incidence of drivers’ interfering with the movement of traffic, minimize crashes, and promote the orderly, free flow of traffic on the roads and highways of Florida.

Section 3. Requires the DHSMV to provide information about the Highway Safety Act in all newly printed driver’s license educational materials after October 1, 2010.

Section 4. Amends s. 316.003, F.S., by defining the term “road rage” to mean:

The act of a driver or passenger to intentionally or unintentionally, due to a loss of emotional control, injure or kill another driver, passenger, or pedestrian, or to attempt or threaten to injure or kill another driver, passenger, or pedestrian.

Section 5. Amends s. 316.083, F.S., to provide that on roads, streets, or highways having two or more lanes that allow movement in the same direction, a driver may not continue to operate a motor vehicle in the furthestmost left-hand lane if the driver knows, or reasonably should know, that he or she is being overtaken in that lane from the rear by a motor vehicle traveling at a higher rate of speed.

The bill provides that this prohibition does not apply to a driver operating a motor vehicle in the furthestmost left-hand lane if:

- The driver is driving the legal speed limit and is not impeding the flow of traffic in the furthestmost left-hand lane;
- The driver is in the process of overtaking a slower motor vehicle in the adjacent right-hand lane for the purpose of passing the slower moving vehicle so that the driver may move to the adjacent right-hand lane;
- Conditions make the flow of traffic substantially the same in all lanes or preclude the driver from moving to the adjacent right-hand lane;
- The driver’s movement to the adjacent right-hand lane could endanger the driver or other drivers;
- The driver is directed by a law enforcement officer, road sign, or road crew to remain in the furthestmost left-hand lane; or
- The driver is preparing to make a left turn.

A driver violating these provisions and the provisions of s. 316.183, F.S., (relating to Unlawful Speed) shall receive a uniform traffic citation for the unlawful speed violation.

Section 6. Amends s. 316.1923, F.S., by adding “failing to yield to overtaking vehicles” to the list of offenses that constitute aggressive careless driving. In addition, the number of acts performed simultaneously or in succession, constituting aggressive careless driving is changed from two to three.

The bill provides that any person convicted of aggressive careless driving is to be cited for a moving violation and punished as provided in ch. 318, F.S., and by the accumulation of points as provided in s. 322.27, F.S., for each act of aggressive careless driving. In addition to any fine or points administered as specified, a person convicted of aggressive careless driving must also pay:

- Upon a first violation, a fine of \$100.
- Upon a second or subsequent conviction, a fine of not less than \$250 but not more than \$500 and be subject to a mandatory hearing under s. 318.19, F.S.

Moneys collected from the increased fine are to be remitted by the clerk of the court to the Department of Revenue for deposit into the DOH Administrative Trust Fund. Of the funds deposited into the DOH Administrative Trust Fund, \$200,000 in the first year and \$50,000 in the second and third years after this bill takes effect are to be transferred into the DHSMV General Revenue Fund to offset the cost of providing educational materials related to the act.

Any additional moneys received are to be used to provide financial support to verified trauma centers to ensure the availability and accessibility of trauma services throughout the state and to emergency medical services organizations to improve and expand prehospital emergency medical services. The additional funds deposited into the DOH Administrative Trust Fund are to be allocated as follows:

- Twenty-five percent is to be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services;
- Twenty-five percent is to be allocated among Level I, Level II, and pediatric trauma centers based on each center’s relative volume of trauma cases as reported in the DOH Trauma Registry;
- Twenty-five percent is to be transferred to the Emergency Medical Services Trust Fund and used by the DOH for making matching grants to emergency medical services organizations as defined in s. 401.107(4), F.S.; and
- Twenty-five percent is to be transferred to the Emergency Medical Services Trust Fund and made available to rural emergency medical services as defined in s. 401.107(5), F.S., and must be used solely to improve and expand pre-hospital emergency medical services in Florida. Additionally, these moneys may be used for the improvement, expansion, or continuation of services provided.

Section 7. Reenacts s. 316.650, F.S., for the purpose of incorporating the amendments made by this act.

Section 8. Amends s. 318.1451, F.S., to mandate a \$2.50 assessment fee, in addition to a regular course fee, from each person who attends a driver improvement course. The fee is to be remitted

to the DHSMV and deposited into the Highway Safety Operating Trust Fund to fund the signage and educational requirements of this bill.

Section 9. Amends s. 318.19, F.S., to include a second or subsequent infraction of aggressive careless driving in the list of infractions for which a court appearance is mandatory.

Section 10. Amends s. 320.697, F.S., to authorize actions for civil damages against motor vehicle dealers. The bill provides that any person who has suffered pecuniary loss or has been adversely affected because of a violation by a motor vehicle manufacturer or motor vehicle dealer has cause of action against the motor vehicle manufacturer or motor vehicle dealer for damages. The bill changes the amount recoverable from three times the pecuniary loss to actual damages.

Section 11. Amends s. 322.05, F.S, to prohibit the DHSMV from issuing a drivers license to a person between the ages of 16 and 18 years old unless the person provides proof of successfully completing a basic driver improvement course approved by the DHSMV within 3 months before the date the person applied for licensure. The bill provides an exception to this provision if the person has been licensed in any other jurisdiction or has satisfactorily completed a Department of Education driver's education course.

Section 12. Establishes an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes a \$2.50 assessment fee on certain persons who are 16 years old or older but less than 18 years of age who attend a course at a driver improvement school.

B. Private Sector Impact:

Persons convicted of aggressive careless driving are to pay \$100 in addition to all fines associated with each individual violation. Upon a second or subsequent conviction, violators will have to pay a fine of no less than \$250 and no more than \$500 in addition to any other fines associated with each individual violation.

C. Government Sector Impact:

According to the DHSMV, 30 hours of programming would be required to include “aggressive careless driving” as a moving violation for the purpose of assessing points specified in s. 322.27, F.S. This would be absorbed in the DHSMV’s normal course of work without the need for an additional appropriation.

The bill provides that \$200,000 will be transferred to the DHSMV General Revenue Fund in the first year and \$50,000 for the 2 subsequent years to fund the cost of developing educational materials related to this bill. Additional fine revenue collected will be distributed to the DOH Administrative Trust Fund for use by certain trauma centers and emergency medical services organizations, of which the total amount is indeterminate.

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 Health Regulation on March 26, 2010:

This Committee Substitute (CS) provides for consistent administration of moneys collected, and specifies that of the funds deposited into the DOH Administrative Trust Fund, \$200,000 in the first year and \$50,000 in the second and third years after this bill takes effect will be transferred to the DHSMV General Revenue Fund. All other funds deposited into the Administrative Trust Fund are to be used to provide financial support to trauma centers. The CS clarifies that the funds transferred to the Emergency Medical Services Trust Fund will be used by the DOH.

The CS amends s. 318.1451, F.S., to mandate a \$2.50 assessment fee from each person attending a basic driver improvement course, to be collected by the school and remitted to the DHSMV and deposited into the Highway Safety Operating Trust Fund to fund the signage and educational requirements related to this act.

The CS amends s. 320.697, F.S., to expand the civil liability cause of action against motor vehicle manufacturers to include motor vehicle dealers and changes the amount to be recovered from treble damages to actual damages.

The CS amends s. 322.05(3), F.S., to prohibit the licensing of any driver between the age of 16 and 18 years old unless the applicant provides proof of successfully completing a basic driver improvement course approved by the DHSMV within 3 months before the date the person applied for licensure. However, the CS provides an exception for a person who has been licensed in any other jurisdiction, or has completed a Department of Education driver's education course.

The CS changes the effective date to October 1, 2010.

B. Amendments:

None.