

**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 Judiciary Committee

BILL: CS/CS/SB 482

INTRODUCER: Judiciary Committee, Health Regulation Committee, and Senator Bennett

SUBJECT: Transportation/Highway Safety Act

DATE: April 14, 2010                      REVISED: \_\_\_\_\_

|    | ANALYST          | STAFF DIRECTOR | REFERENCE   | ACTION                  |
|----|------------------|----------------|-------------|-------------------------|
| 1. | <u>Eichin</u>    | <u>Meyer</u>   | <u>TR</u>   | <b>Fav/2 amendments</b> |
| 2. | <u>Harper</u>    | <u>Wilson</u>  | <u>HR</u>   | <b>Fav/CS</b>           |
| 3. | <u>Treadwell</u> | <u>Maclure</u> | <u>JU</u>   | <b>Fav/CS</b>           |
| 4. | _____            | _____          | <u>WPSC</u> | _____                   |
| 5. | _____            | _____          | _____       | _____                   |
| 6. | _____            | _____          | _____       | _____                   |

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | 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;
- Prohibits the licensing of any driver between the ages of 16 and 19 years old unless the applicant provides proof of successfully completing a basic driver improvement course (and establishes exceptions to this provision) and satisfies the parent or guardian certification that the driver has 50 hours of behind-the-wheel experience; and
- Mandates an assessment fee for attending a basic driver improvement course.

The bill authorizes a civil liability cause of action against motor vehicle dealers for damages attributed to violations of the Florida Automobile Dealers Act, and removes treble damage awards.

The bill also requires the Department of Transportation (DOT) to provide written notice to affected property owners of transportation projects modifying access to adjacent property at least 180 days before the design of the project is finalized. The DOT must also consult with local governments regarding the project, hold a public hearing and hear public comments, and consider those comments, as well as input from the local governments, when completing the project design.

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. The bill creates section 335.199, Florida Statutes.

Section 316.650, Florida Statutes, 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.<sup>1</sup> 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

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<sup>1</sup> National Highway Traffic Safety Administration, *Aggressive Driving Enforcement: Evaluations of Two Demonstration Programs* (Mar. 2004) (DOT HS 809 707), available at <http://www.nhtsa.dot.gov/people/injury/research/AggDrivingEnf/images/AggresDrvngEnforce-5.0.pdf> (last visited Apr. 7, 2010).

aggression in their structure will show this by externalizing some of this violence in the form of dangerous and aggressive driving. . . .<sup>2</sup>

“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.<sup>3</sup>

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.<sup>4</sup> 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).<sup>5</sup> 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

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<sup>2</sup> Whitlock, F.A., *Death on the Road: A Study in Social Violence*. London (Tavistock Publications 1971).

<sup>3</sup> Daniel B. Rathbone and Jorg C. Huckabee, 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 Apr. 8, 2010).

<sup>4</sup> Dominic Connell and Matthew Joint, *Driver Aggression*, Road Safety Unit Group Public Policy (Nov. 1996), available at <http://www.aaafoundation.org/resources/index.cfm?button=agdrtext#Driver%20Aggression> (last visited Mar. 24, 2010).

<sup>5</sup> *Id.*

proceed into that lane. Exceptions and exemptions include: when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.<sup>6</sup> Violations of this law are noncriminal 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). Most, if not all acts under the umbrella of what is considered road rage, are labeled criminal offenses with applicable punishments. Road rage, if not accompanied by some other type of violation, 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, 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 careless driving.<sup>7</sup> The information is recorded and used by the Department of Highway Safety and Motor Vehicles (DHSMV).

Current law 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.<sup>8</sup> Some of the infractions may require a mandatory court hearing.<sup>9</sup>

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<sup>6</sup> Section 316.081(1), (2), and (3), F.S.

<sup>7</sup> Section 316.650 F.S.

<sup>8</sup> Section 316.083, F.S.

<sup>9</sup> Section 318.19, F.S.

## Motor Vehicle Dealers – Civil Liability

A “motor vehicle dealer” is defined 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.<sup>10</sup>

A “franchised motor vehicle dealer” is defined as “any person who engages in the business of repairing, servicing, buying, selling, or dealing in motor vehicles pursuant to an agreement as defined in s. 320.60(1).”<sup>11</sup>

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.<sup>12</sup> The terms “selling” and “sale” include lease-purchase transactions.

Existing law 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.<sup>13</sup>

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. 320.60-320.0701, F.S. (the Florida Automobile Dealers Act).<sup>14</sup>

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<sup>10</sup> Section 320.60(11), F.S.

<sup>11</sup> Section 320.27(1)(c)1., F.S.

<sup>12</sup> Section 320.60(11)(b), F.S.

<sup>13</sup> Section 320.60(11)(c), F.S.

<sup>14</sup> Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealers and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 39 FLA. ST. U. L. REV. 1057 (2002), available at <http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf> (last visited Apr. 10, 2010).

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.

Florida law allows for the grant of a temporary or permanent injunction by any circuit court of the state.<sup>15</sup> 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, 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. (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.<sup>16</sup> The statute does not hold motor vehicle dealers as liable for civil damages.

### **Driver Improvement Schools – Driver's License for Minors**

The DHSMV is authorized 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).<sup>17</sup>

In addition to a regular course fee, an assessment fee in the amount of \$2.50, must be collected by the school from each person who elects to attend a course.<sup>18</sup> 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

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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.*, 1999 WL 1800074, at \*2 (S.D. Fla. 1999) (using the "Florida Motor Vehicle Dealer Protection Act") (emphasis added).

<sup>15</sup> Section 320.695, F.S.

<sup>16</sup> Section 320.697, F.S.,

<sup>17</sup> Section 318.1451, F.S.

<sup>18</sup> Section 318.1451(4), F.S.

- 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 who are at least 15 years of age may seek a learners driver's license, provided they satisfy the school attendance requirements.<sup>19</sup> Persons under the age of 18 years may not receive a commercial driver's license (class A, B, or C license).<sup>20</sup>

### **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. 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 (county court civil penalties) and 938.07 (driving under the influence), F.S., must be used solely to improve and expand prehospital emergency medical services in Florida.<sup>21</sup>

### **Access Management to Roadways**

Access management addresses the location, design, and operation of medians and median openings, driveways, interchanges, and street connections on public roadways. The core goal of access management is the elimination or limitation of traffic points along a roadway by limiting the number of driveways and median openings and restricting certain movements at some median openings. Access management's inherent reduction in traffic conflict points increases safety and improves traffic flow. The Florida Department of Transportation (FDOT) uses access management standards, guidelines, and designs created from national standards and research.

### **Florida's Access Management Act**

The "State Highway System Access Management Act" establishes the Legislature's finding that access management regulations are necessary "to protect the public health, safety, and welfare, to

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<sup>19</sup> Section 322.05(1), F.S.

<sup>20</sup> Section 322.05(4), F.S.

<sup>21</sup> Section 401.113, F.S.

preserve the functional integrity of the State Highway System, and to promote the safe and efficient movement of people or goods within the state.”<sup>22</sup>

Property owners whose property abuts the State Highway System are afforded the right to reasonable access, but not unregulated access to the property.<sup>23</sup> Existing law also provides for FDOT to restrict the operational characteristics of access connections. These access rights are “subject to reasonable regulation to ensure the public’s right and interest in a safe and efficient highway system.”

Access to all roads on the State Highway System is limited or controlled. The FDOT has implemented access management guidelines and standards by rule to provide guidance on access management issues. The guidelines address the location, design, and operation of driveways, median openings, interchanges, and street connections. The goal of these guidelines is to properly balance access and mobility in the design of state roadways.

Rule 14-97, F.A.C., establishes seven classifications for state highways and the criteria and procedures for assigning these classifications to specific roads.<sup>24</sup> Essentially, the classifications allow for consistent application of access management standards by identifying the functional purpose of the road on a scale with high-speed through-traffic on one end, and lower speed local traffic with numerous interactions with adjacent land use on the other end.

For example, Access Class 1 consists of limited access facilities, *i.e.*, roadways which do not provide direct property connections but provide for high speed and high volume traffic movements serving interstate, interregional, and intercity, and, to a lesser degree, intracity, travel needs. Interstate highways and Florida’s Turnpike are typical of this class. Interchange spacing standards for Access Class 1 are shown in Table 1 below.<sup>25</sup> Access Classes 2 through 7 consist of controlled access facilities. Intersection spacing, median type, median opening, and connection (driveway) spacing is shown in Table 2 below.<sup>26</sup>

Generally, the roadways serving areas without existing extensive development are classified in the upper portion of the range (Access Class 2, 3, and 4). Those roadways serving areas with existing moderate to extensive development are generally classified in the lower portion of the range (Access Class 5, 6, and 7). The access management standards for each access class are further determined by the posted speed limit, as shown in Table 2 below. Medians and median openings are regulated through the requirement for a restrictive median in certain classes. For those classes, spacings between median openings are regulated.

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<sup>22</sup> Sections 335.18 - 335.188, F.S.

<sup>23</sup> Section 335.181(2), F.S.

<sup>24</sup> Florida Dep’t of State, *Florida Administrative Weekly and Florida Administrative Code, Rule Chapter: 14-97*, available at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=14-97> (last visited Apr. 13, 2010).

<sup>25</sup> Rule 14-97.003, F.A.C.

<sup>26</sup> *Id.*



| Table 1<br>Access Management Standards for <b>Limited</b> Access Facilities |   |   |
|---|---|---|
| Access Class  | Segment Location  | Applicable Interchange Spacing Standard |
| 1   | Area Type 1 – CBD & CBD Fringe for Cities in Urbanized Areas                            | 1 Mile                                  |
|   | Area Type 2 – Existing Urbanized Areas Other Than Area Type 1                           | 2 Miles                                 |
|   | Area Type 3 – Transitioning Urbanized Areas and Urban Areas Other Than Area Type 1 OR 2 | 3 Miles                                 |
|   | Area Type 4 – Rural Areas   | 6 Miles                                 |

| Table 2<br>Access Management Standards for <b>Controlled</b> Access Facilities |                 |  |             |                                |                                    |          |
|--|-----------------|--|-------------|--------------------------------|------------------------------------|----------|
| Access Class   | Median          | Median Opening Spacing Standard (feet) |             | Signal Spacing Standard (feet) | Connection Spacing Standard (feet) |          |
|  |                 | Full                                   | Directional |                                | > 45 MPH                           | ≤ 45 MPH |
| 2  | Restrictive     | 2,640                                  | 1,320       | 2,640                          | 1,320                              | 660      |
| 3  | Restrictive     | 2,640                                  | 1,320       | 2,640                          | 660                                | 440      |
| 4  | Non-restrictive |  |             | 2,640                          | 660                                | 440      |
| 5  | Restrictive     | 2,640 when > 45 MPH                    |             |                                | 2,640 when > 45 MPH                |          |
|  |                 | 1,320 when ≤ 45 MPH                    |             |                                | 1,320 ≤ 45 MPH                     |          |
| 6  | Non-restrictive |  |             | 1,320                          | 440                                | 245      |
| 7  | Both Types      | 660                                    | 330         | 1,320                          | 125                                | 125      |

**Medians**

Restrictive medians and well designed median openings are the most effective means of reducing traffic conflict points primarily through the elimination of left-turning traffic movements.<sup>27</sup>

Properly implemented median management will result in improvements to traffic operations, minimize adverse environmental impacts, and increase highway safety. As traffic flow is improved, delay is reduced as are vehicle emissions. In addition, roadway capacity and fuel economy are increased, and most importantly, crashes are less numerous and/or less severe.

<sup>27</sup> Florida Department of Transportation, *Median Handbook*, available at <http://www.dot.state.fl.us/planning/systems/sm/accman/pdfs/mhb06b.pdf> (last visited Apr. 13, 2010).

## Public Involvement in Transportation Planning

Existing law provides for public participation in FDOT's planning process.<sup>28</sup> It provides that in developing major transportation improvements such as increasing capacity or providing new access to a limited or controlled access facility or constructing a facility in a new location, FDOT is required to hold one or more public hearings, including a hearing prior to the selection and commitment to a specific design. The hearing is to be conducted to provide an opportunity for effective participation by interested parties. At least 20 days prior to a hearing related to a transportation project's design features, FDOT is required to notify property owners of record within 300 feet of the centerline of the proposed facility and those whom FDOT determines will be substantially affected environmentally, economically, or socially.

### III. Effect of Proposed Changes:

**Section 1.** Creates the "Highway Safety Act."

**Section 2.** Provides findings and expresses 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 Department of Highway Safety and Motor Vehicles (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;

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<sup>28</sup> Section 339.155(6), F.S.

- 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 simultaneously violating these provisions and the provisions of s. 316.183, F.S. (relating to Unlawful Speed) shall receive a uniform noncriminal 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 conviction, 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 Department of Health (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 prehospital 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 for each person who is at least 16 but under 18 years of age who attends a driver improvement course as required under the new provisions created by section 11 of the bill, in addition to a regular course fee. 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 of ss. 320.60-320.70, F.S.,<sup>29</sup> 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 against a licensee or motor vehicle dealer 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 19 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 and complies with the requirement that the driver's parent, guardian, or other responsible adult certifies that he or she, or another licensed over the age of 21 has accompanied the driver for a total of 50 hours of behind-the-wheel experience in driving, with 10 of those hours occurring at night. 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.

An 18-year-old driver is no longer considered a minor.<sup>30</sup> Although certain 18-year olds may have a "parent" to provide this certification of driving experience, those 18-year-olds without parents may not have a legal "guardian or other responsible adult" to satisfy the certification requirement.

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<sup>29</sup> Sections 320.60-320.70, F.S., governs the licensing of motor vehicle dealers and manufacturers, and includes consumer protection and fair trade measures.

<sup>30</sup> See s. 1.01(13), F.S.

**Section 12.** Creates s. 335.199, F.S., to require the Department of Transportation (FDOT) to provide written notice to affected property owners of transportation projects modifying access to adjacent property at least 180 days before the design of the project is finalized. The notice must:

- Include a written explanation of the need for the project; and
- Indicate that all affected parties will be afforded the opportunity to provide comments to FDOT regarding potential impacts of the change.

If the transportation project is within the boundaries of a municipality, the notification must be issued in writing to the chief elected official of municipality. If the project is in the unincorporated area of a county, the notification must be in writing to the chief elected official of the county.

The FDOT must consult with local governments on its final design proposal if the department intends to:

- Divide a state highway;
- Erect median barriers; or
- Close or modify existing access to abutting commercial business property.

Under the bill, the local government may present FDOT with alternatives that relieve impacts to affected business properties.

The FDOT is required to hold at least one public hearing in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community.

The bill requires FDOT to review all comments from the public hearing and take the comments, as well as any alternatives presented by a local government when completing the final design of the transportation project.

**Section 13.** 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.

**D. Other Constitutional Issues:**

This bill may implicate section 6 of article III of the Florida Constitution, which provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The single-subject requirement mandates a logical or natural connection between the various portions of a legislative enactment. This connection may be satisfied if there is a reasonable explanation as to why the Legislature joined multiple subjects within the same legislative act. *See Grant v. State*, 770 So. 2d 655, 657 (Fla. 2000). Among the multitude of cases on this subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation, but that a law containing changes in the workers’ compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.<sup>31</sup>

Although the provisions in the bill all relate to transportation, the majority of the provisions deal with highway safety, while one provision relates to the creation of civil liability for motor vehicle dealers for violations of the Florida Automobile Dealers Act, and one provision requires certain notice requirements for transportation projects affecting property owners.

**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 19 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 Department of Highway Safety and Motor Vehicles (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.<sup>32</sup>

<sup>31</sup> *See State v. Lee*, 356 So. 2d 276 (Fla. 1978); *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).

<sup>32</sup> Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 482*, 3 (Nov. 18, 2009).

The bill provides that \$200,000 will be transferred to the DHSMV General Revenue Fund in the first year and \$50,000 for the two 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.

The expanded notification process for the Department of Transportation (FDOT) related to transportation projects may result in FDOT incurring marginal expenses which can be accommodated within existing resources. The need for an additional appropriation is not anticipated by FDOT.

#### **VI. Technical Deficiencies:**

The reference to “highway project” on line 295 of the bill appears to be inconsistent with the catchline of s. 335.199, F.S., created by the bill, which references “transportation projects.”

#### **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/CS by Judiciary on April 13, 2010:**

The committee substitute:

- Replaces the term “violation” with the term “conviction” for consistency within the aggressive careless driving penalty provision;
- Requires the Department of Transportation (FDOT) to provide written notice, at least 180 days before the design of the project is finalized, to affected property owners of transportation projects modifying access to adjacent property;
- Specifies that the notice must explain the need for the project and indicate that all affected parties will be given an opportunity to provide comments;
- Specifies that, if the notice is within the boundaries of a municipality, the notification must be issued in writing to the chief elected official of the municipality;
- Specifies that if the project is an unincorporated area of a county, the notification must be issued in writing to the chief elected official of the county;
- Requires FDOT to consult with local governments if the final design will divide a state highway, erect median barriers, or close or modify existing access to abutting commercial business properties;
- Requires FDOT to hold one public hearing for public comment on affected access to businesses and potential economic impact;
- Provides that FDOT must review all comments from the public hearing and consider those comments, as well as alternatives presented by a local government, when completing the final design of the project; and

- Provides that a driver who is at least 16 years of age but who is under 19 (rather than 18 under the bill) must complete a basic driver improvement course and satisfy the parent or guardian certification of 50 hours of behind-the-wheel driving.

**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.