

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: SB 608

INTRODUCER: Senator Evers

SUBJECT: Traffic Offenses

DATE: April 9, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Davis | Spalla | TR | Favorable |
| 2. | Dugger | Cannon | CJ | Favorable |
| 3. | Sadberry | Sadberry | BJA | Favorable |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill creates criminal penalties for operators of motor vehicles who commit moving traffic violations that cause serious bodily injury or death to a person riding in or on a motor vehicle or motorcycle.

A person who commits a moving violation that results in the serious bodily injury of a person riding in or on a motor vehicle or motorcycle is guilty of a second degree misdemeanor. In such cases, the bill requires the offender to pay a minimum of \$500, serve a minimum of 30 days in jail, attend a driver improvement course, and have his or her driver's license suspended for a minimum of 30 days.

A person who commits a moving violation that results in the death of a person riding in or on a motor vehicle or motorcycle is guilty of a first degree misdemeanor. The bill requires these offenders to pay a minimum of \$1,000, serve a minimum of 90 days in jail, attend an advanced driver improvement course, and have his or her driver's license suspended for a minimum of 1 year.

This bill creates section 318.195 of the Florida Statutes.

II. Present Situation:

Moving Violations, Generally

Under chapters 316 and 318, F.S., all moving violations are considered non-criminal infractions and are generally punishable by a fine as provided by s. 318.18, F.S. Moving violations include such offenses as speeding, failure to stop at a stop sign or traffic control device, and improper lane change.¹ This section provides a baseline fine of \$60 for all moving violations,² 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.³

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

Penalties for Causing Death or Injury

Non-Criminal Violations

A mandatory hearing before the court is required for any infraction or criminal violation of chapter 316, F.S., which caused serious bodily injury or death.⁴ 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.⁵

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.⁶ DHSMV may suspend an offender's license if the person refuses to submit to a re-examination. Refusal to submit to retesting is grounds to suspend the offender's license.⁷ The court may suspend the driver's license for any criminal violation.⁸

Criminal Violations

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 a driver improvement course results in cancellation of the offender's license until the course is completed.⁹ If the criminal offense is murder, manslaughter, or a

¹ See generally ch. 316, F.S.

² s. 318.18(3)(a), F.S.

³ s. 318.18(3)(b), F.S.

⁴ s. 318.19(1)-(2), F.S.

⁵ The permissive 120 hours of community service are referenced twice in chapter 318, F.S.:

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."

⁶ s. 322.221(2)(a), F.S.

⁷ s. 322.221(3), F.S.

⁸ s. 316.655(2), F.S.

⁹ s. 322.0261(2), F.S.

second DUI manslaughter conviction, the DHSMV shall revoke the offender's license.¹⁰ License suspension for a manslaughter conviction may not be lifted unless the offender has completed a driver improvement or substance abuse program.¹¹

A person who commits the offense of reckless driving causing injury commits a third-degree felony, punishable separately from fines related to reckless driving.¹² If the court reasonably believes alcohol was involved, the court shall order the offender to attend a substance abuse program.¹³

An impaired driver who causes an accident involving injury or death commits a third-degree felony, punishable separately from the potential fine and/or incarceration related to the DUI.¹⁴

A person driving without a valid license who negligently causes an accident involving death or serious bodily injury is guilty of a third-degree felony.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 318.195, F.S., providing enhanced penalties for committing certain moving traffic violations.

A person who commits a moving violation resulting in the serious bodily injury of a person riding in or on a motor vehicle or motorcycle is guilty of a second degree misdemeanor. In such cases, the bill requires the offender to pay a minimum of \$500, serve a minimum of 30 days in jail, attend a driver improvement course, and have his or her driver's license suspended for a minimum of 30 days.

A person who commits a moving violation resulting in the death of a person riding in or on a motor vehicle or motorcycle is guilty of a first degree misdemeanor. The bill requires these offenders to pay a minimum of \$1000, serve a mandatory minimum of 90 days in jail, attend an advanced driver improvement course, and have his or her driver's license suspended for a minimum of 1 year.

The bill states s. 318.195, F.S., does not prohibit a person from being charged with, convicted of, or punished for any other violation of the law.

The bill shall take effect July 1, 2011.

¹⁰ s. 322.26, F.S.(1)(a)-(b), F.S.

¹¹ s. 322.291(1)(a)3., F.S.

¹² s. 316.192(3)(c)2., F.S.

¹³ s. 316.192(5), F.S.

¹⁴ s. 316.193(3)(c)2., F.S.

¹⁵ s. 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 (s. 322.36, F.S.).

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:

Drivers who commit a moving traffic violation resulting in the serious bodily injury or death of a person riding in or on a motor vehicle or motorcycle will be subject to the sanctions outlined in s. 318.195, F.S.

Criminalizing previously non criminal conduct would likely invoke application of criminal protections afforded citizens, including the right to counsel, formal arraignment, sentencing by a judge as opposed to a magistrate, and increased involvement of state prosecutors. The fiscal impact of these factors is unknown.

C. Government Sector Impact:

The bill may generate an indeterminate amount of revenue from fines for the behaviors criminalized by the bill.

Criminalizing previously non criminal conduct would likely invoke application of criminal protections afforded citizens, including the right to counsel, formal arraignment, sentencing by a judge as opposed to a magistrate, and increased involvement of state prosecutors. The fiscal impact of these factors is unknown.

The bill also may have an impact on local jail populations.

According to DHSMV, programming modifications of approximately 150 hours will be required in order to implement the provisions of this bill; however, this cost will be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill criminalizes moving violations that result in an injury or death to persons in or on other motor vehicles and motorcycles, but does not criminalize identical behavior resulting in the injury or death of pedestrians, bicyclists, or persons on other means of conveyance. Punishment is based upon the particular classification of the victim as opposed to the conduct or intent of the violator. This lack of uniformity could result in challenges to the validity of the bill.

Regardless of potential mitigating circumstances, absence of the violator's culpability or contributory actions on the part of the victim, the bill does not allow any discretion in the judiciary by its imposition of a mandatory jail sentence on the violator.

The bill also deviates from the normal practice of not imposing criminal penalties for non criminal civil moving violations alone without additional showing of willful or wanton recklessness or intent to violate the law. (Such as driving under the influence, reckless driving, and fleeing law enforcement.)

The DHSMV has expressed concerns about the effective date of the bill allowing sufficient time for implementation to make necessary programming modifications. The DHSMV suggests an effective date of October 1, 2011.

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.