

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 231 Transportation

SPONSOR(S): Criminal Justice Subcommittee; Highway & Waterway Safety Subcommittee; Passidomo; Fitzenhagen and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 908

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|------------|---------------------------------------|
| 1) Highway & Waterway Safety Subcommittee | 8 Y, 4 N, As CS | Whittaker | Smith |
| 2) Criminal Justice Subcommittee | 12 Y, 0 N, As CS | Cunningham | Cunningham |
| 3) Appropriations Committee | | | |
| 4) Economic Affairs Committee | | | |

SUMMARY ANALYSIS

The bill amends and creates various sections of Florida Statutes designed to protect bicyclists and vulnerable users of a roadway.

Specifically, the bill:

- Defines “bodily injury” and “vulnerable user of a public roadway or vulnerable user;”
- Requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, any thing extending from the vehicle, and any trailer or other thing being towed by the vehicle and a vulnerable user;
- Allows a driver to drive on the left side of a roadway in a no passing zone when the driver is required to do so when passing a vulnerable user in order to provide at least three feet between the vehicle and the vulnerable user;
- Prohibits a person operating a vehicle who overtakes and passes a vulnerable user of a public roadway proceeding in the same direction from making a right or left turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user;
- Makes it a first degree misdemeanor for a person to harass, taunt, or maliciously throw an object at or in the direction of a person riding a bicycle;
- Requires a fine of no more than \$2,000 to be imposed, in addition to any other penalty, if a traffic violation contributed to the bodily injury of a vulnerable user;
- Makes it a first degree misdemeanor for a person to commit a noncriminal traffic infraction that causes serious bodily injury or death and, within 5 years of such violation, commit another noncriminal traffic infraction that causes serious bodily injury or death;
- Requires a person cited for specified traffic infractions that contributed to the bodily injury of a vulnerable user to appear before a judge for a hearing;
- Requires a law enforcement officer to note on certain traffic citations if the violation contributed to the bodily injury of a vulnerable user; and
- Provides severability.

The bill has an indeterminate, negative fiscal impact on the Department of Highway Safety and Motor Vehicles. The bill may also increase the need for jail beds because it creates two first degree misdemeanor offenses.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Protecting Bicyclists

In Florida, bicyclists are considered vehicle operators and are required to obey the same rules of the road as other vehicle operators, including obeying traffic signs, signals, and lane markings.

In 2013, Florida crash reports show that 7,467 pedestrians, 7,905 motorcyclists, 6,520 bicyclists, and 432 other non-motorists were injured in traffic crashes.¹

In recent years, Colorado, Louisiana, Mississippi and Vermont specifically passed measures to protect bicyclists from aggressive and deviant motorist behavior. All included language restricting throwing an object at bicyclists or taunting or harassing them. Louisiana law, for example, states: "It shall be unlawful to harass, taunt, or maliciously throw objects at or in the direction of any person riding a bicycle. Any person who violates this section shall be fined not less than two hundred dollars or imprisoned for not more than thirty days." Mississippi law contains similar language. Colorado and Vermont also extended such protections to pedestrians.²

In 2014, the Florida passed legislation³ that ranked a "leaving the scene of an accident" offense one level higher in the offense severity ranking chart⁴ if the victim of the offense was a vulnerable road user.⁵ The bill defined a "vulnerable road user" as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right of way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal; or
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
 - A farm tractor or similar vehicle designed primarily for farm use;
 - A skateboard, roller skates, or in-line skates;
 - A horse-drawn carriage;
 - An electric personal assistive mobility device; or
 - A wheelchair.⁶

Definitions

The bill creates definitions for the terms "bodily injury" and "vulnerable user or vulnerable user of a public roadway." These definitions apply to all of ch. 316, F.S.

"Bodily injury" is defined as:

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.

¹ Florida Department of Highway Safety and Motor Vehicles, *Traffic Crash Facts Annual Report 2013*, <http://www.flhsmv.gov/html/safety.html> (last visited March 26, 2015).

² National Conference of State Legislatures, *Bicycle and Pedestrian Safety*, <http://www.ncsl.org/research/transportation/bicycle-and-pedestrian-safety.aspx> (last visited March 26, 2015).

³ Ch. 2014-225, Laws of Florida.

⁴ Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. See ss. 921.0022 and 921.0024, F.S.

⁵ s. 316.027(2)(f), F.S.

⁶ s. 316.027 (1)(b), F.S.

“Vulnerable user of a public roadway” or “vulnerable user” is defined as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right-of-way;
- A person operating, or who is a passenger on, a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal; or
- A person lawfully operating on a public roadway, crosswalk, or shoulder of the roadway:
 - A farm tractor or similar vehicle designed primarily for farm use;
 - A horse-drawn carriage;
 - An electric personal assistive mobility device; or
 - A wheelchair.

Overtaking and Passing

Section 316.083, F.S., requires a driver of a vehicle overtaking a bicycle (or other non-motorized vehicle) to pass at a safe distance of no less than three feet between the vehicle and the bicycle. A violation is a noncriminal traffic infraction punishable as a moving violation.⁷

Effect of the Bill

The bill expands the requirements of s. 316.083, F.S., to apply to motor vehicles overtaking a vulnerable user of a public roadway. The bill requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, any thing extending from the vehicle, and any trailer or other thing being towed by the vehicle and the vulnerable user.

Violations remain a noncriminal traffic infraction. However, if the violation contributed to the bodily injury of a vulnerable user, the bill requires the law enforcement officer issuing the citation to make a note of such on the citation.

No Passing Zones

Section 316.0875, F.S., prohibits a driver from driving on the left side of a roadway in a no passing zone.⁸ This prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.⁹ A violation is a noncriminal traffic infraction, punishable as a moving violation.¹⁰

Effect of the Bill

As noted above, s. 316.0875, F.S., prohibits a driver from driving on the left side of a roadway in a no passing zone. The bill specifies that this prohibition does not apply when the driver of a motor vehicle is required to cross pavement striping indicating a no-passing zone when passing a vulnerable user in order to provide at least three feet between the vehicle and the vulnerable user.

Careless Driving

Section 316.1925, F.S., requires a person operating a vehicle upon the streets or highways within the state to drive in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. A person’s failure to do so is careless driving, citable as a moving violation.¹¹

Effect of the Bill

The bill requires a law enforcement officer issuing a careless driving citation to make a note on the citation if the violation contributed to the bodily injury of a vulnerable user.

⁷ s. 316.083(3), F.S.

⁸ Section 316.0875, F.S., authorizes the Department of Transportation and local authorities to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous. The statute also authorizes these entities to, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones.

⁹ s. 316.0875(3), F.S.

¹⁰ s. 316.0875(4), F.S.

¹¹ s. 316.1925(2), F.S.

Newly-Created Sections

Turning when Passing a Vulnerable User

The bill creates s. 316.0833, F.S., which prohibits a person operating a vehicle who overtakes and passes a vulnerable user of a public roadway proceeding in the same direction from making a right or left turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user. A violation is a moving violation. If the violation contributed to the bodily injury of a vulnerable user, the law enforcement officer issuing the citation must make a note of such on the citation.

Harassing or Taunting a Person Riding a Bicycle

The bill creates s. 316.1921, F.S., which makes it unlawful to harass, taunt, or maliciously throw an object at or in the direction of a person riding a bicycle. A violation is a first degree misdemeanor, punishable by a fine of at least \$250 or 30 day imprisonment or both.

Infractions Contributing to Bodily Injury of a Vulnerable User

The bill creates s. 318.142, F.S., which requires a fine of no more than \$2,000 to be imposed, in addition to any other penalty, if a traffic violation contributed to the bodily injury of a vulnerable user.

Noncriminal Traffic Infractions Causing Serious Bodily Injury or Death

The bill creates s. 316.0275, F.S., to make it a first degree misdemeanor¹² for a person to commit a noncriminal traffic infraction that causes serious bodily¹³ injury or death and, within 5 years of such violation, commit another noncriminal traffic infraction that causes serious bodily injury or death. A person who violates this provision must also have their driver license revoked.

Mandatory Hearing

Section 318.19, F.S., requires persons cited for the following to appear before a judge for a hearing:

- Any infraction which results in a crash that causes the death of another;
- Any infraction which results in a crash that causes “serious bodily injury” of another;
- Any infraction of s. 316.172(1)(b), F.S. (requiring traffic to stop for a school bus);
- Any infraction of s. 316.520(1) or (2), F.S. (relating to loads on vehicles); or
- Any infraction of ss. 316.183(2), 316.187, or 316.189, F.S. (all relating to speed zones), of exceeding the speed limit by 30 miles per hour or more.

Effect of the Bill

The bill requires a person cited for the any of the following traffic infractions that contributed to the bodily injury of a vulnerable user to appear before a judge for a hearing:

- Any infraction of s. 316.083, F.S. (overtaking or passing);
- Any infraction of s. 316.0833, F.S. (turning when passing a vulnerable user); or
- Any violation of s. 316.1925, F.S. (careless driving).

B. SECTION DIRECTORY:

Section 1. Amends s. 316.003, F.S., relating to definitions.

Section 2. Creates s. 316.0275, F.S., relating to noncriminal traffic infractions leading to serious bodily injury or death; reclassification.

Section 3. Amends s. 316.083, F.S., relating to overtaking and passing a vehicle.

Section 4. Creates s. 316.0833, F.S., relating to turning when passing vulnerable user.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹³ The bill defines “serious bodily injury” as an injury to a person, excluding the at fault driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Section 5. Amends s. 316.0875, F.S., relating to no-passing zones.

Section 6. Creates s. 316.1921, F.S., relating to harassing, taunting, or throwing object at person riding a bicycle.

Section 7. Amends s. 316.1925, F.S., relating to careless driving.

Section 8. Creates s. 318.142, F.S., relating to infractions contributing to bodily injury of a vulnerable user of a public roadway.

Section 9. Amends s. 318.19, F.S., relating to infractions requiring a mandatory hearing.

Section 10. Amends s. 322.26, F.S., relating to mandatory revocation of license by department,

Section 11. Providing severability.

Section 12. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill has an indeterminate, negative fiscal impact on the Department of Highway Safety and Motor Vehicles. The bill may also have a positive jail bed impact on local governments (i.e., it may increase the need for jail beds) because it creates two new first degree misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Highway & Waterway Safety Subcommittee adopted one amendment to HB 231 and reported the bill favorably as a committee substitute. The amendment:

- Specified that in addition to any other penalty imposed, if a traffic violation contributed to the bodily injury of a vulnerable user, a fine of not more than \$2,000 shall be imposed.
- Removes the requirement for traffic education courses to include instruction on traffic laws relating to the rights and safety of vulnerable users.
- Removes the requirement for driver license and commercial driver license examinations to include testing of an applicant's knowledge of traffic laws relating to the rights and safety of vulnerable users.

On March 24, 2015, the Criminal Justice Subcommittee adopted a strike-all amendment and one amendment to the strike-all amendment and reported the bill favorably as a committee substitute. The amendments, collectively:

- Corrected references to a "vulnerable user of a public right-of-way" to a "vulnerable user of a public roadway;"
- Removed "skateboard, roller skates, or in-line skaters" from the definition of "vulnerable users;"
- Prohibited a person overtaking and passing a vulnerable user of a public roadway from making a right or left turn at an intersection unless the turn can be made at a safe distance;
- Removed the provision relating to substandard lane widths; and
- Made it a first degree misdemeanor for a person to commit a noncriminal traffic infraction that causes serious bodily injury or death and, within 5 years of such violation, commit another noncriminal traffic infraction that causes serious bodily injury or death.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.