SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2254

SPONSOR: Criminal Justice Committee and Senator Meek

SUBJECT: Minor/Approaching Vehicle/Soliciting

DATE: April 13, 1999 REVISED: 4/20/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cannon	CJ	Favorable/CS
2.	Bowman	Yeatman	CA	Fav/1 amendment
3.			FP	
4.				
5.				

I. Summary:

The Committee Substitute (CS) amends s. 316.2045, F.S., to provide that a minor is prohibited from standing, or approaching motor vehicles, on the road for the purpose of soliciting, collecting from, or distributing to a motor vehicle occupant where there is some risk to the minor's safety. Moreover, the CS would provide that any person who directs a minor to commit a violation of this section will be cited for a pedestrian violation, punishable by a $250 fine.

This CS substantially amends the following sections of the Florida Statutes: 316.2045, 318.18, and 318.121.

II. Present Situation:

Chapter 316 of the Florida Statutes, entitled "State Uniform Traffic Control," sets forth the state's traffic law. The offenses created by the chapter are punished as provided in ch. 318, F.S. Section 318.14, F.S., provides that violations of ch. 316, F.S., constitute noncriminal infractions, unless otherwise provided by law, which must be cited by a police officer and which are punishable by a fine. Section 318.18, F.S., (Supp. 1998), sets forth the monetary amounts of the fines.

Furthermore, s. 318.143, F.S., (Supp. 1998), provides that if a trial court finds that a minor has committed a ch. 316, F.S., violation, the court *may also* do one or more of the following:

- reprimand or counsel the minor and his or her parents or guardian;
- require the minor to attend traffic school;
- order the minor to remit a sum not exceeding the maximum fine applicable to an adult for a like offense;

- order the minor to complete community service hours; or
- impose a curfew or other restrictions on the minor's liberty for a period not to exceed 6 months.

Section 316.2045(1), F.S., governs all public streets, highways, and roads in Florida. Public streets, highways, and roads are defined as the width between the boundary lines of every way or place of whatever nature which is open to the public for purposes of vehicular traffic. ss. 316.003(53), (Supp. 1998), and 320.01(16), F.S. This definition does not include roadside places such as sidewalks and rest areas, but does include medians, which are traffic control devices located within the boundary lines of every way or place, and roadbeds.

Section 316.2045, F.S., provides that a person commits a pedestrian violation, punishable by a $15 fine, if he or she willfully obstructs the free, convenient, and normal use of any state or locally maintained public street, highway, or road by:

- impeding, hindering, stifling, retarding, or restraining traffic or passage thereon;
- standing or approaching motor vehicles thereon; or
- endangering the safe movement of vehicles or pedestrians traveling thereon.

"Willfully obstructs" requires more than the person simply knowing that traffic is obstructed by his or her actions; instead, the person must commit, "an intentional act of an unreasonable character in disregard of a known or obvious risk of such magnitude as to render it probable that harm would follow." *See Currie v. Palm Beach County*, 578 So.2d 760 (Fla. 4th DCA 1991); *Thunderbird Drive-In Theatre, Inc. v. Reed By and Through Reed*, 571 So.2d 1341 (Fla. 4th DCA 1990)(Even though drive-in theatre may have known that its entrance obstructed traffic on a public road, the evidence did not establish that the theatre intended to obstruct traffic and, thus, s. 316.2045(1), F.S., was inapplicable.).

Furthermore, subsection (2) of s. 316.2045, F.S., provides that a violation of subsection (1), if for the purpose of soliciting without proper authorization or a permit, constitutes a second degree misdemeanor, punishable by up to 60 days in jail and/or a $500 fine. *See National Federation of Retired Persons v. Department of Ins.*, 553 So.2d 1289, 1290 (Fla. 1st DCA 1989) (solicitation means, "to ask earnestly or to try to induce the person solicited to do the thing solicited."). Subsection (2), however, specifically exempts registered non-profit organizations from the subsection's provisions.

Finally, s. 316.2045, F.S., provides that the section does not apply to political campaigning on the public right-of-way, nor to commercial vehicles used solely for the purpose of collecting solid waste or recyclable materials.

III. Effect of Proposed Changes:

The CS amends s. 316.2045, F.S., to prohibit persons, under the age of 18 years, from standing, or approaching motor vehicles, on any Florida road in order to solicit, collect from, or distribute

to a motor vehicle occupant. This prohibition applies only to conduct occurring in the portion of the road designed for vehicular traffic and only where there is some risk to the minor's safety; thus, a minor's conduct on a sidewalk or other roadside place would not be included. For a first-time violation, the minor shall receive a warning, and for subsequent violations the minor shall be cited for a pedestrian violation which is punishable by a $15 fine. The CS specifically provides that the additional sanctions for minors contained in s. 318.143, F.S., do not apply to this offense.

Furthermore, the CS provides that any person who directs any person under the age of 18 years to unlawfully stand, or approach motor vehicles, on the road shall be cited for a noncriminal traffic infraction, punishable as provided in ch. 318, F.S. The CS amends ch. 318, F.S., to provide that such a violation results in a $250 fine. The bill states that a separate civil penalty may be imposed for each day a violation continues. While presumably the "separate civil penalty" that may be imposed for each additional day refers to the $250 penalty set forth in chapter 318, F.S., this language is unclear. Due to the use of the phrase "*any* person under 18," only one fine may be imposed for unlawful direction occurring during a single episode, notwithstanding the number of minors directed during the episode. *See State v. Mitchell*, 719 So.2d 1245 (Fla. 1st DCA 1998)(when the Legislature uses the term "a" multiple offenses are intended, and when the term "any" is used a single offense is intended).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The CS should withstand any constitutional overbreadth challenges. The doctrine of overbreadth is a tool used by courts to ensure that statutes do not impinge on First Amendment speech freedoms. The United States Supreme Court has held that the doctrine of overbreadth, "is predicated on the danger that an overly broad statute, if left in place, may cause persons whose expression is constitutionally protected to refrain from exercising their rights for fear of criminal sanctions." *Massachusetts v. Oakes*, 491 U.S. 576, 581 (1989).

In order to determine whether a statute, which proscribes conduct protected by the First Amendment, is overbroad, the court looks at the nature of the forum regulated by the statute, i.e., a traditional public forum or a nonpublic forum. Public streets, sidewalks, and parks have been deemed traditional public fora, and the State may only regulate the time, place, and manner of speech in the public fora, if the regulation:

- is content neutral, i.e., it makes no distinction between prohibited and permitted speech;
- is narrowly tailored to serve a significant governmental interest; and
- leaves open ample alternative channels of communication of the information.

Frisby v. Schultz, 103 S.Ct. 948 (1983).

For example in *News and Sun Sentinel Company v. Cox*, 702 F.Supp. 891 (S.D. Fla. 1998), the court applied these principles when considering the constitutionality of s. 337.406, F.S. (1987), which provided that it was a second degree misdemeanor for a person to make any commercial use of the right-of-way of any state-maintained road. "Road" as used in the section statutorily included the roadbed, sidewalks, rest areas and alleys, and "commercial use" by its common meaning included all aspects of buying and selling.

In this case, newspaper vendors, who sold newspapers from street medians, were found to have violated the section. The vendors appealed and the court held that, even though the section was content neutral and left open ample alternative channels of communication, the section was unconstitutionally overbroad because it was not narrowly tailored to serve the significant governmental interest of traffic safety and the control of pedestrian conduct in the streets while motor vehicles are present.

According to the court, in order to avoid overbreadth problems, the section could have more narrowly tailored its ban on all commercial activity by anyone at any place on a state-maintained road by: (1) indicating the section applied only during certain hours, days, or nights when traffic may be greater; (2) specifying that the section applied only to minors based on the rationale that adults are more safety conscious; and/or (3) limiting the proscribed conduct to roadbeds where the danger actually exists. Furthermore, the court noted that the statute did not prohibit free distributions, but instead only sales, and stated that, "there is no basis under the statute as written to allow certain activity on state-maintained roads when no money exchanges hands, yet condemn the same conduct for reasons of safety and traffic control when it takes on a commercial aspect."

Like the section in *News and Sun Sentinel Company*, the subsection, dealing with minors, created by the CS is content neutral and leaves open ample alternative channels of communication. Distinguishably, however, it appears that the subsection is sufficiently narrowly tailored to the state's significant interest in protecting minors from traffic dangers in that the subsection applies only: (1) to minors; (2) to the portion of the road designed for vehicular travel; and (3) where there is some risk to the safety of the minor. Moreover, the subsection applies not only to solicitations, but also to collections from and distributions to motor vehicle occupants, and thus, cannot be construed as permitting minors to distribute free items.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who direct minors to violate s. 316.2045, F.S., may be fined up to $250 for each day that a violation occurs.

C. Government Sector Impact:

This CS would have no prison bed impact because it does not provide for felony penalties. Moreover, there should be no fiscal impact. Enforcement of the CS's provisions should be achievable with current law enforcement and court resources.

VI. Technical Deficiencies:

The amount of the separate civil penalty that may be imposed for each day any person directs a minor to stand or approach a motor vehicle on any public street to solicit, collect from or distribute to the occupant of the vehicle is unclear.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local & Military Affairs:
Provides that a first time violator of the prohibition against a person directing a minor to approach a motor vehicle to solicit contributions, among other activities, shall receive a warning instead of being cited for a noncriminal traffic infraction. Removes language regarding multiple days of violation being subject to a separate civil penalty.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.