

by imprisonment for not more than 6 months or by a fine of not less than \$50 nor more than \$1,000, or by both a fine and imprisonment. In addition, if the person's reckless driving causes or results in the death of another, the person may serve 120 community hours as provided in s. 316.027, F.S. If the court has reasonable cause to believe that the use of alcohol or chemical substances contributed to a violation of this section, the court shall direct the person to complete a DUI program substance abuse education course and evaluation as provided in s. 316.193, F.S.

Chapter 318, F.S., establishes penalties for violations of chapter 316, F.S. With certain exceptions, a \$60 civil fine is imposed for all moving violations. Section 318.21, F.S., specifies the civil penalties received pursuant to chapter 318, F.S., are to be distributed as follows:

- One dollar from each civil penalty to the Department of Children and Family Services for deposit into the Child Welfare Training Trust Fund. This fund is to be used for the purpose of “funding a comprehensive system of child welfare training”.
- One dollar to the Department of Juvenile Justice for deposit into the Juvenile Justice Training Trust Fund.

The remainder is distributed as follows:

- 5.6 percent to the General Revenue Fund of the state.
- 7.2 percent to the Emergency Medical Services Trust Fund. This trust fund is administered by the Department of Health and the money must be used to improve and expand “prehospital emergency medical services in the state as provided in s. 401.113, F.S.
- 5.1 percent to the Additional Court Cost Clearing Trust Fund for criminal justice purposes.
- 8.2 percent to the Brain and Spinal Cord Injury Rehabilitation Trust Fund. The Department of Health administers this trust fund in order to provide the cost of care “for brain or spinal cord injuries as a payor of last resort to residents of this state”.
- 2 percent to the endowment fund of the Florida Endowment Foundation for Vocational Rehabilitation (s. 413.615). This fund is administered by the Division of Vocational Rehabilitation within the Department of Labor in order to “encourage public and private support to enhance vocational rehabilitation and employment of citizens who are disabled”.
- 5/10 percent to the clerk of the court for administrative costs.
- 56.4 percent to the county or municipality in which the violation took place.
- 15 percent to the County Article V Trust Fund.

III. Effect of Proposed Changes:

The bill amends s. 316.655, F.S., to provide that any operator of a motor vehicle operating a motor vehicle in violation of chapter 316, F.S., when the operator is engaged in a secondary activity which results in driver inattention, will be subject to penalty enhancement of double the amount of the fine established under s. 318.18, F.S.

The bill creates s. 318.211, F.S. which provides for the distribution of money collected for violations described in s. 316.655(3), F.S. The bill provides for the following distribution:

- 45 percent of the enhanced penalty amount shall be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund for the purposes set forth in s. 381.79, F.S.
- 25 percent of the enhanced penalty amount shall be paid to the Department of Children and Family Services for deposit into the Child Welfare Training Trust fund pursuant to s. 402.40, F.S., in memory of Helen Marie Witty.
- 10 percent of the enhanced penalty amount shall be deposited into the County Article V Trust Fund of the county in which the penalty was collected.
- 10 percent of the enhanced penalty amount shall be deposited in the endowment fund of the Florida Endowment Foundation for Vocational Rehabilitation established pursuant to s. 413.615, F.S.
- 10 percent of the enhanced penalty amount shall be deposited in the Criminal Justice Standards and Training Trust Fund created pursuant to s. 943.25(2), F.S.

The bill appears to require that the standard fine for the traffic violation be distributed as provided in s. 318.21, F.S. The enhanced part of the fine that is imposed as a result of “driver inattention” would then be distributed as provided in newly created s. 318.211, F.S.

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 bill may be subject to legal challenge based on the fact that neither a definition for “secondary activity” nor a standard for determining “driver distraction” is provided. The Florida Supreme Court has held that a statute is unconstitutionally vague when it “fails to give adequate notice of what conduct is prohibited...it invites arbitrary and discriminatory enforcement.” *Whyce v. Florida* 619 So.2d 231, 236 (Fla. 1993). In addition, the U.S. Supreme Court has held that if a statute fails to provide fair warning of what constitutes unlawful conduct it is vague and, as a result, “impermissible delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis” leading to arbitrary and discriminatory application. *Grayned v. City of Rockford* 408 U.S. 104, 108-109 (1972).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons operating a motor vehicle in violation of chapter 316, F.S., when the operator is engaged in a secondary activity which results in driver inattention, will be subject to a penalty enhancement of double the amount of the fine established under s. 318.18, F.S.

C. Government Sector Impact:

This bill may increase civil fine revenues as a result of drivers being cited with driver inattention. According to the Department of Highway Safety and Motor Vehicles, the amount of this increase is unknown.

The Department reports that the bill would require approximately 230 hours of contracted programming at an estimated cost of \$31,050 to modify the Driver License Software System.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its fiscal analysis of the bill, the Department of Highway Safety and Motor Vehicles noted:

Increasing traffic fines for violations involving secondary inattentiveness creates an environment where law enforcement officers will be required to monitor all activities occurring in vehicles. This will undoubtedly result in questions about the driver’s right to privacy in vehicles. Increasing traffic fines in the past has not always resulted in increased enforcement by

officers. If enacted, this bill would create confusion in enforcement activities as well as possibly increasing the number of violators appearing in infraction hearings in various courts throughout Florida. There are a number of professions, which require operators to perform secondary activities while operating motor vehicles, such as refuse collection and delivery of merchandise.

According to the Department's 1999 Annual Uniform Traffic Citation Statistics, Florida law enforcement officers issued 12,364 citations for reckless driving during 1999. Law enforcement officers issued 200,629 citations for careless driving during this same time period.

VIII. Amendments:

#1 by Transportation:

Revises the distribution of proceeds from the enhanced fine authorized in the bill. Provides that the Transportation Disadvantaged Trust Fund is to receive 10 percent of the moneys.

#2 by Transportation:

Defines aggressive careless driving as committing two or more of the following acts simultaneously or in succession: exceeding the speed limit in excess of 15 mph; unsafe or improper lane change; following another vehicle too closely; improper passing; and violating a traffic control device. The amendment requires the Department of Highway Safety and Motor Vehicles (DHSMV) to revise the uniform traffic citation to include a box to be checked by a law enforcement officer when the officer believes a traffic violation or traffic accident was caused by aggressive driving. The bill further requires the DHSMV to submit a report to the President of the Senate and the Speaker of the House by February 1, 2002, which sets forth the number of incidents of aggressive driving in Florida during the preceding 6-month period. (WITH TITLE AMENDMENT)