

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 137 Offenses Committed While Operating a Motorcycle

SPONSOR(S): Economic Expansion & Infrastructure Council & Lopez-Cantera

TIED BILLS: **IDEN./SIM. BILLS:** 802

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>9 Y, 1 N</u>	<u>Brown</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Brown</u>	<u>Tinker</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS for HB 137 provides additional penalties for certain offenses committed by motor vehicle operators. These penalties include increases in fines and license suspension for motor vehicle operators who exceed the speed limit by more than 50 miles per hour, or who operate a motorcycle improperly. The bill expands the number of restrictions on the proper operation of a motorcycle.

The bill takes effect October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill increases law enforcement authority to restrict drivers' licenses under certain conditions.

Promote Personal Responsibility – The bill increases criminal and non-criminal penalties for motor vehicle operators committing certain unlawful or injurious behaviors.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Motorcycles

An individual wishing to operate a motorcycle¹ in Florida is required to obtain a specific endorsement on his or her driver's license.² Offenses committed by motorcycle operators are generally treated in the same manner as offenses committed by operators of other motor vehicles, however, section 316.2085, F.S., provides specific restriction on the operation of a motorcycle. Specifically, the section prohibits passengers on a motorcycle not designed for more than one person,³ requires the operator to sit with one leg on each side of the vehicle,⁴ prohibits the operator from holding any package or object so large as to restrict the operator's ability to keep both hands on the handlebars,⁵ and prohibits persons under 16 from operating a motorcycle with greater than 150 cubic centimeters, or renting any motorcycle or moped.⁶ Violations of this section are non-criminal traffic infractions punishable as provided in Ch. 318, F.S.

Current Offenses – Excessive Speed

Pursuant to sections 316.183, 316.187, and 316.189, F.S., exceeding the speed limit is a non-criminal traffic infraction punishable as provided by Chapter 318, F.S.⁷ Among the penalties provided by Ch. 318, F.S., is a requirement that driving in excess of 30 miles per hour over the posted speed limit

¹ A motorcycle is specifically defined by section 322.01(25), F.S. as "a motor vehicle powered by a motor with a displacement of more than 50 cubic centimeters, having a seat or saddle for the use of the rider, and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or moped."

² Section 322.57(1)(g), F.S. This section also clarifies that if the applicant passes the required tests but has no other driver's license, the applicant is granted a license for motorcycle operation only.

³ Section 316.2085(1), F.S.

⁴ Section 316.2085(2), F.S.

⁵ Section 316.2085(3), F.S.

⁶ Section 316.2085(4), F.S.

⁷ Certain prohibited acts that may involve excessive speed are deemed criminal offenses, *e.g.* "racing," as defined in s. 316.191, F.S., and "reckless driving," as defined in s. 316.192, F.S.

triggers a mandatory hearing before a designated official.⁸ Fines for speeding are determined by s. 318.18, F.S., as follows:

For speed exceeding the limit by:	Fine:
1 – 5 mph	Warning
6 – 9 mph	\$25
10 – 14 mph	\$100
15 – 19 mph	\$125
20 – 29 mph	\$150
30 mph and above	\$250

Additional court costs (which vary by county) and other fees are also assessed against the offender.

Current Offenses – Racing

Racing is a first-degree misdemeanor created by section 316.191, F.S. It is defined as, “the use of one or more motor vehicles in an attempt to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.” The offense also includes knowingly being a passenger in a race, participating in, coordinating, collecting money, or stopping traffic in order to facilitate a race.⁹

As a first degree misdemeanor, racing is punishable by a fine of \$500 to \$1,000.¹⁰ In addition, the Department of Highway Safety and Motor Vehicles is required to suspend the offender’s license for one year upon conviction.¹¹ A subsequent conviction within 5 years suspends the offender’s license for 2 years.¹²

An officer may immediately arrest and take into custody a person engaged in racing.¹³ The court may subsequently enter an impoundment or immobilization on the vehicle, and the clerk of court must then send notice to the registered owner (if other than the offender), and any person claiming a lien against the vehicle. If the vehicle is owned by someone other than the offender, the agency must release the vehicle to that person if that person can show that he or she was not aware of the vehicle’s use in racing.¹⁴

⁸ Section 318.19(5), F.S. This mandatory hearing eliminates an offender’s option to simply plead guilty by signing the summons and paying a fine by mail. (See generally subsections 318.14(2), (4), and (9), F.S., which are specifically denied to an offender exceeding the speed limit by more than 30 mph.)

⁹ Section 316.191(2)(a)1. – 4., F.S.

¹⁰ *Id.*

¹¹ Section 316.191(2)(a), F.S.

¹² Section 316.191(2)(b), F.S.

¹³ Section 316.191(3), F.S.

¹⁴ The specific release criteria are contained in the DUI statute, section 316.193(6)(e) – (h), F.S.

If the vehicle is owned by the offender, the vehicle may be held for 10 days. If the offense is a second offense, occurring within 5 years of a prior conviction for racing, the vehicle may be seized and forfeited pursuant to the Florida Contraband Forfeiture Act.¹⁵

License Revocation

Section 322.27, F.S., provides the Department of Highway Safety and Motor Vehicles with authority to suspend or revoke licenses for various reasons. These include, but are not limited to, offenses involving death, bodily injury, or significant property damage,¹⁶ incompetency,¹⁷ license fraud or misrepresentation,¹⁸ and passing a school bus unlawfully more than once in five years.¹⁹ The Department may also revoke a license for those offenses that specifically mandate license forfeiture upon conviction. As mentioned above, the crime of racing requires mandatory revocation for one year on first offense, two years if a subsequent offense occurs within 5 years.²⁰

Section 322.27, F.S. also creates a 'point system' for common offenses and provides for suspension of a license upon reaching 12 points.²¹ Reckless driving is currently a '4 point' offense,²² as is exceeding the speed limit by more than 15 miles per hour.²³

Crash Data

Data collected by the Department of Highway Safety and Motor Vehicles indicates that there were 5,075 motorcycle crashes in 2000.²⁴ This number increased to 8,990 in 2006.²⁵ In 2000, there were approximately 195,300 motorcycles registered in the State. By 2006 the number of motorcycles nearly tripled, rising to 579,275.²⁶ Data collected by the Department does not make it possible to calculate the number of 'vehicle miles travelled' specifically for motorcycles, therefore the increase in motorcycle crashes cannot be compared with the change in miles travelled by motorcycles for the 2000 – 2006 time period.

Proposed Changes

CS for HB 137 amends s. 316.2085, F.S., regarding proper operation of a motorcycle. The section is expanded to require motorcycle operators to keep both wheels on the ground at all times (however, it is not a violation if the vehicle loses contact with the ground briefly as a result of road conditions). The amended section also requires the license tag to be permanently affixed to the vehicle and to be incapable of being flipped up.

The bill creates a new s. 316.1926, F.S. This section provides additional penalties for two types of violations. Specifically, violating s. 316.2085, F.S., described above, or speeding in excess of 50 miles per hours, is punishable by certain special provisions in Chapter 318. The bill amends s. 318.14, F.S.,

¹⁵ Section 316.191(4), F.S.

¹⁶ Section 322.27(1)(b), F.S.

¹⁷ Section 322.27(1)(c), F.S.

¹⁸ Section 322.27(1)(d), F.S.

¹⁹ Section 322.27(1)(f), F.S.

²⁰ Section 316.191(2), F.S.

²¹ Section 322.27(3), F.S.

²² Section 322.27(3)(d)1., F.S.

²³ Section 322.27(3)(d)5.b., F.S.

²⁴ 2006 Florida Traffic Crash Statistics, available online at <http://www.hsmv.state.fl.us/hsmvdocs/CS2006.pdf>

²⁵ *Id.*

²⁶ This data was inferred from the Department's Revenue Report for the fiscal year 2000, available online at <http://www.hsmv.state.fl.us/html/revrpts.html>. The report documents the number of "transactions" per vehicle type, and indicates 195,306 transactions for motorcycles. This is not an exact count of the number of motorcycles, as a vehicle that is bought new, then sold (and thus re-registered), in the same year would be counted twice in the annual "transaction" field.

to provide tiered penalties for these violations. A first violation of the motorcycle or speeding prohibitions in the bill results in a non-criminal violation punishable by a \$1,000 fine. A second violation is a non-criminal violation resulting in a \$2,500 fine and the suspension of the operator's license for one year. (In the case of speeding violations, the fines are in lieu of the usual fine provided by. s. 318.18, F.S.)

A third violation of this new offense is deemed a third-degree felony, punishable as provided in ss. 775.082 – 775.084, F.S., as well as loss of the operator's license for a period of 10 years. Under these sections, a third degree felony is punishable by up to five years in prison²⁷ and a fine of up to \$5,000.²⁸

C. SECTION DIRECTORY:

- Section 1** Creates a new section 316.1926, F.S., providing additional penalties for exceeding the speed limit by more than 50 miles per hour or improper operation of a motorcycle.
- Section 2** Amends s. 316.2085, F.S., creating additional restrictions on the proper operation of a motorcycle.
- Section 3** Amends s. 318.14, F.S., providing penalties for violations of certain speeding or motorcycle offenses
- Section 4** Provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Highway Safety and Motor Vehicles reports that the bill would require some programming changes to the Department's Florida Driver License Information System, however the expense for such changes could be "absorbed within existing resources."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²⁷ Section 775.082(3)(d), F.S.

²⁸ section 775.083(1)(c), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A/

B. RULE-MAKING AUTHORITY:

N/A.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Committee Amendment

On March 13, 2008, the Committee on Infrastructure favorably reported the bill with a strike-all amendment, and an amendment to the strike-all amendment. The amendment creates a new s. 316.1926, F.S., which provides that violations of s. 316.2085(2) or (3), F.S., regarding motorcycle operation, or violations of the speeding laws in s. 316.183(2), 316.187, and 316.189, F.S., in excess of 50 miles per hour over the limit, are moving violations punishable as provided in Chapter 318.

The amendment subsequently amends 318.14, F.S., to provide “tiered” penalties for violations of the newly created s. 316.1926, F.S. A first violation is subject to a fine of \$1,000; a second violation is subject to a fine of \$2,500 and a one-year suspension of the offender’s driver’s license; and a third violation is a third degree felony resulting in forfeiture of the vehicle and license suspension for ten years.

The amendment clarifies that both wheels must be on the ground at all times when operating a motorcycle, but it is not a violation if a wheel loses contact with the ground briefly as a result of the road’s surface or other circumstance beyond the control of the operator.

The amendment to the strike-all amendment removes the phrase “horizontally to the ground” in the statute requiring license tags to be permanently affixed to the motorcycle or moped.

Council Amendments

On April 11, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably as a Council Substitute, with two amendments to the travelling strike-all amendment. The first amendment reinserted the phrase “horizontally to the ground.” The second amendment removed the forfeiture provisions contained in the tiered penalty scheme.

This analysis is drawn to the Council Substitute.