

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875

Traffic Offenses

SPONSOR(S): Evers

TIED BILLS:

IDEN./SIM. BILLS: SB 1918

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Brown	Miller
2)	Public Safety & Domestic Security Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Currently, any person who commits a noncriminal moving violation that causes the death or serious bodily injury of another must appear in front of the court to dispose of the infraction. For a civil traffic infraction, the court may order a person to attend driver improvement school and to complete up to 120 hours of community service.

HB 875 criminalizes moving violations that result in serious bodily injury or death of any 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.

The Department of Corrections has not yet reviewed the bill's impact on the Florida prison population.

The bill has an effective date of October 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Moving Violations, Generally**

Under Chapters 316 and 318, 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.<sup>1</sup> This section provides a baseline fine of \$60 for all moving violations,<sup>2</sup> 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.<sup>3</sup>

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 that causes serious bodily injury or death.<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> See generally Ch. 316, F.S.

<sup>2</sup> Sec. 318.18(3)(a), F.S.

<sup>3</sup> Sec. 318.18(3)(b), F.S.

<sup>4</sup> Sec. 318.19(1)-(2), F.S.

<sup>5</sup> The permissive 120 hours of community service are referenced twice in Chapter 318:

**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."

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.<sup>6</sup> 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.<sup>7</sup> The court may suspend the driver's license for any criminal violation.<sup>8</sup>

### *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.<sup>9</sup> If the criminal offense is murder, manslaughter, or a second DUI manslaughter conviction, the DHSMV shall revoke the offender's license.<sup>10</sup> License suspension for a manslaughter conviction may not be lifted unless the offender has completed a driver improvement or substance abuse program.<sup>11</sup>

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

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.<sup>14</sup>

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.<sup>15</sup>

### **Proposed Changes**

HB 875 creates a new s. 318.195, F.S., providing for enhanced criminal penalties for certain moving violations.

The bill provides that 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.

The bill further provides that 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.

HB 875 expressly provides that the new s. 318.195, F.S., does not prohibit a person from being charged with, convicted of, or punished for any other violation of law.

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<sup>6</sup> Sec. 322.221(2)(a), F.S.

<sup>7</sup> Sec. 322.221(3), F.S.

<sup>8</sup> Sec. 316.655(2), F.S.

<sup>9</sup> Sec. 322.0261(2), F.S.

<sup>10</sup> Sec. 322.26, F.S.(1)(a)-(b), F.S.

<sup>11</sup> Sec. 322.291(1)(a)3., F.S.

<sup>12</sup> Sec. 316.192(3)(c)2., F.S.

<sup>13</sup> Sec. 316.192(5), F.S.

<sup>14</sup> Sec. 316.193(3)(c)2., F.S.

<sup>15</sup> Sec. 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 (322.36, F.S.).

**B. SECTION DIRECTORY:**

- Section 1** Creates s. 318.195, F.S., providing criminal penalties for a person who commits a moving violation that causes serious bodily injury to, or causes or contributes to the death of, a person operating or riding in a motor vehicle or operating or riding on a motorcycle; requiring that the person pay a specified fine, serve a minimum period of incarceration, and attend a driver improvement course; requiring the court to revoke the person's driver's license for a specified period; and providing that the enhanced penalties section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law.
- Section 2** Provides an effective date of October 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
See Fiscal Comments, below.
2. Expenditures:  
See Fiscal Comments, below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
See Fiscal Comments, below.
2. Expenditures:  
See Fiscal Comments, below.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have a direct impact on the private sector; however mandatory 30- and 90-day jail sentences for additional traffic violations may impact employers and employees in an indeterminate manner.

**D. FISCAL COMMENTS:**

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

The bill may increase the prison population of Florida, incurring additional costs. The Department of Corrections has not yet reviewed the bill for its impact on the prison population. In addition, local governments may see an increase in jail populations as a result of the bill's mandatory sentences.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill criminalizes moving violations that result in an injury or death to persons on other motor vehicles, but does not criminalize identical behavior resulting in the injury or death of pedestrians, bicyclists, or persons on other means of conveyance. This lack of uniformity could result in challenges to the validity of the bill.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**