



Highway & Waterway Safety Subcommittee

MEETING PACKET

Monday, February 1, 2016
4:00 PM – 6:00 PM
116 (Knott Building)

Steve Crisafulli
Speaker

W. Gregory Steube
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Highway & Waterway Safety Subcommittee

Start Date and Time: Monday, February 01, 2016 04:00 pm
End Date and Time: Monday, February 01, 2016 06:00 pm
Location: 116 Knott Building
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 411 Farm Vehicles by Beshears
PCS for HB 487 -- Persons Who Are Deaf
HB 555 Driving Under the Influence by Plakon, Cortes, B.
HB 703 Vessels by Workman
HB 787 Suspended Driver Licenses by McGhee
HB 1087 Protection of Motor Vehicle Dealers' Consumer Data by Rooney
HB 1105 Identification Cards by Stark, Murphy
PCS for HB 1373 -- School Bus Safety

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, January 29, 2016.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 29, 2016.

NOTICE FINALIZED on 01/28/2016 4:21PM by Lawhon.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 411 Farm Vehicles
SPONSOR(S): Beshears
TIED BILLS: IDEN./SIM. BILLS: SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee		Johnson	Smith
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Current state and federal law contain requirements relating to interstate and intrastate operation of commercial motor vehicles (CMVs). Both federal and state law also contain a number of exemptions specifically applied to agricultural-related CMV operation. The federal Moving Ahead for Progress in the 21st Century Act (MAP-21) exempts "covered farm vehicles" (CFVs) and their drivers from specified federal regulations. These exemptions are not currently authorized in state law.

The bill exempts "covered farm vehicles," under specified conditions, from federal regulations relating to controlled substances and alcohol use and testing; commercial driver licenses; physical qualifications and examinations; hours of service of drivers; and vehicle inspection, repair, and maintenance. These exemptions were authorized in MAP-21 in June 2012, but are not included in state law.

There may be a negative fiscal impact to state funds, due to the potential loss of CDL fees. However, the state may realize an offset from fees for vehicle registration.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Current state and federal law, the former of which is heavily but not entirely predicated on the latter, contain requirements relating to interstate and intrastate operation of commercial motor vehicles (CMVs).¹ Both federal and state law also contain a number of exemptions specifically applied to agricultural-related CMV operation. The federal MAP-21 Act exempts “covered farm vehicles” (CFVs) and their drivers from specified federal regulations. These exemptions are not currently authorized in state law.

State Application of Federal Law and Relevant State Exemptions

Generally, CMVs operated in interstate or intrastate commerce are subjected to various provisions of federal law in state statute, specifically:

- Part 382, Controlled Substance and Alcohol Use and Testing.
- Part 383, Commercial Driver’s License Standards.
- Part 385, Safety Fitness Procedures.
- Part 390, General Federal Motor Carrier Safety Regulations.
- Part 391, Physical Qualifications and Examinations.^{2, 3}
- Part 392, Driving of Commercial Motor Vehicles.
- Part 393, Parts and Accessories Necessary for Safe Operation.
- Part 395, Hours of Service of Drivers.⁴
- Part 396, Inspection, Repair, and Maintenance.
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.⁵

Driver Licensing and Agricultural-Related Exemptions

Every person driving a motor vehicle⁶ must hold a valid driver license.⁷ However, a person is exempt from this requirement while driving or operating any road machine, farm tractor,⁸ or implement of husbandry⁹ temporarily operated or moved on a highway.¹⁰

¹See s. 316.302, F.S.

² Except that a person operating a CMV solely in intrastate commerce not transporting hazard materials that require placarding need not comply with 49 C.F.R., Subpart G, s. 391.11(b)(1) , which generally requires a CMV driver to be at least 21 years of age. Section 316.302(2)(a), F.S.

³ Section 316.302 (3), F.S., authorizes a person who has not attained 18 years of age to operate a CMV with a gross vehicle weight of less than 26,001 pounds while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to storage or market.

⁴ Except that a person operating a CMV solely in intrastate commerce not transporting hazard materials that require placarding need not comply with 49 C.F.R. s. 395.3(a) and (b), relating to maximum driving times for property carrying vehicles. Section 316.302(2)(a), F.S. Such operators also need not comply with the duty status record-keeping (“log book”) requirements of 49 C.F.R. s. 395.8. Section 316.302(2)(d), F.S.

⁵ *Supra* note 2. While s. 316.302(1)(a), F.S., does not expressly apply 49 C.F.R. Part 383, relating to CDLs, to interstate CMV drivers, federal CDL requirements are enforced in state law through Chapter 322, F.S.

⁶ Defined for purposes of Chapter 322, F.S, as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003. Section 322.01(27), F.S.

⁷ Section 322.03, F.S.

⁸ Defined for purposes of Ch. 322, F.S., as a motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another OR designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry. Section 322.01(20), F.S.

⁹The term is not defined in Ch. 322, F.S., but is defined in s. 316.003(16), F.S., as any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry *and in either case not subject to registration if used upon the highways.*

Every person driving a CMV in this state is required to hold a valid commercial driver license (CDL),¹¹ with certain exceptions. Farmers transporting agricultural products, farm supplies, or farm machinery to or from their farms and within 150 miles of their farms are exempt from the CDL requirement if the transporting vehicle is not used in the operations of a common or contract motor carrier.¹²

Hours of Service and Agricultural-Related Exemptions

In addition, with specified exceptions, *intrastate* CMV operators not transporting hazardous materials that require placarding¹³ may not drive:

- More than 12 hours following 10 consecutive hours off duty, or for any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty;¹⁴ or
- After having been on duty more than 70 hours in any period of seven consecutive days, or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week, with 34 consecutive hours off duty constituting the end of any such period of seven or eight consecutive days.¹⁵

The latter weekly limit does not apply to a person operating solely within the state while transporting during harvest periods any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting, from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products.¹⁶

Further, a person who operates a CMV solely within the state is generally exempt from compliance with parts 382, 385, and 390 through 397 of Title 49 while transporting agricultural products from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.¹⁷ However, such person must comply with parts 382, 392,¹⁸ and 393,¹⁹ and with ss. 396.3(a)(1)²⁰ and 396.9.²¹

Vehicle Registration and Agricultural-Related Exemptions

Chapter 320, F.S., generally requires every owner or person in charge of a motor vehicle to register the vehicle, pay license taxes, and display a license plate. However, exempt from these requirements are:

- Motor vehicles operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and which is operated on the roads of this state only incidentally in going from the owner's or operator's headquarters to such farm, grove, or orchard and returning therefrom or in going from one farm, grove, or orchard to another.

¹⁰ Section 322.04(1)(b), F.S.

¹¹ Section 322.53, F.S.

¹² See also s. 322.53(3), F.S., which requires all drivers of for-hire CMVs to hold a valid CDL.

¹³ The Code of Federal Regulations lists and classifies those materials which the U.S.D.O.T. has designated as hazardous materials for purposes of transportation. Any person who offers a hazardous material for transportation, and each carrier by air, highway, rail, or water who transports a hazardous material, is required to comply with requirements for shipping papers, package marking, labeling, and *transport vehicle placarding* applicable to the shipment and transportation of those hazardous materials. See 49 C.F.R. part 172.

¹⁴ Section 316.302(2)(b), F.S.

¹⁵ Section 316.302(2)(c), F.S.

¹⁶ *Id.*

¹⁷ Section 316.302(2)(e), F.S.

¹⁸ Relating to matters such as driving CMVs at railroad crossings, emergency signals for stopped CMVs, fueling precautions, and prohibited practices.

¹⁹ Relating to parts and accessories necessary for safe operation.

²⁰ Relating to systematic inspection, repair, and maintenance requirements for motor carriers and intermodal equipment providers.

²¹ Containing additional requirements relating to inspection of motor vehicles and intermodal equipment in operation.

- Vehicles without motive power which are used principally for the purpose of transporting plows, harrows, fertilizer distributors, spray machines, and other farm or grove equipment and which uses the roads of this state only incidentally.²²

Maximum Width, Height, and Length Limitations/Implements of Husbandry and Farm Equipment, Agricultural Trailers, Forestry Equipment

Generally, the total outside width of any vehicle or the load thereon may not exceed 102 inches, exclusive of safety devices determine to be necessary for safe and efficient operation. A vehicle may generally not exceed a height of 13 feet, 6 inches, inclusive of the load carried. General vehicle length limitations vary depending on the type of vehicle; i.e., straight trucks, semitrailers, and tandem trailer trucks.²³

However, a person engaged in the production of such products, or a custom hauler, is authorized to transport peanuts, grains, soybeans, citrus, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving tractors, movers, and implements from one point of agricultural production to another, by means of the following vehicles, if such vehicles otherwise comply with the requirements of s. 316.515, F.S.:

- Straight trucks, agricultural tractors, citrus harvesting equipment, citrus fruit loaders, and cotton module movers, not exceeding 50 feet in length.
- Any combination of up to and including three implements of husbandry, including the towing power unit.
- Any single agricultural trailer with a load thereon.
- Any agricultural implements attached to a towing power unit.
- A self-propelled agricultural implement.
- An agricultural tractor.²⁴

In addition, a person engaged in the harvesting of forestry products is authorized to transport from one point of harvest to another point of harvest equipment not exceeding 136 inches in width if the equipment is:

- Not capable of exceeding 20 miles per hour.
- Not transported more than 10 miles in distance.
- Used exclusively for harvesting forestry products, not to exceed 10 miles.
- Operated during daylight hours only, and with specified safety requirements.²⁵

Further, the width and height limitations of s. 316.515, F.S., do not apply to farming or agricultural equipment, whether self-propelled, pulled, or hauled, when temporarily operated during daylight hours on a non-limited access facility, which limitations may be exceeded by such equipment without a special permit if the equipment is operated within a 50-mile radius of the real property owned, rented, managed, harvested, or leased by the equipment owner.²⁶

MAP-21 Exemptions

Federal MAP-21 Act defined a new category of vehicles, "covered farm vehicles," (CFVs) and authorized driver operation of such vehicles under certain circumstances. If the required provisions of the definition are met, and if the driver operates a CFV as specified, the CFV and the driver are exempt from federal regulations relating to controlled substances and alcohol use and testing; commercial

²² Section 320.51, F.S. This description of the exempt vehicles is virtually identical to the definition of "farm tractor" for purposes of driver licensing in Chapter 322, F.S.

²³ See s. 316.515, F.S.

²⁴ Section 316.515(5)(a), F.S.

²⁵ Section 316.515(5)(b), F.S.

²⁶ Section 316.515(5)(c), F.S.

driver licenses; physical qualifications and examinations; hours of service of drivers; and vehicle inspection, repair, and maintenance.²⁷ A “covered farm vehicle” is:

- A straight truck²⁸ or articulated vehicle²⁹ that is:
 - Registered in a state with a license plate or other designation issued by the *state of registration* that allows law enforcement officials to identify it as a farm vehicle.
 - Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch.
 - Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch.
 - Not used in for-hire motor carrier operations, except that a tenant’s use of a vehicle pursuant to a crop share farm lease agreement to transport the landlord’s share of crops under that agreement is not treated as “for-hire motor carrier operations.”

Drivers of vehicles meeting the above definition and having a gross vehicle weight or gross vehicle weight rating, *whichever is greater*, of:

- 26,001 pounds or less may operate anywhere in the United States.
- More than 26,001 pounds may operate anywhere in the state of registration or across state lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

Florida law does not currently authorize the new federal exemptions.

Proposed Changes

The bill creates s. 316.003(94), F.S., defining “covered farm vehicle” in a manner that is virtually identical to the federal definition and has the same result.

The bill amends s. 316.302(2)(e), F.S., removing the required compliance with 49 C.F.R. part 382, and with 49 C.F.R. ss. 396.3(a)(1) and 396.9 for operators of CMVs solely within the state who are otherwise exempt from the provisions of s. 316.302(1)(a), F.S., relating to interstate operation, when transporting agricultural, horticultural, or forestry products from farm or harvest place to the first place of processing or storage, or directly to market.

The bill also creates s. 316.302(2)(l), F.S., exempting from the previously identified federal regulations a CFV, as defined in s. 316.003, F.S., registered with a license plate or other designation *issued by another state*, and to exempt the CFV driver, if the vehicle has a gross vehicle weight of:

- 26,001 pounds or less.
- More than 26,001 pounds and is being operated within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

The bill, consistent with Federal Motor Carrier Safety Administration’s final rule on the matter,³⁰ does not allow the federal exemptions if the vehicle is transporting hazardous materials in amounts that require placarding.³¹

In some cases, vehicles used for agricultural-related purposes may qualify for more than one exemption. For example, a vehicle meeting the CFV requirements and qualifying for the MAP-21 federal exemptions might also qualify for the exemption for a person operating a CMV solely within the state from compliance with parts 382, 385, and 390 through 397 of Title 49, while transporting

²⁷ 49 C.F.R. Parts 382; 383; 391, subpart E; 395; and 396, respectively.

²⁸ Straight trucks include commonly recognized vehicles such as pick-up trucks, flat-bed trucks, box trucks, and the like. The truck’s power unit and cargo unit are located on the same vehicle frame. *See* also s. 316.003(70), F.S.

²⁹ Articulated vehicles, in contrast to straight trucks, include those having a power unit coupled to the cargo-carrying unit. *See* also s. 316.003(60) and (71), F.S.

³⁰ *See* the Federal Register, Vol. 78, No. 50, Thursday, March 14, 2013, at p. 16190.

³¹ *Supra* note 14.

agricultural products from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.³² On the other hand, a person qualifying for the latter exemption would not be able to qualify for the federal exemptions if, for example, that person is not an owner or operator of a farm or ranch, or an employee or family member of such owner or operator.

The bill amends s. 322.53(2), F.S., exempting the driver of a CFV, as defined in s. 316.003, F.S., from the requirement to hold a valid CDL.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

- Section 1 Amends s. 316.003, F.S., providing definitions.
- Section 2 Amends s. 316.302, F.S., relating to commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.
- Section 3 Amends s. 322.53, F.S., relating to license required; exceptions.
- Section 4 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not yet analyzed this bill. However, a negative fiscal impact resulting from the potential loss of CDL fees, offset by fees for registration, may be realized.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those qualifying for the CFV exemptions may experience a positive fiscal impact due to relief from compliance with the specified federal regulations, including but not limited to the \$75 fee for a CDL.³³ These savings will be offset by the cost of CFV registration. Farmers and ranchers may realize a positive fiscal impact should the new exemptions facilitate more efficient operations, thereby reducing costs.

D. FISCAL COMMENTS:

None

³² *Supra* note 18.

³³ <http://www.flhsmv.gov/fees/> (Last visited January 21, 2016).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

On line 30, there is a (1), which appears to be unnecessary.

Comments

- Not all vehicles used in agricultural-related operation will qualify as CFVs. Such vehicles other than CFVs must remain subject to the stricken federal provisions in section 2 of the bill in order for the state to stay in compliance with federal law.
- The bill requires a CFV license plate or other designation issued by another state, while the federal law calls for the same by the state of registration.
- The bill does not include language selecting the greater of the gross vehicle weight or the gross vehicle weight rating.

In addition, s. 316.302(2), F.S., specifically applies to intrastate CMV operation. CFVs are federally authorized to operate intrastate, and interstate with the specific distance restriction.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to farm vehicles; amending s. 316.003,
 3 F.S.; defining the term "covered farm vehicle" for
 4 purposes of the Florida Uniform Traffic Control Law;
 5 amending s. 316.302, F.S.; revising requirements for a
 6 person who operates a commercial motor vehicle solely
 7 in intrastate commerce while transporting agricultural
 8 products; providing exemptions for covered farm
 9 vehicles from specified federal regulations relating
 10 to controlled substances and alcohol use and testing,
 11 commercial driver licenses, physical qualifications
 12 and examinations, hours of service of drivers, and
 13 inspection, repair, and maintenance; providing for
 14 application of such exemptions to out-of-state farm
 15 vehicles under certain circumstances; providing
 16 applicability; amending s. 322.53, F.S.; exempting the
 17 driver of a covered farm vehicle from commercial
 18 driver license requirements; providing an effective
 19 date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsection (94) is added to section 316.003,
 24 Florida Statutes, to read:

25 316.003 Definitions.—The following words and phrases, when
 26 used in this chapter, shall have the meanings respectively

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27 ascribed to them in this section, except where the context
 28 otherwise requires:

29 (94) COVERED FARM VEHICLE.—

30 (1) A straight truck or articulated vehicle that is:

31 (a) Registered in a state with a license plate or other
 32 designation issued by that state that allows law enforcement
 33 officials to identify it as a farm vehicle.

34 (b) Operated by the owner or operator of a farm or ranch
 35 or by an employee or family member of an owner or operator of a
 36 farm or ranch.

37 (c) Used to transport agricultural commodities, livestock,
 38 machinery, or supplies to or from a farm or ranch.

39 (d) Not used in for-hire motor carrier operations;
 40 however, for-hire motor carrier operations do not include the
 41 operation of a vehicle meeting the requirements of paragraphs
 42 (a)-(c) by a tenant pursuant to a crop share farm lease
 43 agreement to transport the landlord's portion of the crops under
 44 that agreement.

45 Section 2. Paragraph (e) of subsection (2) of section
 46 316.302, Florida Statutes, is amended, and paragraph (1) is
 47 added to that subsection, to read:

48 316.302 Commercial motor vehicles; safety regulations;
 49 transporters and shippers of hazardous materials; enforcement.—

50 (2)

51 (e) A person who operates a commercial motor vehicle
 52 solely in intrastate commerce is exempt from subsection (1)

53 while transporting agricultural products, including
 54 horticultural or forestry products, from farm or harvest place
 55 to the first place of processing or storage, or from farm or
 56 harvest place directly to market. However, such person must
 57 comply with 49 C.F.R. parts ~~382,~~ 392, and 393, ~~and with 49~~
 58 ~~C.F.R. ss. 396.3(a)(1) and 396.9.~~ A vehicle or combination of
 59 vehicles operated pursuant to this paragraph having a gross
 60 vehicle weight of 26,001 pounds or more or having three or more
 61 axles on the power unit, regardless of weight, must display the
 62 name of the vehicle owner or motor carrier and the municipality
 63 or town where the vehicle is based on each side of the power
 64 unit in letters that contrast with the background and that are
 65 readable from a distance of 50 feet. A person who violates this
 66 vehicle identification requirement may be assessed a penalty as
 67 provided in s. 316.3025(3)(a).

68 (1)1. A covered farm vehicle, as defined in s. 316.003,
 69 and the operator of such vehicle are exempt from requirements
 70 relating to controlled substances and alcohol use and testing in
 71 49 C.F.R. part 382; commercial driver licenses in 49 C.F.R. part
 72 383; physical qualifications and examinations in 49 C.F.R. part
 73 391, subpart E; hours of service of drivers in 49 C.F.R. part
 74 395; and inspection, repair, and maintenance in 49 C.F.R. part
 75 396.

76 2. The exemptions under subparagraph 1. apply to a covered
 77 farm vehicle registered with a license plate or other
 78 designation issued by another state and to the operator of such

79 vehicle if:

80 a. The vehicle has a gross vehicle weight of 26,001 pounds
 81 or less; or

82 b. If the vehicle has a gross vehicle weight of more than
 83 26,001 pounds, the vehicle is being operated within 150 air
 84 miles of the farm or ranch with respect to which the vehicle is
 85 being operated.

86 3. The exemptions in this paragraph do not apply to a
 87 vehicle transporting hazardous materials in an amount that
 88 requires a placard.

89 Section 3. Paragraph (c) of subsection (2) of section
 90 322.53, Florida Statutes, is amended to read:

91 322.53 License required; exemptions.—

92 (2) The following persons are exempt from the requirement
 93 to obtain a commercial driver license:

94 (c)1. Farmers transporting agricultural products, farm
 95 supplies, or farm machinery to or from their farms and within
 96 150 miles of their farms, if the vehicle operated under this
 97 exemption is not used in the operations of a common or contract
 98 motor carrier.

99 2. The driver of a covered farm vehicle as defined in s.
 100 316.003.

101 Section 4. This act shall take effect upon becoming a law.



Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Highway & Waterway Safety
 2 Subcommittee
 3 Representative Beshears offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (94) is added to section 316.003,
 8 Florida Statutes, to read:

9 316.003 Definitions.—The following words and phrases, when
 10 used in this chapter, shall have the meanings respectively
 11 ascribed to them in this section, except where the context
 12 otherwise requires:

13 (94) COVERED FARM VEHICLE.—A straight truck, or an
 14 articulated vehicle, which is all of the following:

15 (a) Registered in a state with a license plate, or any
 16 other designation issued by that state, which allows law
 17 enforcement officers to identify it as a farm vehicle.



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18 (b) Operated by the owner or operator of a farm or ranch
19 or by an employee or a family member of an owner or operator of
20 a farm or ranch in accordance with s. 316.302(3).

21 (c) Used to transport agricultural commodities, livestock,
22 machinery, or supplies to or from a farm or ranch.

23 (d) Not used in for-hire motor carrier operations;
24 however, for-hire motor carrier operations do not include the
25 operation of a vehicle meeting the requirements of paragraphs
26 (a)-(c) by a tenant pursuant to a crop-share farm lease
27 agreement to transport the landlord's portion of the crops under
28 that agreement.

29 Section 2. Present subsections (3) through (12) of section
30 316.302, Florida Statutes, are renumbered as subsections (4)
31 through (13), respectively, a new subsection (3) is added to
32 that section, and paragraph (a) of present subsection (8) is
33 amended, to read:

34 316.302 Commercial motor vehicles; safety regulations;
35 transporters and shippers of hazardous materials; enforcement.-

36 (3) Notwithstanding any contrary provision in subsections
37 (1) and (2), a covered farm vehicle, as defined in s. 316.003,
38 and the operator of such vehicle are exempt from the
39 requirements relating to controlled substances and alcohol use
40 and testing in 49 C.F.R. part 382; commercial driver licenses in
41 49 C.F.R. part 383; physical qualifications and examinations in
42 49 C.F.R. part 391, subpart E; hours of service of drivers in 49



Amendment No. 1.

43 C.F.R. part 395; and inspection, repair, and maintenance in 49
44 C.F.R. part 396, when operating:

45 (a) Anywhere in this state if the covered farm vehicle has
46 a gross vehicle weight or gross vehicle weight rating, whichever
47 is greater, of 26,001 pounds or less.

48 (b) Anywhere in the state of registration, or across state
49 lines within 150 air miles of the farm or ranch with respect to
50 which the vehicle is being operated, if the covered farm vehicle
51 has a gross vehicle weight or gross vehicle weight rating,
52 whichever is greater, of more than 26,001 pounds.

53
54 The provisions in this subsection do not apply to a vehicle
55 transporting hazardous materials in amounts that require
56 placarding pursuant to 49 C.F.R. part 172.

57 (9)~~(8)~~ For the purpose of enforcing this section, any law
58 enforcement officer of the Department of Highway Safety and
59 Motor Vehicles or duly appointed agent who holds a current
60 safety inspector certification from the Commercial Vehicle
61 Safety Alliance may require the driver of any commercial vehicle
62 operated on the highways of this state to stop and submit to an
63 inspection of the vehicle or the driver's records. If the
64 vehicle or driver is found to be operating in an unsafe
65 condition, or if any required part or equipment is not present
66 or is not in proper repair or adjustment, and the continued
67 operation would present an unduly hazardous operating condition,
68 the officer may require the vehicle or the driver to be removed



Amendment No. 1.

69 from service pursuant to the North American Standard Out-of-
70 Service Criteria, until corrected. However, if continuous
71 operation would not present an unduly hazardous operating
72 condition, the officer may give written notice requiring
73 correction of the condition within 14 days.

74 (a) Any member of the Florida Highway Patrol or any law
75 enforcement officer employed by a sheriff's office or municipal
76 police department authorized to enforce the traffic laws of this
77 state pursuant to s. 316.640 who has reason to believe that a
78 vehicle or driver is operating in an unsafe condition may, as
79 provided in subsection (11) ~~(10)~~, enforce the provisions of this
80 section.

81 Section 3. Paragraph (c) of subsection (2) of section
82 322.53, Florida Statutes, is amended to read:

83 322.53 License required; exemptions.-

84 (2) The following persons are exempt from the requirement
85 to obtain a commercial driver license:

86 (c)1. Farmers transporting agricultural products, farm
87 supplies, or farm machinery to or from their farms and within
88 150 miles of their farms, if the vehicle operated under this
89 exemption is not used in the operations of a common or contract
90 motor carrier.

91 2. Drivers of covered farm vehicles, as defined in s.
92 316.003, if the vehicles are operated in accordance with s.
93 316.302(3).

94 Section 4. Paragraph (e) of subsection (3) of section



Amendment No. 1.

95 316.3025, Florida Statutes, is amended to read:

96 316.3025 Penalties.—

97 (3)

98 (e) A civil penalty not to exceed \$5,000 in the aggregate
99 may be assessed for violations found in the conduct of
100 compliance reviews pursuant to s. 316.302(6) ~~s. 316.302(5)~~. A
101 civil penalty not to exceed \$25,000 in the aggregate may be
102 assessed for violations found in a followup compliance review
103 conducted within a 24-month period. A civil penalty not to
104 exceed \$25,000 in the aggregate may be assessed and the motor
105 carrier may be enjoined pursuant to s. 316.3026 if violations
106 are found after a second followup compliance review within 12
107 months after the first followup compliance review. Motor
108 carriers found to be operating without insurance required by s.
109 627.7415 may be enjoined as provided in s. 316.3026.

110 Section 5. Subsection (1) of section 316.3026, Florida
111 Statutes, is amended to read:

112 316.3026 Unlawful operation of motor carriers.—

113 (1) The Office of Commercial Vehicle Enforcement may issue
114 out-of-service orders to motor carriers, as defined in s.
115 320.01, who, after proper notice, have failed to pay any penalty
116 or fine assessed by the department, or its agent, against any
117 owner or motor carrier for violations of state law, refused to
118 submit to a compliance review and provide records pursuant to s.
119 316.302(6) ~~s. 316.302(5)~~ or s. 316.70, or violated safety
120 regulations pursuant to s. 316.302 or insurance requirements in



Amendment No. 1.

121 s. 627.7415. Such out-of-service orders have the effect of
122 prohibiting the operations of any motor vehicles owned, leased,
123 or otherwise operated by the motor carrier upon the roadways of
124 this state, until the violations have been corrected or
125 penalties have been paid. Out-of-service orders must be approved
126 by the director of the Division of the Florida Highway Patrol or
127 his or her designee. An administrative hearing pursuant to s.
128 120.569 shall be afforded to motor carriers subject to such
129 orders.

130 Section 6. This act shall take effect July 1, 2016.

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T I T L E A M E N D M E N T

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Remove everything before the enacting clause and insert:
An act relating to farm vehicles; amending s. 316.003, F.S.;
defining the term "covered farm vehicle" for purposes of the
Florida Uniform Traffic Control Law; amending s. 316.302, F.S.;
providing exemptions for covered farm vehicles and the operators
of such vehicles from specified federal regulations relating to
controlled substances and alcohol use and testing, commercial
driver licenses, physical qualifications and examinations, hours
of service of drivers, and inspection, repair, and maintenance
when operating under certain conditions, notwithstanding
specified statutory provisions; providing applicability;
conforming a cross-reference; amending s. 322.53, F.S.;

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Amendment No. 1.

147 exempting the driver of a covered farm vehicle from commercial
148 driver license requirements; amending ss. 316.3025 and 316.3026,
149 F.S.; conforming cross-references; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 487 Persons Who Are Deaf
SPONSOR(S): Highway & Waterway Safety Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee		Whittaker	Smith

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) will be required to issue an identification card or driver license exhibiting the international symbol for the Deaf and Hard of Hearing upon payment of \$1 and sufficient proof from the applicant that they are deaf or hard of hearing as determined by DHSMV.

An individual who surrenders and replaces his or her identification card or driver license before its expiration date with the sole purpose to have the international symbol for the Deaf and Hard of Hearing exhibited on the identification card or driver license is required to pay a \$2 fee for the card or license that will be deposited into the Highway Safety Operating Trust Fund. If the applicant is not conducting any other transaction affecting the identification card or driver license, the \$25 replacement fee is waived.

The changes made by the bill, shall apply upon implementation of new designs for the driver license and identification card by DHSMV.

The bill appears to have an insignificant negative fiscal impact on state funds. See fiscal comments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Deaf or Hard of Hearing

In Florida, drivers applying for a license who are deaf or cannot hear conversation spoken in a normal tone of voice are restricted to driving with an outside rearview mirror which should be mounted on the left side of the vehicle, or wearing of a hearing aid.¹

There is a restriction currently on a driver license and not the identification card to indicate the requirement to wear a hearing aid. The restriction appears as "K – Hearing Aid" on the back of the driver license. There were 2,001 driver licenses with this restriction as of December 31, 2015.²

One in eight people in the United States (13 percent, or 30 million) aged 12 years or older has hearing loss in both ears, based on standard hearing examinations.³

Proposed Changes

The bill amends ss. 322.051 and 322.14, F.S., requiring the Department of Highway Safety and Motor Vehicles (DHSMV) to issue an identification card or driver license exhibiting the international symbol for the Deaf and Hard of Hearing upon payment of \$1 and sufficient proof from the applicant that they are deaf or hard of hearing as determined by DHSMV.

The international symbol for the Deaf and Hard of Hearing is depicted below:



An individual who surrenders and replaces his or her identification card or driver license before its expiration date with the sole purpose to have the international symbol for the Deaf and Hard of Hearing exhibited on the identification card or driver license is required to pay a \$2 fee for the card or license that will be deposited into the Highway Safety Operating Trust Fund. If the applicant is not conducting any other transaction affecting the identification card or driver license, the \$25 replacement fee is waived.

The changes made by the bill, shall apply upon implementation of new designs for the driver license and identification card by DHSMV.

B. SECTION DIRECTORY:

¹ Florida Administrative Rule 15A-1.003(2)

² Email from the Department of Highway Safety and Motor Vehicles (January 27, 2016) on file with the Highway and Waterway Safety Subcommittee

³ National Institute on Deafness and Other Communication Disorders (NIDCD), *Statistics about Hearing, Ear Infections, and Deafness*, <http://www.nidcd.nih.gov/health/statistics/Pages/quick.aspx> (last visited January 26, 2016)

- Section 1** Amends s. 322.051, F.S., authorizing the international symbol for the Deaf and Hard of Hearing to be exhibited on the identification card of a person who is deaf.
- Section 2** Amends s. 322.14, authorizing the international symbol for the Deaf and Hard of Hearing to be exhibited on the driver license of a person who is deaf or hard of hearing.
- Section 3** Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The additional \$1 fee may have a positive fiscal impact to DHSMV, although it is unknown how many individuals may apply for the designation upon original issuance or renewal of an identification card or driver license.

There may be a negative but indeterminate fiscal impact to the General Revenue Fund and the Highway Safety Operating Trust Fund or tax collector due to an individual being able to replace his or her identification card or driver license without payment of the \$25 replacement fee, if the sole intention is to add the designation.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals can have the international symbol for the Deaf and Hard of Hearing exhibited on his or her identification card or driver license upon payment of an additional \$1 and by providing sufficient proof that they are deaf or hard of hearing when being issued an original identification card or driver license.

An individual who surrenders and replaces his or her identification card or driver license before its expiration date with the sole purpose to have the international symbol for the Deaf and Hard of Hearing exhibited on the identification card or driver license is required to pay a \$2 fee for the card or license and provide sufficient proof that they are deaf or hard of hearing. If the applicant is not conducting any other transaction affecting the identification card or driver license, the \$25 replacement fee will be waived.

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to persons who are deaf; amending ss.
 3 322.051 and 322.14, F.S.; authorizing the
 4 international symbol for the deaf and hard of hearing
 5 to be exhibited on the driver license or
 6 identification card of a person who is deaf or hard of
 7 hearing; providing applicability; providing an
 8 effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (c) is added to subsection (8) of
 13 section 322.051, Florida Statutes, to read:

14 322.051 Identification cards.—
 15 (8)

16 (c) The international symbol for the deaf and hard of
 17 hearing shall be exhibited on the identification card of a
 18 person who is deaf or hard of hearing upon the payment of an
 19 additional \$1 fee for the identification card and the
 20 presentation of sufficient proof that the person is deaf or hard
 21 of hearing as determined by the department. Until a person's
 22 identification card is next renewed, the person may have the
 23 symbol added to his or her identification card upon surrender of
 24 his or her current identification card, payment of a \$2 fee to
 25 be deposited into the Highway Safety Operating Trust Fund, and
 26 presentation of sufficient proof that the person is deaf or hard
 27 of hearing as determined by the department. If the applicant is

28 not conducting any other transaction affecting the
 29 identification card, a replacement identification card may be
 30 issued with the symbol without payment of the fee required in s.
 31 322.21(1)(f)3. For purposes of this paragraph, the international
 32 symbol for the deaf and hard of hearing is substantially as
 33 follows:



34
 35 Section 2. Paragraph (c) of subsection (1) of section
 36 322.14, Florida Statutes, is redesignated as paragraph (d), and
 37 a new paragraph (c) is added to that subsection to read:

38 322.14 Licenses issued to drivers.—

39 (1)

40 (c) The international symbol for the deaf and hard of
 41 hearing provided in s. 322.051(8)(c) shall be exhibited on the
 42 driver license of a person who is deaf or hard of hearing upon
 43 the payment of an additional \$1 fee for the license and the
 44 presentation of sufficient proof that the person is deaf or hard
 45 of hearing as determined by the department. Until a person's
 46 license is next renewed, the person may have the symbol added to
 47 his or her license upon the surrender of his or her current
 48 license, payment of a \$2 fee to be deposited into the Highway
 49 Safety Operating Trust Fund, and presentation of sufficient

50 proof that the person is deaf or hard of hearing as determined
 51 by the department. If the applicant is not conducting any other
 52 transaction affecting the driver license, a replacement license
 53 may be issued with the symbol without payment of the fee
 54 required in s. 322.21(1)(e).

55 Section 3. The amendments made by this act to ss. 322.051
 56 and 322.14, Florida Statutes, shall apply upon implementation of
 57 new designs for the driver license and identification card by
 58 the Department of Highway Safety and Motor Vehicles.

59 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 555 Driving Under the Influence
SPONSOR(S): Plakon and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee		Pitts <i>JP</i>	Smith <i>MA</i>
2) Criminal Justice Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill increases the penalties on a person who refuses to submit to an alcohol test, incidental to lawful detention, while operating a motor vehicle. The penalties include a fine, probation, and points assessed against an individual's license. The increased penalties for first refusal closer resemble the penalties for a first-time DUI conviction under Florida law.

The bill also increases penalties on a person who refuses to submit to an alcohol test, incidental to lawful detention, and whose driving privileges were suspended for a prior refusal to submit to testing. In addition to the potential fines and jail time under current law, the person must have an ignition interlock device placed on his or her vehicle for a period of at least 1 year. Furthermore, a court may not withhold adjudication of guilt, or the imposition of a sentence or penalty, on a person who has had a prior license suspension for refusing testing.

The bill does not appear to have any fiscal impact on state funds.

The effective date of the bill is October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Refusal to Submit to Alcohol Testing

Any person who accepts the privilege of operating a motor vehicle within this state is deemed to have given his or her consent to submit to an approved test of the alcohol content of his or her blood, breath, or urine. The test must be incidental to a lawful arrest, and administered at the request of a law enforcement officer who has a reasonable belief such person was driving a motor vehicle while under the influence of alcoholic beverages.

The Department of Motor Vehicles will administratively suspend a person's driving privileges for 1 year after the first refusal of alcohol testing. The second refusal to consent to a test will result in an administrative suspension as well as criminal charges. A second refusal occurs when a person's driving privileges were suspended for a prior refusal, and he or she refuses to submit to an alcohol test for a second time. A person's motor vehicle license is suspended by the Department of Motor Vehicles for 18 months if found liable for a second refusal. A person who refuses to submit to an alcohol test for a second time faces criminal liability for a first degree misdemeanor, punishable by up to 1 year in jail and \$1,000 fine.

Florida's DUI Laws

Florida's current DUI laws provide for both administrative and criminal sanctions. A first conviction results in a fine of not less than \$500 or more than \$1,000. If the individual's blood or breath-alcohol level is 0.15 or higher, or if he or she has a minor in the vehicle, the fine is not less than \$1,000 or more than \$2,000. There is a community service requirement of 50 hours. A first-time conviction can also lead to imprisonment for a period of no more than 6 months and up to 1 year of probation.

Breath Test Refusal Rates

In 2014, the U.S. Department of Transportation National Highway Traffic Safety Administration released a study regarding breath test refusal rates. The study found Florida had a breath test refusal rate of 82 percent in 2011, as compared to a rate of 40 percent in 2005. The National Highway Traffic Safety Administration also found the average refusal rate for the country as a whole ranged from 19 to 25 percent. State authorities reported to the authors of the study that refusal rates will remain high if the sanctions for failing a breath-alcohol concentration test are more severe than those for refusing to submit to the test. State authorities recommended the license suspension periods for first and repeat refusals be at least as severe as those penalties for driving under the influence.

Ignition Interlock Device

The Florida Legislature's Office of Program Policy Analysis & Government Accountability conducted a study researching ignition interlock devices and DUI recidivism rates. An ignition interlock device prevents the start of a vehicle with a breath sample above .025, collects data, and records and stores visual evidence of device use. Research shows that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions. The study found the six month recidivism rate for first-time DUI offenders that were not required to install an ignition interlock device was 1.74 percent. When compared, the recidivism rate for first-time offenders required to use the ignition interlock device was less with a rate of 0.34 percent. However, the study also found that only 49 percent of Florida DUI

offenders installed an ignition interlock device, as required, after completing their period of license revocation.

Florida Refusal to Consent Case Law

In *Williams v. State*, an opinion issued by the Fifth District Court of Appeal in June 2015, the defendant was convicted of a first degree misdemeanor under Florida's refusal to submit statute for a second refusal to submit to a breath test. In a challenge to the constitutionality of the statute, the defendant argued that the statute violated the Fourth Amendment, which prohibits unreasonable searches and seizures. Specifically, he argued it violated the unconstitutional conditions doctrine as set forth in the 2013 opinion of the United States Supreme Court in *Missouri v. McNeely*. Thus, the issue presented in *Williams* was whether it is constitutional to punish a person criminally for refusing to submit to a breath-alcohol test when the officer conducting the test does not have a warrant.

The unconstitutional conditions doctrine prohibits the government from denying a benefit to a person because he or she exercises a constitutional right. However, the Constitution does not prohibit every government imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights. Generally, warrantless searches are presumptively unreasonable unless they fall within a recognized exception to the warrant requirement. The warrant requirement ensures that inferences to support the search are drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the task of solving the crime.

In *McNeely*, the Court was asked to determine whether the natural metabolization of alcohol in the bloodstream presents an inherent necessity that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in drunk-driving cases. It concluded that an inherent necessity for nonconsensual blood testing did not automatically exist in all drunk-driving cases. The Court held that the review of a warrantless, nonconsensual blood test must always be examined on a case-by-case basis and founded on the totality of the circumstances.

The Fifth DCA, in *Williams*, found that the state's implied consent statute was not an unconstitutional condition or a violation of a person's Fourth Amendment rights. Instead, the *Williams* court followed the majority of courts in holding that statutory implied consent does not constitute an automatic exception to the warrant requirement. The defendant did not necessarily consent to a breath test when he got behind the wheel of his car that night. However, the *Williams* court found the statute, as applied, is constitutional under a general reasonableness test.

The *Williams* court found that many other courts have dealt with a criminal refusal to submit statute have not struck it down as unconstitutional. The court balanced the state's legitimate interest against the degree to which the breath test would have intruded upon the defendant's privacy. The state, according to the court, has legitimate interest in decreasing and prosecuting drunk driving. The state also has a compelling interest in protecting lives, securing the safety of public roads, and deterring drivers from operating vehicles while intoxicated. Additionally, the court found a breath test is minimally intrusive, compared to the blood draw in *McNeely*, which heavily favors finding it reasonable. The *Williams* court held the refusal to submit statute as constitutional because the state's compelling interest outweighed the degree of intrusiveness on defendant's privacy.

The Florida Supreme Court has accepted review the Fifth DCA opinion in *Williams v. State*. According to the deadlines set by the Court, the parties should be in the process of writing and filing their briefs.

Proposed Changes

The bill amends section 316.1939, F.S., to require stricter penalties for all first time and subsequent alcohol test refusals. The heightened penalties reduce the incentive for a person to refuse submission to testing for the first time in order to receive an advantage of a lesser penalty. Under the proposed law, a person who refuses to submit to testing for the first time faces the following additional penalties:

- A fine of at least \$500 but not more than \$1,000;
- Probation for 6 months; and
- 4 points assessed against his or her driver license.

The bill also increases penalties on a person whose driving privilege was suspended for a prior refusal and he or she subsequently refuses to comply with requirements for testing. In addition to the potential for fines and jail time under current law the bill requires the court to order the placement of an ignition interlock device upon all vehicles that are owned and routinely operated by an individual convicted of a second refusal. The ignition interlock device must remain on the vehicle for at least 1 year at the convicted individual's sole expense. Furthermore, the court may not suspend, defer, or withhold adjudication of guilt or the imposition of a sentence or penalty for an individual who fails to comply with the informed consent statute for a second time.

B. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles estimated that it costs \$420,000 to administer the ignition interlock device program in Fiscal Year 2013-2014. These costs include salaries and benefits for department staff who work directly with ignition interlock device vendors, the DUI programs, and indirect costs. The department receives a \$12 interlock fee for each installation. This fee is collected by the vendors and in Fiscal Year 2013-2014, the department received \$187,596 in interlock fees. The figures will rise due to the fact the bill requires mandatory placement of an ignition interlock device for a second refusal to submit to an alcohol test.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to driving under the influence;
 3 amending s. 316.1939, F.S.; providing for suspension
 4 of a driver license for a first-time refusal of a
 5 chemical or physical test of a person's breath, blood,
 6 or urine; providing additional sanctions for such
 7 refusals; providing that such refusal by a person who
 8 has previously had a license suspension for such a
 9 refusal is a misdemeanor; providing for mandatory
 10 ignition interlock devices for persons convicted of
 11 such offenses; providing that a court may not suspend,
 12 defer, or withhold adjudication of guilt or the
 13 imposition of a sentence or penalty for specified
 14 offenses; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 316.1939, Florida Statutes, is amended
 19 to read:

20 316.1939 Refusal to submit to testing; penalties.—

21 (1) Any person who has refused to submit to a chemical or
 22 physical test of his or her breath, blood, or urine, as
 23 described in s. 316.1932, ~~and whose driving privilege was~~
 24 ~~previously suspended for a prior refusal to submit to a lawful~~
 25 ~~test of his or her breath, urine, or blood,~~ and:

26 (a) Who the arresting law enforcement officer had probable

27 | cause to believe was driving or in actual physical control of a
 28 | motor vehicle in this state while under the influence of
 29 | alcoholic beverages, chemical substances, or controlled
 30 | substances;

31 | (b) Who was placed under lawful arrest for a violation of
 32 | s. 316.193 unless such test was requested pursuant to s.
 33 | 316.1932(1)(c);

34 | (c) Who was informed that, if he or she refused to submit
 35 | to such test, his or her privilege to operate a motor vehicle
 36 | would be suspended for a period of 1 year or, in the case of a
 37 | second or subsequent refusal, for a period of 18 months;

38 | (d) Who was informed that a refusal to submit to a lawful
 39 | test of his or her breath, urine, or blood, ~~if his or her~~
 40 | ~~driving privilege has been previously suspended for a prior~~
 41 | ~~refusal to submit to a lawful test of his or her breath, urine,~~
 42 | ~~or blood,~~ is a misdemeanor; and

43 | (e) Who, after having been so informed, refused to submit
 44 | to any such test when requested to do so by a law enforcement
 45 | officer or correctional officer shall be punished:

- 46 | 1. By a fine of at least \$500 but not more than \$1,000;
- 47 | 2. By 6 months' probation; and
- 48 | 3. By having 4 points assessed against his or her driver
 49 | license.

50 | (2)(a) A person who has refused to submit to a chemical or
 51 | physical test of his or her breath, blood, or urine, as
 52 | described in s. 316.1932, and whose driving privilege was

53 | previously suspended for a prior refusal to submit to a lawful
 54 | test of his or her breath, urine, or blood, commits a
 55 | misdemeanor of the first degree and is subject to punishment as
 56 | provided in s. 775.082 or s. 775.083.

57 | (b) The court shall impose mandatory placement, for a
 58 | period of at least 1 year at the convicted person's sole
 59 | expense, of an ignition interlock device approved by the
 60 | department in accordance with s. 316.1938 upon all vehicles that
 61 | are individually or jointly leased or owned and routinely
 62 | operated by the convicted person, when the convicted person
 63 | qualifies for a permanent or restricted license.

64 | (c) A court may not suspend, defer, or withhold
 65 | adjudication of guilt or the imposition of a sentence or penalty
 66 | for an offense under paragraph (a).

67 | ~~(3)+2~~ The disposition of any administrative proceeding
 68 | that relates to the suspension of a person's driving privilege
 69 | does not affect a criminal action under this section.

70 | ~~(4)+3~~ The disposition of a criminal action under this
 71 | section does not affect any administrative proceeding that
 72 | relates to the suspension of a person's driving privilege. The
 73 | department's records showing that a person's license has been
 74 | previously suspended for a prior refusal to submit to a lawful
 75 | test of his or her breath, urine, or blood shall be admissible
 76 | and shall create a rebuttable presumption of such suspension.

77 | Section 2. This act shall take effect October 1, 2016.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Highway & Waterway Safety
 2 Subcommittee
 3 Representative Plakon offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (2) of section 316.193, Florida
 8 Statutes, is amended to read:

9 316.193 Driving under the influence; penalties.—

10 (2)(a) Except as provided in paragraph (b), subsection
 11 (3), or subsection (4), any person who is convicted of a
 12 violation of subsection (1) shall be punished:

13 1. By a fine of:

14 a. Not less than \$500 or more than \$1,000 for a first
 15 conviction.

16 b. Not less than \$1,000 or more than \$2,000 for a second
 17 conviction; and



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- 18 2. By imprisonment for:
19 a. Not more than 6 months for a first conviction.
20 b. Not more than 9 months for a second conviction.
- 21 3. By mandatory placement, at the convicted person's sole
22 expense, of an ignition interlock device approved by the
23 department in accordance with s. 316.1938:
- 24 a. For a first conviction, for a period of at least 6
25 months; or
- 26 b. For a second conviction, ~~by mandatory placement for a~~
27 ~~period of at least 1 year, at the convicted person's sole~~
28 ~~expense, of an ignition interlock device approved by the~~
29 ~~department in accordance with s. 316.1938~~
- 30
- 31 upon all vehicles that are individually or jointly leased or
32 owned and routinely operated by the convicted person, when the
33 convicted person qualifies for a permanent or restricted
34 license. ~~The installation of such device may not occur before~~
35 ~~July 1, 2003.~~
- 36 (b)1. Any person who is convicted of a third violation of
37 this section for an offense that occurs within 10 years after a
38 prior conviction for a violation of this section commits a
39 felony of the third degree, punishable as provided in s.
40 775.082, s. 775.083, or s. 775.084. In addition, the court shall
41 order the mandatory placement for a period of not less than 2
42 years, at the convicted person's sole expense, of an ignition
43 interlock device approved by the department in accordance with



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44 s. 316.1938 upon all vehicles that are individually or jointly
45 leased or owned and routinely operated by the convicted person,
46 when the convicted person qualifies for a permanent or
47 restricted license. ~~The installation of such device may not~~
48 ~~occur before July 1, 2003.~~

49 2. Any person who is convicted of a third violation of
50 this section for an offense that occurs more than 10 years after
51 the date of a prior conviction for a violation of this section
52 shall be punished by a fine of not less than \$2,000 or more than
53 \$5,000 and by imprisonment for not more than 12 months. In
54 addition, the court shall order the mandatory placement for a
55 period of at least 2 years, at the convicted person's sole
56 expense, of an ignition interlock device approved by the
57 department in accordance with s. 316.1938 upon all vehicles that
58 are individually or jointly leased or owned and routinely
59 operated by the convicted person, when the convicted person
60 qualifies for a permanent or restricted license. ~~The~~
61 ~~installation of such device may not occur before July 1, 2003.~~

62 3. Any person who is convicted of a fourth or subsequent
63 violation of this section, regardless of when any prior
64 conviction for a violation of this section occurred, commits a
65 felony of the third degree, punishable as provided in s.
66 775.082, s. 775.083, or s. 775.084. However, the fine imposed
67 for such fourth or subsequent violation may be not less than
68 \$2,000.



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69 ~~(c) In addition to the penalties in paragraph (a), the~~
70 ~~court may order placement, at the convicted person's sole~~
71 ~~expense, of an ignition interlock device approved by the~~
72 ~~department in accordance with s. 316.1938 for at least 6~~
73 ~~continuous months upon all vehicles that are individually or~~
74 ~~jointly leased or owned and routinely operated by the convicted~~
75 ~~person if, at the time of the offense, the person had a blood-~~
76 ~~alcohol level or breath-alcohol level of .08 or higher.~~

77 Section 2. This act shall take effect October 1, 2016.

78
79 -----

80 **T I T L E A M E N D M E N T**

81 Remove everything before the enacting clause and insert:

82 A bill to be entitled

83 An act relating to driving under the influence;
84 amending s. 316.193, F.S.; requiring mandatory
85 placement, at the convicted person's sole expense, of
86 an ignition interlock device for a specified period
87 for a first conviction for driving under the
88 influence; deleting obsolete provisions; conforming
89 provisions to changes made by the act; providing an
90 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 703 Vessels
SPONSOR(S): Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee		Whittaker	Smith 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, life, limb, or damage the property of, or injure any person. Any person who commits a reckless violation is guilty of a misdemeanor of the first degree, punishable by a fine of \$1,000 or imprisonment up to one year.

The bill revises the offense of reckless operation of a vessel to pertain to the willful or wanton disregard for the safety of *other* persons or *other* property at a speed or in a manner as to endanger, or likely endanger, life or limb, or damage the property of, or injure *another* person *outside the vessel*.

Any person operating a vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of any person. The failure to operate a vessel in this manner constitutes careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property. The careless operation of a vessel is a noncriminal violation.

The bill revises the offense of careless operation of a vessel to pertain to operating a vessel so as not to endanger the life, limb, or property of *another* person *outside the vessel*.

The bill deletes a provision authorizing law enforcement to cause any inspections to be made of vessels in accordance with Chapter 327 and Chapter 328 but does make an allowance for law enforcement to make any investigation necessary to secure information required to carry out and enforce the provisions of Chapter 327 and Chapter 328 *if probable cause exists*.

The bill does not appear to have a fiscal impact on state funds.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Reckless or Careless Operation of a Vessel

Section 327.33(1), F.S., provides that it is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, life, limb, or damage the property of, or injure any person. Any person who violates a provision of this subsection commits a misdemeanor of the first degree, punishable by a fine of \$1,000 or imprisonment up to one year.¹

Section 327.33(2), F.S., provides that any person operating a vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of any person. The failure to operate a vessel in this manner constitutes careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property. Any person who violates the provisions of this subsection commits a noncriminal violation.²

Enforcement

Section 327.70(1), F.S., provides that this chapter and Chapter 328 shall be enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of Chapters 327 – 328, Laws of Florida, or cause any inspections to be made of all vessels in accordance with Chapters 327 and 328, Laws of Florida.

The FWC or any other law enforcement agency may make any investigation necessary to secure information required to carry out and enforce the provisions of Chapter 327 and 328, Laws of Florida.³

Proposed Changes

Revising Reckless or Careless Operation of a Vessel (Section 1)

The bill amends s. 327.33(1), F.S., revising the offense of reckless operation of a vessel to pertain to the willful or wanton disregard for the safety of *other* persons or *other* property at a speed or in a manner as to endanger, or likely endanger, life or limb, or damage the property of, or injure *another* person *outside the vessel*.

The bill amends s. 327.33(2), F.S., revising the offense of careless operation of a vessel to pertain to operating a vessel so as not to endanger the life, limb, or property of *another* person *outside the vessel*.

Vessel Inspections, Probable Cause (Section 2)

The bill amends s. 327.70(1) and (4), F.S., deleting a provision authorizing law enforcement to cause any inspections to be made of vessels in accordance with Chapter 327 and Chapter 328 but does make an allowance for law enforcement to make any investigation necessary to secure information

¹ s. 327.33(1), F.S.

² s. 327.33(2), F.S.

³ s. 327.70(4), F.S.

required to carry out and enforce the provisions of Chapter 327 and Chapter 328 *if probable cause exists*.

B. SECTION DIRECTORY:

- Section 1** Amends s. 327.33, F.S., revising provisions relating to reckless or careless operation of a vessel.
- Section 2** Amends s. 327.70, F.S., deleting provisions authorizing law officers to inspect vessels; revising provisions relating to the authority of law enforcement officers to conduct certain investigations.
- Section 3** Provides an effective date of July 1, 2016.

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:
None

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to vessels; amending s. 327.33, F.S.;
 revising provisions relating to reckless or careless
 operation of a vessel; amending s. 327.70, F.S.;
 deleting provisions authorizing law enforcement
 officers to inspect vessels; revising provisions
 relating to the authority of law enforcement officers
 to conduct certain investigations; providing an
 effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) of section 327.33,
 Florida Statutes, are amended to read:

327.33 Reckless or careless operation of vessel.—

(1) It is unlawful to operate a vessel in a reckless
 manner. A person ~~is guilty of reckless operation of a vessel~~ who
 operates any vessel, or manipulates any water skis, aquaplane,
 or similar device, in willful or wanton disregard for the safety
 of other persons or other property at a speed or in a manner as
 to endanger, or likely to endanger, life or limb, or damage the
 property of, or injure another ~~any~~ person outside the vessel is
guilty of reckless operation of a vessel. Reckless operation of
 a vessel includes, but is not limited to, a violation of s.
 327.331(6). A ~~Any~~ person who violates ~~a provision of~~ this
 subsection commits a misdemeanor of the first degree, punishable

27 as provided in s. 775.082 or s. 775.083.

28 (2) A ~~Any person who operates any~~ ~~operating~~ a vessel upon
 29 the waters of this state shall operate the vessel in a
 30 reasonable and prudent manner, having regard for other
 31 waterborne traffic, posted speed and wake restrictions, and all
 32 other attendant circumstances so as not to endanger the life,
 33 limb, or property of another ~~any~~ person outside the vessel. The
 34 failure to operate a vessel in a manner described in this
 35 subsection constitutes careless operation. However, vessel wake
 36 and shoreline wash resulting from the reasonable and prudent
 37 operation of a vessel ~~shall~~, absent negligence, does not
 38 constitute damage or endangerment to property. A ~~Any~~ person who
 39 violates ~~the provisions of~~ this subsection commits a noncriminal
 40 violation as defined in s. 775.08.

41 Section 2. Subsections (1) and (4) of section 327.70,
 42 Florida Statutes, are amended to read:

43 327.70 Enforcement of this chapter and chapter 328.—

44 (1) This chapter and chapter 328 shall be enforced by the
 45 Division of Law Enforcement of the Fish and Wildlife
 46 Conservation Commission and its officers, the sheriffs of the
 47 various counties and their deputies, municipal police officers,
 48 and any other law enforcement officer as defined in s. 943.10,
 49 all of whom may order the removal of vessels deemed to be an
 50 interference or a hazard to public safety, and enforce the
 51 provisions of this chapter and chapter 328, ~~or cause any~~
 52 ~~inspections to be made of all vessels in accordance with this~~

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53 ~~chapter and chapter 328.~~

54 (4) The Fish and Wildlife Conservation Commission or any
55 other law enforcement agency may make any investigation
56 necessary to secure information required to carry out and
57 enforce the provisions of this chapter and chapter 328 if
58 probable cause exists.

59 Section 3. This act shall take effect July 1, 2016.



Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Highway & Waterway Safety
2 Subcommittee

3 Representative Workman offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (1) and (2) of section 327.33,
8 Florida Statutes, are amended to read:

9 327.33 Reckless or careless operation of vessel.—

10 (1) It is unlawful to operate a vessel in a reckless
11 manner. A person is guilty of reckless operation of a vessel who
12 operates any vessel, or manipulates any water skis, aquaplane,
13 or similar device, in willful or wanton disregard for the safety
14 of persons or property at a speed or in a manner as to endanger,
15 or likely to endanger, life or limb, or damage the property of,
16 or injure any person. Reckless operation of a vessel includes,
17 but is not limited to, a violation of s. 327.331(6). Any person



Amendment No. 1.

18 who violates a provision of this subsection commits a
19 misdemeanor of the first degree, punishable as provided in s.
20 775.082 or s. 775.083.

21 (2) A Any person who operates any ~~operating~~ a vessel upon
22 the waters of this state shall operate the vessel in a
23 reasonable and prudent manner, having regard for other
24 waterborne traffic, posted speed and wake restrictions, and all
25 other attendant circumstances so as not to endanger the life,
26 limb, or property of another any person outside the vessel or
27 endanger the life, limb, or property of any person due to vessel
28 overloading or excessive speed. The failure to operate a vessel
29 in a manner described in this subsection constitutes careless
30 operation. However, vessel wake and shoreline wash resulting
31 from the reasonable and prudent operation of a vessel ~~shall~~,
32 absent negligence, does not constitute damage or endangerment to
33 property. A Any person who violates the provisions of this
34 subsection commits a noncriminal violation as defined in s.
35 775.08.

36
37 Section 2. Subsections (2), (3), and (4) of section
38 327.70, Florida Statutes, are amended to read:

39 327.70 Enforcement of this chapter and chapter 328.-

40 (2)(a) The operator of a vessel, upon demonstrated
41 compliance with safety equipment carriage and use requirements
42 as provided in this chapter during a safety inspection initiated
43 by a law enforcement officer, shall be issued a safety



Amendment No. 1.

44 inspection decal signifying such compliance. The safety
45 inspection decal, if displayed, must be located within 6 inches
46 of the inspected vessel's properly displayed vessel registration
47 decal and shall signify that the vessel is deemed to have met
48 safety equipment carriage and use requirements as provided in
49 this chapter at the time and location of inspection. For non-
50 motorized vessels which are not required to be registered, the
51 safety inspection decal, if displayed, must be located on the
52 forward half of the port side of the vessel above the waterline.

53 (b) Law enforcement officers may not stop a vessel solely
54 for the purpose of inspecting safety equipment carriage
55 requirements when the vessel properly displays a valid safety
56 inspection decal, created or approved by the Division of Law
57 Enforcement of the Fish and Wildlife Conservation Commission,
58 except when there is reasonable suspicion that a violation of a
59 safety equipment carriage or use requirement has occurred or is
60 occurring. Nothing herein is intended to restrict vessel stops
61 for any other unlawful purpose.

62 (3)(a) Noncriminal violations of the following statutes
63 may be enforced by a uniform boating citation mailed to the
64 registered owner of an unattended vessel anchored, aground, or
65 moored on the waters of this state:

- 66 1. Section 327.33(3)(b), relating to navigation rules.
67 2. Section 327.44, relating to interference with
68 navigation.



Amendment No. 1.

69 3. Section 327.50(2), relating to required lights and
70 shapes.

71 4. Section 327.53, relating to marine sanitation.

72 5. Section 328.48(5), relating to display of decal.

73 6. Section 328.52(2), relating to display of number.

74 (b) Citations issued to livery vessels under this
75 subsection shall be the responsibility of the lessee of the
76 vessel if the livery has included a warning of this
77 responsibility as a part of the rental agreement and has
78 provided to the agency issuing the citation the name, address,
79 and date of birth of the lessee when requested by that agency.
80 The livery is not responsible for the payment of citations if
81 the livery provides the required warning and lessee information.

82 ~~(4)~~ Such officers shall have the power and duty to
83 issue such orders and to make such investigations, reports, and
84 arrests in connection with any violation of the provisions of
85 this chapter and chapter 328 as are necessary to effectuate the
86 intent and purpose of this chapter and chapter 328.

87 ~~(5)~~ The Fish and Wildlife Conservation Commission or
88 any other law enforcement agency may make any investigation
89 necessary to secure information required to carry out and
90 enforce the provisions of this chapter and chapter 328.

91 Section 3. This act shall take effect July 1, 2016.
92
93

94 **T I T L E A M E N D M E N T**



Amendment No. 1.

95 Remove everything before the enacting clause and insert:
96 An act relating to vessels; amending s. 327.33, F.S.,; revising
97 provisions relating to careless operation of a vessel; amending
98 s. 327.70, F.S.; authorizing the issuance and use of a safety
99 inspection decal; providing exception; providing an effective
100 date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 787 Suspended Driver Licenses
SPONSOR(S): McGhee
TIED BILLS: IDEN./SIM. **BILLS:** SB 1584

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee		Pitts <i>PK</i>	Smith <i>MS</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 787 establishes a Driver License Reinstatement Days pilot program in certain counties throughout the state. The program requires the DHSMV, state attorney, public defender's office, circuit and county courts, clerk of court, and interested organizations within each county participate in the pilot program. The purpose of the program is to reinstate suspended driver licenses. The clerk of courts is authorized to waive certain fees to facilitate driver license reinstatements for eligible persons. The bill requires, by October 1, 2017, the DHSMV to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The bill may have a positive fiscal impact on state funds. (See fiscal comments.)

The act takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Driver License Suspensions and Revocations

Individuals who violate Florida laws may be sanctioned through the suspension or revocation of their driving privilege. Driver license revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege. To reinstate a suspended or revoked license, individuals must fulfill legal and financial obligations. Drivers will need to pay reinstatement fees in addition to any outstanding obligations to legally drive.

Entities at both state and local level play a role in driver license suspensions. At the state level, the DHSMV is responsible for issuing driver licenses and administering driver license examinations, as well as suspending and revoking driver licenses, which includes providing notice required by law and communicating license reinstatement requirements. The role of other state agencies is to notify the department when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue (DOR) notifies DHSMV to start the process of driver license suspension.

At the local level, clerks of court are responsible for collecting financial obligations imposed by the court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Clerks of court use driver license sanctions as a means to improve collections of fines and fees. Section 322.245, F.S., requires clerks of court to notify the DHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses. Failure to pay can result in a license suspension. In addition, clerks of court provide information to the DHSMV about any court actions that require the suspension or revocation of driver licenses. On behalf of DHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

It is estimated that as many as three-fourths of drivers with suspended or revoked licenses continue to drive, indicating driver license sanctions may not effectively force compliance. Driver license suspension and revocation penalties are commonly used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Penalties for driving with a suspended or revoked license increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally get to and from work. If they are caught driving while the license is suspended or revoked, they will incur additional court costs and penalties.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a DL suspension or revocation to pay a service fee of \$45 following a suspension and \$75 following a revocation, in addition to the \$25 fee to replace their license if necessary. "Failure to comply" suspensions require a \$60 reinstatement fee.

Driver License Reinstatement Days

In July 2015, Sarasota County held a Driver License Reinstatement Day. The purpose of the event was to negotiate fees with people whose licenses were suspended because of a failure to pay fines. It was estimated that almost 2,000 people showed up, of which approximately 500 were served. Of those 500 people, 100 were able to reinstate their license. Some were not eligible for reinstatement because they were habitual traffic offenders, under suspension for a DUI, or other were facing charges. All 500 people experienced some level of reduction in the local county fees they owed.

In April 2015, the Duval County Clerk of Court, in conjunction with 59 other Clerk's offices, participated in a statewide campaign called "Operation Green Light." The goal of the operation was to allow individuals who were delinquent in traffic or court fines and fees to make those payments and assist them in getting their licenses reinstated. The 40 percent collections surcharge was waived for these individuals.

Proposed Changes

The bill establishes a Driver License Reinstatement Days program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas County.

The purpose of the program is to reinstate suspended driver licenses. A person is eligible for reinstatement under this program if the period of his or her suspension or revocation has elapsed, the person completed any required course or program, the person is otherwise eligible for reinstatement, and the license was suspended for:

- Driving without a valid license;
- Driving with a suspended license;
- Failing to make payments on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of ch. 318, F.S., relating to disposition of a traffic citation, or ch. 322, F.S., relating to driver licenses.

A person is not eligible for reinstatement under this program if the person's driver license is suspended or revoked for:

- Failing to fulfill any court-ordered child support obligations;
- A violation under s. 316.193, F.S., involving driving under the influence of alcohol or drugs;
- Failing to complete a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- Commission of a traffic-related felony;
- Becoming a habitual traffic offender; or
- An offense committed outside a county in which the pilot program is being implemented.

The DHSMV has indicated within these six counties approximately 541,681 licenses are suspended for failure to appear or comply with a traffic summons, failure to pay a traffic fine, or failure to pay or appear on a criminal charge.

Participants within each county implementing the pilot program shall include the DHSMV, state attorney, public defender's office, circuit and county courts, clerk of court, and interested organizations within each county participate in the pilot program.

The clerk of court, in consultation with the other participants, will select one or more days for the event. The bill requires a person seeking reinstatement through the program to pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

The clerk of court and the DHSMV are responsible for verifying any information necessary for reinstatement of a driver license under the program.

The DHSMV, by October 1, 2017, is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

B. SECTION DIRECTORY:

Section 1. Establishes a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; specifies participants; provides duties of the clerks of court and the Department of Highway Safety and Motor Vehicles; authorizes the clerk of court to compromise certain fees and costs; provides for program eligibility; directs the department to make a report to the Governor and Legislature; and provides for future repeal;

Section 2. Provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive impact on state revenue from the increase in reinstatement fees collected.

The Revenue Estimating Conference has not yet scored the bill.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative impact to local clerks of court from compromising or waiving fees and costs. For this reason, the bill may also have a negative impact on collection agents working with the clerks.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative impact on collection agents working with the clerks from the reduction in fees and fines collected.

The bill will have a positive impact on individuals who may have their financial obligations waived or reduced, and assistance in reinstating their driver license.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The use of the terms suspension and revocation are not consistent throughout the bill. The terms should be modified to represent the proper sanction used for the particular penalty.

The DOR has indicated, regarding child support obligations, the bill should reference court-ordered or administratively-established child support obligations.⁶ DOR enforces both obligations through driver license suspensions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to suspended driver licenses;
 3 establishing a Driver License Reinstatement Days pilot
 4 program in certain counties to facilitate
 5 reinstatement of suspended driver licenses; specifying
 6 participants; providing duties of the clerks of court
 7 and the Department of Highway Safety and Motor
 8 Vehicles; authorizing the clerk of court to compromise
 9 certain fees and costs; providing for program
 10 eligibility; directing the department to make a report
 11 to the Governor and Legislature; providing for future
 12 repeal; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Driver License Reinstatement Days.-

17 (1) There is established a Driver License Reinstatement
 18 Days pilot program in Broward, Duval, Hillsborough, Miami-Dade,
 19 Orange, and Pinellas Counties for the purpose of reinstating
 20 suspended driver licenses. Participants within each county shall
 21 include the Department of Highway Safety and Motor Vehicles, the
 22 state attorney, the public defender's office, the circuit and
 23 county courts, the clerk of court, and interested community
 24 organizations.

25 (2) The clerk of court, in consultation with the other
 26 participants, shall select 1 or more days for an event at which

27 persons with suspended driver licenses may have their licenses
 28 reinstated pursuant to this section. A person must pay the full
 29 reinstatement fee; however, the clerk may compromise or waive
 30 other fees and costs to facilitate the reinstatement.

31 (3) (a) A person is eligible for reinstatement under the
 32 pilot program if the person's driver license was suspended
 33 because the person:

- 34 1. Was driving without a valid driver license;
- 35 2. Was driving with a suspended license;
- 36 3. Failed to make payments on penalties in collection;
- 37 4. Failed to appear in court for a traffic violation; or
- 38 5. Failed to comply with provisions of chapter 314 or
 39 chapter 318, Florida Statutes, relating to disposition of a
 40 traffic citation.

41 (b) Notwithstanding paragraphs (4) (a)-(c), a person is
 42 eligible for reinstatement under the pilot program if the period
 43 of suspension or revocation has elapsed, the person has
 44 completed any required course or program as described in
 45 paragraph (4) (c), and the person is otherwise eligible for
 46 reinstatement of his or her driver license.

47 (4) A person is not eligible for reinstatement under the
 48 pilot program if:

49 (a) The person's driver license is under suspension
 50 because the person failed to fulfill court-ordered child support
 51 obligations;

52 (b) The person's driver license is under suspension for a

53 violation under s. 316.193, Florida Statutes, involving driving
 54 under the influence of alcohol or drugs;

55 (c) The person's driver license is under suspension
 56 because the person has not completed a driver training program,
 57 driver improvement course, or alcohol or substance abuse
 58 education or evaluation program required under s. 316.192, s.
 59 316.193, s. 322.2616, s. 322.271, or s. 322.291, Florida
 60 Statutes;

61 (d) The person's driver license is under suspension for
 62 commission of a traffic-related felony;

63 (e) The person's driver license was revoked because the
 64 person is a habitual traffic offender under s. 322.264, Florida
 65 Statutes; or

66 (f) The person's driver license is under suspension for an
 67 offense committed outside a county in which the pilot program is
 68 being implemented.

69 (5) The clerk of court and the Department of Highway
 70 Safety and Motor Vehicles shall verify any information necessary
 71 for reinstatement of a driver license under the pilot program.

72 (6) By October 1, 2017, the Department of Highway Safety
 73 and Motor Vehicles shall report the results of the pilot program
 74 to the Governor, the President of the Senate, and the Speaker of
 75 the House of Representatives. The report shall include any
 76 recommendation by the department to continue, discontinue, or
 77 expand the pilot program and any necessary legislative action to
 78 facilitate a continuation or expansion of the pilot program.

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79

(7) This section is repealed October 1, 2017.

80

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1087 Protection of Motor Vehicle Dealers' Consumer Data

SPONSOR(S): Rooney, Jr.

TIED BILLS: IDEN./SIM. BILLS: CS/SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee		Johnson 	Smith 
2) Judiciary Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Since 1970, Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers. Manufacturers, distributors, and importers, collectively referred to as licensees, enter into contractual agreements with dealers to sell particular vehicles that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between manufacturers and dealers. Existing law requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

The bill requires a licensee or third party to comply with certain restrictions on sharing or reusing consumer data provided by motor vehicle dealers. Specifically, the bill requires a licensee:

- Comply with all laws on the reuse or disclosure of data, and provide a written statement specifying established procedures to safeguard consumer data;
- Provide a written list of consumer data obtained by a dealer and all persons who the data has been provided to during the previous 12 months, if requested by the dealer;
- May not require a dealer grant the licensee or a third party direct access to the dealer's data management system to collect consumer data;
- Must allow a dealer to furnish consumer data in a widely accepted file format and through a third-party dealer selected by the dealer; and
- Must compensate the dealer for any claims asserted against or damages incurred by the dealer from the licensee's or third party's access, use, or disclosure of the consumer data.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Since 1970, Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers. Manufacturers, distributors, and importers, collectively referred to as licensees, enter into contractual agreements with dealers to sell particular vehicles that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between manufacturers and dealers. Existing law requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer must be licensed to engage in business in this state.¹ The requirements regulating the contractual business relationship between a dealer and a manufacturer are primarily found in ss. 320.60 through 320.70, F.S., known as the Florida Automobile Dealers Act.² These sections of law specify, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a license;
- The process, timing, and notice requirements for licensees wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which DHSMV may deny such a change;
- The procedures a licensee must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a licensee in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Applicability

Section 320.6992, F.S., provides that ss. 320.60 through 320.70, F.S., applies to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. The provisions do not apply to any judicial or administrative proceeding pending as of October 1, 1988, but all agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60 through 320.70, F.S., including amendments, unless specifically providing otherwise.³

In 2009, DHSMV held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of various amendments to that Act.⁴

Consumer Data Protection

Consumer data can refer to a variety of information, including, but not limited to data such as one's:

¹ Section 320.61(1), F.S.

² Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), <http://law-wss-01.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf> (last visited Jan. 15, 2016).

³ Section 320.6992, F.S.

⁴ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

- Personal-identifying data: name, address, telephone number, or email address;
- Demographic data: age, race, occupation, income, or education;
- Retail data: purchase history, credit card numbers, or bank account information; and
- Government data: social security or driver license numbers.

In the United States there are no all-encompassing laws regulating the acquisition, storage, or use of consumer data in general terms. However, partial regulations do exist in state and federal law, including in the Federal Trade Commission (FTC) Privacy and Safeguards Rule, the Gramm-Leach-Bliley Act, and state law.

Gramm-Leach Bliley Act (GLBA)⁵

The GLBA, also known as the Financial Services Modernization Act of 1999, implemented laws regarding the protection and disclosure of nonpublic personal information obtained by financial institutions, limits on reuse of information, and privacy notice requirements. The GLBA gave the FTC the authority to prescribe rules necessary to carry out certain purposes of the Act.

The FTC is the chief federal agency on privacy policy and enforcement. The FTC's Privacy Rule (*The Financial Privacy Rule*) is a principle part of the GLBA, and applies to vehicle dealers who extend credit to someone, arrange for someone to finance or lease a car, or provide financial advice or counseling to individuals.⁶ Personal information collected by a dealer to provide these services is covered under the Privacy Rule, which outlines when privacy notices are required to be given to consumers, information to be included in the privacy notices, limits on the disclosure and reuse of non-public personal information, and opt out requirements.⁷

The FTC's Safeguards Rule, also part of the GLBA, outlines standards for safeguarding customer information.⁸ The rule requires service providers who handle or are permitted access to customer information through its services directly to a financial institution must have a written security plan to protect the confidentiality and integrity of customer data.⁹

Florida Information Protection Act of 2014¹⁰

The Florida Information Protection Act of 2014 provides the procedure for protection and security of confidential personal information¹¹ in the possession of covered entities.¹² Covered entities, governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal information. When the security of a data system is breached, a covered entity must provide notice to the Department of Legal Affairs and effected individuals unless an investigation and consultation with relevant law enforcement agencies determines the breach has not and will not likely result in identity theft or financial harm to the individuals whose

⁵ 15 U.S.C. ss. 6801 *et. seq.*

⁶ Federal Trade Commission, *FTC's Privacy Rule and Auto Dealers: FAQ*, (January 2005), <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-privacy-rule-auto-dealers-faq> (last visited Jan. 17, 2016).

⁷ See 16 C.F.R. part 313.

⁸ See 16 C.F.R. part 314

⁹ *Id.*

¹⁰ Section 501.171, F.S.

¹¹ "Personal information" includes an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; or an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer. A user name or e-mail address, in combination with a password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information."

¹² A "covered entity" is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information.

personal information has been accessed.¹³ If a covered entity fails to provide the required notices, it may face civil penalties.

Proposed Changes

The bill creates, s. 320.646, within the "Florida Automobile Dealers Act" to address consumer data protection.

The bill defines "consumer data" as any information collected or record created by a motor vehicle dealer which contains personal information about a consumer, including, but not limited to, the consumer's name, address, telephone number, e-mail address, social security number, date of birth, driver license number, credit card number, or any other information from which the identity of the consumer could be derived.

The bill defines "data management system" as a computer hardware or software system that is owned, leased, or licensed by a motor vehicle dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely, and that stores and provides access to consumer data collected or stored by a motor vehicle dealer. The term includes, but is not limited to, dealership management systems and customer relations management systems.

The bill provides that notwithstanding the provisions of any franchise agreement, a licensee that receives consumer data from a motor vehicle dealer or requires that a motor vehicle dealer provide consumer data to a third party:

- Must comply with all restrictions on reuse or disclosure of data established by federal and state law and must provide a written statement to the motor vehicle dealer delineating the established procedures adopted by the licensee or a third party which meet or exceed any federal or state requirements to safeguard consumer data, including, but not limited to, those established in the Gramm-Leach-Bliley Act.¹⁴
- Must, upon the written request of the motor vehicle dealer, provide a written list of the consumer data obtained from a motor vehicle dealer and all persons to whom any of the consumer data has been provided by the licensee or a third party during the preceding 12 months. The dealer may make such a request no more than once every six months. The list must indicate the specific fields of the consumer data which were provided to each person.
- May not require that a motor vehicle dealer grant the licensee or a third party direct or indirect access to the dealer's data management system to collect consumer data. A licensee is required to permit a motor vehicle dealer to furnish consumer data in a widely accepted file format, such as comma delineated, and through a third-party vendor selected by the motor vehicle dealer. However, a licensee may access or obtain consumer data directly from a motor vehicle dealer's data management system with the express consent of the dealer. The consent is required to be in the form of a written document that is separate from the parties' franchise agreement, is executed by the motor vehicle dealer, and may be withdrawn by the dealer at any time.
- Must indemnify the motor vehicle dealer for any claims asserted against or damages incurred by the motor vehicle dealer as a result of the licensee's or a third party's access, use, or disclosure of the consumer data.

The bill also reenacts s. 320.6992, F.S., incorporating the newly created section.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

¹³ Section 501.171(4), F.S.

¹⁴ 15 U.S.C. ss. 6801 et. seq.

- Section 1 Creates s. 320.646, F.S, relating to consumer data protection.
- Section 2 Reenacts s. 320.6992, F.S., relating to application.
- Section 3 Provides an effective date.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could positively impact motor vehicle dealers who will be compensated by a licensee for any damages incurred as a result of the licensee's or a third party's access, use, or disclosure of consumer data. For that reason, the bill could also have a negative impact to the licensees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While the bill does not specifically provide rulemaking authority, s. 320.69, F.S., provides rulemaking authority to DHSMV for ss. 320.60 through 320.70, F.S., which includes the newly created statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to protection of motor vehicle
 dealers' consumer data; creating s. 320.646, F.S.;
 defining the terms "consumer data" and "data
 management system"; requiring that a licensee or a
 third party comply with certain restrictions on reuse
 or disclosure of consumer data received from a motor
 vehicle dealer; requiring that such person provide a
 written statement to the motor vehicle dealer
 delineating the established procedures adopted by the
 person which meet or exceed certain requirements to
 safeguard consumer data; requiring that upon request
 of a motor vehicle dealer a licensee provide a list of
 the consumer data obtained and all persons to whom any
 of the data has been disclosed, subject to certain
 requirements; prohibiting a licensee from requiring a
 motor vehicle dealer to grant the licensee or a third
 party access to the dealer's data management system;
 requiring a licensee to permit a motor vehicle dealer
 to furnish consumer data in a widely accepted file
 format and through a third-party vendor selected by
 the motor vehicle dealer; authorizing a licensee to
 access or obtain consumer data from a motor vehicle
 dealer's data management system with the dealer's
 express written consent, subject to certain

27 requirements; requiring the licensee to indemnify the
 28 motor vehicle dealer for certain claims or damages;
 29 reenacting s. 320.6992, F.S., relating to the
 30 provisions that apply to established systems of
 31 distribution of motor vehicles in this state, to
 32 incorporate s. 320.646, F.S., as created by the act,
 33 in a reference thereto; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Section 320.646, Florida Statutes, is created
 38 to read:

39 320.646 Consumer data protection.-

40 (1) As used in this section, the term:

41 (a) "Consumer data" means any information collected or
 42 record created by a motor vehicle dealer which contains personal
 43 information about a consumer, including, but not limited to, the
 44 consumer's name, address, telephone number, e-mail address,
 45 social security number, date of birth, driver license number,
 46 credit card number, or any other information from which the
 47 identity of the consumer could be derived.

48 (b) "Data management system" means a computer hardware or
 49 software system that is owned, leased, or licensed by a motor
 50 vehicle dealer, including a system of web-based applications,
 51 computer software, or computer hardware, whether located at the
 52 motor vehicle dealership or hosted remotely, and that stores and

53 provides access to consumer data collected or stored by a motor
 54 vehicle dealer. The term includes, but is not limited to,
 55 dealership management systems and customer relations management
 56 systems.

57 (2) Notwithstanding the provisions of any franchise
 58 agreement, a licensee that receives consumer data from a motor
 59 vehicle dealer or requires that a motor vehicle dealer provide
 60 consumer data to a third party:

61 (a) Must comply with all restrictions on reuse or
 62 disclosure of data established by federal and state law and must
 63 provide a written statement to the motor vehicle dealer
 64 delineating the established procedures adopted by the licensee
 65 or a third party which meet or exceed any federal or state
 66 requirements to safeguard consumer data, including, but not
 67 limited to, those established in the Gramm-Leach-Bliley Act, 15
 68 U.S.C. ss. 6801 et seq.

69 (b) Must, upon the written request of the motor vehicle
 70 dealer, provide a written list of the consumer data obtained
 71 from a motor vehicle dealer and all persons to whom any of the
 72 consumer data has been provided by the licensee or a third party
 73 during the preceding 12 months. The dealer may make such a
 74 request no more than once every 6 months. The list must indicate
 75 the specific fields of the consumer data which were provided to
 76 each person.

77 (c) May not require that a motor vehicle dealer grant the
 78 licensee or a third party direct or indirect access to the

79 dealer's data management system to collect consumer data. A
 80 licensee must permit a motor vehicle dealer to furnish consumer
 81 data in a widely accepted file format, such as comma delineated,
 82 and through a third-party vendor selected by the motor vehicle
 83 dealer. However, a licensee may access or obtain consumer data
 84 directly from a motor vehicle dealer's data management system
 85 with the express consent of the dealer. The consent must be in
 86 the form of a written document that is separate from the
 87 parties' franchise agreement, is executed by the motor vehicle
 88 dealer, and may be withdrawn by the dealer at any time.

89 (d) Must indemnify the motor vehicle dealer for any claims
 90 asserted against or damages incurred by the motor vehicle dealer
 91 as a result of the licensee's or a third party's access, use, or
 92 disclosure of the consumer data.

93 Section 2. For the purpose of incorporating section
 94 320.646, Florida Statutes, as created by this act, in a
 95 reference thereto, section 320.6992, Florida Statutes, is
 96 reenacted to read:

97 320.6992 Application.—Sections 320.60-320.70, including
 98 amendments to ss. 320.60-320.70, apply to all presently existing
 99 or hereafter established systems of distribution of motor
 100 vehicles in this state, except to the extent that such
 101 application would impair valid contractual agreements in
 102 violation of the State Constitution or Federal Constitution.
 103 Sections 320.60-320.70 do not apply to any judicial or
 104 administrative proceeding pending as of October 1, 1988. All

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105 | agreements renewed, amended, or entered into subsequent to
106 | October 1, 1988, shall be governed by ss. 320.60-320.70,
107 | including any amendments to ss. 320.60-320.70 which have been or
108 | may be from time to time adopted, unless the amendment
109 | specifically provides otherwise, and except to the extent that
110 | such application would impair valid contractual agreements in
111 | violation of the State Constitution or Federal Constitution.

112 | Section 3. This act shall take effect upon becoming a law.



Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Highway & Waterway Safety
 2 Subcommittee
 3 Representative Rooney offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 320.646, Florida Statutes, is created
 8 to read:

9 320.646 Consumer data protection.-

10 (1) As used in this section, the term:

11 (a) "Consumer data" means "nonpublic personal information"
 12 as such term is defined in 15 U.S.C. s. 6809(4) collected by a
 13 motor vehicle dealer and which is provided by the motor vehicle
 14 dealer directly to a licensee or third party acting on behalf of
 15 a licensee. Consumer data does not include the same or similar
 16 data which is obtained by a licensee from any other source.



Amendment No. 1.

17 (b) "Data management system" means a computer hardware or
18 software system that is owned, leased, or licensed by a motor
19 vehicle dealer, including a system of web-based applications,
20 computer software, or computer hardware, whether located at the
21 motor vehicle dealership or hosted remotely, and that stores and
22 provides access to consumer data collected or stored by a motor
23 vehicle dealer. The term includes, but is not limited to,
24 dealership management systems and customer relations management
25 systems.

26 (2) Notwithstanding the provisions of any franchise
27 agreement, with respect to consumer data a licensee or a third
28 party acting on behalf of a licensee:

29 (a) Shall comply with all, and not knowingly cause a motor
30 vehicle dealer to violate any, applicable restrictions on reuse
31 or disclosure of the consumer data established by federal or
32 state law and must provide a written statement to the motor
33 vehicle dealer upon request describing the established
34 procedures adopted by the licensee or third party acting on
35 behalf of the licensee which meet or exceed any federal or state
36 requirements to safeguard the consumer data, including, but not
37 limited to, those established in the Gramm-Leach-Bliley Act, 15
38 U.S.C. ss. 6801 et seq.

39 (b) Shall, upon the written request of the motor vehicle
40 dealer, provide a written list of the consumer data obtained
41 from the motor vehicle dealer and all persons to whom any
42 consumer data has been provided by the licensee or a third party



Amendment No. 1.

43 acting on behalf of a licensee during the preceding 6 months.
44 The dealer may make such a request no more than once every 6
45 months. The list must indicate the specific fields of consumer
46 data which were provided to each person. Notwithstanding the
47 foregoing, such a list need not include:

48 1. A person to whom consumer data was provided, or the
49 specific consumer data provided to such person, if the person
50 was, at the time the consumer data was provided, one of the
51 licensee's service providers, subcontractors or consultants
52 acting in the course of such person's performance of services on
53 behalf of or for the benefit of the licensee or motor vehicle
54 dealer, provided that the licensee has entered into an agreement
55 with such person requiring that the person comply with the
56 safeguard requirements of applicable state and federal law,
57 including, but not limited to, those established in the Gramm-
58 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq; or

59 2. A person to whom consumer data was provided, or the
60 specific consumer data provided to such person, if the motor
61 vehicle dealer has previously consented in writing to such
62 person receiving the consumer data provided and the motor
63 vehicle dealer has not withdrawn such consent in writing.

64 (c) May not require that a motor vehicle dealer grant the
65 licensee or a third party direct or indirect access to the
66 dealer's data management system to obtain consumer data. A
67 licensee must permit a motor vehicle dealer to furnish consumer
68 data in a widely accepted file format, such as comma delimited,



Amendment No. 1.

69 and through a third-party vendor selected by the motor vehicle
70 dealer. However, a licensee may access or obtain consumer data
71 directly from a motor vehicle dealer's data management system
72 with the express consent of the dealer. The consent must be in
73 the form of a written document that is separate from the
74 parties' franchise agreement, is executed by the motor vehicle
75 dealer, and may be withdrawn by the dealer upon 30 days' written
76 notice to the licensee.

77 (d) Must indemnify the motor vehicle dealer for any third-
78 party claims asserted against or damages incurred by the motor
79 vehicle dealer to the extent caused by access to, use of, or
80 disclosure of consumer data in violation of this section by the
81 licensee, a third party acting on behalf of the licensee, or a
82 third party to whom the licensee has provided consumer data.

83 (3) In any cause of action against a licensee pursuant to
84 s. 320.697 for a violation of paragraphs (2)(a), (2)(b), or
85 (2)(c), the person bringing the action has the burden of proving
86 that the violation was willful or with sufficient frequency to
87 establish a pattern of wrongdoing with respect to such person's
88 consumer data.

89 Section 2. For the purpose of incorporating section
90 320.646, Florida Statutes, as created by this act, in a
91 reference thereto, section 320.6992, Florida Statutes, is
92 reenacted to read:

93 320.6992 Application.—Sections 320.60-320.70, including
94 amendments to ss. 320.60-320.70, apply to all presently existing



Amendment No. 1.

95 or hereafter established systems of distribution of motor
 96 vehicles in this state, except to the extent that such
 97 application would impair valid contractual agreements in
 98 violation of the State Constitution or Federal Constitution.
 99 Sections 320.60-320.70 do not apply to any judicial or
 100 administrative proceeding pending as of October 1, 1988. All
 101 agreements renewed, amended, or entered into subsequent to
 102 October 1, 1988, shall be governed by ss. 320.60-320.70,
 103 including any amendments to ss. 320.60-320.70 which have been or
 104 may be from time to time adopted, unless the amendment
 105 specifically provides otherwise, and except to the extent that
 106 such application would impair valid contractual agreements in
 107 violation of the State Constitution or Federal Constitution.

108 Section 3. This act shall take effect upon becoming a
 109 law.

110
 111 -----

112 **T I T L E A M E N D M E N T**

113 Remove everything before the enacting clause and insert:
 114 An act relating to protection of motor vehicle dealers' consumer
 115 data; creating s. 320.646, F.S.; defining the terms "consumer
 116 data" and "data management system"; requiring that a licensee or
 117 a third party comply with certain restrictions on reuse or
 118 disclosure of consumer data received from a motor vehicle
 119 dealer; requiring that such person provide a written statement
 120 to the motor vehicle dealer delineating the established



Amendment No. 1.

121 | procedures adopted by the person which meet or exceed certain
122 | requirements to safeguard consumer data; requiring that upon
123 | request of a motor vehicle dealer a licensee provide a list of
124 | the consumer data obtained and all persons to whom any of the
125 | data has been disclosed, subject to certain requirements;
126 | prohibiting a licensee from requiring a motor vehicle dealer to
127 | grant the licensee or third party access to the dealer's data
128 | management system; requiring a licensee to permit a motor
129 | vehicle dealer to furnish consumer data in a widely accepted
130 | file format and through a third-party vendor selected by the
131 | motor vehicle dealer; authorizing a licensee to access or obtain
132 | consumer data from a motor vehicle dealer's data management
133 | system with the dealer's express written consent, subject to
134 | certain requirements; requiring the licensee to indemnify the
135 | motor vehicle dealer for certain claims or damages; providing
136 | that a person bringing a specified cause of action for certain
137 | violations must meet certain requirements; reenacting s.
138 | 320.6992, F.S., relating to the provisions that apply to
139 | established systems of distribution of motor vehicles in this
140 | state, to incorporate s. 320.646, F.S., as created by the act,
141 | in a reference thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1105 Identification Cards
SPONSOR(S): Stark and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee		Whittaker	Smith <i>MS</i>
2) Appropriations Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill allows a person with a developmental disability, or a parent or guardian of a child or ward with a developmental disability to voluntarily request to be issued an identification card with a "D" designation for the person diagnosed with a developmental disability.

The Department of Highway Safety and Motor Vehicles (DHSMV) will issue the identification card upon proof of diagnosis of a developmental disability by a licensed physician and payment of a \$10 fee. The additional \$10 fee is deposited into the Operations and Maintenance Trust Fund administered by the Agency for Persons with Disabilities (APD). A replacement identification card that includes the designation may be issued without payment of the \$25 replacement fee.

The bill provides that the changes made to the identification card by this bill will apply upon implementation of new designs for the driver license and identification card by DHSMV.

To the extent that individuals apply for and obtain the "D" designation authorized in the bill at the time their identification cards are issued, renewed, or replaced, there will be a positive fiscal impact on the APD's Operations and Maintenance Trust Fund, and a negative fiscal impact on the General Revenue Fund, the DHSMV's Highway Safety Operating Trust Fund and issuing county tax collectors. These impacts are indeterminate and expected to be insignificant.

The bill provides an effective date of October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Developmental Disabilities in Florida

Section 393.063(9), F.S., defines developmental disabilities to mean “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”

The Florida Developmental Disabilities Council estimates there are approximately 100,000 individuals living in the state who meet the developmental disability criteria.¹

Identification Cards in Florida

Any person who is five years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit, may be issued an identification card by the DHSMV upon completion of an application and payment of a \$25 fee.² For an original identification card the \$25 fee is deposited into the General Revenue Fund. For a replacement identification card \$9 is deposited into the Highway Safety Operating Trust Fund (HSOTF) or retained by the tax collector issuing the replacement, and \$16 is deposited into the General Revenue Fund.³

An identification card issued to a person 5 to 14 years of age expires, unless canceled earlier, on the fourth birthday of the applicant following the date of original issue. An identification card issued to a person 15 years of age or older expires, unless canceled earlier, on the eighth birthday of the applicant following the date of original issue.⁴

In fiscal year 2014-2015, there were 533,584 identification cards issued statewide.⁵

Identification Cards for Persons with Developmental Disabilities

Other states have implemented Disability Identification Cards for individuals with developmental disabilities. These identification cards serve as an indicator for police and others that an individual has a developmental disability.

For example, in Illinois, the Disabled Person Identification Card is used to signify an individual has a physical, developmental, visual, hearing, or mental disability, and classifies each disability.⁶ The card is able to be used as proof of a disability as well as proof of identification for the individual. In Georgia, disability symbols can be placed on a license, permit, or identification card issued by the Georgia Department of Driver Services.⁷ Conditions such as PTSD, Dementia, Autism, and developmental disabilities, confirmed by a medical doctor, can be indicated on the back of an individual's license, permit, or identification card.⁸

¹ Department of Highway Safety and Motor Vehicles, *SB 718 Agency Bill Analysis*, (on file with the Highway and Waterway Safety Subcommittee).

² s. 322.051, F.S.

³ s. 322.21(1)(f), F.S.

⁴ s. 322.051(2)(a), F.S.

⁵ DHSMV Agency Analysis, *supra* note 1.

⁶ See 15 ILCS 335/4a

⁷ O.C.G.A. s. 40-5-171 (2010).

⁸ Georgia Department of Driver Services, *DDs-29 Revised (3/23/2011) Form*, <http://www.dds.ga.gov/docs/forms/DDS-29-12610.pdf> (last visited January 27, 2016).

Agency for Persons with Disabilities (APD)

The APD serves over 50,000 Floridians with developmental disabilities.⁹ Revenues deposited into the Operations and Maintenance Trust Fund administered by the APD consist of receipts from third-party payors of health care services, such as Medicaid.¹⁰ These funds are used to provide services to agency clients and administer those services.¹¹ These services include: life skills development and job training, personal care assistance, therapeutic and wellness support, transportation services, and specialized medical assistance.

Proposed Changes

The bill amends s. 322.051, F.S., allowing a person with a developmental disability, or a parent or guardian of a child or ward with a developmental disability to voluntarily request to be issued an identification card with a "D" designation for the person diagnosed with a developmental disability.

DHSMV will issue the identification card upon proof of diagnosis of a developmental disability by a licensed physician and payment of a \$10 fee. The additional \$10 fee is deposited into the Operations and Maintenance Trust Fund administered by the Agency for Persons with Disabilities (APD). A replacement identification card that includes the designation may be issued without payment of the \$25 replacement fee.

The bill provides that the changes made to the identification card by this bill will apply upon implementation of new designs for the driver license and identification card by DHSMV.

B. SECTION DIRECTORY:

Section 1 Amends s. 322.051, F.S., requiring DHSMV to issue an identification card exhibiting a special designation for a person who has a developmental disability under certain circumstances; requiring payment of an additional fee and proof of diagnosis by a licensed physician; requiring the fee to be deposited into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund; authorizing issuance of a replacement identification card that includes the special designation without payment of a specified fee; requiring the DHSMV to develop rules to facilitate the issuance, requirements, and oversight of developmental disability identification cards.

Section 2 Provides applicability.

Section 3 Provides the effective date will be October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There will be a positive indeterminate impact to Operations and Maintenance Trust Fund administered by APD.

2. Expenditures:

⁹ Agency for Persons with Disabilities, *About Us*, <http://apd.myflorida.com/about/> (last visited January 27, 2016).

¹⁰ s. 20.1971(2)(a), F.S.

¹¹ Email from Agency for Persons with Disabilities, (Mar. 18, 2015) (on file with the Highway and Waterway Safety Subcommittee).

The DHSMV estimates 398 programming hours and a fiscal impact of \$24,920 for implementation of the bill.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person with a developmental disability wishing to obtain the "D" designation on his or her identification card will be charged an additional \$10 fee. A replacement identification card that includes the designation may be issued without payment.

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:

DHSMV shall develop rules to facilitate the issuance, requirements, and oversight of developmental disability identification cards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹² DHSMV Agency Analysis, *supra* note 1.
STORAGE NAME: h1105.HWSS.DOCX
DATE: 1/28/2016

1 A bill to be entitled
 2 An act relating to identification cards; amending s.
 3 322.051, F.S.; requiring the Department of Highway
 4 Safety and Motor Vehicles to issue an identification
 5 card exhibiting a special designation for a person who
 6 has a developmental disability under certain
 7 circumstances; requiring payment of an additional fee
 8 and proof of diagnosis by a licensed physician;
 9 requiring the fee to be deposited into the Agency for
 10 Persons with Disabilities Operations and Maintenance
 11 Trust Fund; authorizing issuance of a replacement
 12 identification card that includes the special
 13 designation without payment of a specified fee;
 14 requiring the department to develop rules to
 15 facilitate the issuance, requirements, and oversight
 16 of developmental disability identification cards;
 17 providing applicability; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 • Section 1. Paragraph (c) is added to subsection (8) of
 22 section 322.051, Florida Statutes, to read:

23 322.051 Identification cards.—

24 (8)

25 (c)1. Upon request by a person who has a developmental
 26 disability, or by a parent or guardian of a child or ward who

27 | has a developmental disability, the department shall issue an
 28 | identification card exhibiting a capital "D" for the person,
 29 | child, or ward if the person or the parent or guardian of the
 30 | child or ward submits:

31 | a. Payment of an additional \$10 fee; and
 32 | b. Proof acceptable to the department of a diagnosis by a
 33 | licensed physician of a developmental disability as defined in
 34 | s. 393.063.

35 | 2. The department shall deposit the additional \$10 fee
 36 | into the Agency for Persons with Disabilities Operations and
 37 | Maintenance Trust Fund under s. 20.1971(2).

38 | 3. A replacement identification card that includes the
 39 | designation may be issued without payment of the fee required
 40 | under s. 322.21(1)(f).

41 | 4. The department shall develop rules to facilitate the
 42 | issuance, requirements, and oversight of developmental
 43 | disability identification cards under this section.

44 | Section 2. The amendments made by this act to s. 322.051,
 45 | Florida Statutes, shall apply upon implementation of new designs
 46 | for the driver license and identification card by the Department
 47 | of Highway Safety and Motor Vehicles.

48 | Section 3. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1373 School Bus Safety
SPONSOR(S): Highway & Waterway Safety Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee		Whittaker <i>Whittaker</i> Smith <i>Smith</i>	

SUMMARY ANALYSIS

In Florida, a person operating a vehicle who passes a school bus on the side children enter and exit while the bus is displaying a stop signal commits a moving violation punishable as provided in Chapter 318, and requires a mandatory hearing. If at the hearing, the alleged offender is found to have committed the offense, the court shall impose a minimum civil penalty of \$200 plus an additional \$65. In addition, the Department of Highway Safety and Motor Vehicles (DHSMV) must suspend the driver's license of any person who commits a violation of this section for not less than 180 days and not more than one year for a subsequent offense within a five year period.

The bill increases the violation to an offense of reckless driving, punishable as provided in s. 316.192, Florida Statutes, if a person operating a vehicle passes a school bus on the side that children enter and exit when the school bus displays a stop signal.

The bill does not appear to have an impact on state funds.

The bill provides an effective date of October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Failure to Stop for a School Bus

A person commits a moving violation if he or she is driving a vehicle and fails to stop when approaching any school bus while it is displaying a stop signal.¹ A violation of this offense is punishable as provided in Ch. 318, Florida Statutes. There is a minimum \$100 civil penalty and an additional \$65 civil penalty for a driver who has been found guilty by the court for failing to stop for a school bus.² The DHSMV must suspend the driver's license of any person who commits a second or subsequent violation of this section within a five year period for not less than 90 days and not more than six months.³

A person operating a vehicle who passes a school bus on the side children enter and exit while the bus is displaying a stop signal commits a moving violation punishable as provided in Ch. 318 and requires a mandatory hearing.⁴ If at the hearing, the alleged offender is found to have committed the offense, the court shall impose a minimum civil penalty of \$200 plus an additional \$65. In addition, the DHSMV must suspend the driver's license of any person who commits a violation of this section for not less than 180 days and not more than one year for a subsequent offense within a five year period.⁵

Statistics

The National Safety Council estimates that some 25 million students nationwide begin and end their day with a trip on a school bus.⁶

From 2004 to 2013, there were 1,344 people killed in school-transportation-related crashes, an average of 134 fatalities per year.⁷

Reckless driving⁸

Reckless driving is a criminal offense. It is driving with a willful or wanton disregard for the safety of persons or property. A conviction of reckless driving can result in serious penalties under certain circumstances, they are:

First conviction: A misdemeanor carrying up to \$500 in fines or 90 days imprisonment, or both.⁹

Second or subsequent conviction: A misdemeanor carrying up to \$1,000 in fines or up to six months imprisonment, or both.¹⁰

¹ s. 316.172(1)(a), F.S.

² s. 318.18(5)(a)(c), F.S.

³ s. 318.18(5)(a), F.S.

⁴ s. 316.172(1)(b), F.S.

⁵ s. 318.18(5)(b), F.S.

⁶ National Safety Council, *School Buses are Students' Safest Mode of Transportation*, <http://www.nsc.org/learn/safety-knowledge/Pages/news-and-resources-school-bus-safety-rules.aspx> (last visited January 8, 2016)

⁷ National Highway Traffic Safety Administration, *School-Transportation-Related Crashes*, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwi6hNSt_prKAhWBPRoKHT3oA78QFggjMAE&url=http%3A%2F%2Fwww-nrd.nhtsa.dot.gov%2FPubs%2F812170.pdf&usg=AFOjCNEIta3WicJ772td7HCg93ldm25k4A (last visited January 8, 2016)

⁸ s. 316.192, F.S.

⁹ s. 316.192(2)(a), F.S.

¹⁰ s. 316.192(2)(b), F.S.

Offense causing property damage: A misdemeanor of the first degree¹¹ carrying up to \$1,000 in fines¹² or up to one year imprisonment.¹³

Offense causing serious bodily injury: A felony of the third degree¹⁴ carrying up to \$5,000 in fines¹⁵ or up to five years imprisonment.¹⁶

Offense resulting in a fatal accident: Often charged as a felony vehicular homicide¹⁷ carrying up to \$10,000 in fines¹⁸ or up to 15 years imprisonment.¹⁹

Proposed Change

The bill increases the violation from a moving violation to an offense of reckless driving, punishable as provided in s. 316.192, Florida Statutes, if a person operating a vehicle passes a school bus on the side that children enter and exit when the school bus displays a stop signal.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.172, F.S., providing that passing a school bus on the side where children enter and exit the school bus when the bus displays the stop signal commits reckless driving.

Section 2 Provides an effective date of October 1, 2016.

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:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

¹¹ s. 316.192(3)(c),1., F.S.

¹² s. 775.083, F.S.

¹³ s. 775.082, F.S.

¹⁴ s. 316.192(3)(c),2., F.S.

¹⁵ s. 775.083, F.S.

¹⁶ s. 775.082, F.S.

¹⁷ s. 782.071, F.S.

¹⁸ s. 775.083, F.S.

¹⁹ s. 775.082, F.S.

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to school bus safety; amending s.
 3 316.172, F.S.; providing that a person who passes a
 4 school bus on the side that children enter and exit
 5 while the school bus displays the stop signal commits
 6 reckless driving; specifying that violations be
 7 punished as reckless driving violations rather than
 8 moving violations; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (b) of subsection (1) of section
 13 316.172, Florida Statutes, is amended to read:

14 316.172 Traffic to stop for school bus.—

15 (1)

16 (b) A ~~Any~~ person using, operating, or driving a vehicle
 17 that passes a school bus on the side that children enter and
 18 exit while ~~when~~ the school bus displays a stop signal commits
 19 reckless driving ~~a moving violation~~, punishable as provided in
 20 s. 316.192 ~~chapter 318~~, and ~~is subject to a mandatory hearing~~
 21 ~~under the provisions of s. 318.19.~~

22 Section 1. This act shall take effect October 1, 2016.