

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 908

INTRODUCER: Transportation Committee and Senator Altman

SUBJECT: Traffic Safety

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Fav/CS</b>
2.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
3.			FP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 908 seeks to increase the safety of “vulnerable users of a public roadway.” The bill:

- Revises and creates various statutory provisions and penalties relating to traffic control laws and vulnerable users, such as pedestrians and bicyclists;
- Clarifies provisions relating to overtaking and passing vulnerable users, particularly with respect to maintaining required distance between a passing vehicle and a vulnerable user;
- Sets out requirements for making turns at certain locations when passing a vulnerable user;
- Allows drivers to cross the centerline in an identified no-passing zone when passing a vulnerable user;
- Makes harassing, taunting, or throwing an object at a person riding a bicycle a first degree misdemeanor, punishable by a fine of at least \$250 and/or incarceration up to 30 days;
- Makes a second noncriminal traffic infraction causing serious bodily injury or death to another person within five years of the first such infraction a first degree misdemeanor;
- Requires mandatory revocation of the driver license of any person who commits a second noncriminal traffic infraction causing serious bodily injury or death to another person within five years of the first such infraction;
- Requires appearance at a mandatory hearing for certain infractions contributing to the bodily injury of a vulnerable user;
- Provides a mandatory fine for certain infractions contributing to the bodily injury of a vulnerable user;

- Requires law enforcement officers issuing certain citations to note if the violation contributed to the bodily injury of a vulnerable user; and
- Revises cross-references to conform definitions.

## II. Present Situation:

### Definitions

Current law defines certain relevant terms for purposes of ch. 316, F.S., relating to traffic control laws, as follows:

- “Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.<sup>1</sup>
- “Bicycle” means every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.<sup>2</sup>
- “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.<sup>3</sup>

The term “bodily injury,” is defined identically in various sections of Florida Statutes<sup>4,5,6</sup> to mean:

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.

The term “vulnerable road user,” as used in provisions relating to crashes involving death or personal injuries, is defined to mean:

- A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal;
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway;
- A farm tractor or similar vehicle designed primarily for farm use;

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<sup>1</sup> Section 316.003(75), F.S.

<sup>2</sup> Section 316.003(2), F.S.

<sup>3</sup> Section 316.003(42), F.S.

<sup>4</sup> Section 501.001(1)(c), F.S.

<sup>5</sup> Section 831.03(1), F.S.

<sup>6</sup> Section 914.21, F.S.

- A skateboard, roller skates, or in-line skates;
- A horse-drawn carriage;
- An electric personal assistive mobility device; or
- A wheelchair.<sup>7</sup>

### **Driving on Right Side of Roadway**

Vehicles must generally be driven up the right half of the roadway, with certain exceptions, such as when overtaking and passing another vehicle proceeding in the same direction and when an obstruction exists making it necessary to drive to the left of the center of the highway.<sup>8</sup> Additionally, any vehicle traveling at less than the normal speed of traffic under existing conditions must be driven in the right-hand lane or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.<sup>9</sup> A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>10, 11</sup>

Similarly, any person operating a bicycle upon a roadway at less than normal speed of traffic under existing conditions must be ridden in the lane marked for bicycle use or, if no marked lane exists, as close as practicable to the right-hand curb or edge of the roadway except when:

- Overtaking and passing another bicycle or vehicle traveling in the same direction;
- Preparing for a left turn at an intersection or into a private road or driveway; or when
- Reasonably necessary to avoid any condition or potential conflict, including without limitation a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.<sup>12</sup>

“Substandard-width lane” is defined to mean a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.<sup>13</sup>

### **Overtaking and Passing**

Section 316.083, F.S., sets out requirements relating to overtaking and passing vehicles proceeding in the same direction. The driver of a vehicle overtaking another proceeding in the same direction must give an appropriate signal,<sup>14</sup> pass to the left at a safe distance, and not again drive to the right side of the roadway until safely clear of the overtaken vehicle. When

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<sup>7</sup> Section 316.027, F.S.

<sup>8</sup> Section 316.081(1), F.S.

<sup>9</sup> Section 316.081(2), F.S.

<sup>10</sup> Sections 316.081(5) and 318.18(3), F.S.

<sup>11</sup> A person convicted of a noncriminal violation may not be sentenced to a term of imprisonment or to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county. Section 775.082(5), F.S.

<sup>12</sup> Section 316.2065(5)(a), F.S.

<sup>13</sup> Section 316.2065(5)(a)3., F.S. See also s. 316.208, F.S., reflecting almost identical requirements and providing the same definition of “substandard-width lane” relating to mopeds.

<sup>14</sup> Generally, by means of the hand and arm or by signal lamps. See ss. 316.155, 316.156, and 316.157, F.S.

overtaking a bicycle or other nonmotorized vehicle, the driver of the overtaking vehicle must pass at a safe distance not less than three feet between the overtaking vehicle and the bicycle.<sup>15</sup>

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle must give way to the right in favor of the overtaking vehicle, on audible signal or upon visible flashing of the headlamps of the overtaking vehicle if at nighttime. The driver of the overtaken vehicle is prohibited from increasing speed until completely passed by the overtaking vehicle.<sup>16</sup> A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>17</sup>

### **Right Turns on Red**

Generally, a vehicle facing a steady red signal must stop before entering a crosswalk on the near side of an intersection or, if none, then before entering the intersection, and remain stopped until a green indication is shown. Right turns on red are authorized, but a driver must yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection. Cities and counties may prohibit right-turns-on-red at any intersection with notice of the prohibition erected in a location visible to traffic approaching the intersection.<sup>18, 19</sup>

### **No-Passing Zones**

A driver is prohibited from driving on the left side of a roadway if signs or markings are in place to define a no-passing zone, or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.<sup>20</sup> The prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, or to the driver of a vehicle turning left into or from an alley, private road, or driveway.<sup>21</sup> A no-passing zone violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>22</sup>

### **Infractions Requiring Mandatory Hearing**

Current law requires appearance at a mandatory hearing for any person cited for the following:

- Any infraction resulting in a crash that causes the death of another;
- Any infraction resulting in a crash that causes “serious bodily injury” of another as defined in s. 316.1933(1), F.S.;

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<sup>15</sup> Section 316.083(2), F.S.

<sup>16</sup> Section 316.083(2), F.S.

<sup>17</sup> Sections 316.083(3) and 318.18(3), F.S.

<sup>18</sup> Section 316.074(1), F.S., and s. 316.075(1)(c), F.S.

<sup>19</sup> A notice of violation or a traffic citation for a red light violation detected by a traffic infraction detector, or a “red light camera,” may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at intersections where right-hand turns are permissible. Section 316.0083, F.S.

<sup>20</sup> Section 316.0875(2), F.S. Section 316.0875(1), F.S., authorizes the Florida Department of Transportation and local authorities to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be hazardous and, by appropriate signs or markings on the roadway, to indicate the beginning and end of such zones.

<sup>21</sup> Section 316.0875(3), F.S.

<sup>22</sup> Sections 316.0875(4) and 318.18(3), F.S.

- Any infraction for passing a school bus displaying a stop signal, when passing on the side that children enter or exit;
- Any infraction for failure to secure the load being hauled on a vehicle;
- Any infraction for exceeding certain speed limits by 30 miles per hour or more.<sup>23</sup>

In addition to a mandatory hearing, if a person commits a noncriminal traffic infraction in which a person dies as a result of the infraction, he or she may be required to perform 120 hours of community service.<sup>24</sup>

### **Convictions Requiring Mandatory Driver License Revocation**

The Department of Highway Safety and Motor Vehicles (DHSMV) is currently directed to revoke the driver license or driving privilege of any person upon receiving a record of the person's conviction for a range of offenses, including, but not limited to, manslaughter or DUI manslaughter, failure to stop and render aid in the event of a crash resulting in the death or personal injury of another, and perjury. A court may also order revocation when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the revocation.<sup>25</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 316.003, F.S., to define the term "bodily injury" identically as that term is already defined in existing law. The bill also defines the term "vulnerable user of a public roadway" or "vulnerable user" identically to the definition of "vulnerable road user" in current s. 316.027, F.S., except that the phrase "or roadway" is inserted after the word "highway" with regard to pedestrians; and passengers on a bicycle, motorcycle, scooter, or moped lawfully on the roadway are included in the definition. The new definition is broader for general purposes of ch. 316, F.S., than the existing definition in s. 316.027, F.S., relating to crashes involving death or personal injuries, as the existing definition does not include passengers.

**Section 2** amends s. 316.027(1)(b), F.S., to delete the current definition of "vulnerable road user," strike "road" from the term, and redefine "vulnerable user" by cross-referencing the broader definition in s. 316.003, F.S.

**Section 3** creates s. 316.0275, F.S., to require reclassification of a second noncriminal traffic infraction causing *serious* bodily injury or death to another person within five years of the first such violation to a first degree misdemeanor. This subjects an offender to a fine not exceeding \$1,000 and a definite term of imprisonment not exceeding one year.<sup>26</sup> Additionally, the person's driver license must be revoked. "Serious bodily injury" is defined for purposes of that section to mean an injury to a person, excluding the at-fault driver, which consists of a physical condition

<sup>23</sup> Section 318.19, F.S. Section 316.1933(1)(b), F.S., defines "serious bodily injury" to mean an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

<sup>24</sup> Section 318.14(1), F.S.

<sup>25</sup> Section 322.26, F.S.

<sup>26</sup> Sections 775.082 and 775.083, F.S.

that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**Section 4** revises s. 316.083, F.S., relating to overtaking and passing a vehicle, to:

- Clarify that subsection (2) is applicable to the driver of a *motor vehicle overtaking a person operating a bicycle or other vulnerable user of a public roadway*;
- Require such driver to pass the person operating the bicycle or the vulnerable user at a safe distance of no less than three feet *as measured from anything extending from the motor vehicle and trailer or other item towed by the motor vehicle*; and
- Require that a law enforcement officer issuing a citation for a violation note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public right-of-way.

**Section 5** creates s. 316.0833, F.S., to prohibit a person operating a vehicle while overtaking and passing a vulnerable user of a public roadway traveling in the same direction from making a right or left turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user. A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60. A law enforcement officer issuing a citation for a violation must note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public right-of-way.

**Section 6** amends s. 316.0875(3), F.S., to add an additional exclusion from the provisions relating to no-passing zones. If the driver of a motor vehicle is required to cross pavement striping indicating a no-passing zone when passing a vulnerable user of a public right-of-way in order to provide at least three feet between the motor vehicle and the vulnerable user, the driver is *not* prohibited from crossing the centerline or driving on the left side of a roadway.

**Section 7** creates s. 316.1921, F.S., making it unlawful to harass, taunt, or maliciously throw an object at or in the direction of a person riding a bicycle. A violation of this section is a first degree misdemeanor, punishable by a fine of at least \$250 or by imprisonment of not more than 30 days, or both.

**Section 8** amends s. 316.1925, relating to careless driving, to require a law enforcement officer issuing a citation for a violation to note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public right-of-way.

**Section 9** creates s. 318.142, F.S., to require the designated official to impose a fine of not more than \$2,000 for any violation that contributes to the bodily injury of a vulnerable user of a public roadway, in addition to any other penalties imposed under s. 316.083 (overtaking and passing), s. 316.0833 (right or left turns at intersections or into private driveways), or s. 316.1925 (careless driving), F.S.

**Section 10** amends s. 318.19, F.S., to require appearance at a mandatory hearing for any infraction of s. 316.083, s. 316.0833, or s. 316.1925, F.S., which contributes to the bodily injury of a vulnerable user of a public right-of-way.

**Section 11** amends s. 322.0261(2), F.S., to revise a cross-reference to the relocated and revised definition of “vulnerable user.”

**Section 12** amends s. 322.26, F.S., to require mandatory revocation of a person’s driver license or privilege for a violation of the newly created s. 316.0275, F.S.

**Section 13** provides the bill takes effect on October 1, 2015.

A number of editorial and grammatical revisions are also made in the bill.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Offenders will be subject to the described penalties. A decrease in personal injury and death for vulnerable users may be experienced, as well as a reduction in costs associated with litigating claims for such injury or death.

C. Government Sector Impact:

According to the DHSMV, the bill’s revisions to penalties associated with the rights and safety of vulnerable users of public roadways, for the harassing or taunting of bicycle riders, and for violations contributing to bodily injuries may result in positive fiscal impacts to local government. The number of additional citations and resulting positive fiscal impact, as well as any negative fiscal impact due to the need for reprogramming local e-citation systems, is indeterminate at this time.

Similarly, the department suggests, the bill’s revisions to penalties associated with the rights and safety of vulnerable users of public roadways, for the harassing or taunting of bicycle riders, and for violations contributing to bodily injuries may result in positive

fiscal impacts to state government. The number of additional citations and resulting revenues is indeterminate at this time. The DHSMV further notes:

The adoption of the bill will require state government to update and modify their programming systems. The fiscal impact to the Department is estimated at \$41,400 for 540 programming hours. Of the 540 programming hours, 210 hours at a \$40 hourly rate will be accomplished with full time equivalent personnel, and 330 hours at a \$100 hourly rate will be accomplished with contracted resources.<sup>27</sup>

There may be a negative fiscal impact upon local jails as a result of the two newly created misdemeanor penalties under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.027, 316.083, 316.0875, 316.1925, 318.19, 322.0261, and 322.26.

This bill creates the following sections of the Florida Statutes: 316.0275, 316.0833, 316.1921, and 318.142.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 26, 2015:**

The CS modifies the bill by:

- Revising the term, “vulnerable user of a public right-of-way,” to “vulnerable user of a public roadway,” but keeping the same definition.
- Revising the term, “vulnerable road user” to “vulnerable user” in s. 316.027, F.S., and referencing the broader definition inserted into s. 316.003, F.S.,
- Requiring reclassification of a second noncriminal traffic infraction causing serious bodily injury or death to another person within five years of the first such violation a first degree misdemeanor; subjecting an offender to certain penalties and driver license revocation; and defining “serious bodily injury.”

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<sup>27</sup> See the DHSMV’s 2015 Agency Legislative Bill Analysis for companion HB 231. On file in the Senate Transportation Committee.



- Applying the requirements for making a right turn, when overtaking and passing a vulnerable user at certain locations, to left turns.
- Removing from the bill revisions to the definition of “substandard-width lane.”
- Revising the penalty provisions that may be imposed in addition to any others for violations related to overtaking and passing a vulnerable user, making turns at intersections or into private driveways when passing a vulnerable user, and careless driving.
- Removing provisions requiring the curriculum for certain driver education and examinations to provide instruction on traffic laws and test the applicant’s knowledge of such laws relating to the rights and safety of vulnerable users of public rights-of-way.

**B. Amendments:**

None.