

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1019 Motor Vehicles

**SPONSOR(S):** Economic Affairs Committee; Transportation & Highway Safety Subcommittee; Rader and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N, As CS	Kiner	Miller
2) Economic Affairs Committee	15 Y, 2 N, As CS	Kiner	Creamer

### SUMMARY ANALYSIS

CS/CS/HB 1019 revises state law that restricts the volume at which a car stereo, or other soundmaking device, may be played on a public street. The current law was reviewed by the Florida Supreme Court (FLSC) and found to be unconstitutionally overbroad as an unreasonable, content-based restriction on the freedom of expression.

Specifically, the bill removes the current exemption provided for vehicles used for business or political purposes, if those vehicles use sound in the normal course of business. The bill also removes the restriction on sound that is louder than necessary to be heard by the vehicle's passengers in areas adjoining churches, schools, or hospitals.

By removing the business and political exemptions and removing the "louder than necessary" restriction, the effect of the proposed change applies the statute's restrictions on sound to all classes of vehicles, except law enforcement and emergency vehicles, in all areas, if the sound is plainly audible at a distance of 25 feet or more. Thus, drivers of vehicles used for business or political purposes will be subject to applicable penalties for a violation of the statute's restrictions.

To prevent arbitrary and discriminatory enforcement, the bill leaves intact the current requirement that the Department of Highway Safety and Motor Vehicles (DHSMV) promulgate rules to define "plainly audible" and establish standards that direct law enforcement personnel to measure sound.

The bill also leaves local government police powers intact by clarifying that local governments may enact stricter time, place, and manner restrictions.

Under the bill, the current law penalty for a violation of the sound restrictions remains a noncriminal traffic citation, which carries a \$30 fine, plus court costs, which vary by county but generally range from about \$78 to \$100.

The bill is effective July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### *Statutory Provisions*

Section 316.3045, F.S., restricts the volume at which a car stereo, or other soundmaking device, may be played on a public street.<sup>1</sup> Specifically, the statute makes it unlawful to amplify sound so that it is:

- plainly audible at a distance of 25 feet or more from the vehicle; or
- louder than necessary for convenient hearing by the vehicle's passengers in areas adjoining churches, schools, or hospitals.<sup>2</sup>

To prevent arbitrary and discriminatory enforcement, the statute's provisions require that law enforcement personnel use an objective standard – distance – in order to determine if someone has violated the prohibition. The statute also requires DHSMV to adopt rules defining “plainly audible” and to establish standards regarding how sound should be measured by law enforcement personnel.

Pursuant to this statutory directive, DHSMV has promulgated rule 15B-13.001, F.A.C., which defines “plainly audible” and directs law enforcement personnel to measure the sound according to the following standards:

- the primary means of detection shall be by means of the law enforcement officer's ordinary auditory senses, so long as the law enforcement officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid;
- the officer must have a direct line of sight and hearing to the motor vehicle producing the sound so that he can readily identify the offending motor vehicle and the distance involved;
- the officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound;
- the motor vehicle from which the sound is produced must be located upon (stopped, standing or moving) any street or highway. Parking lots and driveways are included when any part thereof is open to the public for purposes of vehicular traffic.<sup>3</sup>

There are, however, exemptions to the statutory sound restrictions. First, the statute exempts law enforcement vehicles and emergency vehicles equipped with a communication device necessary in the performance of official duties or procedures.<sup>4</sup> The statute also exempts sound coming from a vehicle that is used for business or political purposes, if the use of sound is within the normal course of business.<sup>5</sup> There is a separate statutory provision that requires every vehicle to have a horn in good working order that is capable of emitting sound under normal conditions from a distance of not less than 200 feet.<sup>6</sup> Under that same statute, a warning device, such as a car alarm, may also be used.<sup>7</sup>

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<sup>1</sup> Specifically, s. 316.3045, F.S., makes it “unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is: (a) plainly audible at a distance of 25 feet or more from the motor vehicle; or (2) louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.”

<sup>2</sup> s. 316.3045(1), F.S.

<sup>3</sup> These standards are listed in 15B-13.001(3), F.A.C., and apply to the detection of sound that is louder than necessary for the convenient hearing by the vehicle's passengers in areas adjoining churches, schools, or hospitals.

<sup>4</sup> s. 316.3045(2), F.S.

<sup>5</sup> s. 316.3045(3), F.S.

<sup>6</sup> s. 316.271, F.S.

<sup>7</sup> Id.

A driver that violates the sound restrictions in s. 316.3045, F.S., is subject to issuance of a nonmoving traffic citation, which carries a \$30 fine, plus court costs, which vary by county but generally range from about \$78 to \$100.

In 2011, there were 4,091 citations issued statewide for violations of s. 316.3045, F.S.<sup>8</sup>

### *Constitutional Challenge*

In December 2012, the Florida Supreme Court (FLSC) issued a ruling on the statute's constitutionality.<sup>9</sup> The precise issues before the FLSC were the following:

- whether the statutory "plainly audible" standard was unconstitutionally vague and overbroad; and
- whether the business and political purposes exemptions were permissible, and if not, whether the exemptions could be severed from the rest of the statute.<sup>10</sup>

In its opinion, the FLSC held that the statute was not unconstitutionally vague because it provided persons of common intelligence and understanding adequate notice of the proscribed conduct, and used an objective standard – distance – for doing so.<sup>11</sup> The FLSC also noted that the statute directed DHSMV to promulgate rules defining "plainly audible" and to establish standards regarding how sound should be measured by law enforcement personnel, and "while each law enforcement officer may have different auditory sensitivities," the statute and rule's objective standard provided "fair warning . . . so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis."<sup>12</sup>

However, the FLSC did find the statute unconstitutionally overbroad in that it was an unreasonable, content-based restriction on the freedom of expression.<sup>13</sup> First, the FLSC cited well-settled precedent declaring the right to play music in public as protected under the First Amendment.<sup>14</sup> The FLSC then noted that because the right to play music in public was protected, a statute restricting the time, place, or manner of the expression of that right, must be content-neutral, narrowly tailored to serve a significant governmental interest, and must leave open ample alternative channels for communication of the information.<sup>15</sup>

While the FLSC found that the desire to protect the public from excessively loud noise was a compelling state interest, the FLSC did not find that the statute was narrowly tailored to serve that interest, and did not find that the restriction was content-neutral. Essentially, the FLSC held that because the statute allowed sound to be amplified at any volume from a vehicle used for business or political purposes, but proscribed other types of sound if the sound was plainly audible at a distance of 25 feet or more, the statute favored certain types of expression over others.<sup>16</sup>

On the issue of severability, the FLSC noted that the unconstitutional portions of a statute may be severed from the other constitutional portions in certain instances. According to precedent, the FLSC noted that the "key determination is whether the overall legislative intent is still accomplished without the invalid provisions."<sup>17</sup> Because the statute specifically carved out an exemption for business and political vehicles, the FLSC found that the Florida Legislature did not intend for the statute's provisions

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<sup>8</sup> See DHSMV's Agency Bill Analysis for HB 1019. A copy of the bill analysis is on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

<sup>9</sup> *State v. Catalano*, 104 So.3d 1069 (Fla. 2012).

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.* at 13.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *Id.* at 18-19.

<sup>17</sup> *Id.* at 20.

to apply “uniformly to all classes of vehicles or content.”<sup>18</sup> For this reason, the FLSC did not sever the exemptions and held the statute unconstitutional in its entirety.

### Effect of Proposed Change

The bill amends s. 316.3045, F.S., to remove the statutory exemptions provided for motor vehicles used for business or political purposes, which in the normal course of conducting such business, use soundmaking devices.

The bill also removes the restriction on sound that is louder than necessary for convenient hearing by the vehicle’s passengers in areas adjoining churches, schools, or hospitals. Although not specifically addressed by the FLSC, an associate judge at the appellate level wrote separately that “louder than necessary” is arguably subjective and may be impermissible if challenged.<sup>19</sup>

By removing the business and political exemptions and removing the “louder than necessary” restriction, the effect of the proposed change applies the statute’s restrictions on sound to all classes of vehicles, except law enforcement and emergency vehicles, in all areas if the sound is plainly audible at a distance of 25 feet or more. Thus, drivers of vehicles used for business or political purposes will be subject to applicable penalties for a violation of the statute’s restrictions. The bill does not affect the statutory provisions that require a vehicle to have a horn in good working order, and which also allow a warning device, such as a car alarm, to be used.

The bill also leaves local government police powers intact by clarifying that local governments may enact stricter time, place, and manner restrictions.

Under the bill, the current law penalty for a violation of the sound restrictions remains a noncriminal traffic citation, which carries a \$30 penalty.

The bill is effective July 1, 2013.

## B. SECTION DIRECTORY:

- Section 1: amends s. 316.3045, F.S.; removes a restriction on sound that is louder than necessary for convenient hearing by the vehicle’s passengers; removes the exemptions provided for business or political vehicles that use sound in the course of business; and clarifies that local governments may enact stricter time, place, and manner restrictions;
- Section 2: provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
See Fiscal Comments.
2. Expenditures:  
None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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<sup>18</sup> Id.

<sup>19</sup> *State v. Catalano*, 60 So.3d 1147 (Fla. App. 2 Dist., 2011).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A driver, including a driver of a vehicle used for business or political purposes, that violates the sound restrictions in s. 316.3045, F.S., is subject to issuance of a nonmoving traffic citation, which carries a \$30 fine, plus court costs, which vary by county but generally range from about \$78 to \$100.

D. FISCAL COMMENTS:

Due to the FLSC ruling, no uniform traffic citations (UTC) are currently being issued by law enforcement. To the extent that the revised and reenacted law allows UTCs to be issued, the state and local governments may collect additional fine revenue.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

According to the Florida Attorney General's Office which was consulted in the drafting of this bill, the bill is intended to resolve the constitutional issues addressed by the FLSC in *State v. Catalano*.

B. RULE-MAKING AUTHORITY:

The bill amends s. 316.3045, F.S., which requires DHSMV to promulgate rules to define "plainly audible" and establish standards regarding how sound should be measured by law enforcement personnel. Pursuant to the current statutory directive, DHSMV has promulgated rule 15B-13.001, F.A.C.

Subsection (4) of rule 15B-13.001, F.A.C., provides that the "standards set forth in subsection (3) above shall also apply to the detection of sound that is louder than necessary for the convenient hearing of persons inside the motor vehicle in areas adjoining churches, schools, or hospitals."

Because the bill removes the "louder than necessary" restriction, DHSMV will be required to update its rule to ensure law enforcement personnel has sufficient standards on how sound should be measured.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Wednesday, March, 27, 2013, the Transportation & Highway Safety Subcommittee adopted one technical amendment to HB 1019, and subsequently reported the bill favorably as a Committee Substitute. The technical amendment aligned the House Bill with its Senate companion and did not change the substance of the bill.

On Tuesday, April 9, 2013, the Economic Affairs Committee adopted one technical amendment to CS/HB 1019, and subsequently reported the bill favorably as a Committee Substitute. The technical amendment changed a reference to "this subsection" to "this section" on line 37 of CS/HB 1019, and did not change the substance of the bill.

This bill analysis is drafted to CS/CS/HB 1019.