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.)

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

BILL:	SB 634
INTRODUCER:	Senator Simpson
SUBJECT:	Motor Vehicles
DATE:	April 2, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Favorable**
2.	Clodfelter	Cannon	CJ	**Pre-meeting**
3.			JU	
4.				
5.				
6.				

I. Summary:

SB 634 removes a provision of s. 316.3045, F.S., that exempts motor vehicles used for business or political purposes from the prohibition against amplifying sound from within a motor vehicle to a level that it is plainly audible at a distance of 25 feet or more from the motor vehicle. This provision was recently found to be unconstitutional by the Florida Supreme Court.

The bill also removes a provision of the statute that prohibits amplifying sound from within a motor vehicle so that it is louder than necessary for convenient hearing by the vehicle's occupants in areas adjoining churches, schools, or hospitals. The constitutionality of this provision has been called into question by courts because of its subjective nature.

This bill amends section 316.3045 of the Florida Statutes.

II. Present Situation:

Richard T. Catalano and another man were cited in 2007 and 2008, respectively, in separate incidents in Pinellas County, Florida, for violating the sound standards of s. 316.3045, F.S. (playing music too loudly in their vehicles), and both men challenged the constitutionality of the law, arguing that the statute is facially unconstitutional. The circuit court agreed and invalidated the law, and the Second District Court of Appeal upheld that decision.[1] In December 2012, the Florida Supreme Court issued an opinion affirming the lower court decisions holding that the statute is unconstitutional.[2]

[1] *State v. Catalano*, 60 So.3d 1139 (Fla. 2d DCA 2011).
[2] *State v. Catalano,* 104 So.3d 1069 (Fla. 2012)

Section 316.3045, F.S., provides:

> 316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.—
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> (1) It is 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:
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> (a) Plainly audible at a distance of 25 feet or more from the motor vehicle; or
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> (b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.
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> (2) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.
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> (3) The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.
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> (4) The provisions of this section do not apply to the noise made by a horn or other warning device required or permitted by s. 316.271. The Department of Highway Safety and Motor Vehicles shall promulgate rules defining "plainly audible" and establish standards regarding how sound should be measured by law enforcement personnel who enforce the provisions of this section.
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> (5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

In considering the constitutionality of the statute, the Supreme Court first determined that the "plainly audible at a distance of 25 feet or more" standard "provides fair warning of the prohibited conduct and provides an objective guideline – distance – to prevent arbitrary and discriminatory enforcement so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis….This is not a standard that calls for police officers to judge whether sound is excessive, raucous, disturbing, or offensive; if the officer can hear the amplified sound more than twenty-five feet from its source, the individual has violated the statute."[3] The court then held that the "plainly audible" standard is not unconstitutionally vague.[4]

Next turning to whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression, the court noted that "the right to play music, including amplified music, in public fora is protected under the First Amendment….Limitations are reasonable if they are "justified without reference to the content of the regulated speech,…narrowly tailored to serve a significant governmental interest, and…leave open ample alternative channels for

[3] *Id.*, 104 So.3d at 1076 (citation omitted).
[4] *Id*. at 1075-1077.

communication of the information."…If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied."[5]

With respect to s. 316.3045, F.S., the court noted:

> "Initially, it would appear that section 316.3045(1)(a) does not regulate expression based on the content of the message as it bans all amplified sound coming from within the interior of a motor vehicle that is "plainly audible" beyond twenty-five feet from the source. In short, the statute proscribes excessive sound emanating from vehicles on public thoroughfares. Subsection (3), however, excepts "motor vehicles used for business or political purposes, which in the normal course of conducting such business use [sound-making] devices" from this broad proscription.
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> "…The regulation, however, treats commercial and political speech more favorably than noncommercial speech….Regardless of the intent of the Legislature, section 316.3045 is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints….Thus, this statute is content based because it does not apply equally to music, political speech, and advertising. *See Discovery Network*, 507 U.S. at 428–29, 113 S.Ct. 1505 (stating that a sound ordinance is permissible if it applies equally to music, political speech, and advertising)."[6]

Pointing to the State's argument that the statute serves the State's interest in traffic safety and protecting the public from excessively loud noise, the court agreed that protecting the public from excessively loud noise is a compelling state interest, but that traffic safety generally is not a compelling state interest.

> "Even assuming the asserted interests are compelling, it is unclear how the statute advances those interests by allowing commercial and political speech at a volume "plainly audible" beyond twenty-five feet, but not allowing noncommercial speech to be heard at the same distance….The State simply argues that noncommercial vehicles are more dangerous to the public because they are ubiquitous. This argument, however, fails to explain how a commercial or political vehicle amplifying commercial or political messages audible a mile away is less dangerous or more tolerable than a noncommercial vehicle amplifying a religious message audible just over twenty-five feet away from the vehicle. Further, the statute protects commercial speech to a greater degree than noncommercial speech; commercial speech, however, is generally afforded less protection." [7]

The court then held:

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[5] *Id.* at 1078 (citations omitted).
[6] *Id.* at 1078-1079.
[7] *Id*. at 1080 (citation omitted).

> "Accordingly, we find that the statute is an unreasonable restriction on First Amendment rights. Likewise, the restriction of the constitutionally protected right to amplify sound, despite the State's acknowledgement that this level of noise is tolerable and safe if the source is a commercial or political vehicle, is not narrowly tailored to achieve the government's interests in improving traffic safety and protecting the citizenry from excessive noise. Thus, we also find that the statute is unconstitutionally overbroad because it restricts the freedom of expression in a manner more intrusive than necessary."[8]

The Supreme Court also noted the comment by one of the lower court judges in a concurring opinion that s. 316.3045(1)(b), F.S., is also "constitutionally infirm" because it "permits citations, at least `in areas adjoining churches, schools, or hospitals,' for sound that is `louder than necessary for the convenient hearing by persons inside the vehicle.'"[9] The court did not consider the constitutionality of paragraph (1)(b) because it was not at issue in the appeal, but the lower court judge questioned the subjectivity required to enforce the provision.

III. Effect of Proposed Changes:

The bill amends s. 316.3045, F.S., to:

- Repeal current paragraph (b) of subsection (1), which prohibits sound from a soundmaking device or instrument from within a motor vehicle so that the sound is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals;
- Repeal the exclusion in subsection (3) of motor vehicles used for business or political purposes, which in the normal course of conducting business use soundmaking devices;
- Amend the remaining portion of subsection (3) to permit local authorities to regulate the place where a device or instrument described in subsection (1) can be operated (regulation of time and manner are already permitted); and
- Make editorial and clarifying changes.

Removal of the language that was rejected by the court as unconstitutional, as well as the language that is constitutionally suspect, will presumably make the statute constitutional. The statute, as amended, will prohibit the operator of a motor vehicle from amplifying sound from within the motor vehicle to a level that it is plainly audible at a distance of 25 feet or more from the vehicle. This will reestablish existing law that has not been enforceable throughout the state since the Supreme Court found the entire statute to be unconstitutional due to other provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[8] *Id.* at 1080.
[9] *Id.* at 1074.

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:

A citizen found to have violated the sound standard of s. 316.3045, F.S., for sound which is plainly audible at a distance of 25 feet or more from the citizen's motor vehicle, is subject to a $30 penalty for a nonmoving traffic violation.[10] This is not a new provision, but reestablishes existing law that was not enforceable due to the unconstitutionality of other provisions in the statute.

C. Government Sector Impact:

The bill removes unconstitutional portions of existing law so the law enforcement officers will be equipped with a constitutional traffic law that serves the State's interest in traffic safety and in protecting the public from excessively loud noise on public streets. There appears to be no fiscal impact on the governmental sector because this was existing law that was temporarily unenforceable.

VI. Technical Deficiencies:

It is recommended that the word "subsection" on line 37 be changed to "section" to conform with the amendments to s. 316.3045(3), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

[10] The penalty is set forth in s. 318.18(2), F.S.

B. Amendments:

None.