

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 Transportation

BILL: SB 634

INTRODUCER: Senator Simpson

SUBJECT: Motor Vehicles

DATE: March 15, 2013

REVISED: _____

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

I. Summary:

SB 634 revises provisions relating to the operation of radios or other soundmaking devices in vehicles following a recent Florida Supreme Court decision finding portions of the relevant statute unconstitutional.

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.

Section 316.3045, F.S., provides:

316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.—

(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:

(a) Plainly audible at a distance of 25 feet or more from the motor vehicle; or

(b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.

(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.

(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.

(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.

(5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

On appeal, the Florida 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.”¹ The court then held that the “plainly audible” standard is not unconstitutionally vague.²

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 communication of the information.” . . . If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.”³

With respect to s. 316.045, F.S., the court noted:

¹ Copy of opinion on file in the Senate Transportation Committee and may be accessed electronically at: <http://www.floridasupremecourt.org/decisions/2012/sc11-1166.pdf#xml=http://199.242.69.43/txis/search/pdfhi.txt?query=No.+SC11-1166+December+2012&pr=Florida+Supreme+Court&prox=page&rorder=1000&rprox=1000&rdfreq=500&rwfreq=500&rlead=1000&rdepth=0&sufs=2&order=r&cq=&id=50cabec423>

² Id. at 9-10.

³ Id. at 13-14, citations omitted.

“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, except “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.

“...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, the statute is content based because it does not apply equally to music, political speech, and advertising.”⁴

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.⁵

“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.”

The court then held:

“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.”⁶

⁴ Id. at 15-16, citations omitted.

⁵ Id. at 16.

⁶ Id. at 19.

III. Effect of Proposed Changes:

SB 634 amends s. 316.3045, F.S., to:

- repeal current paragraph (b) of subsection (1), which prohibits sound from a soundmaking device or instrument from with 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; and
- make editorial and clarifying changes.⁷

Having removed those portions of the statute rejected by the court, the statute is then presumably constitutional.

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:

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.⁸

⁷ The Supreme Court noted the opinion of one of the lower court judges that paragraph "... (b) of the statute suffers constitutional infirmity as 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.'" Id. at 6, citations omitted.

⁸ Section 318.18(2), F.S.

C. Government Sector Impact:

Law enforcement officers are equipped with a constitutional provision of law that serves the State's interest in traffic safety and in protecting the public from excessively loud noise on public streets.

VI. Technical Deficiencies:

None.

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.

B. Amendments:

None.