



185404

LEGISLATIVE ACTION

Senate	.	House
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Floor: WD	.	
04/30/2013 09:23 AM	.	
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Senator Brandes moved the following:

1 **Senate Amendment to Amendment (218538) (with title**
2 **amendment)**

3
4 Between lines 151 and 152
5 insert:

6 Section 6. Subsection (91) is added to section 316.003,
7 Florida Statutes, to read:

8 316.003 Definitions.—The following words and phrases, when
9 used in this chapter, shall have the meanings respectively
10 ascribed to them in this section, except where the context
11 otherwise requires:

12 (91) LOCAL HEARING OFFICER.—The person, designated by a
13 department, county, or municipality that elects to authorize



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14 traffic infraction enforcement officers to issue traffic
15 citations under s. 316.0083(1)(a), who is authorized to conduct
16 hearings related to a notice of violation issued pursuant to
17 316.0083. The charter county, noncharter county, or municipality
18 may use its currently appointed code enforcement board or
19 special magistrate to serve as the local hearing officer. The
20 department may enter into an interlocal agreement to use the
21 local hearing officer of a county or municipality.

22 Section 7. Subsection (1) of section 316.0083, Florida
23 Statutes, is amended, and subsection (5) is added to that
24 section, to read:

25 316.0083 Mark Wandall Traffic Safety Program;
26 administration; report.—

27 (1)(a) For purposes of administering this section, the
28 department, a county, or a municipality may authorize a traffic
29 infraction enforcement officer under s. 316.640 to issue a
30 traffic citation for a violation of s. 316.074(1) or s.
31 316.075(1)(c)1. A notice of violation and a traffic citation may
32 not be issued for failure to stop at a red light if the driver
33 is making a right-hand turn in a careful and prudent manner at
34 an intersection where right-hand turns are permissible. A notice
35 of violation and a traffic citation may not be issued under this
36 section if the driver of the vehicle came to a complete stop
37 after crossing the stop line and before turning right if
38 permissible at a red light, but failed to stop before crossing
39 over the stop line or other point at which a stop is required.
40 This paragraph does not prohibit a review of information from a
41 traffic infraction detector by an authorized employee or agent
42 of the department, a county, or a municipality before issuance



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43 of the traffic citation by the traffic infraction enforcement
44 officer. This paragraph does not prohibit the department, a
45 county, or a municipality from issuing notification as provided
46 in paragraph (b) to the registered owner of the motor vehicle
47 involved in the violation of s. 316.074(1) or s. 316.075(1)(c)1.

48 (b)1.a. Within 30 days after a violation, notification must
49 be sent to the registered owner of the motor vehicle involved in
50 the violation specifying the remedies available under s. 318.14
51 and that the violator must pay the penalty of \$158 to the
52 department, county, or municipality, or furnish an affidavit in
53 accordance with paragraph (d), or request a hearing within 60 ~~30~~
54 days following the date of the notification in order to avoid
55 court fees, costs, and the issuance of a traffic citation. The
56 notification must shall be sent by first-class mail. The mailing
57 of the notice of violation constitutes notification.

58 b. Included with the notification to the registered owner
59 of the motor vehicle involved in the infraction must be a notice
60 that the owner has the right to review the photographic or
61 electronic images or the streaming video evidence that
62 constitutes a rebuttable presumption against the owner of the
63 vehicle. The notice must state the time and place or Internet
64 location where the evidence may be examined and observed.

65 c. Notwithstanding any other provision of law, a person who
66 receives a notice of violation under this section may request a
67 hearing within 60 days following the date of delivery of the
68 notice of violation or pay the penalty pursuant to the notice of
69 violation, but a payment or fee may not be required before the
70 hearing requested by the person. The notice of violation must be
71 accompanied by, or direct the person to a website that provides,



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72 information on the person's right to request a hearing and on
73 all court costs related thereto and a form to request a hearing.
74 As used in this sub-subparagraph, the term "person" includes a
75 natural person, registered owner or coowner of a motor vehicle,
76 or person identified on an affidavit as having care, custody, or
77 control of the motor vehicle at the time of the violation.

78 d. If the registered owner or coowner of the motor vehicle,
79 or the person designated as having care, custody, or control of
80 the motor vehicle at the time of the violation, or an authorized
81 representative of the owner, coowner, or designated person,
82 initiates a proceeding to challenge the violation pursuant to
83 this paragraph, such person waives any challenge or dispute as
84 to the delivery of the notice of violation.

85 2. Penalties assessed and collected by the department,
86 county, or municipality authorized to collect the funds provided
87 for in this paragraph, less the amount retained by the county or
88 municipality pursuant to subparagraph 3., shall be paid to the
89 Department of Revenue weekly. Payment by the department, county,
90 or municipality to the state shall be made by means of
91 electronic funds transfers. In addition to the payment, summary
92 detail of the penalties remitted shall be reported to the
93 Department of Revenue.

94 3. Penalties to be assessed and collected by the
95 department, county, or municipality are as follows:

96 a. One hundred fifty-eight dollars for a violation of s.
97 316.074(1) or s. 316.075(1)(c)1. when a driver ~~has~~ failed to
98 stop at a traffic signal if enforcement is by the department's
99 traffic infraction enforcement officer. One hundred dollars
100 shall be remitted to the Department of Revenue for deposit into



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101 the General Revenue Fund, \$10 shall be remitted to the
102 Department of Revenue for deposit into the Department of Health
103 Emergency Medical Services Trust Fund, \$3 shall be remitted to
104 the Department of Revenue for deposit into the Brain and Spinal
105 Cord Injury Trust Fund, and \$45 shall be distributed to the
106 municipality in which the violation occurred, or, if the
107 violation occurred in an unincorporated area, to the county in
108 which the violation occurred. Funds deposited into the
109 Department of Health Emergency Medical Services Trust Fund under
110 this sub-subparagraph shall be distributed as provided in s.
111 395.4036(1). Proceeds of the infractions in the Brain and Spinal
112 Cord Injury Trust Fund shall be distributed quarterly to the
113 Miami Project to Cure Paralysis and ~~shall be~~ used for brain and
114 spinal cord research.

115 b. One hundred fifty-eight dollars for a violation of s.
116 316.074(1) or s. 316.075(1)(c)1. when a driver ~~has~~ failed to
117 stop at a traffic signal if enforcement is by a county or
118 municipal traffic infraction enforcement officer. Seventy
119 dollars shall be remitted by the county or municipality to the
120 Department of Revenue for deposit into the General Revenue Fund,
121 \$10 shall be remitted to the Department of Revenue for deposit
122 into the Department of Health Emergency Medical Services Trust
123 Fund, \$3 shall be remitted to the Department of Revenue for
124 deposit into the Brain and Spinal Cord Injury Trust Fund, and
125 \$75 shall be retained by the county or municipality enforcing
126 the ordinance enacted pursuant to this section. Funds deposited
127 into the Department of Health Emergency Medical Services Trust
128 Fund under this sub-subparagraph shall be distributed as
129 provided in s. 395.4036(1). Proceeds of the infractions in the



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130 Brain and Spinal Cord Injury Trust Fund shall be distributed
131 quarterly to the Miami Project to Cure Paralysis and ~~shall be~~
132 used for brain and spinal cord research.

133 4. An individual may not receive a commission from any
134 revenue collected from violations detected through the use of a
135 traffic infraction detector. A manufacturer or vendor may not
136 receive a fee or remuneration based upon the number of
137 violations detected through the use of a traffic infraction
138 detector.

139 (c)1.a. A traffic citation issued under this section shall
140 be issued by mailing the traffic citation by certified mail to
141 the address of the registered owner of the motor vehicle
142 involved in the violation ~~if when~~ payment has not been made
143 within 60 ~~30~~ days after notification under paragraph (b), if the
144 registered owner has not requested a hearing as authorized under
145 paragraph (b), or if the registered owner has not submitted an
146 affidavit under this section ~~subparagraph (b)1~~.

147 b. Delivery of the traffic citation constitutes
148 notification under this paragraph. If the registered owner or
149 coowner of the motor vehicle, or the person designated as having
150 care, custody, or control of the motor vehicle at the time of
151 the violation, or a duly authorized representative of the owner,
152 coowner, or designated person, initiates a proceeding to
153 challenge the citation pursuant to this section, such person
154 waives any challenge or dispute as to the delivery of the
155 traffic citation.

156 c. In the case of joint ownership of a motor vehicle, the
157 traffic citation shall be mailed to the first name appearing on
158 the registration, unless the first name appearing on the



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159 registration is a business organization, in which case the
160 second name appearing on the registration may be used.

161 ~~d. The traffic citation shall be mailed to the registered~~
162 ~~owner of the motor vehicle involved in the violation no later~~
163 ~~than 60 days after the date of the violation.~~

164 2. Included with the notification to the registered owner
165 of the motor vehicle involved in the infraction shall be a
166 notice that the owner has the right to review, ~~either~~ in person
167 or remotely, the photographic or electronic images or the
168 streaming video evidence that constitutes a rebuttable
169 presumption against the owner of the vehicle. The notice must
170 state the time and place or Internet location where the evidence
171 may be examined and observed.

172 (d)1. The owner of the motor vehicle involved in the
173 violation is responsible and liable for paying the uniform
174 traffic citation issued for a violation of s. 316.074(1) or s.
175 316.075(1)(c)1. when the driver failed to stop at a traffic
176 signal, unless the owner can establish that:

177 a. The motor vehicle passed through the intersection in
178 order to yield right-of-way to an emergency vehicle or as part
179 of a funeral procession;

180 b. The motor vehicle passed through the intersection at the
181 direction of a law enforcement officer;

182 c. The motor vehicle was, at the time of the violation, in
183 the care, custody, or control of another person;

184 d. A uniform traffic citation was issued by a law
185 enforcement officer to the driver of the motor vehicle for the
186 alleged violation of s. 316.074(1) or s. 316.075(1)(c)1; or

187 e. The motor vehicle's owner was deceased on or before the



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188 date that the uniform traffic citation was issued, as
189 established by an affidavit submitted by the representative of
190 the motor vehicle owner's estate or other designated person or
191 family member.

192 2. In order to establish such facts, the owner of the motor
193 vehicle shall, within 30 days after the date of issuance of the
194 traffic citation, furnish to the appropriate governmental entity
195 an affidavit setting forth detailed information supporting an
196 exemption as provided in this paragraph.

197 a. An affidavit supporting an exemption under sub-
198 subparagraph 1.c. must include the name, address, date of birth,
199 and, if known, the driver license number of the person who
200 leased, rented, or otherwise had care, custody, or control of
201 the motor vehicle at the time of the alleged violation. If the
202 vehicle was stolen at the time of the alleged offense, the
203 affidavit must include the police report indicating that the
204 vehicle was stolen.

205 b. If a traffic citation for a violation of s. 316.074(1)
206 or s. 316.075(1)(c)1. was issued at the location of the
207 violation by a law enforcement officer, the affidavit must
208 include the serial number of the uniform traffic citation.

209 c. If the motor vehicle's owner to whom a traffic citation
210 has been issued is deceased, the affidavit must include a
211 certified copy of the owner's death certificate showing that the
212 date of death occurred on or before the issuance of the uniform
213 traffic citation and one of the following:

214 (I) A bill of sale or other document showing that the
215 deceased owner's motor vehicle was sold or transferred after his
216 or her death, but on or before the date of the alleged



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217 violation.

218 (II) Documentary proof that the registered license plate
219 belonging to the deceased owner's vehicle was returned to the
220 department or any branch office or authorized agent of the
221 department, but on or before the date of the alleged violation.

222 (III) A copy of a police report showing that the deceased
223 owner's registered license plate or motor vehicle was stolen
224 after the owner's death, but on or before the date of the
225 alleged violation.

226

227 Upon receipt of the affidavit and documentation required under
228 this sub-subparagraph, the governmental entity must dismiss the
229 citation and provide proof of such dismissal to the person that
230 submitted the affidavit.

231 3. Upon receipt of an affidavit, the person designated as
232 having care, custody, or ~~and~~ control of the motor vehicle at the
233 time of the violation may be issued a notice of violation
234 pursuant to paragraph (b) ~~traffic citation~~ for a violation of s.
235 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop
236 at a traffic signal. The affidavit is admissible in a proceeding
237 pursuant to this section for the purpose of providing proof that
238 the person identified in the affidavit was in actual care,
239 custody, or control of the motor vehicle. The owner of a leased
240 vehicle for which a traffic citation is issued for a violation
241 of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to
242 stop at a traffic signal is not responsible for paying the
243 traffic citation and is not required to submit an affidavit as
244 specified in this subsection if the motor vehicle involved in
245 the violation is registered in the name of the lessee of such



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246 motor vehicle.

247 4. Paragraphs (b) and (c) apply to the person identified on
248 the affidavit, except that the notification under sub-
249 subparagraph (b)1.a. must be sent to the person identified on
250 the affidavit within 30 days after receipt of an affidavit.

251 5.4. The submission of a false affidavit is a misdemeanor
252 of the second degree, punishable as provided in s. 775.082 or s.
253 775.083.

254 (e) The photographic or electronic images or streaming
255 video attached to or referenced in the traffic citation is
256 evidence that a violation of s. 316.074(1) or s. 316.075(1)(c)1.
257 when the driver failed to stop at a traffic signal has occurred
258 and is admissible in any proceeding to enforce this section and
259 raises a rebuttable presumption that the motor vehicle named in
260 the report or shown in the photographic or electronic images or
261 streaming video evidence was used in violation of s. 316.074(1)
262 or s. 316.075(1)(c)1. when the driver failed to stop at a
263 traffic signal.

264 (5) Procedures for a hearing under this section are as
265 follows:

266 (a) The department shall publish and make available
267 electronically to each county and municipality a model Request
268 for Hearing form to assist each local government administering
269 this section.

270 (b) The charter county, noncharter county, or municipality
271 electing to authorize traffic infraction enforcement officers to
272 issue traffic citations under s. 316.0083(1)(a) shall designate
273 by resolution existing staff to serve as the clerk to the local
274 hearing officer.



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275 (c) Any person, herein referred to as the "petitioner," who
276 elects to request a hearing under paragraph (1)(b) shall be
277 scheduled for a hearing by the clerk to the local hearing
278 officer to appear before a local hearing officer with notice to
279 be sent by first-class mail. Upon receipt of the notice, the
280 petitioner may reschedule the hearing once by submitting a
281 written request to reschedule to the clerk to the local hearing
282 officer, at least 5 calendar days before the day of the
283 originally scheduled hearing. The petitioner may cancel his or
284 her appearance before the local hearing officer by paying the
285 penalty assessed under paragraph (1)(b), plus \$50 in
286 administrative costs, before the start of the hearing.

287 (d) All testimony at the hearing shall be under oath and
288 shall be recorded. The local hearing officer shall take
289 testimony from a traffic infraction enforcement officer and the
290 petitioner, and may take testimony from others. The local
291 hearing officer shall review the photographic or electronic
292 images or the streaming video made available under sub-
293 paragraph(1)(b)1.b. Formal rules of evidence do not apply,
294 but due process shall be observed and govern the proceedings.

295 (e) At the conclusion of the hearing, the local hearing
296 officer shall determine whether a violation under this section
297 has occurred, in which case the hearing officer shall uphold or
298 dismiss the violation. The local hearing officer shall issue a
299 final administrative order including the determination and, if
300 the notice of violation is upheld, require the petitioner to pay
301 the penalty previously assessed under paragraph (1)(b), and may
302 also require the petitioner to pay county or municipal costs,
303 not to exceed \$250. The final administrative order shall be



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304 mailed to the petitioner by first-class mail.

305 (f) An aggrieved party may appeal a final administrative
306 order consistent with the process provided under s. 162.11.

307 Section 8. Paragraph (c) of subsection (3) of section
308 316.650, Florida Statutes, is amended to read

309 316.650 Traffic citations.—

310 (3)

311 (c) If a traffic citation is issued under s. 316.0083, the
312 traffic infraction enforcement officer shall provide by
313 electronic transmission a replica of the traffic citation data
314 to the court having jurisdiction over the alleged offense or its
315 traffic violations bureau within 5 days after the date of
316 issuance of the traffic citation to the violator. If a hearing
317 is requested, the traffic infraction enforcement officer shall
318 provide a replica of the traffic notice of violation data to the
319 clerk for the local hearing officer having jurisdiction over the
320 alleged offense within 14 days.

321 Section 9. Section 318.121, Florida Statutes, is amended to
322 read:

323 318.121 Preemption of additional fees, fines, surcharges,
324 and costs.—Notwithstanding any general or special law, or
325 municipal or county ordinance, additional fees, fines,
326 surcharges, or costs other than the court costs and surcharges
327 assessed under s. 318.18(11), (13), (18), ~~and~~ (19), and (22) may
328 not be added to the civil traffic penalties assessed under ~~in~~
329 this chapter.

330 Section 10. Subsection (3) is added to section 318.15,
331 Florida Statutes, to read:

332 318.15 Failure to comply with civil penalty or to appear;



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333 penalty.-

334 (3) The clerk shall notify the department of persons who
335 were mailed a notice of violation of s. 316.074(1) or s.
336 316.075(1)(c)1. pursuant to s. 316.0083 and who failed to enter
337 into, or comply with the terms of, a penalty payment plan, or
338 order with the clerk to the local hearing officer or failed to
339 appear at a scheduled hearing within 10 days after such failure,
340 and shall reference the person's driver license number, or in
341 the case of a business entity, vehicle registration number.

342 (a) Upon receipt of such notice, the department, or
343 authorized agent thereof, may not issue a license plate or
344 revalidation sticker for any motor vehicle owned or coowned by
345 that person pursuant to s. 320.03(8) until the amounts assessed
346 have been fully paid.

347 (b) After the issuance of the person's license plate or
348 revalidation sticker is withheld pursuant to paragraph (a), the
349 person may challenge the withholding of the license plate or
350 revalidation sticker only on the basis that the outstanding
351 finances and civil penalties have been paid pursuant to s.
352 320.03(8).

353 Section 11. Paragraph (c) of subsection (15) of section
354 318.18, Florida Statutes, is amended, and subsection (22) is
355 added to that section, to read:

356 318.18 Amount of penalties.—The penalties required for a
357 noncriminal disposition pursuant to s. 318.14 or a criminal
358 offense listed in s. 318.17 are as follows:

359 (15)

360 (c) If a person who is mailed a notice of violation or
361 cited for a violation of s. 316.074(1) or s. 316.075(1)(c)1., as



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362 enforced by a traffic infraction enforcement officer under s.
363 316.0083, presents documentation from the appropriate
364 governmental entity that the notice of violation or traffic
365 citation was in error, the clerk of court or clerk to the local
366 hearing officer may dismiss the case. The clerk of court or
367 clerk to the local hearing officer may ~~shall~~ not charge for this
368 service.

369 (22) In addition to the penalty prescribed under s.
370 316.0083 for violations enforced under s. 316.0083 which are
371 upheld, the local hearing officer may also order the payment of
372 county or municipal costs, not to exceed \$250.

373 Section 12. Subsection (8) of section 320.03, Florida
374 Statutes, is amended to read:

375 320.03 Registration; duties of tax collectors;
376 International Registration Plan.—

377 (8) If the applicant's name appears on the list referred to in
378 s. 316.1001(4), s. 316.1967(6), s. 318.15(3), or s. 713.78(13),
379 a license plate or revalidation sticker may not be issued until
380 that person's name no longer appears on the list or until the
381 person presents a receipt from the governmental entity or the
382 clerk of court that provided the data showing that the fines
383 outstanding have been paid. This subsection does not apply to
384 the owner of a leased vehicle if the vehicle is registered in
385 the name of the lessee of the vehicle. The tax collector and the
386 clerk of the court are each entitled to receive monthly, as
387 costs for implementing and administering this subsection, 10
388 percent of the civil penalties and fines recovered from such
389 persons. As used in this subsection, the term "civil penalties
390 and fines" does not include a wrecker operator's lien as



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391 described in s. 713.78(13). If the tax collector has private tag
392 agents, such tag agents are entitled to receive a pro rata share
393 of the amount paid to the tax collector, based upon the
394 percentage of license plates and revalidation stickers issued by
395 the tag agent compared to the total issued within the county.
396 The authority of any private agent to issue license plates shall
397 be revoked, after notice and a hearing as provided in chapter
398 120, if he or she issues any license plate or revalidation
399 sticker contrary to the provisions of this subsection. This
400 section applies only to the annual renewal in the owner's birth
401 month of a motor vehicle registration and does not apply to the
402 transfer of a registration of a motor vehicle sold by a motor
403 vehicle dealer licensed under this chapter, except for the
404 transfer of registrations which includes the annual renewals.
405 This section does not affect the issuance of the title to a
406 motor vehicle, notwithstanding s. 319.23(8)(b).

407
408 ===== T I T L E A M E N D M E N T =====

409 And the title is amended as follows:

410 Between lines 4626 and 4627

411 insert:

412 amending s. 316.003, F.S.; defining the term "local
413 hearing officer"; amending s. 316.0083, F.S; revising
414 provisions relating to the use of a traffic infraction
415 detector; specifying when a citation may be issued;
416 providing that a recipient of a notice of violation
417 may request a hearing; providing that initiating a
418 proceeding to challenge a violation or a citation
419 waives any challenge or dispute as to delivery of the



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420 notice; revising provisions for issuance of a
421 citation; revising provisions for enforcement if a
422 person other than the owner is designated as having
423 care, custody, or control of the motor vehicle at the
424 time of the violation; providing procedures for
425 conducting hearings to determine whether a violation
426 has occurred; amending s. 316.650, F.S.; requiring
427 notification of violation data to be sent within a
428 certain timeframe; amending s. 318.121, F.S.; limiting
429 the assessment of costs and charges added to certain
430 penalties; amending s. 318.15, F.S.; providing for the
431 registration of a vehicle owned by a person who fails
432 to comply with the terms of the local hearing officer;
433 amending s. 318.18, F.S.; providing for dismissal of
434 cases by presentation of appropriate documentation;
435 authorizing the assessment of county or municipal
436 costs when certain violations are upheld following a
437 hearing; amending 320.03, F.S.; adding a cross-
438 reference;