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LEGISLATIVE ACTION

Senate

House

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04/29/2013 03:05 PM

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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 official, 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 before turning right if permissible at a red light, but failed  
38 to stop before crossing over the stop bar or other point at  
39 which a stop is required. This paragraph does not prohibit a  
40 review of information from a traffic infraction detector by an  
41 authorized employee or agent of the department, a county, or a  
42 municipality before issuance of the traffic citation by the



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43 traffic infraction enforcement officer. This paragraph does not  
44 prohibit the department, a county, or a municipality from  
45 issuing notification as provided in paragraph (b) to the  
46 registered owner of the motor vehicle involved in the violation  
47 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 delivery of the notification in order  
55 to avoid court fees, costs, and the issuance of a traffic  
56 citation. The notification must ~~shall~~ be sent by first-class  
57 mail. The mailing of the notice of violation constitutes  
58 notification.

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

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



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

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

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

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

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



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

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



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130 provided in s. 395.4036(1). Proceeds of the infractions in the  
131 Brain and Spinal Cord Injury Trust Fund shall be distributed  
132 quarterly to the Miami Project to Cure Paralysis and ~~shall be~~  
133 used for brain and spinal cord research.

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

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

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

158 c. In the case of joint ownership of a motor vehicle, the



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159 traffic citation shall be mailed to the first name appearing on  
160 the registration, unless the first name appearing on the  
161 registration is a business organization, in which case the  
162 second name appearing on the registration may be used.

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

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

174 (d)1. The owner of the motor vehicle involved in the  
175 violation is responsible and liable for paying the uniform  
176 traffic citation issued for a violation of s. 316.074(1) or s.  
177 316.075(1)(c)1. when the driver failed to stop at a traffic  
178 signal, unless the owner can establish that:

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

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

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

186 d. A uniform traffic citation was issued by a law  
187 enforcement officer to the driver of the motor vehicle for the



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188 alleged violation of s. 316.074(1) or s. 316.075(1)(c)1; or

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

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

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

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

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

216 (I) A bill of sale or other document showing that the





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217 deceased owner's motor vehicle was sold or transferred after his  
218 or her death, but on or before the date of the alleged  
219 violation.

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

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

228

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

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



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246 specified in this subsection if the motor vehicle involved in  
247 the violation is registered in the name of the lessee of such  
248 motor vehicle.

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

253 5.4. The submission of a false affidavit is a misdemeanor  
254 of the second degree, punishable as provided in s. 775.082 or s.  
255 775.083.

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

266 (5) Procedures for a hearing under this section are as  
267 follows:

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

272 (b) The charter county, noncharter county, or municipality  
273 electing to authorize traffic infraction enforcement officers to  
274 issue traffic citations under s. 318.0083(1)(a) shall designate



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275 by resolution existing staff to serve as the clerk to the local  
276 hearing officer.

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

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

297 (e) At the conclusion of the hearing, the local hearing  
298 officer shall determine whether a violation under this section  
299 has occurred, in which case the hearing officer shall uphold or  
300 dismiss the violation. The local hearing officer shall issue a  
301 final administrative order including the determination and, if  
302 the notice of violation is upheld, require the petitioner to pay  
303 the penalty previously assessed under paragraph (1)(b), and may



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304 also require the petitioner to pay county or municipal costs,  
305 not to exceed \$500. The final administrative order shall be  
306 mailed to the petitioner by first-class mail.

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

309 Section 8. Paragraph (c) of subsection (3) of section  
310 316.650, Florida Statutes, is amended to read

311 316.650 Traffic citations.—

312 (3)

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

324 Section 9. Section 318.121, Florida Statutes, is amended to  
325 read:

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



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

335 318.15 Failure to comply with civil penalty or to appear;  
336 penalty.-

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

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

350 (b) After the issuance of the person's license plate or  
351 revalidation sticker is withheld pursuant to paragraph (a), the  
352 person may challenge the withholding of the license plate or  
353 revalidation sticker only on the basis that the outstanding  
354 finances and civil penalties have been paid pursuant to s.  
355 320.03(8).

356 Section 11. Paragraph (c) of subsection (15) of section  
357 318.18, Florida Statutes, is amended, and subsection (22) is  
358 added to that section, to read:

359 318.18 Amount of penalties.-The penalties required for a  
360 noncriminal disposition pursuant to s. 318.14 or a criminal  
361 offense listed in s. 318.17 are as follows:



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362 (15)

363 (c) If a person who is mailed a notice of violation or  
364 cited for a violation of s. 316.074(1) or s. 316.075(1)(c)1., as  
365 enforced by a traffic infraction enforcement officer under s.  
366 316.0083, presents documentation from the appropriate  
367 governmental entity that the notice of violation or traffic  
368 citation was in error, the clerk of court or clerk to the local  
369 hearing officer may dismiss the case. The clerk of court or  
370 clerk to the local hearing officer may ~~shall~~ not charge for this  
371 service.

372 (22) In addition to the penalty prescribed under s.  
373 316.0083 for violations of s. 316.0083 which are upheld, the  
374 local hearing officer may also order the payment of county or  
375 municipal costs, not to exceed \$250.

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

378 320.03 Registration; duties of tax collectors;  
379 International Registration Plan.—

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



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

410  
411 ===== T I T L E A M E N D M E N T =====

412 And the title is amended as follows:

413       Between lines 4626 and 4627

414 insert:

415       amending s. 316.003, F.S.; defining the term "local  
416       hearing officer"; amending s. 316.0083, F.S; revising  
417       provisions relating to the use of a traffic infraction  
418       detector; specifying when a citation may be issued;  
419       providing that a recipient of a notice of violation



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