

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

(1)(a) For purposes of administering this section, the department, a county, or a municipality may authorize a traffic infraction enforcement officer under s. 316.640 to issue a traffic citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1. A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible. A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required. This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer. This paragraph does not prohibit the department, a county, or a municipality from issuing notification as provided in paragraph (b) to the registered owner of the motor vehicle involved in the violation of s. 316.074(1) or s. 316.075(1)(c)1.

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

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

c. Notwithstanding any other provision of law, a person who receives a notice of violation under this section may request a hearing within 60 days following the notification of violation or pay the penalty pursuant to the notice of violation, but a payment or fee may not be required before the hearing requested by the person. The notice of violation must be accompanied by, or direct the person to a website that provides, information on the person's right to request a hearing and on all court costs related thereto and a form to request a hearing. As used in this sub-subparagraph, the term "person" includes a natural person, registered owner or coowner of a motor vehicle, or person identified on an affidavit as having care, custody, or control of the motor vehicle at the time of the violation.

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

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

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

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

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

b. One hundred fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver failed to stop at a traffic signal if enforcement is by a county or municipal traffic infraction enforcement officer. Seventy dollars shall be remitted by the county or municipality to the Department of Revenue for deposit into the General Revenue Fund, \$10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund, \$3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and \$75 shall be retained by the county or municipality enforcing the ordinance enacted pursuant to this section. Funds deposited into the Department of Health Emergency Medical Services Trust Fund under this sub-subparagraph shall be distributed as provided in s. 395.4036(1). Proceeds of the infractions in the Brain and Spinal Cord Injury Trust Fund shall be distributed quarterly to the Miami Project to Cure Paralysis and used for brain and spinal cord research.

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

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

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

c. In the case of joint ownership of a motor vehicle, the traffic citation shall be mailed to the first name appearing on the registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible.

(3) This section supplements the enforcement of s. 316.074(1) or s. 316.075(1)(c)1. by law enforcement officers when a driver fails to stop at a traffic signal and does not prohibit a law enforcement officer from issuing a traffic citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop at a traffic signal in accordance with normal traffic enforcement techniques.

(4)(a) Each county or municipality that operates a traffic infraction detector shall submit a report by October 1, 2012, and annually thereafter, to the department which details the results of using the traffic infraction detector and the procedures for enforcement for the preceding state fiscal year. The information submitted by the counties and municipalities must include statistical data and information required by the department to complete the report required under paragraph (b).

(b) On or before December 31, 2012, and annually thereafter, the department shall provide a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the use and operation of traffic infraction detectors under this section, along with the department's recommendations and any necessary legislation. The summary report must include a review of the information submitted to the department by the counties and municipalities and must describe the enhancement of the traffic safety and enforcement programs.

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

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

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

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

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

(e) At the conclusion of the hearing, the local hearing officer shall determine whether a violation under this section has occurred, in which case the hearing officer shall uphold or dismiss the violation. The local hearing officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the petitioner to

pay the penalty previously assessed under paragraph (1)(b), and may also require the petitioner to pay county or municipal costs, not to exceed \$250. The final administrative order shall be mailed to the petitioner by first-class mail.

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

History.—s. 5, ch. 2010-80; s. 98, ch. 2012-174; ss. 3, 74, ch. 2012-181; s. 43, ch. 2013-15; s. 5, ch. 2013-160.