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IN THE SUPREME COURT OF FLORIDA

THIRD DISTRICT COURT CASE NO: 91-366
Supreme Court Case No: 79,478

TRAVELERS INDEMNITY COMPANY,

Petitioners,

vs.

RAUL GONZALEZ, ETC., ET AL.,

Respondents.

TRAVELER INDEMNITY COMPANY'S REPLY BRIEF ON MERITS

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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. STATEMENT OF WHY REVIEW SHOULD BE GRANTED.. ..	1
III. ARGUMENT.....	2
THE MINIMUM AMOUNT OF INSURANCE REQUIRED ON A PER PERSON BASIS FOR PRIVATE MOTOR VEHICLES HAVING LESS THAN 24 SEATS WHICH ARE PRIMARILY ENGAGED IN THE TRANSPORTATION OF SCHOOL CHILDREN AND WHICH ARE WITHIN THE CLASS DESCRIBED BY SECTION 316.615 FLA. STAT. (1986) IS \$10,000 PER PERSON/THE NUMBER OF SEATS TIMES \$5,000 PER INCIDENT.	
IV. CONCLUSION.....	10
V. CERTIFICATE OF SERVICE...	12

TABLE OF AUTHORITIES

<u>CASE</u>	<u>PAGE</u>
<u>Bituminous Casualty Corp. v. Williams,</u> 17 So.2d 98 (Fla. 1944)	6
<u>France v. Liberty Mutual Ins. Co.,</u> 380 So.2d 1155 (Fla. 3rd DCA 1980)	6
<u>Holl v. Talcott,</u> 191 So.2d 40 (Fla. 1966)	3,7
<u>Knight v. Mundy Plastering Company,</u> 220 So.2d 357 (Fla. 1968)	6
<u>Reedy Creek Imperial District v. State Department of Environmental Regulation,</u> 486 So.2d 642 (Fla. 1st DCA 1986)	6
<u>Suazo v. Del Busto,</u> 587 So.2d 480 (Fla. 3rdDCA 1991)	1,3,7
<u>Woodley v. Department of Health and Rehabilitative Services,</u> 505 So.2d 676 (Fla. 1st DCA 1987)	6

Table of Authorities
Continued

Other Authorities:

S3.28.00	1
S4.22.00 "School Bus Inspection and Transportation Manual"	1,3
§627.742 (Fla. Stat. 1989) §627.742(2)	3,5,7,8,9 7,9
Senate Bill 814	8
Chapter 67-419	8
Chapter 69-247	8
§234.03	3,4,5
Chapter 234	4,5,7,8
Chapter 316	7
§316.615	2,3,7,8,9,10
§316.615 Fla. Stat. (1986)	2
§316.615 Fla. Stat (1989)	4
316.003(45)	7,8
§317.692	4,5,7,8,9
§317.692(1)(a) Fla. Stat.	8
§321.05(6) Fla. Stat. (1989)	2
Section 15D-4.001 Fla. Administrative Code	2
Op. atty. Gen., 082-70, Sept. 1982	2,9

INTRODUCTION

This Reply Brief is in response to the Answer Brief filed by the Plaintiff/Respondents Raul Gonzalez and Virgilia Gonzalez individually and as parents and next friends of Wendy Mayen, a minor (Gonzalez). References to the appendix to this brief will be by the symbol "App."

STATEMENT OF WHY REVIEW SHOULD BE GRANTED

Travelers agrees with Gonzalez to the extent that Gonzalez recognizes that this; court's decision in reviewing Suazo v. DelBusto, 587 So.2d **480** (3rd DCA 1991), will be dispositive.¹

As we asserted in Suazo we respectfully submit that review should be granted herein because the judicial legislation formulated by the Third District Court of Appeals will have a devastating financial impact among insurance carriers who have been issuing insurance policy in reliance upon an interpretation of law contrary to that manufactured by the Third District. In sum, because we submit that the Third District's ruling is erroneous and because the decision will have a wide-spread effect upon the insurance industry and the owners of the extensive number of private school buses operating in the state and the pupils who ride

¹ The regulations applicable in the Suazo case and in the present case are contained in the "School Bus Inspection and Transportation Manual" (attached to Initial Brief) and they are virtually identical. See **54.22.00** which is applicable to the case at bar and all motor vehicles with a seating capacity of less than **24** students and **S3.28.00** which is applicable to motor vehicles carrying more than **24** pupils.

those buses, we respectfully request that court exercise its jurisdiction and address the merits of the Third District's conclusion.

ARGUMENT

THE MINIMUM AMOUNT OF INSURANCE REQUIRED ON A PER PERSON BASIS FOR PRIVATE MOTOR VEHICLES HAVING LESS THAN 24 SEATS WHICH ARE PRIMARILY ENGAGED IN THE TRANSPORTATION OF SCHOOL CHILDREN AND WHICH ARE WITHIN THE CLASS DESCRIBED BY SECTION 316.615 FLA. STAT. (1986) IS \$10,000 PER PERSON/THE NUMBER OF SEATS TIMES \$5,000 PER INCIDENT.²

Gonzalez' contention that the Third District's decision was correct because it reformed the subject policy to provide the minimum coverage required by the applicable statutes and regulations is groundless. As we indicated previously, the Department of Highway Safety and Motor Vehicles is required pursuant to Sections 316.615 of the Florida Statutes to annually inspect all public and nonpublic school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for transporting pupils to school but which are not operated by or under the purview of the state or political subdivision thereof, or under a franchise issued by a municipality or the public service commission. Section 15D-4.001 of the Florida Administrative Code and Op. Atty. Gen., **082-70** September 1982. In addition to conducting the aforementioned inspections, the Florida

² There is no dispute that the vehicle in question was primarily engaged in the transportation of school children since the Travelers policy, which was attached to the initial complaint, described the insured's business as "school bus."

Highway Patrol is authorized pursuant to Section 321.05(6) Fla. Stat. (1989) to pass rules and regulations implementing Section 316.615. It is pursuant to this delegation of authority that the Highway **Patrol** passed the regulation which governs the bus in question-Section 4.22.00 of the "School Bus Inspection and Student Transportation Manual." (Attached **as** an appendix to the Initial Brief). Since the respondent has failed to demonstrate at this point that the Travelers policy failed inspection, on the state of this record it must be presumed that the policy issued by Travelers was accepted by the Highway Patrol as being in compliance with the regulations set forth in the Highway Patrol's **manual**.³ Holl v. Talcott, 191 So.2d 40 (Fla. 1966). Also there is no question that this regulation is unclear to the extent that it does not specifically indicate whether or not the minimum requirements for insurance set forth therein apply on a per person or **per** occurrence basis and accordingly, the regulation should be placed in its historical perspective along with the two statutes which peripherally deal with the question at bar, Section 316.615 and Section 234.03.

³ We would agree with the Respondent that the issue of the proper interpretation of the Highway Patrol's manual was never raised in the trial court. It should be noted however, that none of the parties to this cause nor the trial judge and none of the parties in the **Suazo** case nor the trial judge were aware that such regulations even existed until such time as the Department of Highway Safety and Motor Vehicles filed an Amicus Brief with the Third District in the Suazo case. In any event, since we believe the trial court's ruling that **5627.742** was applicable under the facts and circumstances of this case is erroneous, there is certainly nothing which precludes remand **and** further discovery regarding the regulations which are applicable.

Section 316.615 (1989) was initially enacted in 1967 as Fla. Stat. S317.692. Subsection 1(a) of the statute indicated that all motor vehicles which are used primarily for the transportation of pupils to school were to comply with the requirements for school buses of Chapter 234. Unlike the present version of Section 234.03, the statute **as** it existed in 1967 contained specific insurance requirements which read as follows:

Section 234.03 Liability **Insurance** -

Liability insurance shall be carried on school buses and may be carried on other motor vehicles **as** provided below:

(1) LIABILITY INSURANCE REQUIRED TO PROTECT PUPILS TRANSPORTED -

County boards are required to secure and keep in force, with companies duly authorized to do business in Florida, insurance covering liability for damages on account of bodily injury, or death resulting therefrom, to pupils legally enrolled in the public schools, by reason of the ownership, maintenance, operating or use of school buses and other vehicles which said pupils are being transported to or from a school or school activity. Such liability insurance shall be carried in the sum of \$10,000 for bodily injury, or death resulting therefrom, to any one pupil, and shall, for any one accident, be limited to \$5,000 multiplied by the rated seating capacity of the bus or vehicle as determined by regulations of the State Board of Education... (emphasis supplied).

As the aforementioned statutes indicate, there could be no question, at least in 1967, that all motor vehicles primarily used in the transportation of school children and having either more or less than **24** seats were required to provide coverage in the amount of \$10,000 per person and the amount of seats times \$5,000 per

accident—the amount provided by the Travelers policy in **question.**⁴

Section **317.692** was subsequently amended in 1969 (see **App. 1-3**) to exempt from the requirements of Chapter **234** vehicles with a seating capacity of less than **24** pupils. The amendment also indicated that such vehicles were to have liability insurance to protect the pupils being transported and at this point the regulations of the Highway Patrol became **controlling.**⁵

Contrary to Gonzalez' assertions therefore, if anything, the legislative history of the relevant statutes indicates that the minimum requirements for motor vehicles primarily engaged in transporting school children and containing less than **24** seats would be \$10,000 per person plus the number of seats times \$5,000 per occurrence, the amounts provided by the Travelers policy.

Not only does the historical background of the present regulation support our position but, as we asserted in our Initial Brief on page 9, the most reasonable interpretation of the

⁴ In asserting that **s627.742** is applicable to the vehicle in question, the respondent contends that in **1967** Section 317.692 was enacted "requiring private school buses to comply with the requirements for public school buses contained within Chapter **234.**" This is a misstatement and in fact the aforementioned statute required all motor vehicles primarily engaged in the transportation of school children to comply with the requirements of Chapter **234** not just school buses. Ultimately, of course, the legislature created an exception for vehicles with a capacity of less than **24** pupils but the legislature never intended that there would be a distinction drawn regarding the insurance requirements, only whether **or** not the vehicle should comply with the color and identification requirements of Chapter **234.**

⁵ In **1978** Section **234.03** was amended to its present form. This version of the statute does not contain any requirements regarding insurance coverage. Hence, the Highway Patrol's regulations also govern the insurance requirements for private school buses containing more than **24** seats.

applicable regulation is that it imposes a minimum limit on a per occurrence as opposed to a per person basis since the regulation is phrased in terms of "pupils" and it sets the amount of coverage based on the number of seats in the bus. In any event, it certainly cannot be said that there are definite indications in the law justifying the invalidation or reformation of the policy provisions actually agreed upon, and hence, those provisions should be given effect. E.g. Bituminous Casualty Corp. v. Williams, 17 So.2d 98 (Fla. 1944) and France v. Liberty Mutual Insurance Company, 380 So.2d 1155 (Fla.3rd DCA 1980).

Alternatively, we concede that it may be said that when the Florida Highway Patrol enacted the subject regulation, it "dropped the ball" in the sense that the resulting regulation did not explicitly indicate whether or not the insurance requirements were on a per person as opposed to a per occurrence **basis**. As previously emphasized however, it is for this reason that the agency's **own** interpretation of its regulation is of critical importance. **See** E.g. Knight v. Mundy Plastering Company, 220 So.2d 357 (Fla. 1968); Woodley v. Department of Health and Rehabilitative Services, 505 So.2d 676 (Fla. 1st DCA 1987) and Reed v. Creek Imperial District v. The State Department of Environmental Regulation, 486 So.2d 642 (Fla. 1st DCA 1986). At a minimum since the record fails to demonstrate conclusively, one way or the other, how the Highway Patrol interpreted its regulation and since it must be presumed at this point that the subject policy has in fact been **deemed** by the Highway Patrol in its inspection to be in conformance

with its regulations, Holl v. Talcott, supra, the case should be remanded to the trial court for this determination.

Finally, we don't believe there is any question, as the Third District recognized, that the provisions set forth in **5627.742** (Fla. Stat. **1989**) are not applicable to the bus in question⁶. While §627.742(2) indicates that "School buses subject to the provisions of Chapter **234** or §. 315.615 are exempt from the provisions of this section" and while 316.003(45) defines a school bus as "any motor vehicle which complies with the color and identification requirements of Chapter 234 and is used to transport children to or from school or in connection with school activities"... we nevertheless submit that the bus in question constitutes a school bus subject to the provisions of Chapter **316.615** and hence, **is** exempt from §627.742. In this respect it is important to note the preamble language to §316,003. This language indicates that "the following words and phrases when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires." (emphasis supplied). Section **627.742** is certainly not contained within Chapter 316 and hence the definition of school bus as set forth in §316.003(45) does not govern. Additionally and more importantly, a review of the applicable statute, Section 316.615 and its predecessor 317.692 indicates that the provisions of

⁶ As pointed out previously, in affirming the trial court's decision the Third District simply relied upon Suazo v. DelBusto, **587** So.2d 485 (Fla. 3rd DCA **1991**) which specifically indicates that **§627.742** is not applicable.

Section 316.615 are applicable to all nonpublic sector motor vehicles primarily used for the transportation of school children. For example, the preamble to Senate Bill #814 which was ultimately enacted as Chapter 69-247 (App. 1-3) - the provision which exempted from Chapter 234 vehicles with less than 24 pupils, indicates that

AN ACT relating to inspection of school buses; amending Section 317.692(1)(a) Fla. Stat.; providing for the exclusion of buses with a seating capacity of under twenty-four (24) pupils; providing minimum requirements for vehicles under 24 pupils; providing an effective date.⁷

As the aforementioned indicates there is no question that the provisions of Section 316.615 are applicable to buses and vehicles primarily engaged in the transportation of school children and carrying less than 24 pupils. There **is** simply no logical reason why the applicability of the insurance requirements of 627.742 should depend on whether or not the bus transporting **school** children complies with the color and identification requirements of Chapter 234. Furthermore, as the Highway Patrol recognized in its School Bus Inspection and Student Transportation Manual, the provisions of the manual are applicable to all "school buses" which are defined in **the** manual **as** motor vehicles primarily used for transporting school children. (See Appendix to Initial Brief,

⁷ It is also significant to note that the initial enactment of Section 317.692 Chapter 67-419 (App. 4-5) and the statute itself was entitled "Inspection of school buses" but the statute dealt with all motor vehicles (not just school buses as that term is defined in Section 316.003(45)), which were primarily engaged in the transportation of school children. The context, in other words, required a different interpretation and meaning to be attributed to the term "school bus" than that set forth in Section 316.003(45).

Section 1.05.00(G) pg. 1-4). The manual further indicates in Section 2.11.00 (pg. 2-4) that "nonpublic school buses with a seating capacity of 23 passengers or less are not required to be painted national school bus chrome but are otherwise required to comply with the inspection criteria of Chapter 4 of this manual." Additionally, it should be noted that the Attorney General has recognized in Op. 082-70 September 21, 1982 that the Department of Highway Safety and Motor Vehicles is required pursuant to Section 316.615 to inspect all motor vehicles (other than private passenger automobiles) which are used primarily for transporting pupils to school which are not operated by or under the purview of the state or political subdivision thereof etc. Suffice it to say that the applicable regulations and statutes indicate a definite intention on the part of the legislature that vehicles engaged primarily in the transportation of school children should be governed by the provisions of Section 316.615 or Chapter 234 in addition to the regulations of the Department of Highway Safety and Motor Vehicles. It is these statutes and regulations which govern the insurance requirements for these motor vehicles, not §627.742.

Finally, it should be noted that §627.742 was not even enacted until 1981 some 14 **years** after Section 316.615's predecessor 317.692 was enacted. As we pointed out previously, Section 317.692 indicated that all motor vehicles primarily engaged in the transportation of school children were to comply with the requirements for school buses of Chapter 234 of the Florida Statutes. If one agrees with the Respondent, it would mean that

between 1967 and 1981 there would have been no statutory insurance requirements for motor vehicles engaged in transporting school children for that 14 year **period.**⁸ Such a contention is completely contrary to the clear meaning of 316.615 and its predecessor as well as the Highway Patrol's regulations which leave no question that the insurance requirements set forth therein are applicable to all motor vehicles primarily engaged in the transportation of school children.

CONCLUSION

There is no logical basis for the Third District's opinion that the legislature intended the school buses carrying less than **24** students should have a minimum of \$100,000 liability coverage per person. Contrary to the Third District's finding and in light of the historical background and the actual wording of the regulation, the most reasonable interpretation is that the bus in question should have had coverage in the amount of \$10,000 per person the number of seats times **\$5,000** times the **number** of seats, the actual coverage provided by the Travelers policy. Additionally, there is no question that the legislature has in fact delegated the authority for addressing this issue to the Florida Highway Patrol and on the basis of the record presented herein, it must be presumed at this point, that the Travelers policy was in conformity with the regulations adopted by that agency. At a

⁸ It would also mean that the extensive safety requirements set forth in the various regulations and statutes would have had no applicability to this category of motor vehicles engaged in transporting school children.

minimum therefore the case should be remanded for a determination of whether or not the Florida Highway Patrol's interpretation parallels that of Travelers.

In sum, the court should reject the judicial legislation adopted by the Third District. If, in fact, as the respondents urge, it is desirable that coverage be afforded in a minimum of \$100,000 per person, then the Highway Patrol is free to amend its regulations. Simply put, the law should be changed by conventional means since the retroactive rewriting of the governing regulations substantially increases the financial burden to be born by the carriers without any corresponding increase in premiums.

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BY: 

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 3rd day of June, 1992 mailed to James Blecke, Esq., 19 West Flagler Street, Suite 705, Miami, FL 33130.

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66 West Flagler Street
Miami, FL 33130

BY: 

CHRISTOPHER LYNCH
Attorneys for Petitioner

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 817, Florida Statutes, is amended by adding section 817.061 to read:

817.061 Misleading solicitation of payments prohibited.—

(1) It shall be unlawful for any person, company, corporation, agency, association, partnership, institution or charitable entity to solicit payment of money by another by means of a statement or invoice, or any writing that would reasonably be interpreted as a statement or invoice for goods not yet ordered or for services not yet performed and not yet ordered, unless there appears on the face of the statement or invoice or writing in 30 point bold face type the following warning:

“This is a solicitation for the order of goods or services and you are under no obligation to make payment unless you accept the offer contained herein.”

(2) Any person damaged by non-compliance with this section, in addition to other remedies, is entitled to damages in the amount equal to three times the sum solicited.

Section 2. Any person, company, corporation, agency, association, partnership, institution or charitable entity who violates this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

Section 3, This act shall take effect upon becoming law.

Became a law without the Governor's approval.

Filed in Office Secretary of State July 2, 1969.

CHAPTER 69-247

Senate Bill No. 814

AN ACT relating to inspection of school buses; amending section 317.692(1)(a), Florida Statutes; providing for the exclusion of buses with a seating capacity of under twenty-four (24) pupils; providing requirements for minimum requirements for vehicles under twenty-four (24) pupils; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 317.692, Florida Statutes, is amended to read:

317.692 Inspection of school buses; physical requirements of drivers.

(1)(a) All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than twenty-four (24) pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state, a political subdivision thereof, or under a franchise issued by a municipality or the public service commission, shall comply with the requirements for school buses of chapter 234, Florida Statutes. [to the same extent as motor vehicles which are regularly used for the transportation of pupils of the public schools to and from school or school activities.]

Section 2. Such vehicles shall have the following:

(1) All school bus drivers shall pass an annual physical Examination, and have posted in bus certificate to drive same.

(2) Shall have a non-leaking exhaust system.

(3) Shall be equipped with First Aid Kit.

(4) Shall be equipped with fire extinguisher.

(5) Shall have unbroken safety glass on all windows.

(6) Shall have inside rear view mirror capable of giving driver clear view of motor vehicles approaching from the rear.

(7) All seats shall be securely anchored.

(8) Shall have liability insurance to protect pupils being transported.

(9) Shall transport no more passengers than equipped to seat.

(10) Any bus or van with a seating capacity of less than 24 children, owned and operated by any private day school, kindergarten or child care center shall be identified with large permanent or removable signs attached to such vehicle containing the words "Caution, this vehicle transporting children".

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LAWS OF FLORIDA CHAPTER 69-248

Section 3. This act shall take effect immediately upon becoming law.

Became a law without the Governor's approval.

Filed in Office Secretary of State July 2, 1969.

CHAPTER 69-248

Senate Bill No. 831

AN ACT relating to the gas safety law of 1967, chapter 368, Florida statutes; amending section 368.021, Florida statutes, by extending its applicability to liquefied petroleum gas with air admixture; adding section 368.06, Florida statutes, to provide a penalty; and providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 368.021, Florida statutes, is amended to read as follows:

368.021 Applicability.--The provisions of this law and all orders, rules and regulations adopted pursuant thereto shall apply to every person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling any gas transmission or distribution facilities or any other facility supplying natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substance to or for the public within this state; provided, however, that the terms of this law shall not apply to those supplying liquefied petroleum gas in either the liquid or gaseous form.

Section 2. Chapter 368, Florida statutes, is amended by adding section 368.06 to read as follows:

368.06 Penalty for violation of chapter.

(1) Any person who violates any provision of this chapter, or any regulation issued hereunder, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation for each day that such violation persists, except that the maximum civil

APP 3

CHAPTER 67-419 LAWS OF FLORIDA

CHAPTER 67-418

Senate Bill No. 872

AN ACT relating to the model traffic ordinance for municipalities, accidents, amending section 186.0180(2), Florida Statutes, providing penalties for persons involved in an accident who fail to stop at the scene of accident for the purpose of giving information or rendering aid to the injured person.

Be It Enacted by the Legislature of the State of Florida,:

Section 1. Subsection (2) of section 186.0180, Florida Statutes, is amended to read:

186.0180 Accidents involving death or personal injuries or damage to vehicles.—

(2) Any person willfully failing to stop or comply with said requirements under such circumstances shall be guilty of violations of this ordinance, and shall upon being found guilty be punished as provided for by law.

Approved by the Governor July 26, 1967.

Filed in Office Secretary of State July 27, 1967.

CHAPTER 67-419

Committee Substitute for Senate Bill No. 175

AN ACT relating to regulation of traffic on the highways; amending chapter 317, Florida Statutes; providing for all school buses to meet the requirements of chapter 234 under regulations prescribed by the department of public safety; providing for physical examinations of school bus drivers; providing for annual inspection of school buses; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 317, Florida Statutes, is amended by adding a new section to read:

Inspection of school buses; physical requirements of drivers.—

App 4

(1) (a) automobiles, pupils to sch purview of th franchise issu mission, shall chapter 234, I

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Be It Enact

(1) (a) All motor vehicles, other than private passenger automobiles, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state, a political subdivision thereof or under a franchise issued by a municipality or the public service commission, shall comply with the requirements for school buses of chapter 234, Florida Statutes.

(b) For the purposes of this subsection the term "school" shall include all public and private nursery, pre-elementary, elementary, secondary and college level schools.

(2) No person shall operate or cause to be operated a motor vehicle covered by subsection (1) unless the operator has met the physical examination requirements of section 234.16, Florida Statutes.

(3) All school buses and all motor vehicles covered by subsection (1), shall be inspected annually by the department and when found satisfactory for safe operation shall display on the vehicle a current certificate of inspection.

(4) The department shall promulgate such rules and regulations as are necessary to effect the purposes of this section.

Section 2. This act shall take effect July 1, 1968.

Approved by the Governor July 26, 1967.

Filed in Office Secretary of State July 27, 1967.

CHAPTER 67-420

Senate Bill No. 1522

AN ACT relating to free motor vehicle license plates; amending chapter 67-47, Laws of Florida, by adding new section 3 to provide that disabled veterans be entitled to free license plates for the year 1967 and directing the motor vehicle department to refund all moneys to said person having purchased 1967 tags, renumbering present section 3 as 4; providing an effective date.

Be It Enacted by the Legislature of the State of Florida: