

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1479

Highway Safety and Motor Vehicles

SPONSOR(S): Burgin

TIED BILLS:

IDEN./SIM. BILLS: 986

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	20 Y, 0 N, As CS	Brown	Miller
2)	Economic Development & Community Affairs Policy Council			
3)	Transportation & Economic Development Appropriations Committee			
4)	Full Appropriations Council on Education & Economic Development			
5)				

SUMMARY ANALYSIS

CS/HB 1479 contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of major provisions in the bill include:

- Requiring vehicles to slow down on multi-lane roads when the driver cannot safely change lanes as otherwise required by the "Move Over Act;"
- Modifying requirements regarding display of motorcycle license tags;
- Providing a definition of, license plate requirements for, and operational restrictions on mini trucks;
- Allowing DHSMV to use issue electronic certificates of title for vehicles and vessels, and to use e-mail addresses for certain notifications;
- Requiring driver improvement courses for persons convicted of traffic offenses causing crashes three or more times in three years;
- Phasing out "valid in Florida only" licenses, and ensuring that applicants cannot have more than one REAL ID-compliant identification card;
- Removing a requirement that certain traffic school instructors be certified by DHSMV;
- Clarifying the legislative intent with regard to DHSMV hearing officers' ability to consider the lawfulness of an arrest in a license suspension hearing; and
- Allowing certain petitioners for license re-instatement to avoid a hearing, if other requirements are met and the underlying offenses were "non-egregious."

The bill's provisions are generally technical or administrative in nature and will have no fiscal impacts. Some of the provisions could have an indeterminate fiscal impact on state government and the private sector.

The bill has an effective date of January 1, 2010, although specific provisions take effect July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

"Move Over Act" (Section 1)

Current Situation

In 2002, the Legislature created the "Move Over Act,"¹ requiring drivers on a multi-lane road to move out of the lane nearest an emergency vehicle or wrecker, and requiring drivers on a single-lane road to slow to 20 miles per hour. The act is intended to provide additional safety to persons involved in, or responding to, emergencies on the roadside.

Proposed Legislation

There is a possibility that a driver on a multi-lane road may be unable to shift lanes as required under current law. In these situations, the bill amends s. 316.126, F.S., directing motorists to slow down on a four-lane highway if they are unable to move over, as drivers on a single-lane road are required to do under the current law.

Motorcycles/Mopeds (Sections 2, 5)

Current Situation

In 2008, the Legislature passed CS/HB 137,² which provided additional penalties for certain offenses committed by motor vehicle operators, including increased fines and terms of license suspension for persons who operate a motorcycle improperly. The bill also expanded on the proper operation of a motorcycle – including a requirement that the license tag of a motorcycle must be "permanently affixed horizontally to the ground," and incapable of being adjusted or "flipped up."

The 2008 law stated that a first violation of this prohibition (and the bill's other prohibitions) is a non-criminal violation punishable by a \$1,000 fine. A second violation is a non-criminal violation resulting in a \$2,500 fine and the suspension of the operator's license for one year. Violators cited for a third violation commit a 3rd degree felony, punishable by a fine up to \$5,000 and imprisonment not to exceed five years and are subject to revocation of driver licensure for a period of 10 years.

¹ 2002-217, Laws of Florida.

² 2008-117, Laws of Florida.

Proposed Legislation

The bill modifies s. 316.2085, F.S., to state that, rather than being “permanently affixed horizontally to the ground,” that a motorcycle tag must simply be “permanently affixed to the vehicle.” The bill clarifies the prohibition regarding the visibility or legibility of a tag by adding that “[n]o device for or method of concealing or obscuring the legibility of the license tag of a motorcycle shall be installed or used” by a rider.

The bill also modifies the definition of motorcycle slightly, to account for standards issued by the National Highway Traffic Safety Administration (NHTSA). While the current Florida definition of “motorcycle” excludes all vehicles in which the driver is enclosed by a cabin, NHTSA currently recognizes a small number of enclosed-cabin vehicles as motorcycles, not vehicles, for the purposes of identifying the correct set of safety standards. In order to fully comply with NHTSA safety standards, the bill provides that a motorcycle does not include vehicles with cabins, except when the specific vehicle meets NHTSA requirements for a motorcycle.

Mini Trucks (Sections 3, 5, 7)

Current Situation

Current Florida law provides for several different types of non-traditional vehicles on the roadways, including golf carts,³ all-terrain vehicles,⁴ utility vehicles,⁵ and low speed vehicles.⁶ Each of these types of vehicle has a different set of safety and operating requirements.

Some vehicles are presumptively allowed on certain roads, unless the jurisdiction governing the roadway deems the vehicle unsafe;⁷ other vehicles are presumptively prohibited, unless the jurisdiction affirmatively finds that operation of the vehicle on a given road is safe.⁸

Current Florida law does not make provision for mini trucks. According to the Insurance Institute for Highway Safety (IIHS),

Minitrucks are sold as off-road vehicles for farms and construction sites and are far smaller than conventional small trucks sold for on-the-road use. These vehicles go by many names, including Japanese minitruck, Kei truck, microtruck, and utility transportation vehicle. Minitrucks have the capacity to reach top speeds of 55 mph or more, but many are sold with governors to limit their speed to 25 mph.⁹

Federal safety standards do not currently apply to minitrucks; they are typically sold as off-road vehicles.¹⁰ Eleven states (Arkansas, Idaho, Illinois, Kansas, Louisiana, Missouri, North Dakota, Oklahoma, Tennessee, Utah, and Wyoming) allow minitrucks on specific portions of public roads.¹¹ In Illinois and Missouri, minitrucks are allowed only by local ordinance. Illinois, Kansas, and Tennessee require minitrucks to comply with federal safety standards for low-speed vehicles.¹²

³ Section 316.212, F.S.

⁴ Section 316.2123, F.S. *See also*, 316.2074, F.S.

⁵ Sections 316.2126, 316.21265, and 316.2127, F.S.

⁶ Section 316.2122, F.S.

⁷ *See, e.g.*, section 316.2122, F.S., providing that low speed vehicles are generally permitted on roads having a posted speed limit of 35 miles per hour or less, unless a county, municipality, or FDOT deem the road unsafe for such vehicles.

⁸ *See, e.g.*, section 316.2123, F.S., providing that ATV operation on public streets is generally prohibited on paved roadways. A county may, by majority vote, override this prohibition to allow ATVs to operate on certain unpaved roads. Golf carts are similarly prohibited on roadways pursuant to section 316.212, F.S., but a county, municipality, or FDOT may consider various safety factors and deem certain roads appropriate for golf cart use.

⁹ *Minitruck State Laws, March 2009*, Insurance Institute for Highway Safety. Available online at <http://www.iihs.org/laws/minitrucks.aspx>

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Proposed Legislation

CS/HB 1479 defines a “mini truck” as

any four-wheeled reduced-dimension truck that does not have NHTSA truck classification, with a top speed of 55 miles per hour, and which is equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, and seat belts.

The bill provides that DHSMV must create license plates of unique design to be issued to mini trucks, along with low speed vehicles,¹³ upon payment of the appropriate license taxes and fees.

CS/HB 1479 expands s. 316.2122(3), F.S., which currently requires low speed vehicles to be registered and insured in accordance with s. 320.02, F.S. The bill adds a requirement that mini trucks must also be registered and insured, and provides that both low speed vehicles and mini trucks must be titled in accordance with Chapter 319, F.S.

CS/HB 1479 amends s. 316.2122, F.S., to provide that mini trucks generally may be operated in the same situations as low speed vehicles. Mini trucks are permitted on roads where the posted speed limit is 35 miles per hour or less, although this does not prohibit the vehicle from crossing at an intersection with a road having a higher speed limit. On roads governed by a county or municipality, the county or municipality may prohibit operation of mini trucks when deemed necessary in the interest of safety. On roads governed by the Florida Department of Transportation, FDOT may prohibit operation of mini trucks when deemed necessary in the interest of safety.

The bill provides that drivers of mini trucks must have a valid driver’s license.

E-mail Addresses and Electronic Certificates of Title (Sections 4, 9, 13, 15, 21, 22)

Current Situation

DHSMV is currently authorized by several provisions to accept forms and conduct other business electronically, but is not specifically authorized to collect e-mail addresses or use e-mail as a notification method.

Proposed Legislation

CS/HB 1479 amends ss. 319.40, F.S., and 328.30, F.S., authorizing DHSMV to issue electronic certificates of title, and use e-mail addresses as a notification method in lieu of the United States Postal Service for vehicles and vessels, respectively.

The bill amends s. 322.08, F.S., authorizing DHSMV to use e-mail addresses of driver’s license or ID card holders for notification purposes, and modifies s. 322.18, F.S., allowing DHSMV to mail “or email” driver’s license renewal notices.

CS/HB 1479 amends ss. 320.95, F.S., and 328.80, F.S., authorizing DHSMV to use e-mail addresses for the purpose of sending notifications to owners and registrants of vehicles and vessels generally.

Motor Vehicle Registration Voluntary Check-off (Section 6)

Current Situation

Section 320.023, F.S., details the requirements with which a non-profit entity must comply in order to be listed as a “voluntary checkoff” organization on motor vehicle applications. These requirements, which include a \$10,000 application fee and both long- and short-term marketing strategies to be reviewed by DHSMV, must be met before the Legislature independently approves the organization’s inclusion on applications. Section 320.023(5)(c)F.S., provides that “any voluntary contributions authorized by law shall only be distributed to an organization under an appropriation by the Legislature.”

¹³ Defined in s. 320.01(42), F.S.

Proposed Legislation

CS/HB 1479 amends s. 320.023(5)(c), F.S., to state that voluntary contributions must be “deposited into and distributed from the Motor Vehicle License Clearing Trust Fund.”

Driver Improvement Courses (Section 10)

Current Situation

Section 322.0261, F.S., currently requires the Department of Highway Safety and Motor Vehicles to screen crash reports in order to identify various types of crashes. These screening procedures identify crashes involving death or any injury serious enough to require transport to a medical facility,¹⁴ or a crash involving property damage of \$500 or more, when the operator causing the crash was involved in a prior crash within a 2-year period.¹⁵

When DHSMV identifies a crash involving one of these scenarios, it requires the operator convicted of (or pleading no contest to) the offense giving rise to the crash to attend a driver improvement school within 90 days. A failure to attend a driver improvement class results in the cancellation of the offender’s driver’s license, by DHSMV.

Proposed Changes

The bill adds an additional screening requirement for DHSMV. In addition to the offenses described above, the Department must also screen for any crash, irrespective of injury or property damage, that is an offender’s third crash in 36 months. As with other offenders, the three-crash offender must attend a driver improvement school within 90 days of receiving notice from DHSMV or face cancellation of his or her license.

In addition to driver improvement school requirements in current law, CS/HB 1479 requires the three-crash offender to attend a driver improvement course that includes “behind-the-wheel instruction and an assessment of the operator’s ability to safely operate a motor vehicle.” The bill further requires that in order to receive credit for the course, the offender must successfully complete a behind-the-wheel examination.

REAL ID Issues (Sections 11, 12, 13)

Current Situation

On May 11, 2005, President Bush signed into law the REAL ID Act of 2005.¹⁶ Title II of the Act “directly imposes prescriptive driver’s license standards.”¹⁷ The REAL ID Act contains a provision regarding the verification of documents presented to a license-issuing state agency.¹⁸ States must verify with all issuing agencies the issuance, validity, and completeness of all documents presented. The receiving state also must verify a social security number, if given, with the Social Security Administration.

Basic driver’s license standards also are contained in the act.¹⁹ All licenses must contain the person’s name, date of birth, gender, license number, digital photograph, and legal address and physical security features to prevent fraud or counterfeiting and a common machine-readable technology with defined data elements. The REAL ID Act also prohibits customers from holding two REAL ID compliant documents simultaneously

Proposed Legislation

The bill amends s. 322.03, F.S., to phase out "valid in Florida only" driver's licenses, as required by the REAL ID Act. Specifically, this section allows a part-time resident issued a "valid in Florida only" license

¹⁴ Section 322.0261(1)(a), F.S.

¹⁵ Section 332.0261(1)(b), F.S.

¹⁶ H.R. 1268, Public Law 109-13.

¹⁷ *NCSL REAL ID Act of 2005 Title Summary*, report from the National Conference of State Legislators, 2005.

¹⁸ *See generally*, REAL ID Act, s. 202(c)(3)(A), s. 202(d)(4), and s. 202(d)(5).

¹⁹ *See generally* REAL ID Act, s. 202(c) and (d).

to continue to hold such license until the next regularly scheduled renewal. Licenses identified as "valid in Florida only" may not be issued or renewed effective July 1, 2009. This provision explicitly expires June 30, 2017.

The bill makes a technical correction regarding ID Card fees in s. 322.051, F.S.²⁰

The bill amends s. 322.08, F.S., to specify that the Department of Highway Safety and Motor Vehicles shall not issue a driver license or ID card to anyone holding a valid driver license or ID card issued by another state, eliminating the possibility of holding two or more REAL ID-compliant identification cards.

Traffic Law & Substance Abuse Education Courses (Section 14)

Current Situation

Chapter 488, Florida Statutes, requires all commercial driving schools and their instructors to obtain a license from DHSMV in order to operate in Florida. The license requirements for instructors include "special eye tests, written tests, and road tests, and to furnish proof of his or her qualifications and ability as an instructor."²¹

Section 318.1451, F.S., authorizes any person to engage in the business of operating a "driver improvement school," so long as the school offers "department-approved courses." Section 322.095, F.S., authorizes approved DUI programs²² to offer traffic law and substance abuse education (TLSAE) programs. DHSMV must "contract for an independent evaluation" of the courses, and must conduct financial audits of the fees charged by course providers.²³ DHSMV licenses both driver-improvement and TLSAE schools under Chapter 488, F.S., but does not "certify" the schools.²⁴

Section 322.095, F.S., requires DHSMV to "certify" TLSAE instructors; however, no criteria are given. DHSMV suggests that this sentence was mistakenly left in the statutes in 1995, when the driving-school industry was de-regulated and statutory provisions regarding certification were removed.²⁵

Proposed Legislation

The bill amends s. 322.095, F.S., eliminating the requirement that the individual instructors teaching these courses must be "certified" by DHSMV. Instructors and schools continue to be licensed pursuant to Chapter 488, F.S.

Lawful Breath, Blood, or Urine Test (Section 17)

Current Situation

In 2006 the Legislature removed provisions requiring DHSMV administrative hearing officers to consider the lawfulness of an arrest in any hearing to suspend a driver's license. Under s. 322.2615(7)(b), F.S., the administrative review performed by a hearing officer is now limited to:

- Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
- Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.

²⁰ Identification card fees were moved from s. 322.051, F.S., to 322.21, F.S., during the 2008 session; however, one partial sentence was mistakenly left in the original section.

²¹ Section 488.04(1), F.S.

²² See ss. 316.193(5) and 322.292, F.S.

²³ Section 322.095(2)-(3), F.S.

²⁴ *Agency Bill Analysis: HB 1479*, Department of Highway Safety and Motor Vehicles, March 14, 2009.

²⁵ *Id.* See ch. 95-326, Laws of Florida.

- Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

In subsequent judicial decisions regarding this limitation, DHSMV has “contend[ed] that the lawfulness of the arrest is no longer an issue in the suspension process.”²⁶ However, courts have agreed with defendants who assert that s. 322.2615, F.S. must be read *in pari materia* with section 316.1932, F.S., which states that a lawful test “must be incident to a lawful arrest.”

According to the appellate courts that have reviewed this issue, the Legislature needs to be more specific if it truly intended to remove the language limiting the scope of a hearing officer’s review.

Proposed Legislation

The bill amends s. 322.2615, F.S., to state that, “[n]otwithstanding s. 316.1932, the term ‘lawful breath, blood or urine test’ means any test approved by the Florida Department of Law Enforcement.”

Non-egregious Hearings (Section 18)

Current Situation

Section 322.271, F.S., creates a petition process by which some drivers may have their license re-instated after it has been denied, suspended, or revoked. This petition process requires the person to prove that the license revocation is a “serious hardship” preventing him or her from carrying out an occupation, trade, or employment, and that driving is “necessary to the proper support of the person or his or her family.”²⁷ The person must also provide proof of attendance at a DHSMV-approved driver training program or DUI program substance abuse education course (including subsequent substance abuse treatment, if referred).²⁸ The person may also submit letters of recommendation from “respected business persons in the community.”²⁹

The re-instatement process is not available to persons designated “habitual traffic offenders” under s. 322.27(5), F.S., or to persons convicted of certain DUI-related offenses, pursuant to ss. 322.28, 322.2615, 322.261, and 316.193, F.S.³⁰

Proposed Legislation

The bill amends s. 322.271, F.S., allowing DHSMV to eliminate the hearing for non-egregious suspensions while still requiring the driver to complete all other necessary reinstatement provisions, including DUI substance abuse education and driver training programs.

“Non-egregious” suspensions are those which do not involve death or serious bodily injury, multiple DUI convictions, or a “second or subsequent suspension or revocation pursuant to the same provision of this chapter.” DHSMV retains the right to hold a hearing for a re-instatement that might otherwise qualify as non-egregious, “based on the severity of the offense.”

Minor Issues

Section 8 of the bill amends s. 320.203, F.S., to correct a cross-reference regarding s. 320.20(5), F.S.

Section 16 amends s. 322.201, F.S., deleting a requirement that records of crash reports or court records of convictions and the complete driving records of individuals must be duly certified by machine imprint for authentication to be received as evidence. An embossed stamp is no longer the industry standard for certifications.

²⁶ *Department of Highway Safety and Motor Vehicles v. Pelham*, 979 So.2d 304, Fla.5th DCA (2008), at 306.

²⁷ Section 322.271(2)(a), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Section 19 of the bill corrects a citation.

Section 20 of CS/HB 1479 relates to commercial driver's licenses. The bill amends s. 322.64, F.S., to make technical changes conforming to current Federal Motor Carrier Safety Administration regulations.

Section 23 provides an effective date of January 1, 2010. (Some sections of the bill specify that they are effective July 1, 2009.)

B. SECTION DIRECTORY:

- Section 1: Amends section 316.126, F.S., directing motorists to slow down on a four-lane highway if unable to move over as required by the current "Move Over Act."
- Section 2: Amends section 316.2085, F.S., clarifying that a motorcycle tag must be permanently affixed to the vehicle; providing that no device or method of concealing or obscuring the legibility of the license tag of a motorcycle shall be installed or utilized.
- Section 3: Amends s. 316.2122, F.S., providing that mini trucks may only be operated on roads with speed limits under 35 miles per hour; requiring mini trucks to be registered and insured; requiring mini trucks and low speed vehicles to be titled; requiring mini truck operators to have a valid driver's license; permitting counties and municipalities to prohibit mini truck operation when deemed in the best interest of the state on roads within their jurisdiction; permitting the Department of Transportation to prohibit mini truck operation when deemed in the best interest of the state on roads under its jurisdiction.
- Section 4: Amends section 319.40, F.S., authorizing the Department to issue electronic title certificates for vehicles, and to use e-mail as a notification method to owners.
- Section 5: Amends s. 320.01, F.S., providing exceptions to the current exclusion of all vehicles with cabins from the definition of motorcycle; providing a definition for mini trucks.
- Section 6: Amends section 320.023, F.S., to clarify that voluntary contributions must be deposited into and distributed from the Motor Vehicle License Clearing Trust Fund.
- Section 7: Creates s. 320.0847, F.S., requiring DHSMV to issue license tags for low speed vehicles and mini trucks upon payment of appropriate taxes and fees; requiring such tags to comply with general license tag requirements in s. 320.06, F.S.
- Section 8: Amends section 320.203, F.S., to correct a cross-reference regarding s. 320.20(5), F.S.
- Section 9: Amends section 320.95, F.S., permitting the Department to use e-mail to notify vehicle owners and registrants, in lieu of the U.S. Postal Service.
- Section 10: Amends s. 322.0261, F.S., requiring DHSMV to identify crashes involving a third crash by the same operator within 36 months of the first crash; requiring an offender convicted of causing a third crash within 36 months to attend driver improvement school, which must include behind-the-wheel instruction; requiring DHSMV to cancel the license of an offender failing to meet this requirement within 90 days of receiving notice.
- Section 11: Amends section 322.03, F.S., phasing out "valid in Florida only" licenses; allowing a part-time resident issued a "valid in Florida only" license to continue to hold such license until the next regularly scheduled renewal. Licenses identified as "valid in Florida only" may not be issued or renewed effective July 1, 2009.
- Section 12: Amends section 322.051, F.S., correcting a cross-reference to driver's license fees in section 322.21, F.S.
- Section 13: Amends section 322.08, F.S., specifying that the Department shall not issue a driver license or ID card to anyone holding a valid driver license or ID card issued by another state.
- Section 14: Amends section 322.095, F.S., eliminating the requirement that all instructors teaching Traffic Law and Substance Abuse education courses must be certified by the Department.

- Section 15: Amends s. 322.18, F.S., authorizing DHSMV to e-mail license renewal notices to licensees.
- Section 16: Amends section 322.201, F.S., deleting the requirement that records of crash reports or court records of convictions and the complete driving records of individuals must be duly certified by machine imprint for authentication to be received as evidence.
- Section 17: Amends section 322.2615, F.S., providing that notwithstanding the provisions of s. 316.1932, F.S., a lawful breath, blood or urine test shall mean any test or test approved by the Florida Department of Law Enforcement.
- Section 18: Amends section 322.271, F.S., allowing the Department to eliminate the hearing for non-egregious suspensions while still requiring the driver to complete all other necessary reinstatement provisions.
- Section 19: Amends section 322.293, F.S., to correct a citation.
- Section 20: Amends section 322.64, F.S., to make technical corrections to the disqualification statute as it relates to commercial licenses and refusal to submit to BAC testing.
- Section 21: Amends section 328.30, F.S., authorizing the Department to issue electronic title certificates for vessels, and to use e-mail as a notification method to owners.
- Section 22: Amends section 328.80, F.S., permitting the Department to use e-mail to notify vessel owners and registrants, in lieu of the U.S. Postal Service.
- Section 23: Provides an effective date of January 1, 2010, except as otherwise provided by the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

By eliminating the requirement for certain administrative hearings (see Section 18), the Department of Highway Safety and Motor Vehicles could reduce expenditures by an indeterminate amount, depending on the number of hearings deemed unnecessary.

DHSMV has indicated that some of the bill's changes could require programming costs; these will be absorbed by the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Drivers who commit three offenses causing vehicle crashes will be required to pay for and attend a driver improvement school in order to avoid license cancellation. CS/HB 1479 requires these classes to include behind-the-wheel instruction, and include a final behind-the-wheel exam. According to DHSMV, these classes vary in cost depending on location and length of course, but may cost

approximately \$200 - \$300. By way of comparison, a more basic driver improvement course taken online for a short period of time, could cost as little as \$20.³¹

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not contain any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

E-mail collection

Several sections of the bill allow DHSMV to collect email address from individuals registering a vehicle or vessel, for use as an additional notification method.

Section 119.0712(2), F.S., provides that certain personal identifying information held by DHSMV and "contained in a motor vehicle record," is exempt from the public records provisions of s. 119.07, F.S. As a result, information such as an individual's social security number, name, address, phone number, and other information is not readily available from DHSMV. This section does have a number of exceptions, however. Among other provisions, personal information can be released to:

- motor vehicle manufacturers for purposes of recall notification and other performance issues,
- government agencies, including any court or law enforcement agency,
- certified process servers, to accomplish service,
- insurers, in connection with claims investigation or fraud,
- any licensed private investigative agency, or
- to any "legitimate business" for use in the "normal course of business," but only to verify information supplied by an individual to the business, or to correct information given by the individual, to prevent fraud, or collect a debt.

It is not clear whether or not an email collected under any of the provisions of the bill would be "contained in a motor vehicle record." If the email addresses are considered non-exempt records, they will be readily available to legitimate online marketing services as well as businesses that engage in web-based activities such as "spamming" or "phishing." If not exempt from disclosure, these addresses could also be available to any private individual wishing to discover the email address of any other individual who has registered a vehicle or vessel in Florida and agreed to supply an email address to DHSMV.

V. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Roads, Bridges, and Ports Policy Committee adopted a strike-all amendment and reported the bill favorably. The strike-all removed several provisions, including provisions with a significant fiscal impact, and included the following new sections:

³¹ Conversation with Steven Fielder, Department of Highway Safety and Motor Vehicles, March 19, 2009.

- Defining “mini trucks,” authorize their use in a fashion identical to “low-speed vehicles,” and authorizing DHSMV to create unique license plates for them,
- Requiring motorcycle license tags to be permanently affixed to the vehicle, and prohibiting any device or method of concealing or obscuring the tag.
- Requiring driver improvement school for any driver who is in 3 at-fault crashes in 3 years, and
- Allowing DHSMV to notify driver’s license holders eligible for renewal via email.