

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1479 Highway Safety and Motor Vehicles
SPONSOR(S): Economic Development & Community Affairs Policy Council; Roads, Bridges & Ports Policy Committee, Burgin
TIED BILLS: IDEN./SIM. BILLS: CS/CS/SB 1100

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Roads, Bridges & Ports Policy Committee, 20 Y, 0 N, As CS, Brown, Miller. Row 2: Economic Development & Community Affairs Policy Council, 14 Y, 0 N, As CS, Brown, Tinker.

SUMMARY ANALYSIS

CS/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:

- Re-enacting the Department of Highway Safety and Motor Vehicles;
Providing for a settlement regarding Mary Ann Collier, et al. v. Dickinson, et al., a pending lawsuit against the DHSMV;
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;
Providing for the operation and taxation of tri-vehicles in Florida;
Clarifying operational and administrative issues regarding derelict motor vehicle certificates, storage, and conveyance of derelict motor vehicles;
Providing an exemption for certain persons who require a handicapped placard but are physically unable to visit a driver's license or tax collector's office;
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;
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 July 1, 2009, although specific provisions take effect September 1, 2009 or January 1, 2010.

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:

Collier Litigation (Section 1)

Background: The Drivers' Privacy Protection Act

The Drivers' Privacy Protection Act (DPPA)¹ requires all states to protect the privacy of personal information contained in an individual's motor vehicle record. This information includes the driver's name, address, phone number, Social Security number, driver identification number, photograph, height, weight, gender, age, certain medical or disability information, and in some states, fingerprints. It does not include information concerning a driver's traffic violations, license status or accidents.

The Act has a number of exceptions. A driver's personal information may be obtained from a state's Department of Motor Vehicles for any federal, state or local agency use in carrying out its functions; for any state, federal or local proceeding if the proceeding involves a motor vehicle; for automobile and driver safety purposes, such as conducting recall of motor vehicles; and for use in market research activities. Personal data is also available to licensed private investigators.

The Act imposes criminal fines for non-compliance and grants individuals a private right of action including actual and punitive damages, as well as attorney's fees.

The DPPA limits the use of a driver's motor vehicle record to certain purposes. These purposes are defined in 18 U.S.C. § 2721:

- Legitimate government agency functions.
- Use in matters of motor vehicle safety, theft, emissions, product recalls.
- Motor vehicle market research and surveys.
- "Legitimate" business needs in transactions initiated by the individual to verify accuracy of personal information.
- Use in connection with a civil, criminal, administrative or arbitral proceeding.
- Research activities and statistical reports, so long as personal information is not disclosed or used to contact individuals.
- Insurance activities.
- Notice for towed or impounded vehicles.
- Use by licensed investigators or security service.

¹ 18 U.S.C. 2721, *et seq.* (Public Law 103-322). Information in this section was adopted from the Electronic Privacy Information Center's survey of DPPA issues, available online at: <http://epic.org/privacy/drivers/> (last visited February 25, 2009).

- Use by private toll transportation facilities.
- In response to requests for individual records if the State has obtained express consent from the individual.
- For bulk marketing distribution if State has obtained express consent from the individual.
- Use by any requestor where the requestor can show written consent of the individual.
- For any other legitimate State use if it relates to motor vehicle or public safety.

If an individual has not given consent to the release of a motor vehicle record, the DPPA limits sharing of information once it is obtained. Information may only be shared with other approved users only for permitted uses. In addition, records must be kept of each additional disclosure identifying each person or entity that is receiving the disclosure and for what purpose. The disclosure records must be kept for a period of 5 years.

Current Situation, Florida Lawsuit

Mary Ann Collier, et al. v. Dickinson, et al., Case No. 04-21351-DV-JEM (S.D. Fla.), is a potential class action lawsuit originally filed on June 7, 2004. The suit names present and former employees of the DHSMV as defendants and alleges the continued disclosure of personal information maintained by DHSMV obtained from motor vehicle and driver license records in violation of the DPPA. DHSMV is represented by Chesterfield Smith, Senior Assistant Attorney General, and each of the three named defendants is represented by attorneys appointed through the Department of Financial Services, Division of Risk Management.

The Federal law was effective June 1, 2000. However, Florida statute was not amended to conform with the federal requirements until September 30, 2004 when s. 119.0712(2), F.S. was amended to mirror DPPA. The above legal action led to the 2004 change in Florida law.

The initial complaint demanded approximately \$39 billion in liquidated damages, \$2,500 per release of information. The parties engaged in three separate mediation sessions. The mediated agreement reached on June 5, 2008 provides that all motor vehicle registrants who are class members (all natural persons who had a valid driver license, identification card or motor vehicle registration) would receive a \$1 credit on the renewal of their motor vehicle registration during the period of July 1, 2009 through June 30, 2010. The total amount of the credit would be approximately \$10.4 million.

There will also be equitable relief which includes changing the procedures of DHSMV regarding disclosure of personal information. DHSMV is required by the settlement agreement to maintain a website informing the public of their rights under DPPA.

In addition, the Division of Risk Management would pay each of the four named plaintiffs \$3,000 and attorneys' fees in the amount of \$2.85 million.

Proposed Changes

CS/CS/HB 1479 provides that any person who held a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004, is eligible to receive a single \$1 credit on a new or renewed motor vehicle registration between July 1, 2009, and June 30, 2010.

Section 320.08046, F.S., provides a \$1 surcharge on license taxes for all vehicles required to be registered in Florida. Of this \$1 surcharge, 58 percent is directed to the General Revenue Fund and 42 percent is directed to the Grants and Donations Trust Fund in the Department of Juvenile Justice, to fund community juvenile justice partnership grants. HB 7029 identifies only the General Revenue Fund portion of this surcharge as the funding mechanism for the estimated \$10.4 million in revenue not collected as a result of the settlement. An eligible recipient may elect not to receive the \$1 credit.

Sunset Review Process (Section 2)

Sections 11.901-11.920, F.S., the "Florida Government Accountability Act," create an agency sunset review process to determine if a public need exists for the continuation of a state agency, its advisory

committees, or its programs. The act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action before the review date to reenact the agency or its advisory committees, the agency will continue to be subject to an annual sunset review until the Legislature enacts legislation relating to the agency's abolition, continuation, or reorganization.

Sunset Review Process and Recommendations

The act requires the appointment of a Joint Legislative Sunset Committee to oversee the review process, obtain public input, and make recommendations to abolish, continue, or reorganize the agency under review. Two reports are required prior to an agency's review date:

- No later than 2 years preceding the year in which an agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with a preliminary report detailing its programs and activities. Upon receipt of the agency's report, the sunset review committees of the Senate and House of Representatives are required to conduct independent reviews of the agency and its advisory committees. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General are required to assist the Senate and House of Representatives in the review process.
- No later than March 1 of the year in which an agency is scheduled to be reviewed, the sunset committees of the Senate and House of Representatives are required to provide the President of the Senate and Speaker of the House of Representatives with recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

The Joint Legislative Sunset Committee, Senate Committee on Transportation and OPPAGA have prepared various reports and memorandums regarding the sunset review of DHSMV and its programs and activities since 2007. In September 2008, the Senate Committee on Transportation recommended the following actions:

- Retain the department.
- Repeal the obsolete Bureau of Motor Vehicle Inspection.
- Promote additional tax collector participation in providing driver's licenses and ID cards.

Proposed Changes

Based upon the review and recommendations that occurred during the sunset review process, the bill reenacts the DHSMV and deletes the obsolete Bureau of Motor Vehicle Inspection from s. 20.24(2), F.S.

Tri-Vehicles (Sections 4, 5, 11, 14)

Current Situation

Current Florida law provides for legal operation on public roads for motorcycles, automobiles, and trucks, as well as several different types of non-traditional vehicles including golf carts,² all-terrain vehicles,³ utility vehicles,⁴ and low speed vehicles.⁵ However, no provision is made for "tri-vehicles," which are 3-wheeled, enclosed-cabin vehicles. Such vehicles do not fit into current definitions of an automobile or motorcycle, and as such are not legally operable on public roads in Florida.

Proposed Changes

The bill amends several section of law to provide for legal operation of tri-vehicles in Florida. CS/CS/HB 1479 defines 'tri-vehicle' in both Chapters 316 and 322, and exempts such vehicles from the definition of 'motorcycle,' for clarity. The definition of 'tri-vehicle' requires such vehicles to meet several Federal safety standards for seat-belts, windshield wipers, "roof crush" resistance. The vehicle must also be produced by a manufacturer in quantities of at least 300 per calendar year.

² Section 316.212, F.S.

³ Section 316.2123, F.S. *See also*, 316.2074, F.S.

⁴ Sections 316.2126, 316.21265, and 316.2127, F.S.

⁵ Section 316.2122, F.S.

The bill provides that a tri-vehicle, being an ‘inherently low-emission’ vehicle, is included in the definition of ‘hybrid vehicle’ for the purposes of s. 316.0741, F.S., and may be driven in a High-Occupancy Vehicle lane. CS/CS/HB 1479 taxes the registration of a tri-vehicle by amending s. s. 320.08(2), F.S., to include tri-vehicles with automobiles.

“Move Over Act” (Section 6)

Current Situation

In 2002, the Legislature created the “Move Over Act,”⁶ 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 Changes

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 7, 10)

Current Situation

In 2008, the Legislature passed CS/HB 137,⁷ 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.

Proposed Changes

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 8, 10, 12)

Current Situation

⁶ 2002-217, Laws of Florida.

⁷ 2008-117, Laws of Florida.

Current Florida law provides for several different types of non-traditional vehicles on the roadways, including golf carts,⁸ all-terrain vehicles,⁹ utility vehicles,¹⁰ and low speed vehicles.¹¹ 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;¹² other vehicles are presumptively prohibited, unless the jurisdiction affirmatively finds that operation of the vehicle on a given road is safe.¹³

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.¹⁴

Federal safety standards do not currently apply to minitrucks; they are typically sold as off-road vehicles.¹⁵ Eleven states (Arkansas, Idaho, Illinois, Kansas, Louisiana, Missouri, North Dakota, Oklahoma, Tennessee, Utah, and Wyoming) allow minitrucks on specific portions of public roads.¹⁶ 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.¹⁷

Proposed Changes

CS/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,¹⁸ upon payment of the appropriate license taxes and fees.

CS/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/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

⁸ Section 316.212, F.S.

⁹ Section 316.2123, F.S. *See also*, 316.2074, F.S.

¹⁰ Sections 316.2126, 316.21265, and 316.2127, F.S.

¹¹ Section 316.2122, F.S.

¹² *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.

¹³ *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.

¹⁴ *Minitruck State Laws, March 2009*, Insurance Institute for Highway Safety. Available online at <http://www.iihs.org/laws/minitrucks.aspx>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Defined in s. 320.01(42), F.S.

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.

Derelict Motor Vehicle Certificates (Section 9)

Present Situation

Section 319.30, F.S., requires that when a motor vehicle or mobile home is to be dismantled, destroyed, or altered so significantly as to no longer be the motor vehicle or mobile home described in the certificate of title, the owners as listed on the title must surrender the title to DHSMV for cancellation. Violation of the requirement constitutes a second degree misdemeanor.

Currently, when a vehicle is sold to a salvage dealer, the statute requires that a vehicle must be accompanied by the:

- certificate of title,
- salvage certificate of title, or a
- vehicle certificate of destruction issued by DHSMV.

Alternatively, if the title has been surrendered to the DHSMV, a "derelict motor vehicle certificate" from the vehicle owner attesting to the surrender of the title must accompany the vehicle.¹⁹ Salvage motor vehicle dealers are required to record the name, address, and personal identification card number of any person delivering motor vehicles, derelicts and major parts.²⁰ Similar to the requirements of salvage motor vehicle dealer, when a motor vehicle, derelict, or major part is purchased by a secondary metals recycler²¹, the recycler must record the name, address, and personal identification card number of any person delivering the vehicle, derelict or part, and must obtain from the seller:

- valid certificate of title
- valid certificate of destruction issued by DHSMV
- If neither of the above is available, an derelict motor vehicle certificate signed by the seller stating that the certificate of title was returned to DHSMV.

Proposed Changes

CS/CS/HB 1479 clarifies that term "derelict motor vehicle certificate" by adding the word "application," throughout s. 319.30, F.S. The bill also defines a "seller" for purposes of the section, and makes changes throughout the section to clarify that sellers, in addition to owners, may be entitled to complete a derelict motor vehicle certificate application.

The bill makes a salvage operator or recycler's failure to obtain personal identification information from a seller or owner a second-degree misdemeanor. The bill clarifies that a recovery, storage, or towing operator claiming a lien against a motor vehicle may not use the 'derelict motor vehicle certification application' process to transport the vehicle. Doing so results in a third-degree felony under the bill. Such transporters are required to obtain title or a certificate of destruction.

Handicapped Placards (Section 13)

Current Situation

Pursuant to s. 320.0848, F.S., certain persons with long-term mobility problems are entitled to obtain a placard designed to be visible from the front and rear of a motor vehicle. DHSMV currently requires a

¹⁹ Section 319.30(2)(c)2., F.S.

²⁰ Section 319.30 (6), F.S.

²¹ S. 538.18 (8) F.S. defines "secondary metals recycler" as an individual who is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

person to have a valid identification card (or driver's license), in order to associate the handicapped placard with the individual.

The Department has indicated that certain persons are unable to physically visit a driver's license or tax collector's office in order to obtain an identification card to be associated with a placard. Under the current situation, a photo-less identification card must be created by DHSMV, in order to subsequently issue a valid placard. Such photo-less ID cards will not meet REAL ID standards being promulgated by the Federal government.

Proposed Changes

The bill amends s. 320.0848(2), F.S., to provide that, for those persons unable to obtain a valid license or identification card, the person's physician may sign a waiver from that requirement. This change will allow DHSMV to issue handicapped placards to individuals without issuing non-compliant identification cards.

Driver Improvement Courses (Section 15)

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,²² 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.²³

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/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 16, 17)

Current Situation

On May 11, 2005, President Bush signed into law the REAL ID Act of 2005.²⁴ Title II of the Act "directly imposes prescriptive driver's license standards."²⁵ The REAL ID Act contains a provision regarding the verification of documents presented to a license-issuing state agency.²⁶ 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.

²² Section 322.0261(1)(a), F.S.

²³ Section 332.0261(1)(b), F.S.

²⁴ H.R. 1268, Public Law 109-13.

²⁵ *NCSL REAL ID Act of 2005 Title Summary*, report from the National Conference of State Legislators, 2005.

²⁶ *See generally*, REAL ID Act, s. 202(c)(3)(A), s. 202(d)(4), and s. 202(d)(5).

Basic driver's license standards also are contained in the act.²⁷ 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 Changes

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 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 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.

Non-egregious Hearings (Section 19)

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."²⁸ 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).²⁹ The person may also submit letters of recommendation from "respected business persons in the community."³⁰

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.³¹

Proposed Changes

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 3 re-states s. 320.08046, F.S.

Section 18 provides rulemaking authority to DHSMV regarding the Medical Advisory Board created pursuant to s. 322.125, F.S.

²⁷ See generally REAL ID Act, s. 202(c) and (d).

²⁸ Section 322.271(2)(a), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Section 20 of CS/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 21 provides an effective date of July 1, 2009. (Some sections of the bill specify that they are effective September 1, 2009 or January 1, 2010.)

B. SECTION DIRECTORY:

- Section 1: Implements a litigation settlement; provides eligibility and procedures to collect the credit; provides an opportunity for eligible recipients to refuse the \$1 credit; provides a funding mechanism; provides an expiration of the provision.
- Section 2: Re-enacts the Department of Highway Safety and Motor Vehicles; amends section 20.24, F.S., eliminating the Bureau of Motor Vehicle Inspection.
- Section 3: Re-states section 320.08046, F.S.
- Section 4: Amends section 316.003, F.S., excluding "tri vehicle" from the definition of "motorcycle," defining the term "tri vehicle."
- Section 5: Amends section 316.0741, F.S., amending the definition of "hybrid vehicle" to include "tri vehicles" that are inherently low-emission vehicles.
- Section 6: 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 7: 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 8: Amends section 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 9: Amends section 319.30, F.S., clarifying definitions regarding derelict vehicles; requiring derelict vehicle certificate applications; providing a definition of 'seller' for purposes of derelict vehicle salvage and recycling; requiring derelict vehicle certificate applications received by salvage motor vehicle dealers and secondary metals recyclers to contain the identification card number of the seller or owner; provides that failure to obtain the identification card number on a derelict vehicle certificate application is a third degree felony; permitting secondary metals recyclers to obtain salvage certificates of title from sellers or owners as a valid method of documentation; providing that towing operators claiming a lien pursuant to ss. 713.58, 713.78 or 715.104, F.S., may not use the derelict motor vehicle certificate application to transport vehicles without otherwise obtaining title to the vehicle or a certificate of destruction; providing that a violation of this provision is a third-degree felony
- Section 10: Amends section 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 11: Amends section 320.08, F.S., providing that the licensing of a tri vehicle is taxed in the same manner as an automobile.
- Section 12: Creates section 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 13: Amends section 320.0848, F.S., providing exceptions to the requirement that a disabled person be required to obtain an identification card before being issued a handicapped placard; providing that a physician may sign an exception to such requirement for persons unable to physically visit a driver's license or tax collector's office.
- Section 14: Amends section 322.01, F.S., excluding "tri vehicle" from the definition of "motorcycle," defining the term "tri vehicle."
- Section 15: Amends section 322.0261, F.S., requiring DHSMV to identify crashes involving a third crash by the same operator with 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 16: 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 17: 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 18: Amends section 322.125, F.S., providing rulemaking authority to the Department with regard to the Medical Advisory Board.
- Section 19: 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: Provides an effective date of July 1, 2009, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce the amount of revenue received from certain drivers when registering or renewing a motor vehicle in the state of Florida. The estimated reduction is \$10.4 million.

The bill redirects revenue authorized in s. 320.08046, F.S., which is currently designated to the General Revenue Fund, to fund the \$1 credit to implement the litigation settlement provisions of *Collier v. Dickinson* for the period July 1, 2009 through June 30, 2010.

This will result in a non-recurring revenue loss to the General Revenue Fund for the credit amount. The department estimates approximately 10.4 million driver license/ID card holders and/or motor vehicle registrants would be eligible to receive the credit.

	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
License Tax Surcharge	\$10.4	\$0	\$0

2. Expenditures:

By eliminating the requirement for certain administrative hearings (see Section 19), DHSMV 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:

Floridians holding a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004 may elect to receive a \$1 reduction on a new or renewed motor vehicle registration between July 1, 2009 and June 30, 2010.

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/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 \$20.³²

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill contains one grants of rulemaking authority related to s. 322.125, F.S. This section creates a Medical Advisory Board which "advise[s] the department on medical criteria and vision standards relating to the licensing of drivers."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³² Conversation with Steven Fielder, Department of Highway Safety and Motor Vehicles, March 19, 2009.

V. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Roads, Bridges & 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:

- 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.

On April 14, 2009, the Economic Development & Community Affairs Policy Council adopted a strike-all amendment and two amendments to the strike-all amendment, and reported the bill favorably as a council substitute.

The strike-all removed several sections of the bill, including those sections allowing the Department of Highway Safety and Motor Vehicles to use e-mail for vehicle registration notices and other purposes. It also removed minor technical changes contained in the bill.

The strike-all added new sections, including:

- Re-enactment of the Department of Highway Safety and Motor Vehicles and elimination of one Bureau,
- Language required to settle the *Collier* litigation (Section 1, below),
- A change exempting certain handicapped persons from needing a license or identification card in order to receive a handicapped placard, and
- Specific rulemaking authority to the Department in relation to its Medical Advisory Board.

The amendments to the strike-all included language authorizing the operation of “tri vehicles” on Florida roads, and language making technical and operational changes to the derelict motor vehicle certification application process in order to reduce fraud.