

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 631 Motor Vehicles
SPONSOR(S): Roads, Bridges & Ports Policy Committee, Burgin
TIED BILLS: IDEN./SIM. BILLS: SB 1182

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Roads, Bridges & Ports Policy Committee, 9 Y, 2 N, As CS, Brown, Miller.

SUMMARY ANALYSIS

CS/HB 631 amends s. 316.1951, F.S., to revise provisions relating to parking vehicles on public property for the purpose of displaying the vehicles for sale, hire, or rental (a process known as "curbstoning").

The bill modifies motor vehicle dealer requirements relating to the sale of motor vehicles by:

- Removing notarization requirements by requiring a perjury statement to appear on certain forms;
Providing that motor vehicle dealers selling vehicles to persons that reside in other states need not apply for a title certificate;
Directing the Department of Highway Safety and Motor Vehicles (DHSMV) to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate, revalidation sticker, or replacement plate if the name of the owner appears on a list submitted to DHSMV by a licensed motor vehicle dealer for failure to pay for a previous registration of the vehicle;
Removing "pilot program" language regarding privatized dealer training education;
Authorizing motor vehicle dealers to keep certain required records in electronic form if desired; and
Authorizing DHSMV to suspend, deny, or revoke the license of any licensee based on issues related to non-payment of required fees to DHSMV or a dealer training school.

CS/HB 631 also increases the width and weight requirements in the definition of recreational off-highway vehicles in Chapters 261 and 317, Florida Statutes.

The bill has an effective date of July 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:

##### **Curbstoning/Prohibited Parking**

###### Present Situation

"Curbstoning" is a term used to describe the practice of parking a vehicle in an area upon a public street, highway, a public parking lot, or public or private property where the public has a right to travel by motor vehicle, for the purpose of and intent of displaying the vehicle for sale, hire, or rent. The following are examples of curbstoning:

- Sales of vehicles by licensed motor vehicle dealers at locations other than their licensed location without an off-premises permit.
- Parking and offering for sale one's personal vehicle on the right-of-way of any street or highway or on any private property where the public has the right to travel by motor vehicle, for more than twenty-four hours at a time without expressed permission of the property owner.
- Engaging in business of selling motor vehicles without a motor vehicle dealer license. The department defines this activity as any unlicensed person, firm, business or organization buying, selling, or offering for sale motor vehicles under conditions which require such person, firm, business or organization to be licensed

Section 316.1951, F.S., provides that it is illegal, except in certain circumstances, for any person to park a motor vehicle:

- upon a public street or highway,
- upon a public parking lot, or other public property, or
- upon private property where the public has the right of travel by motor vehicle

for the principal purpose and intent of displaying the motor vehicle thereon for sale, hire, or rental unless the sale, hire, or rental of the motor vehicle is specifically authorized on such property by municipal or county regulation and the person is in compliance with all municipal or county licensing regulations.

This restriction does *not* prohibit a person from parking, for purposes of displaying for sale, their own motor vehicle on any private property which the person owns or leases or on other private property when the person obtains the permission of the owner to park the vehicle there.

In addition, this restriction does not prohibit a licensed motor vehicle dealer from displaying for sale or offering for sale motor vehicles at locations other than the dealer's licensed location if the dealer has been issued a supplemental license for off-premises sales, as provided in s. 320.27(5), F.S. The dealer must also be in compliance with all municipal and county licensing regulations. A vehicle displayed for sale by a licensed dealer at any location other than the dealer's licensed location is subject to immediate removal without warning. These provisions may be enforced by a law enforcement officer, compliance officer, or DHSMV supervisor.

Section 316.1951, F.S., also contains requirements for written notices regarding illegal parking of vehicles for sale. Paragraph (4) requires DHSMV to adopt by rule a uniform written notice to be used to enforce the prohibitions of illegal parking, and paragraph (5) provides for the removal of any motor vehicle parked in one location for more than 24 hours after a written notice has been issued.

Every written notice issued must be affixed in a conspicuous place upon a vehicle by a law enforcement officer or compliance officer or supervisor. Any motor vehicle that has been illegally parked within 30 days after a previous violation and written notice is subject to immediate removal without warning.

Immediate removal without warning is also applicable for

- Violations of s. 316.1951(6), F.S., which provides it is unlawful to offer a vehicle for sale if the vehicle identification number has been destroyed, removed, covered, altered or defaced, as described in s.319.33(1)(d), F.S.
- Violations of s. 316.1951(7), F.S., which provides it is unlawful to knowingly attach to any motor vehicle a registration not assigned or lawfully transferred to the vehicle pursuant to s. 320.261, F.S.
- Violations of s. 316.1951(8), F.S., which provides it is unlawful to display or offer for sale a vehicle that does not have a valid registration as provided in s. 320.02, F.S.
- Violations of s. 316.1951(9), F.S. which provides a vehicle is subject to immediate removal without warning if it bears the telephone number that has been displayed on three or more vehicles offered for sale within a 12-month period.

All violations for illegally parking or selling motor vehicles are non-criminal traffic infractions, punishable as non-moving violations.<sup>1</sup> The penalty for non-moving violations is a \$30 fine, plus court costs which vary by county. Section 316.1951(10), F.S., provides any other provision of law to the contrary notwithstanding, a violation of illegally parking or selling a motor vehicle shall subject the owner of such motor vehicle to towing fees reasonably necessitated by removal and storage of the motor vehicle.

Section 316.1945(3), F.S., authorizes law enforcement officers and parking enforcement specialists to issue a "ticket form as may be used by a political subdivision or municipality," to a driver whose vehicle is illegally parked, or attach the ticket to the vehicle in a conspicuous place. A uniform traffic citation (UTC) may *not* be issued by being attached to an unattended motor vehicle, and may not be issued for violation of a county or municipal parking ordinance.

These prohibitions do not prohibit the governing body of a municipality or county, with respect to streets, highways, or other property under its jurisdiction, from regulating the parking of motor vehicles for any purpose.<sup>2</sup>

### Proposed Changes

HB 631 removes s. 316.1951(4), F.S., eliminating a requirement that DHSMV adopt a "uniform written notice" to enforce provisions prohibiting parking a motor vehicle on certain property for the purpose of displaying the vehicle for sale, hire, or rental. The bill amends s. 316.1951(5), F.S., to authorize a code enforcement officer from any local government agency to issue a traffic citation or have an illegally parked motor vehicle removed, and provides that law enforcement officers, compliance officers, and

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<sup>1</sup> Section 316.1951(12), F.S.

<sup>2</sup> Section 316.1951(11), F.S.

code enforcement officers may order immediate removal of motor vehicle parked illegally in violation of ss. 316.1951(6)-(9), F.S., (which are renumbered (5)-(8) in the bill).

The bill amends s. 318.18, F.S., to require a person cited for unlawfully displaying a motor vehicle for sale, hire, or rental to pay a \$100 fine, which is retained by the governing authority authorizing the vehicle to be towed. The bill specifies that fines collected by DHSMV shall be deposited into the Highway Safety Operating Trust Fund.

## **Notarized Signatures on Transfer and Reassignment Forms**

### Present Situation

Section 319.225, F.S., provides for procedures and regulations regarding the transfer and reassignment of motor vehicle titles. Specifically, s. 319.225(6), F.S., provides if a certificate of title is physically held by a lienholder or is lost or otherwise unavailable, the transferor may give a power of attorney to his or her transferee for the purpose of odometer disclosure. The power of attorney must be on a form issued or authorized by DHSMV. The transferee must sign the power of attorney form, print his or her name, and return a copy of the power of attorney form to the transferor. Upon receipt of a title certificate or duplicate title certificate, the transferee must complete the space for mileage disclosure on the title certificate exactly as the mileage was disclosed by the transferor on the power of attorney form. Currently, DHSMV may require the signatures on title transfer documents be notarized.

### Proposed Changes

The bill amends s. 319.225, F.S., to provide that certain motor vehicle title transfer forms do not require notarized signatures; however, in lieu of notarization, the forms must include an affidavit with the following wording: "UNDER PENALTY OF PERJURY,<sup>3</sup> I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE."

## **Motor Vehicle Titles/Liens**

### Present Situation

Section 319.23(6), F.S., provides when a motor vehicle or mobile home is sold by a licensed dealer, regardless of the purchaser's state of residence, the dealer must file for the transfer of title with DHSMV within 30 days of the sale of the vehicle or motor home.

### Proposed Changes

HB 631 provides that a motor vehicle dealer is not required to apply for a certificate of title when the general purchaser of the motor vehicle resides in another state or country. The motor vehicle dealer is required to transfer ownership and reassign the certificate of title or manufacturer's certificate of origin to the purchaser, and the purchaser must sign an affidavit, approved by DHSMV, stating that the purchaser will title and register the motor vehicle in another state or country.

## **License Plate Registration**

### Present Situation

Every owner of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or its authorized agent for registration on a form prescribed by DHSMV. Section 320.02(16), F.S., authorizes DHSMV to withhold registration or re-registration of a motor vehicle if the name of the owner or co-owner appears on a list submitted by a licensed motor vehicle dealer for failure to pay for a previous registration of that vehicle.

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<sup>3</sup> Section 837.06, F.S., provides that "knowingly mak[ing] a false statement in writing with the intent to mislead a public servant in the performance of his or her duties" is a second degree misdemeanor.

The motor vehicle dealer must maintain signed evidence the owner or co-owner acknowledged the dealer's authority to submit the list to the department if he or she failed to pay and must note the amount the owner or co-owner would be responsible for the vehicle registration.

### Proposed Changes

The bill directs DHSMV to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate, revalidation sticker, or replacement plate if the name of the owner appears on a list submitted to the department by a licensed motor vehicle dealer for a previous registration of the vehicle.

## **Motor Vehicle Dealers; Continuing Education and Training**

### Present Situation

Section 320.27, F.S., provides for the licensing and certification of motor vehicle dealers. Section 320.27(1)(c), F.S., defines a "motor vehicle dealer" as any person engaged in the business of buying, selling, or dealing in motor vehicles, or offering or displaying motor vehicles for sale at wholesale or retail. Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be presumed *prima facie* to be engaged in such business.

Section 320.27(4), F.S., provides the requirements that must be met in order for a franchised motor vehicle dealer to receive a license certificate, which must be renewed every 2 years. A franchised motor vehicle dealer that has been licensed continuously for 2 years and is in good standing with DHSMV is exempt from the pre-licensing training requirement when seeking a new franchise motor vehicle dealer license. Motor vehicle dealer principals are required to provide certification of completing 8 hours of continuing education prior to filing license renewal forms with the DHSMV; such certification must be filed once every 2 years, beginning in 2006. The continuing education must include 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics.

The continuing education must be provided by a licensed dealer school either in a classroom or by correspondence. Dealer schools must provide completion certificates to both DHSMV and the customer, and the schools are authorized to charge a fee for providing continuing education. The privatized method authorized for training dealer license applicants was considered a pilot project which was to be evaluated by the department after it had been in operation for two years.

### Proposed Changes

HB 631 deletes obsolete language and clarifies that an applicant who has held a valid motor vehicle dealer's license continuously within the past two years and who remains in good standing with the department is exempt from the pre-licensing requirements. The bill removes the "pilot" provision for training dealer license applicants, as the pilot program has been deemed successful by DHSMV.

## **Denial, Suspension or Revocation of License**

### Present Situation

Section 320.27(9), F.S., provides that DHSMV may deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed fraud or willful misrepresentation in applying for or obtaining a license, been convicted of a felony, or failed to honor a bank draft or check given to a motor vehicle dealer for the purchase of a motor vehicle by another motor vehicle dealer within 10 days after notification the bank draft or check has been dishonored.

### Proposed Changes

The bill authorizes DHSMV to also deny, suspend, or revoke a motor vehicle dealer license if the licensee has:

- Failed to honor a check given to the department within 10 days after notification the check has been dishonored by the bank due to insufficient funds;
- Stopped payment on a check or issued a check payable to the department from a closed account, or
- Charged back a credit card transaction to the department.

Similarly, DHSMV is authorized to deny, suspend, or revoke a motor vehicle dealer license if the licensee has:

- Failed to honor a check given to a licensed motor vehicle dealer training school for tuition within 10 days after notification the check has been dishonored by the bank due to insufficient funds;
- Stopped payment on a check or issued a check payable to a licensed motor vehicle dealer training school for tuition from a closed account, or
- Charged back a credit card transaction to the school.

If a student commits such acts as listed above, the motor vehicle dealer training school may cancel the training certificate issued to the student and notify the department of the cancellation.

## **ROVs**

### Present Situation

Chapter 261, F.S., "Off-Highway Vehicle Safety and Recreation," and Chapter 317, F.S., "Off-Highway Vehicle Titling," currently define an "ROV" as any motorized recreational off-highway vehicle:

- having a width of 60 inches or less,
- having a dry weight of 1,500 pounds or less,
- designed to travel on four non-highway tires,
- having non-straddle seating and a steering wheel, and
- manufactured for use by one or more persons

The definition explicitly states that it does not include a golf cart, as defined in s. 320.01(22), F.S. and 316.003(38), F.S., nor does it include a low-speed vehicle, as defined in s. 320.01(42), F.S.

### Proposed Changes

The bill increases the allowable weight of an ROV from 1,500 to 2,000 pounds, and increases the allowable width of an ROV from 60 to 64 inches.

HB 631 provides an effective date of July 1, 2010.

## **B. SECTION DIRECTORY:**

Section 1 Amends s. 261.03, F.S.; amending the definition of "ROV."

Section 2 Amends s. 317.0003, F.S.; amending the definition of "ROV."

Section 3 Amends s. 316.1951, F.S.; removing a requirement that the Department of Highway Safety and Motor Vehicles adopt by rule a uniform written notice for enforcement of provisions that prohibit parking a motor vehicle on certain property for the purpose of displaying the motor vehicle as being for sale, hire, or rental; removing a requirement that each law enforcement agency provide its own notice for such enforcement; authorizing a code enforcement officer from any local government agency to enforce provisions prohibiting parking a motor vehicle on certain property for the purpose of displaying the motor vehicle as being for sale, hire, or rental; authorizing a law enforcement officer, compliance officer, code enforcement officer from any local government agency, or supervisor of the department to enforce provisions prohibiting offering a vehicle for sale if the vehicle identification number has been destroyed or defaced, to enforce prohibitions which prohibit knowingly attaching to any motor vehicle a registration that was not assigned to the vehicle, to enforce provisions prohibiting

displaying or offering for sale a motor vehicle without a valid registration, and to enforce provisions prohibiting the display of a telephone number on a motor vehicle if that number has been displayed on three or more vehicles offered for sale within a 12-month period; requiring that a release form prescribed by the department must be completed verifying that a fine has been paid to the appropriate governing authority; authorizing towing and storage entities to collect towing and storage fees for motor vehicles towed for violation of certain prohibitions prior to payment of the fine or completion of the release form; removing a requirement that a vehicle must be parked in one location for 24 hours after a written notice has been placed on the vehicle before its removal is authorized; removing a requirement that a written notice must be affixed to the vehicle in a conspicuous manner; removing a provision authorizing immediate removal of a motor vehicle within 30 days of a previous violation and written notice; providing that the owner of a vehicle parked in violation of such provisions is subject to a fine in addition to towing and storage fees.

- Section 4 Amends s. 318.18, F.S.; specifying a fine for a vehicle that is displayed for sale, hire, or rental in violation of provisions in s. 316.1951, F.S.
- Section 5 Amending s. 319.225, F.S.; prohibiting DHSMV from requiring the signature of the transferor to be notarized on certain motor vehicle title transfer forms relating to mileage of the vehicle; requiring the forms to include an affidavit declaring facts in the document to be true.
- Section 6 Amending s. 319.23, F.S.; providing that under certain circumstances a motor vehicle dealer is not required to apply for a certificate of title for a motor vehicle sold to a general purchaser who resides outside the state.
- Section 7 Amending s. 320.02, F.S.; directing DHSMV to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate or revalidation sticker if that person is on a list submitted to DHSMV by a licensed dealer.
- Section 8 Amending s. 320.27, F.S.; clarifying an exemption from certain dealer pre-licensing requirements; removing a requirement for evaluation of privatized applicant training methods; authorizing dealer records to be kept in either paper or electronic form; providing procedures for transfer of documents to electronic form; authorizing DHSMV to deny, suspend, or revoke a dealer's license for certain actions relating to payments made to DHSMV; and authorizing a dealer training school to cancel the training certificate issued to a student for certain actions relating to payments made to the school.
- Section 9 Providing an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill could result in additional fine revenue for state and local governments, depending on the number of violators and the fines collected.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill could result in additional fine revenue for state and local governments, depending on the number of violators and the fines collected.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Violators of the bill's prohibition would be subject to a \$100 fine for a vehicle unlawfully displayed for sale, hire, or rental. Limiting off-premise supplemental licenses to no more than one per month would presumably cause a reduction in the number of off-premises sale supplemental licenses issued to motor vehicle dealers.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DHSMV has provided the following comments regarding the motor vehicle dealer provisions:

- The bill allows, when a licensee chooses to maintain electronic records, the original paper documents to be destroyed after the licensee successfully transfers title and registration to the purchaser as required by Ch. 319, F.S., for any purchaser who titles and registers the motor vehicle in this state. DHSMV recommends clarifying that the original paper documents may be destroyed upon compliance with all other state and federal required laws and after the issuance of the title and registration to the purchaser.

DHSMV has also expressed concerns about the effective date of the bill allowing sufficient time for implementation to make necessary programming modifications, and suggests an effective date of October 1, 2010.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Roads, Bridges, and Ports Policy Committee favorably adopted three amendments for HB 631. The first amendment increases the width and weight requirements in the definition of ROVs, or recreational off-highway vehicles, in Chapters 261 and 317, Florida Statutes. The second amendment removes provisions of the bill limiting the number of off-premises sale supplemental licenses that may be issued to a motor vehicle dealer.

Amendment 3 removes provisions requiring DHSMV to develop a uniform traffic citation, to be issued by local code enforcement officers. In lieu of this arrangement, the amendment eliminates the requirement that DHSMV adopt a uniform written notice, but authorizes a code enforcement officer from any local government agency to issue a traffic citation or have an illegally parked motor vehicle removed. The amendment also provides that law enforcement officers, compliance officers, and code enforcement officers may order immediate removal of motor vehicle parked illegally in violation of ss. 316.1951(6)-(9), F.S.

Amendment 3 also clarifies that the \$100 fine levied by the original bill is retained by the governing authority authorizing the vehicle to be towed. When that authority is DHSMV, the amendment specifies that fines collected by DHSMV shall be deposited into the Highway Safety Operating Trust Fund.

This bill was reported favorably as a committee substitute.