

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: SB 1182

INTRODUCER: Senator Crist

SUBJECT: Motor Vehicle Transactions

DATE: February 25, 2010 REVISED: 3/3/10

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-------------------------|
| 1. | Davis | Meyer | TR | Fav/2 amendments |
| 2. | | | CA | |
| 3. | | | TA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill 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. This bill also modifies motor vehicle dealer requirements relating to the sale of motor vehicles by: providing motor vehicle dealers selling vehicles to persons that reside in other states will not be required to apply for a title certificate; directing the Department of Highway Safety and Motor Vehicles (DHSMV or department) 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; limiting the issuance of a temporary supplemental license for off-premises sales to a dealer to no more than one per calendar month; authorizing motor vehicle dealers to keep certain required records in electronic form; and authorizes the department to suspend, deny, or revoke the license of any licensee based on issues related to non-payment of required fees to the department.

This bill substantially amends sections 316.1951, 318.18, 319.225, 319.23, 320.02, and 320.27 of the Florida Statutes.

II. Present Situation:

Curbstoning/Prohibited Parking

"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 rent¹. 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 licensed²

Section 316.1951, F.S., provides it is illegal, except in certain circumstances, for any person to park a motor vehicle, for sale 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(4) F.S., provides the DHSMV shall adopt by rule a uniform written notice to be used to enforce the prohibitions of illegal parking.

Section 316.1951(5), F.S., 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

¹ Florida Department of Highway Safety and Motor Vehicles Division of Motor Vehicles Procedure EP-03 <http://www3.hsmv.state.fl.us/Intranet/dmv/Manuals/DMVProcedures/BFOEC/EP-03.pdf> (last visited March 2, 2010).

² *Id.*

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.

Section 316.1951(6), F.S., 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. A vehicle found in violation of this subsection is subject to immediate removal without warning.

Section 316.1951(7), F.S., 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. Vehicles in violation are subject to immediate removal without warning.

Section 316.1951(8), F.S., 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. Vehicles in violation are subject to immediate removal without warning.

Section 316.1951(9), F.S. 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.

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 316.1951(11), F.S., provides this section does 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.

Section 316.1951(12), F.S., provides a violation for illegally parking or selling motor vehicles is a non-criminal traffic infraction, punishable as a nonmoving violation, unless otherwise mandated by general law.

Traffic Infraction Penalties

Section 318.18, F.S., provides the general penalty amounts for numerous traffic infractions and criminal violations.

Notarized Signatures on Transfer and Reassignment Forms

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 the department. 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, the department may require the signatures on title transfer documents be notarized.

Motor Vehicle Titles/Liens

Section 319.23, F.S., provides for the application and issuance of motor vehicle titles. Specifically, s. 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.

License Plate Registration

Every owner of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state.³ The owner or person in charge must apply to the department or to its authorized agent for registration on a form prescribed by the department. Section 320.02(16), F.S., authorizes the 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 to the department by a licensed motor vehicle dealer for a previous registration of that vehicle. 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.

Motor Vehicle Dealers

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 prima facie presumed to be engaged in such business.

Continuing Education and Training

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 the department 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 the DHSMV and the customer and the schools are authorized to charge a fee for providing continuing education. The privatized method for training dealer license applicants authorized was considered a pilot project which was to be evaluated by the department after it had been in operation for two years.⁴

³ Section 320.02, F.S.

⁴ Ch. 96-413, L.O.F.

Off-Premises Sales Supplemental License

Section 320.27(5), F.S., requires a licensed motor vehicle dealer to obtain a supplemental license for each permanent additional place or places of business not contiguous to the premises for which the original license is issued, on a form prescribed by DHSMV, and upon a payment of \$50 for each additional location. A supplemental license authorizing off-premises sales shall be issued at no charge to the dealer for a period not to exceed ten consecutive calendar days. To obtain a temporary supplemental license for off-premises sales, the applicant must:

- Be a licensed dealer;
- Notify the applicable local DHSMV office of the specific dates and location for which the license is requested;
- Display a sign at the licensed location clearly identifying the dealer;
- Provide staff to work at the temporary location for the duration of the off-premises sale;
- Meet any local government permitting requirements; and
- Have the permission of the property owner to sell at that location.

Maintenance of Records

Section 320.27(6), F.S., provides motor vehicle dealers must keep a book or record of the following for a period of 5 years:

- The vehicle purchase, sale, or exchange of any motor vehicle;
- The receipt of any motor vehicle for the purpose of sale;
- The temporary tag issuance date;
- The date of title transfer;
- The name and address of the buyer, seller, and any alleged owners;
- A description of the motor vehicle including any vehicle or component identification number; and
- A statement that any such number has been altered, if that is the case.

Denial, Suspension or Revocation of License

Section 320.27(9), F.S., provides the 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.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 316.1951, F.S., to require the department to adopt a uniform traffic citation to enforce provisions prohibiting parking a motor vehicle on certain property for the purpose of displaying the vehicle for sale, hire, or rental and to remove the requirement that each law enforcement agency provide its own notice for such enforcement. This section is also amended to authorize a code enforcement officer from any local government agency to have an illegally parked motor vehicle removed. The owner of a motor vehicle cited for a violation of unlawfully displaying a motor vehicle for sale, hire, or rental is subject to a fine.

Section 2 of 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.

Section 3 of the bill amends s. 319.225, F.S., to provide 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, I DECLARE THAT I
HAVE READ THE FOREGOING DOCUMENT AND
THAT THE FACTS STATED IN IT ARE TRUE.

Section 4 amends s. 319.23, F.S., to provide 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, as approved by the department, the purchaser will title and register the motor vehicle in another state or country.

Section 5 amends s. 320.02, F.S., to direct the department 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.

Section 6 amends s. 320.27(4), F.S., to delete obsolete language and to clarify 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 *prelicensing* requirements. The section is further amended to remove the "pilot" provision for training dealer license applicants. The pilot program is beyond the two year pilot period and according to the department deemed successful.

Section 320.27(5), F.S., is amended to limit the issuance of a temporary supplemental license for off-premises sales to a dealer to no more than one per calendar month.

Section 320.27(6), F.S., is amended to allow motor vehicle dealers to keep certain required records in either paper or electronic form. When a licensee chooses to maintain electronic records, the original paper documents may be destroyed under specified circumstances.

Section 320.27(9), F.S., is amended to authorize the department to 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; or 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.

In addition, the department 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; or 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.

Section 7 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Violators 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 will cause a reduction in the number of off-premises sale supplemental licenses issued to motor vehicle dealers.

C. Government Sector Impact:

According to DHSMV, this bill will have an indeterminate fiscal impact on the department.

In addition, this bill may result in additional fine revenue for state and local governments.

VI. Technical Deficiencies:

According to the department, the issuance of a Uniform Traffic Citation (UTC) to enforce provisions prohibiting parking a motor vehicle on certain property for the purpose of displaying the vehicle for sale, hire, or rental would not be appropriate at this time. Currently, an UTC must be delivered to the violator in person or by mail. Officers issuing UTCs for this violation would have to obtain personal information from the DHSMV's driver license and registration

databases. The department has concern for the placement of an UTC containing such personal information on the vehicle. The notices currently used do not contain personal information. The department recommends delivering the UTC to the registered owner instead of placement on the vehicle.

VII. Related Issues:

The department provided the following comments:

The bill limits the issuance of a temporary supplemental license for off-premises sales to a dealer to no more than one per calendar month. The DHSMV recommends requiring the applicant apply for the off-premises license 30 days prior to the event to allow sufficient time to process the application.

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. The department recommends clarifying 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.

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

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 341070 by Transportation on March 3, 2010:

Modifies the term “ROV” to increase the current statutory size and weight limits of recreational off-highway vehicles. Specifically, in order for a vehicle to be classified as an ROV it must:

- be 64 inches or less in width and weigh 2,000 pounds or less;
- be designed to travel on four or more nonhighway tires;
- have nonstraddle seating and a steering wheel;
- be manufactured for recreational use by one or more persons.

Barcode 477218 by Transportation on March 3, 2010:

Clarifies a qualified witness testifying against an accused violator of Florida’s speed laws must be competent to give testimony only when the testimony is derived from the use of a tested electronic, electrical, mechanical or other device used in the calculation of speed.

Reduces from five times within 10 years to five times within a lifetime that certain persons are allowed to attend a basic driver improvement course approved by the department in lieu of a court appearance and points being assessed on his or her driving record.

Provides an exemption from a requirement to attend a driver improvement course for drivers convicted of certain violations if adjudication is withheld by the court.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
