

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1057 Motor Vehicles
SPONSOR(S): Transportation & Infrastructure Subcommittee, McClure
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N	Johnson	Vickers
2) State Affairs Committee	19 Y, 0 N	Johnson	Williamson

SUMMARY ANALYSIS

Beginning October 1, 2019, the bill authorizes the display of certain lights underneath a motor vehicle and permits volunteer firefighters to display red and white lights, instead of the current red lights, on their vehicles.

Beginning July 1, 2019, the bill makes changes to the notification requirements governing the storage and sale of damaged or dismantled vehicles. Specifically, the bill requires entities facilitating the disposal of total-loss vehicles to:

- Provide specified notices by certified mail or another commercial delivery service that provides proof of delivery;
- Use a vehicle owner's address from both the insurance company and the titling jurisdiction identified through the National Motor Vehicle Title Information System, or an equivalent commercially available system, for sending a notice;
- Provide proof of all lien satisfactions or proof of a release on all liens on a vehicle when applying for a certificate of destruction or salvage certificate of title;
- Provide an affidavit indicating a notice had been sent to all lien holders, in the event a lien satisfaction or a release of all liens on a vehicle cannot be obtained; and
- Require proof of delivery to the lienholder at the address on the certificate of title and, if the address is different from the one on file with the Department of State for the lienholder's registered agent, proof of delivery to that address.

Beginning October 1, 2019, the bill authorizes entities that process title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict and salvage motor vehicles to utilize the electronic filing system maintained by the Department of Highway Safety and Motor Vehicles.

The bill does not appear to have a significant fiscal impact to state and local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Under Vehicle Lights

Present Situation

Section 316.235, F.S., authorizes certain additional lighting equipment on motor vehicles. However, the statute does not address lamps or devices underneath a motor vehicle. A violation of s. 316.235, F.S., is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in Ch. 318, F.S.¹ A nonmoving violation has a base fine of \$30; but with additional fees, the total fine is \$108.²

Effect of Proposed Changes

Beginning October 1, 2019, the bill authorizes a motor vehicle to be equipped with one or more lamps or devices underneath the motor vehicle as long as such lamps or devices do not emit light in violation of statutes regarding lights on law enforcement vehicles,³ flashing lights,⁴ or multiple-beam road lighting equipment.⁵

Volunteer Firefighter Lights

Present Situation

Section 316.2397(3), F.S., authorizes vehicles of the fire department and fire patrol, including vehicles of volunteer firefighters, vehicles of medical staff physicians or technicians of licensed medical facilities, ambulances, buses, and taxicabs to show or display red lights.

Section 316.2398, F.S., authorizes a privately owned vehicle belonging to an active firefighter member of a volunteer firefighting company or association, while en route to the fire station for the purpose of proceeding to a fire or other emergency or while en route to a fire or other emergency, or a privately owned vehicle belonging to a medical staff physician or technician of a licensed medical facility, while responding to an emergency, may display or use red warning signals visible from the front and from the rear of such vehicle, subject to the following restrictions and conditions:

- No more than two red warning signals may be displayed;
- No inscription may appear across the face of the lens of the red warning signal; and
- In order for an active volunteer firefighter to display such red warning signals, such firefighter must first secure a written permit from the chief executive officer of the firefighting organization to use the red warning signals, which must be carried by such firefighter while the red warning signals are displayed.⁶

It is unlawful for any person who is not an active firefighter member of a regularly organized volunteer firefighting company or association, or a physician or technician of the medical staff of a licensed medical facility, to display any red warning signals on any motor vehicle owned by him or her.⁷

¹ Chapter 318, F.S., relates to the disposition of traffic infractions.

² Florida Clerk of Courts, *2018 Distribution Schedule of Court Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording*, p. 19. Available at: https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/2018_distribution_schedule_1.pdf (last visited February 26, 2019).

³ Section 316.2397(1), F.S.

⁴ Section 316.2397(7), F.S.

⁵ Section 316.238, F.S.

⁶ Section 316.2398(1), F.S.

⁷ Section 316.2398(2), F.S.

A violation of s. 316.2398, F.S., is a nonmoving violation, punishable as provided in Ch. 318, F.S. In addition, volunteer firefighters must be dismissed from the firefighting organization by the organization's chief executive officer.⁸

Section 322.01(4), F.S., defines the term "authorized emergency vehicle" as a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized to display red or blue lights, and that is on call to respond to emergencies and includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles used only incidentally for emergency purposes.

Effect of Proposed Changes

Beginning October 1, 2019, the bill authorizes vehicles registered to volunteer fire fighters to use red or *red and white* lights under certain circumstances. The bill also revises the definition of the term "authorized emergency vehicle" to conform to changes made by this bill.

Damaged or Dismantled Vehicles

Present Situation

In Florida, a motor vehicle or mobile home is considered a total loss when:

- An insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the owner upon the theft of the motor vehicle or mobile home; or
- An uninsured motor vehicle or mobile home is wrecked or damaged and the cost of repairing or rebuilding the vehicle is 80 percent or more of the cost to the owner to replace the wrecked or damaged motor vehicle or mobile home with one of like kind and quality.⁹

Under Florida law, independent entities facilitate the disposal and sale of total-loss vehicles.¹⁰ The term "independent entities" is defined as a business or entity that may temporarily store damaged or dismantled motor vehicles pursuant to an agreement with an insurance company and is engaged in the sale or resale of damaged or dismantled motor vehicles.¹¹

Following an incident resulting in a vehicle's total loss, the vehicle owner's insurance company directs the independent entity to recover and store the damaged vehicle, pending resolution of the claim between the driver and the insurance company. In some cases, after the claims process is complete, the insurance company requests that the independent entity release the vehicle back to its owner. If an insurance company wishes to release a damaged or dismantled motor vehicle to its owner, it provides the independent entity a release statement authorizing the independent entity to release the vehicle.¹²

The independent entity must send notice by certified mail to the vehicle's owner at the owner's address reflected in the Department of Highway Safety and Motor Vehicles' (DHSMV) records.¹³ However, DHSMV's records only contain owner address records for vehicles titled in Florida. Therefore, the independent entity has no way to provide notice to an out-of-state vehicle owner so the owner can either pick up the vehicle, or the independent entity can apply for a certificate of destruction¹⁴ or a salvage certificate of title¹⁵ and dispose of the vehicle. This has resulted in independent entities storing vehicles with out-of-state titles with no means of disposal.

⁸ Section 316.2398(5), F.S.

⁹ Section 319.30(3)(a)1., F.S.

¹⁰ Section 319.30, F.S., governs damaged or dismantled motor vehicles and mobile homes, including salvage.

¹¹ Section 319.30(1)(g), F.S.

¹² Section 319.30(9)(a), F.S.

¹³ Section 319.30(9)(b), F.S.

¹⁴ Section 319.30(1)(a), F.S., defines the term "certificate of destruction" as the certificate issued pursuant to s. 713.78(11), F.S., or s. 713.785(7)(a), F.S.

¹⁵ Section 319.30(1)(u), F.S., defines the term "salvage certificate of title" as a salvage certificate of title issued by DHSMV or another motor vehicle department authorized to issue titles in another state.

The notice must inform the owner that he or she has 30 days after receipt of the notice to pick up the vehicle from the independent entity. If the motor vehicle is not claimed within those 30 days, the independent entity may apply for a certificate of destruction or a salvage certificate of title.¹⁶ Before releasing any damaged or dismantled motor vehicle to its owner or before applying for a certificate of destruction or salvage certificate of title, the independent entity must make the required notification to the National Motor Vehicle Title Information System (NMVTIS).^{17,18}

Upon applying for a certificate of destruction or salvage certificate of title, the independent entity must provide a copy of the release statement from the insurance company, proof of providing the 30-day notice to the owner, proof of notification to NMVTIS, and applicable fees.¹⁹

Currently, salvage motor vehicle dealers²⁰ and secondary metal recyclers²¹ initiating a certificate of destruction, salvage title, or derelict vehicle certificate transaction must, in person or by mail, process the request at the county tax collector's office and pay any applicable fees for the transaction.²² Applications are reviewed by the tax collector's office and then approved or rejected. If the application is approved, the tax collector's office processes the transaction, uploads the documents to the Florida Real-time Vehicle Information System, and prints the certificate of destruction, salvage title, or derelict vehicle certificate. If the documents are rejected, the salvage dealer or metal recycler must correct any errors in the documentation and start the process again.

DSHMV's Electronic Filing System (EFS) provides a means for agents, primarily licensed motor vehicle dealers, to perform certain transactions related to motor vehicle title and registration issuance. The system provides users real time access to vehicle registration and title information from DHSMV and grants users access to real time transaction processing of title and registration applications. The tax collector is responsible for reviewing and approving EFS title and registration transactions processed by participating EFS agents.²³

Certified service providers build their own interface systems that link up with the EFS to provide transaction services to EFS agents. EFS agents provide title and registration processing services to customers when their products are purchased. The EFS agent also generates the appropriate DHSMV documents, including the vehicle registration, title application form and, in some cases, the title

¹⁶ Section 319.30(3)(b), F.S.

¹⁷ Section 319.30(1)(o), F.S., defines the term "National Motor Vehicle Title Information System" as the national mandated vehicle history database maintained by the United States Department of Justice to link the states' motor vehicle title records, including DSHMV's title records, and ensure that states, law enforcement agencies, and consumers have access to vehicle titling, branding, and other information that enables them to verify the accuracy and legality of a motor vehicle title before purchase or title transfer of the vehicle occurs.

¹⁸ Section 319.30(9)(c), F.S.

¹⁹ Section 319.30(9)(d), F.S.

²⁰ Section s. 320.27(1)(c)5., F.S. defines the term "salvage motor vehicle dealer" as any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

²¹ Section 538.18(11), F.S., defines the term "secondary metals recycler" as any person who: is engaged, from a fixed location, in the business of purchase transactions or 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; or has facilities for 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, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

²² The Department of Highway Safety and Motor Vehicles, Division of Motorist Services, *Motor Vehicle Procedures Manual, Uninsured Motor Vehicles or Mobile Homes Declared Total Loss, Motor Vehicles Junked by Owners and Derelict Motor Vehicles* (December 18, 2014), available at <https://www3.flhsmv.gov/dmv/Proc/tl/tl-35.pdf> (last visited on March 18, 2019).

²³ Department of Highway Safety and Motor Vehicles, *Electronic Filing System*, Available at: <https://www.flhsmv.gov/motor-vehicles-tags-titles/electronic-lien-titles/electronic-filing-system-efs/> (Last visited March 15, 2019).

certificate (printed from Tallahassee).²⁴ At the end of the EFS transaction, the customer's vehicle is titled and registered without having to visit a tax collector or DHSMV office. There are currently five certified service providers²⁵ and over 2,400 EFS agents in Florida.²⁶

Section 320.03(10), F.S., provides requirements governing the operation and use of the electronic filing system. The electronic filing system must be available for use statewide and applied uniformly throughout the state. An entity that, in the normal course of its business, sells products that must be titled or registered, provides title and registration services on behalf of its consumers and meets all established requirements may be an authorized electronic filing system agent and may not be precluded from participating in the electronic filing system in any county. Upon request from a qualified entity, the tax collector must appoint the entity as an authorized electronic filing system agent for that county.

Effect of Proposed Changes

Effective July 1, 2019, the bill amends s. 319.30(9), F.S., authorizing the independent entity to send notice by either certified mail or another commercially available delivery service that provides proof of delivery.

The bill provides that if DHSMV's records do not contain the owner's address, the independent entity must:

- Send a notice meeting the statutory requirements to the owner's address that is provided by the insurance company in its release statement.
- Identify the vehicle's latest titling jurisdiction using NMVTIS, or an equivalent commercially available system, and attempt to obtain the owner's address from that jurisdiction. If that jurisdiction provides an address different from the owner's address provided by the insurance company, the independent entity must send a notice to both addresses.
- Maintain for a minimum of three years the records related to the 30-day notice sent to the owner, the results of any NMVTIS searches, and the notification to NMVTIS or an equivalent commercially available system.

The bill requires the independent entity to show proof of lien satisfaction or proof of a release of all liens on the motor vehicle upon applying for a certificate of destruction or a salvage certificate of title. The bill provides that if the independent entity is unable to obtain a lien satisfaction or a release of all liens on the motor vehicle, the independent entity must provide an affidavit stating that notice was sent to all lienholders that the motor vehicle is available for pickup, 30 days have passed since the notice was delivered or attempted to be delivered, attempts have been made to obtain a release from all lienholders, and all such attempts have been to no avail. The notice to lienholders and attempts to obtain a release for lienholders may be by written request delivered in person or by certified mail, or by another commercially available delivery service that provides proof of delivery to the lienholder and the lienholders address as provided on the certificate of title and, if the address is different, as designated with the Department of State pursuant to s. 655.0201(2), F.S.²⁷

Beginning October 1, 2019, the bill requires DHSMV's electronic filing system to process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles.²⁸ The bill authorizes DHSMV to adopt rules to administer this requirement, including, but not limited to, rules establishing participation requirements, certification of service providers,

²⁴ *Id.*

²⁵ *Id.*

²⁶ Email from Kevin Jacobs, Deputy Director Legislative Affairs, Department of Highway Safety and Motor Vehicles, EFS background-765. (March 7, 2019)/

²⁷ Section 655.0201(2), F.S., provides that a financial institution authorized to transact business in this state may designate with the Department of State a place or registered agent located within the state as the financial institution's sole location or agent for service of process, notice, levy, or demand.

²⁸ This is pursuant to s. 319.30(2), (3), (7), and (8), F.S.

electronic filing system requirements, disclosures, and enforcement authority for noncompliance. The bill also deletes obsolete rulemaking authority.

B. SECTION DIRECTORY:

Section 1 amends s. 316.235, F.S., relating to additional lighting equipment.

Section 2 amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 3 amends s. 316.2398, F.S., relating to the display or use of red warning signals; motor vehicles of firefighters or medical staff.

Section 4 amends s. 316.224, F.S., conforming a cross reference.

Section 5 amends s. 319.30, F.S., relating to the dismantling; destruction, or change of identity of a motor vehicle or mobile home.

Section 6 amends s. 320.03, F.S., relating to the registration duties of tax collectors.

Section 7 amends s. 322.01, F.S., providing definitions.

Section 8 provides that except as otherwise provided and except for section 8, which takes effect upon becoming a law, this act has an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

County tax collectors may experience an indeterminate decrease in fees collected for processing a certificate of destruction, salvage title, or derelict vehicle certificate transaction, and may experience an indeterminate decrease in workload.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Independent entities may experience a reduction in costs associated with vehicle storage and transaction processing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DHSMV to adopt rules to administer its electronic filing system for use by authorized electronic filing system agents, including, but not limited to, rules establishing participation requirements, certification of service providers, electronic filing system requirements, disclosures, and enforcement authority for noncompliance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Transportation & Infrastructure Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Authorized the use of a commercially available system, in addition to the National Motor Vehicle Title Information System, by an independent entity to obtain a vehicle owner's address.
- Required that independent entities must provide proof of all lien satisfactions or proof of a release on all liens on a vehicle when applying for a certificate of destruction or salvage certificate of title.
- Required that if the lienholder's address is different than the one on file with the Department of State for a financial institution's registered agent or service, then the notice must also be provided to the address on file with the Department of State.
- Revised the statutory definition of "authorized emergency vehicle" to conform to the authorization for volunteer firefighters to display red and white lights.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.