

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 1068

SPONSOR: Finance and Taxation Committee and Comprehensive Planning, Local and Military Affairs Committee; Transportation Committee; and Senator Sebesta

SUBJECT: Highway Safety, Motor Vehicles, and Vessels

DATE: April 27, 2001 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------|
| 1. | Vickers | Meyer | TR | Favorable/CS |
| 2. | Cooper | Yeatman | CA | Favorable/CS |
| 3. | Keating | Johansen | FT | Favorable/CS |
| 4. | | | AGG | |
| 5. | | | AP | |
| 6. | | | | |

I. Summary:

This CS addresses a number of highway safety, motor vehicle, and vessel issues. Many of the provisions in the CS are related to programs administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Substantive issues in the CS address driving under the influence, motor vehicle title and registration, vessel title and registration, operator and commercial driver’s license requirements, and vehicle/vessel towing requirements. Specific provisions of the CS include the following:

Traffic Control (ch. 316, F.S.) - The CS exempts motorized scooters from the definition of “motor vehicle” and provides that motorized scooters are subject to the same general operating regulations as bicycles. The CS exempts solid waste and recovered waste collection vehicles from certain requirements relating to unattended motor vehicles. The CS increases the penalty for allowing vehicle loads to escape onto the highway from a non-moving to moving infraction and exempts vehicles carrying agricultural products on certain roads from the load requirements contained in s. 316.520, F.S. The CS authorizes county and municipal crash investigation officers to issue traffic citations under chapters 319, 320, and 322, F.S. Currently, such officers are limited to issuing traffic citations under chapter 316, F.S. The bill authorizes an inherently low-emission vehicle that is certified and labeled as such in accordance with federal regulations to be driven in an high occupancy vehicle.

Motor Vehicle Titles and Registration (ch. 319 and ch. 320, F.S.) - The CS revises the definition of “major component parts” to provide greater specificity regarding the disposition of salvage and rebuilt motor vehicles. Similarly, the CS authorizes DHSMV to affix a decal to rebuilt vehicles to identify the vehicle as being rebuilt from parts, and provides removal of the decal is a third degree felony. The CS provides that certain categories of non-apportioned vehicles (heavy

trucks and buses) are not subject to staggered registration and provides for the cancellation of a license plate or fuel-use decal for failure to satisfy the requirements of a weight or safety violation issued by the Office of Motor Carrier Compliance. The CS also amends numerous sections of statute dealing with specialty, personalized, and military license plates. Finally, the CS revises several provisions relating to the denial, suspension, or revocation of a motor vehicle dealer license. Provides for the sale of the Florida Golf Specialty License plate.

Driver Licenses (ch. 322, F.S.) - The CS increases the number of points, from four to six, that young drivers (ages 15 to 17) may accumulate before the department revokes their driver's license and issues them a restricted license. The CS shortens the time period that a DUI-related temporary permit is valid from 30 days to 10 days after issuance and repeals related obsolete requirements. This will conform the temporary permit's validity to the period of time the driver has to request a review of the suspension. The CS also conforms Florida law to federal commercial carrier safety requirements by adding two additional grounds for the disqualification of a commercial driver's license. Finally, the CS authorizes DHSMV to approve and regulate certain categories of driver improvement courses.

Miscellaneous Issues - The CS codifies existing appropriations proviso language transferring \$1.4 million from the Marine Resources Conservation Trust Fund to the Highway Safety Operating Trust Fund. This will provide an annual funding source for administrative costs incurred by DHSMV in the administration of vessel registration. The CS also adds the insurance company to the list of individuals that must be notified when a vehicle has been towed. The CS provides for the removal of vessels parked on private property and provides the same notice, storage, and release requirements for towing a vehicle would be applicable to towing a vessel. The CS also revises certain requirements relating to the sale of unclaimed vehicles. Finally, the CS provides failure of a towing company to make "good faith best efforts" to meet notice requirements precludes the imposition of any towing or storage charges. Amends procedures to be followed when a complaint of unfair cancellation of a dealer agreement has been made by a motor vehicle dealer against a licensee.

This CS substantially amends the following sections of the Florida Statutes: 316.003, 316.1945, 316.1951, 316.1975, 316.2065, 316.228, 316.520, 316.640, 318.1451, 319.001, 319.14, 319.23, 319.27, 319.28, 319.30, 320.01, 320.023, 320.025, 320.05, 320.055, 320.06, 320.0605, 320.072, 320.0805, 320.08056, 320.08062, 320.083, 320.089, 320.18, 320.27, 320.60, 320.61, 320.64, 320.641, 320.643, 320.645, 320.699, 322.01, 322.0261, 322.05, 322.081, 322.095, 322.161, 322.2615, 322.27, 322.28, 322.292, 322.61, 322.64, 324.091, 328.01, 328.42, 328.56, 328.72, 328.76, 681.1096, 681.1097, 681.115, 713.78, 715.07, and 832.09. This CS creates sections 320.691 and 322.222, Florida Statutes. This CS repeals the following sections of the Florida Statutes: 322.282, 322.331, and 715.05.

II. Present Situation:

Section 316.003, F.S., provides definitions for chapter 316, F.S., relating to traffic control. Currently, there is no definition for motorized scooter. Several courts have recently questioned the legal status of motorized scooters.

Section 316.074, F.S., defines “high occupancy lane” or “HOV lane” to mean a lane of a public roadway designated for use by vehicles in which there is more than one occupant unless otherwise authorized by federal law.

Section 316.1945, F.S., prohibits stopping, standing, or parking a motor vehicle in specified areas. Currently, this section does not specifically prohibit parking in the median or turn lane. Several local law enforcement agencies have cited this as a significant traffic safety concern.

Section 316.1951, F.S., provides that it is illegal for a person to park a motor vehicle in excess of 24 hours on a public street or highway, a public parking lot, or other public property, or on private property where the public has the right to travel by motor vehicle, for the principal purpose of displaying the motor vehicle for sale, hire, or rent. 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. These provisions are related to the practice known as “curbstoning” and may be enforced by a law enforcement officer, or by a DHSMV license inspector or supervisor.

Section 316.1975, F.S., establishes certain requirements relating to unattended motor vehicles. Currently, there is no exemption from these requirements for solid waste collection vehicles.

Section 316.2065, F.S., establishes operating regulations for bicycles.

Section 316.228, F.S., provides that certain vehicles transporting logs, long pulpwood, poles, or posts which extend more than four feet from the rear of the vehicle must have an amber strobe-type lamp on the projecting load.

Section 316.520, F.S., provides that failure to prevent the load on a vehicle from escaping is a non-moving traffic infraction.

Section 316.640, F.S., currently provides county and municipal crash investigation officers with the authority to issue traffic citations utilizing chapter 316, F.S., while state traffic crash investigators may issue traffic citations under chapters 316, 319, 320, and 322, F.S.

Section 318.14(2), F.S. provides that, except as provided in s. 316.1001(2), any person cited for a noncriminal traffic infraction under this section must sign and accept a citation indicating a promise to appear.

Section 318.1451, F.S., provides that no governmental entity or court may provide, issue, or maintain any information or orders regarding driver improvement schools or course providers, with the exception of directing inquiries or requests to the local telephone directory heading of driving instruction or the traffic school reference guide.

Section 319.001, F.S., establishes definitions relating to motor vehicle titles. The Department maintains the current definitions are not comprehensive and fail to adequately distinguish between major component parts for certain motor vehicles.

Section 319.14, F.S., provides all motor vehicles declared to be salvage and then rebuilt must be inspected by the DHSMV to assure the identify of the vehicle. This inspection involves identifying all major component parts that were replaced or repaired on the vehicle.

Section 319.23, F.S., provides certain requirements for transferring ownership of an antique vehicle.

Section 319.27, F.S., provides that lien holders may file Florida liens on vehicles not currently registered in Florida in anticipation that such vehicles will be registered in this state.

Section 319.28, F.S., requires that an original or certified copy of the applicable contract must be submitted when processing an application for title based on a contractual default.

Section 319.30, F.S., establishes definitions with regard to dismantling, destruction, and salvage of motor vehicles. The Department maintains the current definitions are not comprehensive and fail to adequately distinguish between major component parts for various types of motor vehicles. Vehicles worth \$1,500 or less are exempt from the requirement that they be issued a certificate of destruction.

Section 320.01, F.S., provides definitions for chapter 320, F.S. Currently, there is no definition for motorized scooter. The legal status of motorized scooters has recently been called into question by a number of courts around the state.

Section 320.02, F.S., requires every owner of a motor vehicle which is operated or driven on the roads of Florida to register the vehicle with the Department of Highway Safety and Motor Vehicles.

Section 320.023, F.S., contains separate audit and reporting requirements for recipients of funds through a voluntary check off on motor vehicle registration.

Section 320.025, F.S., provides for the registration of motor vehicles under a fictitious name. This section does not currently include a provision for vessels owned or operated by a law enforcement agency of state, county, municipal, or federal government, the Attorney General's Medicaid Fraud Control Unit, or any state public defender's office.

Section 320.05, F.S., provides for public inspection of certain motor vehicle records. This section does not currently include a similar provision for the release of vessel records to the public.

Section 320.055, F.S., provides that non-apportioned commercial motor vehicles in the categories of heavy trucks and buses are required to have staggered registration.

Section 320.06, F.S., requires each vehicle license plate to have two decals: a decal on the left with the month of expiration and a decal on the right with the year of expiration.

Section 320.0605, F.S., does not specifically state that a registration certificate is not required for vehicles registered within the fleet program. This provision is currently referenced in s. 320.0657, F.S.

Section 320.072, F.S., requires a fee of \$100 to be imposed upon the initial application for registration on certain motor vehicles. The fee is due on any private-use vehicle unless the vehicle being registered is a replacement for a vehicle disposed of by the person applying for registration. Current law allows a registrant to provide proof that they have owned a Florida license plate at any point in time to be exempt from the \$100 initial registration fee.

Section 320.0805, F.S., currently provides all personalized license plates must remain out of circulation for a period of three years before they can be reassigned to another individual.

Section 320.08056, F.S., currently provides if a specialty license plate sells less than 8,000 plates by the end of the fifth year of sales, it is to be discontinued by DHSMV. Collegiate specialty plates, with the exception of Barry University and Bethune-Cookman College, are exempted from this requirement. These two colleges applied for a specialty license plate after the exemption clause was enacted and were not included in the exemption.

Section 320.08058, F.S., is a listing of all of the specialty license plates authorized by the Legislature. There are currently 31 such specialty license plates.

Section 320.08062, F.S., contains separate audit and reporting requirements for recipients of funds collected by DHSMV for the various organizations through the purchase of specialty license plates.

Section 320.083, F.S., provides that a private-use truck weighing more than 5,000 pounds may not be issued a license plate with the amateur radio operator distinction.

Section 320.089, F.S., provides a private-use truck weighing more than 5,000 pounds may not be issued an Ex-P.O.W. or Purple Heart license plate.

Section 320.18, F.S., provides that the DHSMV may withhold the registration of any motor vehicle or mobile home if the owner has failed to register it under the provisions of law for any previous period or periods for which it appears registration should have been made in this state, until the tax for such period or periods is paid.

Section 320.27, F.S., provides that only licensed motor vehicle dealers may buy or sell motor vehicles at an auction. The person offering a used motor vehicle for sale at an auction must have the certificate of title or other ownership documents in his or her possession. This section also provides for the denial, suspension, or revocation of a dealer's license.

Section 322.01, F.S., provides definitions for chapter 322, F.S. Currently, there is no definition for motorized scooter. The legal status of motorized scooters has recently been called into question by a number of courts around the state.

Section 322.0261, F.S., establishes requirements relating to mandatory driver improvement schools.

Section 322.05, F.S., currently allows for persons ages 16 or 17 years to have a learner's driver's license for 90 days in order to be eligible to receive a Class D driver's license (required for trucks weighing between 8,000 and 26,000 pounds). Legislation enacted during the 2000 Session requires a valid learner's driver's license be held for at least 12 months before an operator license can be issued.

Section 322.081, F.S., contains separate audit and reporting requirements for recipients of funds through a voluntary checkoff on motor vehicle registration.

Section 322.095, F.S., establishes requirements relating to Traffic Law and Substance Abuse Education courses.

Section 322.161, F.S., addresses high-risk drivers. The department is required to revoke the license of young drivers (ages 15 to 17) who accumulate four points in one year.

Section 322.2615, F.S., provides when an individual is arrested for DUI (s. 316.193, F.S.) the driver is issued a 30-day permit upon arrest or issuance of suspension notice. The driver has 10 days to request review of the suspension. If the driver requests review he is issued a restricted permit until the suspension is either sustained or invalidated. If a driver does not request review, the suspension becomes final. However, the driver still retains a valid unrestricted permit for up to 20 additional days.

Section 322.27, F.S., authorizes the Department to revoke the license of a habitual traffic offender for a minimum of five years.

Section 322.28, F.S., provides that an individual whose license is revoked for a DUI-related offense must submit to a reexamination once the revocation has expired in order to reinstate his or her license.

Section 322.282, F.S., provides for the issuance of temporary driving permits when a license is suspended.

Prior to the 2000 Session, s. 322.292, F.S., required all DUI programs to be either governmental entities or not-for-profit corporations. This section was amended to delete this limitation on DUI program providers, opening this area to participation by for-profit corporations.

Section 322.331, F.S., requires an individual whose license is revoked for being a habitual traffic offender to request a hearing when the revocation has expired in order to reinstate his or her license.

Section 322.61, F.S., provides a commercial motor vehicle driver can be disqualified and lose his or her commercial driver's license for certain traffic convictions if committed while operating a commercial motor vehicle.

Section 322.64, F.S., provides for the issuance of a 30-day temporary permit to a commercial driver when he or she is charged with driving with an unlawful blood alcohol level.

Section 324.091, F.S., provides that the Department is to maintain records related to insurance coverage for vehicle owners and may cancel the license or registration for failure to carry proper insurance. Currently, this information may only be accessed by written request to the Department.

Section 328.01, F.S., requires a copy of the applicable contract when processing an application for vessel title based on a contractual default.

Section 328.42, F.S., does not currently allow a stop against a transaction on a vehicle if a dishonored check is given by a customer for a vessel transaction.

Section 328.56, F.S., currently uses the terminology of commercial or recreational vessels when referring to numbering on vessels operated on state waters.

Section 328.72, F.S., establishes special requirements for what is necessary to transfer ownership of an antique vessel.

Section 328.76, F.S., provides that except as otherwise specified, and less any administrative costs, all funds collected from the registration of vessels through the DHSMV and the tax collectors offices, less those funds designated for the use of the counties pursuant to s. 328.72(1), shall be deposited in the Marine Resources Conservation Trust Fund.

Pursuant to proviso language in the 2000 General Appropriations Act, \$1.4 million of vessel registration revenue was placed in the Highway Safety Operation Trust Fund for DHSMV administrative costs related to the vessel registration program.

Section 681.1096, F.S., creates the Pilot Recreational Vehicle Mediation and Arbitration Program to resolve disputes between RV manufacturers and consumers. Section 681.1097, F.S., provides for dispute eligibility and program function. This pilot program is repealed effective September 30, 2001.

Section 681.115, F.S., provides that any settlement agreement entered into by a consumer that waives, limits, or disclaims the rights the consumer has relating to vehicle warranties established in this chapter is void as contrary to public policy.

Section 713.78, F.S., requires a towing operator to notify the owner, the lien holder, and the Department when a vehicle has been towed. This section does not currently require the towing operator to notify the relevant insurance company. Currently, this section provides that an unclaimed vehicle may be sold after 35 days free of all prior liens.

Section 715.05, F.S., establishes notice requirements to be followed when a law enforcement agency authorizes the removal of a vehicle by a towing operator.

Section 715.07, F.S., provides for the removal of vehicles parked on private property without permission. This section does not address the removal of a vessel parked on private property.

Section 832.09, F.S., provides any person who passes a worthless check, and who fails to appear before the court and against whom a warrant or capias for failure to appear is issued shall have his or her driver's license suspended or revoked. The clerk of the court notifies DHSMV of the action of the court and the license is suspended or revoked by DHSMV. At present, there is no standardized form for clerks to use in notifying the Department that an individual has satisfied the requirements of the court and the driver's license should be reinstated.

Chapter 320, F.S., provides for the licensing of motor vehicle dealers and motor vehicle manufacturers and regulates the franchise relationship between franchise dealers and the manufacturers. The intent of this licensing and regulation as stated in s. 320.605, F.S., is to protect the public health, safety and welfare of citizens of the state by regulating licensing, maintaining competition, providing consumer protection and fair trade, and providing minorities with opportunities for full participation as motor vehicle dealers.

Section 320.60 provides definitions for the manufacturer licensing and franchise regulations portions of the chapter. As used in ss. 320.60-320.70, F.S., the term `Alicensee@` refers to a manufacturer, factory branch, distributor, or importer.

Currently, no motor vehicle may be sold, leased, or offered for sale or lease in this state unless the manufacturer, importer, or distributor of such motor vehicle, which issues an agreement to a motor vehicle dealer in this state, is licensed under ss. 320.60-320.70, F.S. Upon obtaining a license under this section the licensee is considered to be doing business in this state and is subject to the jurisdiction of the court of this state and service of process in accordance with chapter 48, F.S.

Section 320.61(4), F.S., currently provides that when a complaint of unfair cancellation of a dealer agreement is made by a motor vehicle dealer against a licensee and is being heard by the Department, no replacement application for such agreement may be granted to another dealer until a final decision on the complaint of unfair cancellation is rendered by DHSMV.

Section 320.64, F.S., provides for denial, suspension, or revocations of a manufacturers' license. A license may be denied, suspended, or revoked, within the entire state or at specific locations within the state at which the licensee engages in business upon proof the licensee has failed to comply with the specific provisions set out in the section with sufficient frequency to establish a pattern of wrongdoing. A sample of the specific provisions in s. 320.64, F.S., include the following subsections: (1) The licensee is unable to carry out contractual obligations; (13) The licensee has refused to deliver to a dealer with an agreement with the manufacturer any vehicles or parts covered by the agreement specifically advertised by the licensee to be available for immediate delivery, except as excused by the section; and, (20) The licensee has established or implemented a method of distribution of motor vehicles to its franchise dealers which is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicle dealer or dealers.

Section 320.641, F.S., provides remedies for unfair cancellation of a franchise agreement by a licensee. The section requires the licensee to provide notice to a dealer at least 90 days before changing, canceling or not renewing a franchise agreement when such action would adversely alter the rights or obligations of a dealer under the franchise agreement or will substantially impair the sales, service obligations or investment of a dealer. DHSMV must be notified of any

action taken regarding a franchise agreement, and failure to provide the 90 day notice will render the action voidable by the dealer. Any motor vehicle dealer whose franchise agreement is discontinued, canceled, not renewed, modified, or replaced may, within a 90-day notice period, file a petition or complaint for a determination of whether such action is unfair or prohibited.

The discontinuation, cancellation, or non renewal of a franchise agreement is unfair unless it is: 1) Not clearly permitted by the franchise agreement; 2) Is not undertaken in good faith; 3) Is not undertaken for good cause; or, 4) Is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach. Agreements and certificates of appointment continue in effect until final determination of the issues raised in the petition or complaint by the motor vehicle dealer. No replacement dealer may be named prior to final adjudication of the dealers' complaint by DHSMV and the exhaustion of all appellate remedies if a stay is issued by either DHSMV or an appellate court. The petitioner (the motor vehicle dealer) has the initial burden of proof to show by a preponderance of the evidence the unfairness of the manufacturers' decision.¹ If there is a prima facie showing of bad faith, the burden shifts to the licensee to show by a preponderance of the evidence it would have reached the same conclusion even in the absence of the alleged bad faith.²

Section 320.643, F.S., establishes certain provisions governing a dealers' transfer, assignment, or sale of a franchise agreement. The section provides for written notice to the licensee and provides the licensee with 60 days in which to approve or not approve the transfer, assignment, or sale. Where the licensee objects, the refusal must include the material reasons for the rejection. The licensee is prohibited from unreasonably withholding approval. Additionally, the courts have held that a first right of refusal in a franchise agreement is void.³

Section 320.645, F.S., provides restrictions on the ownership of motor vehicle dealerships by licensees. With certain exceptions, no licensee or representative of the licensee may own or operate a motor vehicle dealership in this state for the sale or service of motor vehicles which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state. However, licensees are not considered to own or operate a dealership when operating a dealership during transitions between owners, when owning or operating a dealership in conjunction with someone purchasing the dealership, or while offering the dealership for sale when there is no independent person to operate the dealership.

Section 320.695, F.S., authorizes DHSMV, or any motor vehicle dealer to seek a temporary or permanent injunction, or both, restraining any person who is not licensed by DHSMV from acting as a licensee under the terms of ss. 320.60-320.70, F.S.

¹*International Harvester Co. v. Clavin*, 353 So. 2d 144 at 148 (Fla. 1st DCA, 1977).

²*Id.*

³In *Bayview Buick-GMC Truck, Inc. v General Motors Corp.*, 597 so. 2d 887 (Fla 1st DCA, 1992), the court found that a contract provision which provided General Motors with the ability to purchase the dealership was void. First, the manufacturer could not use a contract provision to circumvent the statutes which set forth the manner and terms for a licensee to object to a transfer of ownership. Second, s. 320.645, F.S., prohibits any manufacturer from owning a dealership either directly or indirectly except as provided in the three exceptions, none of which applied in this instance.

III. Effect of Proposed Changes:

Section 1 - Motorized Scooters. Section 316.003, F.S., is amended to define a “motorized scooter” as a vehicle having no seat or saddle, having no more than three wheels, and not capable of speeds exceeding 30 miles per hour. The BILL exempts a motorized scooter from the definition of motor vehicle.

Section 2 – High Occupancy Vehicle Lanes. Section 316.0741, F.S., is amended to add subsection (4), which authorizes an inherently low-emission vehicle that is certified and labeled as such in accordance with federal regulations to be driven in an HOV (high occupancy vehicle) lane at any time.

Section 3 - Stopping, Standing, or Parking Prohibited. Section 316.1945, F.S., is amended to specifically prohibit stopping, standing, or parking in the median of a roadway. This provision is intended to provide local law enforcement agencies with the authority to issue citations to offending motorists.

Section 4 - Parking Prohibited/Curbstoning Enforcement. Section 316.1951, F.S., provides that it is illegal for a person to park a motor vehicle in excess of 24 hours on a public street or highway, a public parking lot, or other public property, or on private property where the public has the right to travel by motor vehicle, for the principal purpose of displaying the motor vehicle for sale, hire, or rent. 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. These provisions are related to the practice known as “curbstoning” and may be enforced by a law enforcement officer, or by a DHSMV license inspector or supervisor. The CS amends this section to provide that it may also be enforced by a DHSMV compliance examiner.

Section 5 - Unattended Motor Vehicle. Section 316.1975, F.S., is amended to exempt solid waste and recovered waste collection vehicles from certain requirements relating to unattended motor vehicles. This provision extends the same exemption that is currently applicable to delivery vehicles.

Section 6 - Motor Scooter Regulations. Section 316.2065, F.S., is amended to clarify that motorized scooters are subject to similar operating regulations as bicycles. However, the operator of a motorized scooter would not be subject to the helmet requirement which is applicable to bicycles.

Section 7 - Lamps or Flags on Projecting Loads. Section 316.228, F.S., is amended to provide that commercial motor vehicles transporting certain forestry-related loads must display an amber strobe light and must also be marked with a red flag as described in subsection (1) of s. 316.228. This provision clarifies the applicability of the strobe light requirement.

Section 8 - Loads on Vehicles. Section 316.520, F.S., is amended to provide that a violation of this section is in fact a moving violation (\$60 and 3 points). In 1999, this section was amended

twice in the same bill, with one reference to this infraction being a moving violation and one reference to this infraction being a non-moving violation.

The CS also amends s. 316.520, F.S., to provide that vehicles carrying agricultural products locally from a field harvest site to a farm storage site or a farm feed lot, on roads where the posted speed limit is less than 55 miles per hour and the distance traveled on public roads is less than 20 miles, are exempt from this section.

Section 9 - Traffic Crash Investigation Officers. Section 316.640, F.S., is amended to authorize county and municipal crash investigation officers to issue traffic citations under chapters 319, 320, and 322, F.S. Currently, such officers are limited to issuing traffic citations under chapter 316, F.S. This change is intended to conform the statutes in order to establish uniformity between state, county, and municipal crash investigators. Clarifying language is added to prohibit parking enforcement specialists from carrying firearms or other weapons, or from having arrest powers.

Section 10. Non criminal Traffic Infractions. Section 318.14(2), F.S. is amended to clarify that any person cited for an infraction under this section must sign and accept a citation indicating a promise to appear, must be cited "at the scene".

Section 11 - Driver Improvement Schools. Section 318.1451, F.S., is amended to allow government entities and courts to distribute a traffic school reference guide or provider list developed by DHSMV; to allow course providers receiving request for information about traffic schools from geographic areas that they do not serve to provide a telephone number for a course provider that they believe serves such geographic area; to amend the traffic school reference guide to include the names and telephone numbers of the fully approved course providers; to require the cost of producing the traffic school reference guide be assumed by providers included in the guide; and to specify guidelines for reproducing the guide.

Section 12 - Definitions/Major Component Parts. Section 319.001, F.S., is amended to revise the definition of major component parts to provide greater specificity regarding the disposition of salvage and rebuilt motor vehicles. The Department asserts this will help to identify rebuilt vehicles before they are titled to ensure clear ownership and to ensure such vehicles are not rebuilt with stolen parts.

Sections 13 - Rebuilt Vehicles/Major Component Parts. Section 319.14, F.S., is amended to authorize the Department to affix a decal to rebuilt vehicles to identify the vehicle as being rebuilt from parts, and to provide that removal of the decal is a third degree felony. The CS also deletes the separate definition of a combined vehicle from the statutes so that a combined vehicle becomes simply another type of vehicle "assembled from parts".

Section 14 - Antique Vehicle Titles. Section 319.23, F.S., is amended to delete certain requirements for transferring ownership of an antique vehicle. The CS conforms antique vehicle title transfer requirements to the requirements for every other motor vehicle.

Section 15 - Notice of Lien. Section 319.27, F.S., is amended to disallow the filing of a lien on any vehicle until it is properly registered in this state. According to DHSMV, many liens are

filed based on the assumption that these vehicles will be registered in Florida. A significant number of these vehicles are never actually registered in Florida, cluttering the DHSMV database.

Section 16 - Title Transfer for Contractual Default. Section 319.28, F.S., is amended to delete the requirement that an original or certified copy of the contract must be submitted in connection with an application for a motor vehicle title based on contractual default. Because a contractual lien is acknowledged by the owner at the time it is recorded on the title certificate, a copy of the security contract between the owner and the lien holder is not necessary.

Section 17 - Definitions/Major Component Parts. Section 319.30, F.S., is amended to revise the definition of “major component parts” and “major parts” to provide greater specificity regarding the disposition of salvage and rebuilt motor vehicles. The CS also allows an insurer paying a total loss claim to obtain a certificate of destruction for such vehicle, and the insurer must obtain a certificate in its own name before the vehicle may be sold or transferred. The bill increases from \$1,500 to \$3,000, the value of vehicles exempt from the requirements that they be issued a certificate of destruction.

Section 18 - Definitions/Motorized Scooter/Motor Home. Section 320.01, F.S., is amended to specifically exempt motorized scooters from the definition of motor vehicle. In addition, the definition of a motor home is revised to conform to the length limitations (45 feet) contained in s. 316.515, F.S.

Section 19. Registration of Motor Vehicles. Section 320.02, F.S., is amended to include in statute, a voluntary check-off for contributions to the Hearing Research Institute and the Juvenile Diabetes Foundation International. When these two check-offs went into statute, they were inadvertently left out of s. 320.02.

Section 20 - Voluntary Check off on Vehicle Registration/Florida Single Audit Act. Section 320.023, F.S., contains separate audit and reporting requirements for recipients of these funds. The CS conforms these provisions to the Florida Single Audit Act (FSAA), s. 215.97, F.S. The FSAA establishes uniform audit requirements for State financial assistance provided by state agencies to non-state entities to carry out state projects. The FSAA applies to non-state entities expending \$300,000 or more in state financial assistance annually. Although expenditures of funds by organizational recipients may not exceed the audit threshold in any given year, the FSAA does not limit the ability of the DHSMV to conduct or arrange such audits, or limit the audit authority of the DHSMV Inspector General or the Auditor General. In addition, organizations are required to notify the department immediately to stop warrants for voluntary check-off contributions if any of the conditions in subsection (4) exist and must comply with the audit provisions, if applicable, for any period of operation during the fiscal year.

Section 21 - Vessel Registration/Fictitious Name. Section 320.025, F.S., is amended to authorize the issuance of vessel registration decals under fictitious names for vessels owned or operated by certain law enforcement or judicial entities. This provision conforms vessel registration law to motor vehicle registration law.

Section 22 - Vessel Records/Public Inspection. Section 320.05, F.S., is amended to authorize public inspection of vessel registration information. This provision conforms vessel registration law to motor vehicle registration law.

Section 23 - Registration of Non-AppORTioned Vehicles. Section 320.055, F.S., is amended to provide that certain categories of non-appORTioned vehicles (heavy trucks and buses) are not subject to staggered registration. The registration period for such vehicles would be December 1 to November 30, and the renewal period would be the 31-day period beginning December 1.

Section 24 - Registration/Validation Decals. Section 320.06, F.S., is amended to allow for only one decal on the right side of the license plate with the month and year showing on the same decal. This will conform license plate decal provisions to DHSMV's implementation of a new decal dispenser system.

Section 25 - Certificate of Registration. Section 320.0605, F.S., is amended to clearly state that the registration certificate for vehicles registered within the fleet program are not required to be in the possession of the operator or within the vehicle.

Section 26 - Initial Registration Fee. Section 320.072, F.S., is amended to restrict the time frame a registrant can use a previous license plate for exemption of the \$100 initial registration fee to ten years. Current law allows a registrant to provide proof that they have owned a Florida license plate at any point in time to be exempt from the \$100 initial registration fee.

Section 27 - Personalized License Plates. Section 320.0805, F.S., is amended to allow personalized license plates to be reassigned to another individual one year (currently three years) following the expiration of the registration.

Section 28 – Specialty License Plates. Section 320.08056, F.S., is amended adding to the list of specialty license plates, the Florida Golf license plate.

Currently, if a specialty license plate sells less than 8,000 plates by the end of the fifth year of sales, it is to be discontinued. Collegiate specialty plates, with the exception of Barry University and Bethune-Cookman College, are exempted from this requirement. These two colleges applied for a specialty license plate after the exemption clause was enacted and were not included in the exemption. The bill also amends s. 320.08056, F.S. to exempt the license plates of these two colleges from the discontinuance requirements. This would apply the exemption to all collegiate specialty license plates.

Section 29 – Florida Golf Specialty License Plates. - The bill amends s. 320.08058, F.S., directing the Department to issue a Florida Golf license plate. In addition to applicable motor vehicle registration taxes and fees, a \$25 annual use fee will be charged for this new specialty license plate.

Annual use fees for the Florida Golf license plate are to be distributed to the Tee Off For Opportunity Trust Fund of the Dade Amateur Golf Association (DAGA). The Tee Off For Opportunity Trust Fund must use the fees to fund amateur and junior golf programs at public or

private golf courses and other municipal, county, civic, or school programs that provide youth access to golf in the state. The fees must be used as follows:

- 10 percent will be disbursed to DAGA to administer the Tee Off For Opportunity project statewide, including administrative costs.
- 15 percent will be disbursed to DAGA to market the Florida Golf license plate.
- 60 percent will be distributed to the Tee Off For Opportunity Trust Fund to fund amateur and junior golf programs, tournaments, and events statewide.
- 15 percent will be disbursed to DAGA to operate its existing junior golf program, clinics, summer camps, and tournaments.

Section 30 - Specialty License Plates/Florida Single Audit Act. Various organizations receive funds collected by DHSMV through the purchase of specialty license plates. Section 320.08062, F.S., contains separate audit and reporting requirements for recipients of these funds. The CS conforms these provisions to the Florida Single Audit Act (FSAA), s. 215.97, F.S. The FSAA establishes uniform audit requirements for State financial assistance provided by state agencies to non-state entities to carry out state projects. The FSAA applies to non-state entities expending \$300,000 or more in state financial assistance annually. Although expenditures of funds by organizational recipients may not exceed the audit threshold in any given year, the FSAA does not limit the ability of the DHSMV to conduct or arrange such audits, or limit the audit authority of the DHSMV Inspector General or the Auditor General. In addition, organizations are required to notify the department immediately to stop warrants for voluntary check-off contributions if any of the conditions in subsection (4) exist and must comply with the audit provisions, if applicable, for any period of operation during the fiscal year.

Section 31 - Amateur Radio Operator License Plate. Section 320.083, F.S., is amended to increase the weight restriction on eligible private-use trucks from 5,000 to 7,999 pounds. DHSMV asserts this change acknowledges the market trend towards larger sport utility vehicles.

Section 32 - Ex-POW and Purple Heart License Plates. Section 320.089, F.S., is amended to increase the weight restriction on eligible private-use trucks from 5,000 to 7,999 pounds. DHSMV asserts this change acknowledges the market trend towards larger sport utility vehicles.

Section 33 - Cancellation of License Plate or Fuel-Use Decal. Section 320.18, F.S., is amended to provide that DHSMV may cancel the registration or fuel-use decal of a vehicle if the owner has failed to pay a Department of Transportation Motor Carrier Compliance Office weight or safety violation

Section 34 - Motor Vehicle Dealers. Section 320.27, F.S., is amended to provide that only the buyer of a motor vehicle sold at auction must be a licensed motor vehicle dealer. This would allow other entities such as financial institutions and rental companies to sell motor vehicles at auctions. This provision conforms this section to existing industry practice. The CS provides a definition for "Bona fide employee." The CS also allows the person offering a vehicle for auction to have control of the certificate of title or ownership document. This change would allow ownership documents to be kept in another location to reduce the risk of loss, and be sent to the purchaser at a later date.

Section 320.27, F.S., also provides grounds for the denial, suspension, or revocation of a dealer's license. These grounds include matters such as fraud, misrepresentation in advertising, requiring a purchaser to accept unordered equipment, failure to provide odometer disclosure statements, and felony convictions. To take action against a licensee, the Department must prove sufficient frequency of violations to establish a pattern of wrongdoing by the licensee. The CS amends this section to delete the requirement that a pattern of wrongdoing be established so that a licensee could be subject to discipline for failure to comply with any one violation.

Further, when a motor vehicle dealer is convicted of a crime which results in being prohibited from continuing as a licensed dealer, the dealer may not continue in any capacity within the industry. Such a person may not have a financial interest, or a management, sales, or other role in the operation of a dealership. The person also may not derive income from the dealership beyond reasonable compensation for the sale of his or her ownership interest in the business. The CS provides that being convicted of a felony will disqualify a person from working in the industry or being involved in a dealership. If a dealer violates this provision by allowing a disqualified person to have an interest or role in a dealership, the CS provides the dealer's license can be denied or revoked.

Section 35 – Automobile Dealers Industry Advisory Board. Section 320.691, F.S., is created to establish an advisory board within DHSMV to provide a means for the automobile industry and the department to address issues that affect the industry. The board will be composed of twelve members, who will make recommendations on proposed rules and procedures, present issues and consider matters relating to the industry, and submit an annual report to the executive director of the department and file copies with the Governor, President of the Senate, and the Speaker of the House of Representatives. Membership, terms of appointment, and meeting of the board are specified. Per diem, travel and staffing of the board are also specified.

Section 36 - Definitions/Motorized Scooter. Section 322.01, F.S., is amended to provide that a motorized scooter is not a motor vehicle for drivers' licensing purposes.

Section 37 - Mandatory Driver Improvement Courses. Section 322.0261, F.S., is amended to provide that the Department is to approve and regulate certain driver improvement courses (advanced driver improvement) that rely on technology for delivery. The CS provides criteria for course approval.

Section 38 - Driver's License/Under 18. Section 322.05, F.S., is amended to clarify that a person under 18 years of age must hold a learner's license for 12 months before applying for a class D driver's license (vehicles weighing 8,000 to 26,000 pounds). This provision conforms this section to driver's license requirements enacted during the 2000 Session.

Section 39 - Voluntary Check off on Driver's License Applications/Florida Single Audit Act. Various organizations receive funds that are collected by DHSMV through voluntary check-off donations. Section 322.081, F.S., contains separate audit and reporting requirements for recipients of these funds. The CS conforms these provisions to the Florida Single Audit Act (FSAA), s. 215.97, F.S. The FSAA establishes uniform audit requirements for State financial assistance provided by state agencies to non-state entities to carry out state projects. The FSAA applies to non-state entities expending \$300,000 or more in state financial assistance annually.

Although expenditures of funds by organizational recipients may not exceed the audit threshold in any given year, the FSAA does not limit the ability of the DHSMV to conduct or arrange such audits, or limit the audit authority of the DHSMV Inspector General or the Auditor General.

Section 40 - **Traffic Law and Substance Abuse Education.** Section 322.095, F.S., is amended to provide that the Department is to approve and regulate certain driver improvement courses (Traffic Law and Substance Abuse Education courses) that rely on technology as the delivery method. The CS also provides criteria for course approval.

Section 41 – **High Risk Drivers.** Section 322.161, F.S., is amended to increase the number of points, from four to six, that young drivers (ages 15 to 17) may accumulate before the department revokes their driver’s license and issues them a restricted license.

Section 42 - **Administrative Review/Rule Authority.** Section 322.222, is created to provide specific statutory authority for the Department to hold administrative hearings for medical suspension cases.

Section 43 - **Temporary Driving Permits.** Section 322.2615, F.S., is amended to shorten the time that a temporary permit is valid from 30 days to 10 days after issuance. This will conform the permit’s validity to the period of time the driver has to request a review of the suspension. When a 30-day temporary driving permit is issued, the driver has 10 days to request review of the suspension. If the driver requests a review, a restricted permit is issued which is valid until the suspension is either sustained or invalidated. If a driver does not request review within the 10-day period, the suspension becomes final on the tenth day and the driver should not have an unrestricted permit that could be valid for up to 20 additional days.

Section 44 - **Habitual Traffic Offender.** Section 322.27, F.S., is amended to make the driver’s license revocation period for a Habitual Traffic Offender a mandatory 5 years, rather than a minimum of 5 years.

Section 45 - **Period of Suspension/DUI.** Section 322.28, F.S., is amended to provide that an individual whose DUI-related license revocation has expired will be reinstated without reexamination. According to DHSMV, no other revocation or suspension requires a reexamination when the time period for the revocation or suspension has passed.

Section 46 - **Temporary Driving Permits/Repeal.** Pursuant to s. 322.2615, F.S., a law enforcement officer must suspend the driver’s license of a person who has been arrested for having an unlawful blood-alcohol or breath-alcohol level, or of a person who has refused to submit to a breath, urine, or blood test authorized by law. The officer takes the person's driver's license and issues a 30-day temporary permit at the scene of the arrest if the person is otherwise eligible to receive one. The CS repeals s. 322.282, F.S., which relates to issuance of temporary driving permits when a license is suspended. This reference is no longer needed because a temporary permit is issued at the scene of the arrest.

Section 47 - **DUI Programs/Provider Limitations.** Section 322.292, F.S., is amended to require that DUI programs must be operated by either governmental entities or not-for-profit corporations. Prior to the 2000 Session, all DUI programs were required to be either

governmental entities or not-for-profit corporations. This section was amended last year to delete this limitation on DUI program providers, opening this area to participation by for-profit corporations. Some DUI providers have expressed concerns about additional competition from the for-profit private sector, citing concerns about DUI program costs, quality, and effectiveness.

Section 48 - Habitual Traffic Offenders/License Reinstatement. Section 322.27, F.S., authorizes the Department to revoke the license of a habitual traffic offender for a minimum of five years. Section 322.331, F.S., requires an individual whose license is revoked for being a habitual traffic offender to come to the Department and schedule a hearing when the revocation has expired. The CS repeals s. 322.331, F.S., to provide that an individual whose license revocation has expired will be reinstated without a hearing. According to DHSMV, no other revocation or suspension requires a hearing for reinstatement when the time period for the revocation or suspension has passed.

Section 49 - Commercial Motor Vehicles/Driver Disqualification. Section 322.61, F.S., is amended to add the following two additional grounds for CDL disqualification: (1) violation of an out-of-service order; and (2) violation of laws pertaining to railroad-highway grade crossings. For violations of an out-of-service order the suspension is 90 days to 1 year for a first violation; 1 year to 5 years for two violations within 10 years; and 3 years to 5 years for three violations within 10 years. These periods are increased for violations that occur while transporting hazardous materials. For railroad-highway grade crossing violations the suspension is a minimum of 60 days for a first violation; a minimum of 120 days for two violations within 3 years; and a minimum of 1 year for three violations within 3 years. These changes conform Florida law to federal commercial carrier safety requirements.

Section 50 - Commercial Motor Vehicles/Temporary Driving Permit. Section 322.64, F.S., is amended to reduce the temporary permit time from 30 days to 10 days in cases of DUI. This change will bring Florida law in compliance with federal requirements for commercial drivers.

Section 51 - Electronic Access to Insurer Information. Pursuant to chapters 324 and 627, F.S., a vehicle owner must provide DHSMV with proof of compliance with financial responsibility requirements. The Department maintains records related to insurance coverage for vehicle owners and may cancel the license or registration for failure to carry proper insurance. Currently, this information may only be accessed by written request to the Department. The CS amends s. 324.091, F.S., to authorize DHSMV to grant an approved third party electronic access to vehicle insurer information. The third-party provider would, for a fee, allow insurers, lawyers and financial institutions to access insurance information for subrogation and claims purposes.

Section 52 - Vessel Titles/Contractual Default. Section 328.01, F.S., is amended to delete the requirement for the copy of the contract when processing an application for title based on a contractual default. Because a contractual lien is acknowledged by the owner at the time it is recorded on the title certificate, a copy of the security contract between the owner and the lien holder is not necessary.

Section 53 - Vessel Registration/Dishonored Checks. Section 328.42, F.S., is amended to allow a stop against a vehicle customer when a dishonored check was given for a vessel

transaction, preventing all types of transactions until the check is sufficiently reimbursed to the Department.

Section 54 - Vessel Registration Numbers. Section 328.56, F.S., is amended to delete the reference to “commercial or recreational” when referring to vessels operated on the waters of the state. There is now only one series of state registration numbers issued for vessels without regard to how the vessel is used.

Section 55 - Antique Vessels. Section 328.72, F.S., is amended to delete special requirements for transfer of an antique vessel. This conforms antique vessel title transfer requirements to the requirements for every other type of vessel.

Sections 56 - Marine Resources Conservation Trust Fund. Effective July 1, 2001, the bill codifies in s. 328.76, F.S., existing appropriations proviso language transferring \$1.4 million from the Marine Resources Conservation Trust Fund to the Highway Safety Operating Trust Fund. This will provide an annual funding source for administrative costs incurred by DHSMV in the administration of vessel registration.

Section 57 - Pilot Recreational Vehicle Mediation and Arbitration Program/Extension. Section 681.1096, F.S., creates the Pilot Recreational Vehicle Mediation and Arbitration Program to resolve disputes between RV manufacturers and consumers. This program is repealed effective September 30, 2001. If the program were repealed, these disputes would be subject to the vehicle lemon law provisions of ss. 681.109 and 681.1095, F.S. The CS revises the provision which provides for automatic repeal so that the program will continue to operate until September 30, 2002.

Section 58 - Pilot Recreational Vehicle Mediation and Arbitration Program/Operation. Section 681.1097, F.S., is amended to provide for technical corrections to an arbitrator’s decision. In addition, the CS revises provisions relating to the appeal of an arbitrator’s decision to circuit court.

Section 59 – Settlement Agreements. Section 681.115, F.S., is amended to void a settlement agreement that restricts the consumer’s ability to disclose the terms of agreements between the buyer and the seller.

Section 60 -Towing/Required Notification/Sale of Unclaimed Vehicles. Section 713.78, F.S., is amended to add the insurance company to the list of individuals that must be notified when a vehicle has been towed. The CS also moves the notice requirement to be followed when law enforcement authorizes the removal of a vehicle from s. 715.05, F.S., to s. 713.78, F.S. With these changes, s. 715.05, F.S., is no longer needed and is repealed by section 57 of the bill. These changes are intended to insure proper notification is given to all parties that may have an interest in a towed vehicle.

The CS also revises requirements relating to the sale of unclaimed vehicles. Currently, s. 713.78, F.S., provides that an unclaimed vehicle may be sold after 35 days free of all prior liens. The CS provides that a vehicle may be sold after 35 days if the vehicle is 5 years of age or older, or after 50 days if the vehicle is 3 years of age or less.

Section 61 - **Reporting of Unclaimed Vehicles/Repeal.** The CS repeals s. 715.05, F.S., relating to the reporting of unclaimed motor vehicles. These provisions are reassigned to s. 713.78, F.S.

Section 62 - **Towing/Vessels/Limitations on Charges.** Section 715.07, F.S., is amended to define the term “vessel” and to allow for the removal of vessels parked on private property. The same notice, storage and release requirements for towing a vehicle would be applicable to towing a vessel. The CS also provides that failure of a towing company to make “good faith best efforts” to meet notice requirements precludes the imposition of any towing or storage charges.

Section 63 - **License Suspension/Worthless Check.** Section 832.09, F.S., is amended to allow DHSMV to create a standardized form for all clerks of the court to use when notifying the Department that a person has satisfied the requirements of the court and the driver’s license should be reinstated.

Section 64 – **Motor Vehicle Dealer.** The CS amends s. 360.60, F.S., to revise the definition of “motor vehicle dealer” to include licensed franchised motor vehicle dealers who repair or service motor vehicles or certain used motor vehicles for commission, money, or other things of value; and to define “sell” and its various synonyms to include lease transactions.

Section 65 – **Licensing Requirements.** The CS amends s. 360.61, F.S., to provide no replacement dealer license may be granted pending a dealer complaint of unfair or prohibited cancellation or non-renewal, so long as the dealer agreement of the complaining dealer is in effect as provided under s. 320.641(7), F.S.

Section 66 – **Denial, Suspensions or Revocations.** The CS amends s. 320.64, F.S., to provide violations of prohibited acts are sufficient grounds for license denial, suspension, or revocation and makes them subject to penalties provided in ss. 320.695 and 320.697, F.S. These provisions relate to temporary or permanent injunctions, which shall be issued without bond and civil penalties respectively. If a violation by a licensee has occurred, the person who has been affected may recover damages in an amount equal to 3 times the pecuniary loss, together with costs and a reasonable attorney’s fee to be assessed by the court. Burden of proof is upon the licensee to prove that a violation or unfair practice did not occur.

The CS also amends s. 320.64, F.S., to provide additional reasons which could justify the denial, suspension, or revocation of a manufacturers’ license in Florida. The CS provides for the following:

- Require manufacturers to retain for three years, records describing methods or formulas for allocation of motor vehicles and records of actual allocation and distribution of motor vehicles to its dealers in Florida;
- Require manufacturers to make available all named vehicles from a line-make, e.g., a manufacturer may not refuse to distribute particular models to particular dealers;
- Prohibit manufacturers from competing with dealers of the same line-make;

- Require all sales of vehicles in Florida to be through franchised motor vehicle dealers, excepting factory programs for certain defined persons so long as the vehicles are delivered through a dealer;
- Limit warranty audit periods;
- Prohibit a manufacturer from refusing to allocate vehicles, charged-back or withheld payments, or other things of value to dealers otherwise eligible under a sales promotion, program, or contest;
- Prohibit a manufacturer from excluding a dealer from participating in promotions, programs, or contests for selling to a customer who ships the vehicle to a foreign country. The CS creates a rebuttable presumption that the dealer did not know, or should not have reasonably known that the vehicle would be exported if the vehicle was titled in the United States;
- Prohibit a manufacturer's failure to indemnify dealers against negligent manufacture, design, or assembly;
- Prohibit a manufacturer from publishing confidential dealer information without dealer consent;
- Prohibit a manufacturer's failure to reimburse a dealer for the reasonable cost of providing loaner vehicles, if dealers are required by factory programs to provide such loaner vehicles;
- Prohibit a manufacturer's threat to audit a dealer for the purpose of coercing the dealer to forego rights granted to the dealer by agreement or by law. (Manufacturers are permitted to reasonably and periodically audit dealers to determine the validity of paid claims);
- Prohibit a manufacturer from offering a franchise agreement that forces binding mediation or arbitration, requires legal action in venues outside Florida, requires mediation or arbitration outside Florida, or fails to provide that the laws of Florida are binding in any legal proceeding or other method of dispute resolution;
- Prohibit a manufacturer's discrimination in prices charged to dealers, except in certain limited circumstances and prohibits a manufacturer's discrimination in prices charged to dealers through the use of rebates or incentives.

The CS provides that violation of these requirements and prohibitions may result in denial, suspension, or revocation of a license to do business within the entire state, or at specific locations within the state upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing.

Section 67 - **Discontinuations and Cancellations.** The CS amends s. 320.641, F.S., relating to the discontinuation, cancellation, non renewal, or replacement of franchise agreements to provide the following:

- Provide criteria to be used in determining whether a termination, cancellation, non-renewal, or modification of a franchise should be approved;
- Require that a franchise agreement shall remain in effect during the appeals process over a decision to discontinue, cancel, or refuse renewal of the agreement, except in the case of a dealer's loss of license or abandonment; and
- Allow the transfer of a franchise agreement pending the outcome of a termination proceeding.

Section 68 – **Transfer, Assignment, or Sale of Franchise Agreements.** The CS amends s. 320.643, F.S., relating to the transfer, assignment, or sale of franchise agreement to provide the following:

- Allow a manufacturer to use financial qualifications in its determinations regarding a transfer, and allows the dealer to file a complaint in protest of the denial of a transfer;
- Require a manufacturer to state reasons for rejecting a transfer, and to provide for approval of the transfer if the manufacturer fails to notify the dealer of the rejection within 60 days.

Section 69 – **Restriction Upon Ownership of Dealership by Licensee.** The CS amends s. 320.645, F.S., relating to the restriction upon ownership of dealerships by a licensee to allow manufacturers to operate motor vehicle dealerships for the exclusive purpose of broadening diversity and improving minority representation. The CS provides certain definitions. In addition, the CS does not restrict the business activities of short term rental businesses that sell only used vehicles, perform warranty repairs only on vehicles they sell, and finance the sale of used vehicles only.

Section 70 – **Administrative Hearings and Adjudications.** The CS amends s. 320.699, F.S., to require that a hearing on a notice of protest shall not be held sooner than 180 days from the filing of the protest.

Section 71 – **Severability.** Creates s. 320.705, F.S., specifying that if a provision of the CS or its application to any person or circumstance is held invalid, the other provisions or applications of the act which can be given effect without the invalid provision or application. To that end the provisions of the CS are declared severable.

Section 72 - **Effective Date.** Except as otherwise provided, this act shall take effect October 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In the case of *Yamaha Parts Distributors, Inc. v. Ehrman*⁴, the Supreme Court discussed the applications of the manufacturer licensing provisions in chapter 320 in relation to the constitutional right to contract. Absent a specific statement of retroactive application in the statutory provision the Court stated:

To justify retroactive application it is not enough to show that this legislation is a valid exercise of the state's police power because that power, however broad in other contexts, here collides with the constitutional ban on laws impairing contracts. Virtually no degree of contract impairment has been tolerated in this state. citing *Ft Lauderdale v. State ex rel. Elston Bank & Trust Co.*, 125 Fla. 89, 169 So. 1(1933).

The Court then went on to find the states interest in policing the industry in the termination of franchise agreements was not so great as to override the sanctity of contracts. Thus the provisions of section 320.641 applied only prospectively to franchise agreements signed after its date. Based on this case the amendments to provisions impacting the franchise agreement would apply only prospectively to franchise agreements entered into after July 1, 2001.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Several provisions in the bill will help to identify rebuilt vehicles before they are titled to ensure clear ownership and to ensure that such vehicles are not rebuilt with stolen parts.

⁴316 So. 2d 557 (Fla. 1975).

Motor vehicle manufacturers may incur some additional cost in meeting the requirements associated with the cancellation of a motor vehicle dealer agreement.

This CS provides additional safeguards for Florida motor vehicle dealers against unfair or capricious actions by motor vehicle manufacturers.

Persons who apply for the Florida Golf license plate would have to pay \$25 for the annual use fee.

A portion of the revenues generated through the sale of the Florida Golf license plate will be disbursed to private entities for the purposes authorized in the bill.

C. Government Sector Impact:

A number of provisions in the bill will result in administrative efficiencies or reduce administrative costs to the Department, but these costs savings will be minimal.

Section 56 of the bill relates to the Marine Resources Conservation Trust Fund. Pursuant to proviso language in the 2000 General Appropriations Act, \$1.4 million of vessel registration revenue was placed in the Highway Safety Operation Trust Fund for DHSMV administrative costs. The bill codifies this proviso language in s. 328.76, F.S., to pay for vessel registration administrative costs of \$1.4 million from vessel registration fees in each fiscal year.

Current law provides an application fee, not to exceed \$60,000, be paid to the Department to defray the administrative costs of reviewing and developing the new specialty license plate. The Department has indicated that \$60,000 has been collected from the applicant to defray these costs. This fee will be refunded if the license plate is not approved by the Legislature.

The Department estimates administrative and design costs to be approximately \$60,000 per specialty license plate authorized. Any additional cost of issuing the license plate will be retained from the first proceeds derived from the annual use fees as provided in s. 320.08056(7), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.