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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001-196, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON TRANSPORTATION
ANALYSIS

BILL #: CS/SB 1956, 2nd ENG

RELATING TO: Motor Vehicles

SPONSOR(S): Commerce and Economic Opportunities and Senator Latvala

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMITTEE ON TRANSPORTATION YEAS 6 NAYS 0
(2) COMMERCE AND ECONOMIC OPPORTUNITIES YEAS 6 NAYS 0
(3) JUDICIARY YEAS 7 NAYS 0
(4)
(5)

I. SUMMARY:

The bill addresses a number of highway safety, motor vehicle, and vessel issues. Key provisions in the bill:

- Conform Florida's commercial driver's license process to federal requirements by disqualifying persons violating out-of-service orders or railroad-highway grade crossing regulations from driving commercial vehicles.
- Conform voluntary check-off donation and specialty license plate laws to Florida's Single Audit Act, and require organizations receiving donation and plate sale proceeds to report to DHSMV if they cease to exist.
- Revise licensing provisions for vehicle dealers and manufacturers, and create the Automobile Dealers Industry Advisory Board within DHSMV.
- Provide for the annual deposit of vessel registration administrative costs in the Highway Safety Operating Trust Fund, and make technical changes relating to vessel titling and registration.
- Revise the Pilot RV Mediation and Arbitration Program to allow parties to request technical corrections to arbitrator decisions; to make arbitrator decisions binding; and to provide a new appeals process.
- Delete the requirement that DHSMV must retain evidence of title for motor vehicles presented by out-of-state applicants for a Florida certificate of title, and specify that DHSMV is not required to retain any evidence of title.
- Make certain bad sales practices with respect to motor vehicles sold by dealers subject to the Florida Deceptive and Unfair Trade Practices Act.

This bill does not appear to have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No [X]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

Less Government

The bill supports the principle of less government in that it reduces the burden on DHSMV of retaining and storing the documentary history and evidence of motor vehicle titles. The bill does not support the principle of less government in that it creates the Automobile Dealers Industry Advisory Board within the DHSMV.

B. PRESENT SITUATION:

Because of the comprehensive nature of the changes contained in this bill, the present situation relating to each issue is set out in the Section-by-Section portion of this analysis.

C. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the changes contained in this bill, the proposed changes relating to each issue is set out in the Section-by-Section portion of this analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Parked Vehicles/Unauthorized Sale: Pursuant to s. 316.1951, F.S., 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 that 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 "curb-stoning" and may be enforced by a law enforcement officer, or by a DHSMV license inspector or supervisor. The bill amends this section to provide that a DHSMV compliance examiner may also enforce it.

Section 2. Liability for Payment of Parking Violations: Pursuant to s. 316.1967, F.S., a person cited for a parking violation who elects to appear at a hearing on the matter waives the right to pay the civil penalty provided by the ticket. The official at the hearing determines whether a violation has been committed and may impose a civil penalty up $100 plus court costs. The bill clarifies that the official is authorized to impose a fine amount that is designated by a county ordinance.

Section 3. Commercial Truck Loads/Marking & Lighting: Current law provides that certain vehicles transporting logs, pulpwood, poles, or posts that extend more than four feet from the rear of the vehicle must have an amber strobe-type lamp on the projecting load. The amber strobe lamp must be visible to other drivers from the rear and sides of the vehicle transporting the projecting load. The bill amends s. 316.228, F.S., to provide that multiple strobe lights are required if a single light is not visible from the rear and both sides. The bill also provides that the load must be marked with a red flag. The bill applies these requirements to loads of unprocessed logs or pulpwood, and excludes loads consisting of poles and posts.

Section 4. Amount of Civil Penalties/Disabled Parking Violations: Section 318.18(6), F.S., provides a civil penalty of $100 for illegally parking, under s. 316.1955, F.S., in a parking space provided for people who have disabilities. The bill amends s. 318.18(6), F.S., so that violators are subject to a fine of $100 plus court costs, or the fine amount designated by county ordinance plus court costs.

Section 5. Application for Certificate of Title/Evidence of Title: Current law requires DHSMV to retain evidence of motor vehicle or mobile home title presented by a person applying for a certificate of title to a vehicle or mobile home previously registered in another state or another country. Section 319.23, F.S., eliminates the requirement that DHSMV retain such evidence.

Sections 6, 8 & 11. Florida Single Audit Act/Non-State Entities/Notification: Various organizations receive funds that are collected by DHSMV either through voluntary check-off donations or through the purchase of specialty license plates. Sections 320.023, 320.08062 and 322.081, F.S., contain separate audit and reporting requirements for recipients of these funds. The bill 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 DHSMV to conduct or arrange such audits, or limit the audit authority of the DHSMV Inspector General or the Auditor General. In addition, the bill requires an organization that receives proceeds derived from a voluntary check-off on a driver's license application or vehicle registration form to notify DHSMV immediately if the organization ceases to exist, or if it ceases the activity funded by the check-off contribution. The bill also requires certain organizations seeking to establish a voluntary contribution on a driver's license application or vehicle registration form to register as a charitable organization intending to solicit contributions with the Department of Agriculture and Consumer Services.

Section 7. Specialty License Plates/Discontinuance: Currently, if a specialty license plate sells fewer 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. In addition, only new sales are counted toward the 8,000-plate threshold, but not renewals of plates already sold. The bill amends s. 320.08056, F.S, to exempt the license plates of these two colleges from the discontinuance requirements. The exemption applies to all collegiate specialty license plates. In addition, the bill provides that DHSMV must count annual renewals of license plates toward the 8000-plate threshold, along with sales of new plates, in determining whether to discontinue a specialty plate. The bill also requires organizations receiving contributions from the sales of specialty plates to report to DHSMV immediately if the organization ceases to exist, or discontinues the services funded by the contributions.

Section 9. Motor Carrier Penalty/Failure to Pay: Currently s. 320.18, F.S., provides that DHSMV may withhold or cancel the motor vehicle registration of a person who has paid for a registration or other fee with a dishonored check. Chapter 316, F.S., authorizes the Department of Transportation to enforce commercial truck regulations, and law enforcement officers of DOT's Office of Motor Carrier Compliance may issue citations for weight and safety violations to a vehicle owner or motor carrier who has violated these regulations. The bill amends s. 320.18, F.S., to provide that DHSMV may cancel the registration of a vehicle if the owner has failed to pay a DOT weight or safety violation penalty.

Section 10. Driver's License/Under 18 Years of Age: Recently enacted law requires that a valid learner's driver's license be held for at least 12 months before an operator license can be issued to the holder. This requirement was not made applicable to class D licenses, which are required for trucks weighing between 8,000 and 26,000 pounds. The bill amends s. 322.05, F.S., to clarify that a person under 18 must hold a learner's license for 12 months before applying for a class D driver's license.

Section 12. High Risk Drivers/Restricted Licenses: Under current law, class D or E licensees aged 15 through 17 who accumulate four or more points against their license within a 12-month period have their driving privileges restricted. A class E licensee who accumulates four points within twelve months is not eligible to obtain a class D license for one year. The bill amends s. 322.161, F.S., to provide that these restrictions occur after the accumulation of six points instead of four points.

Section 13. Administrative Review/Rule Authorization: DHSMV has established a rule for processing hearings requested by a citizen when that person's driver's license is suspended or revoked for medical reasons. The DHSMV's statutory authority to have a rule has been questioned by the Joint Administrative Procedures Committee. The bill creates s. 322.222, F.S., to provide specific statutory authority for the department to hold administrative hearings for medical cases.

Section 14. Temporary Driving Permits: 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 bill amends s. 322.2615, F.S., 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 more days.

Section 15. DUI Programs/Provider Limitations: Prior to the 2000 legislative session, all DUI program providers were required to be either governmental entities or not-for-profit corporations. Section 322.292, F.S., was amended in the 2000 legislative session to delete this limitation on DUI program providers, opening the area to participation by for-profit corporations. DHSMV sets licensing and quality control guidelines for DUI programs in Florida, and has indicated that not-for-profit corporations have sought licensure. According to the DHSMV, some DUI providers have expressed concerns about additional competition from the for-profit private sector, citing concerns about DUI program costs, quality, and effectiveness. The bill reinstates the statutory provision that limits DUI programs to being operated by governmental entities or not-for-profit corporations.

Sections 16 & 17. Commercial Motor Vehicles/Driver Disqualification: Under the federal Commercial Motor Vehicle Safety Act of 1986, all commercial truck drivers must have a Commercial Driver's License (CDL). Under current Florida law a driver can be disqualified and lose his or her CDL for certain traffic convictions if committed while operating a commercial motor vehicle:

- If convicted of two serious traffic violations within 3 years, the CDL can be suspended for 60 days. A third conviction within 3 years results in a 120-day disqualification. "Serious traffic violations" include unlawful speed (15 MPH or more over the posted speed), careless or reckless driving, fleeing or attempting to elude a police officer, other traffic offenses committed in a commercial motor vehicle resulting in the death or personal injury of any person, and not properly insuring a commercial motor vehicle.

- A driver will be disqualified for 1 year for a first time conviction of the following offenses while operating a commercial motor vehicle: a) driving with an alcohol concentration of .04 percent or more; b) leaving the scene of an accident; c) using a commercial motor vehicle in the commission of a felony, or; d) refusing to take a DUI test. If convicted of any of these offenses while transporting hazardous materials, the disqualification time is increased to 3 years. A second conviction for the above offenses will result in disqualification for life. Using a commercial motor vehicle in the making, selling, or distribution of drugs will result in disqualification for life.

The bill amends s. 322.61, F.S., to add two additional grounds for CDL disqualification, including being convicted or otherwise found to have committed a violation of an out-of-service order and 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.

In addition, Florida law allows a 30-day temporary permit to be issued to a commercial driver when he or she is charged with driving with an unlawful blood alcohol level. The bill amends s. 322.64, F.S., to reduce the temporary permit time to 10 days. These changes bring Florida law in compliance with federal requirements for commercial drivers.

Section 18. 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. Effective July 1, 2001, the bill codifies this proviso language in s. 328.76, F.S. This will pay for DHSMV vessel registration administrative costs by depositing $1.4 million from vessel registration fees in the Highway Safety Operating Trust Fund on an annual basis.

Section 19. Motor Vehicle Dealers/Franchises/Definitions: Under current law, "motor vehicle dealers" are defined in part as persons or firms who service or repair motor vehicles under a franchise agreement, or who engage in the practice of buying, selling, exchanging or renting motor vehicles, or who engage in the business of selling motor vehicle for another owner. The bill amends s. 360.60, F.S., revising the definition of "motor vehicle dealer" so that the person or firm must also be licensed as a "franchised motor vehicle dealer" pursuant to s. 320.27, F.S., in order to be considered a "motor vehicle dealer," and includes persons or firms who lease motor vehicles in the definition. In addition, the bill defines the terms "sell," "selling," "sold," "exchange," "retail sales," and "leases" to include situations in which the title of a motor vehicle is transferred to a retail

consumer or a retail customer leases a vehicle for 12 months or more. Pursuant to the bill, a manufacturer's direct sales of motor vehicles to its own employees, employees of affiliated companies, franchised dealers of the same line-make, charitable organizations, and the federal government are not included in the definition.

Section 20. Licenses Required of Motor Vehicle Manufacturers, Distributors and Importers: Current law prohibits DHSMV from granting a replacement application for a dealer agreement when a dealer makes a complaint of unfair cancellation of the agreement against a manufacturer, distributor, or importer (licensee), and when that complaint is still being heard. The bill prohibits the issuance of a replacement dealer license until the department has reached a final decision in any pending complaints for unfair or prohibited cancellation of a dealer agreement by a licensee, or for non-renewal of a dealer agreement, as long as the dealer agreement of the complaining dealer is in effect.

Section 21. Denial, Suspension, or Revocation of License; Grounds: Section 320.64, F.S., provides grounds for the denial, suspension, or revocation of a motor vehicle manufacturer, distributor, or importer's license to operate in Florida. The bill amends s. 320.64, F.S., to:

- 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 amendment 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 unreasonable rejection of a proposed sale of a dealership or proposed change in executive management;

- Prohibit a manufacturer's discrimination in prices charged to dealers, except in certain limited circumstances;
- Prohibit a manufacturer's discrimination in prices charged to dealers through the use of rebates or incentives.

The bill 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 22. Franchise Agreements/Discontinuation, Cancellation, Non-renewal, Modification, and Replacement: Current law requires a motor vehicle manufacturer to give written notice to a motor vehicle dealer and DHSMV that the manufacturer intends to discontinue, cancel, or fail to renew a franchise agreement. The law also requires similar notice when a manufacturer intends to modify or replace a franchise. If a manufacturer fails to give written notice, its action is rendered voidable at the option of the dealer. In the event that a manufacturer discontinues, cancels, modifies, replaces, or fails to renew a franchise agreement, the dealer is entitled to petition for determination whether the manufacturer's action is an unfair or prohibited discontinuation. A manufacturer's action is unfair if it is not clearly permitted by the franchise agreement; is not undertaken for good cause; or is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach. A manufacturer is prohibited from naming a replacement dealer before adjudication by DHSMV and exhaustion of all appellate remedies.

The bill amends s. 320.641, F.S., to allow a dealer to petition DHSMV upon receipt of a manufacturers notice of intent to discontinue, cancel, not renew, modify, or replace a franchise agreement. The bill provides that, in addition to existing grounds for a finding of unfairness, a discontinuation, cancellation, or non-renewal is unfair if the grounds relied upon for the discontinuation, cancellation, or non-renewal are not applied in a uniform and consistent manner. Also, a modification or replacement is considered unfair if it is not permitted by the franchise agreement, or is not undertaken for good cause. The manufacturer has the burden of proving that its action is fair and not prohibited.

The bill provides that a franchise agreement remains in effect pending the exhaustion of all appeals, however, in the case where a dealer appeals a decision in favor of the manufacturer based on abandonment or revocation of the dealer's license, the franchise agreement will remain in effect only if the dealer demonstrates likelihood of success on appeal and that the public interest will not be harmed by preserving the agreement. The bill also provides that in the event a dealer requests a transfer of the franchise agreement during a termination proceeding, the proceedings will be stayed until review of the transfer request by the manufacturer. During this review period, the franchise agreement remains in effect. If the transfer is rejected, the dealer may pursue administrative remedies, and the termination proceeding will remain stayed while the administrative and appellate process is pending. If the transfer is approved or mandated by law, the termination proceedings will be dismissed with prejudice as moot.

Section 23. Transfer, Assignment, or Sale of Franchise Agreements:

Present Situation

Motor Vehicle dealers in Florida may not transfer, assign, or sell a franchise to another person without first requesting permission in writing from the manufacturer. A manufacturer must respond to such a request within 60 days, or permission is deemed granted. If permission is granted, the transfer, assignment, or sale is valid only if the transferee agrees to comply with all of the

requirements of the existing franchise agreement. A manufacturer is prohibited from unreasonably withholding permission to transfer a franchise agreement. The law presumes withholding of permission unreasonable if the transferee is of good moral character and its executive management's business experience meets the reasonable and uniform standards the manufacturer applies to its dealers. A manufacturer can file a complaint with DHSMV requesting a finding that the proposed transferee is not qualified under s. 320.643, F.S. Burden of proving non-qualification is on the manufacturer. If the 60-day period passes without a response from the manufacturer, or DHSMV dismisses that complaint or enters a finding adverse to the manufacturer, the franchise agreement is amended to incorporate the transfer. A Manufacturer is also prohibited from hindering the sale or transfer of stock in a dealership unless that manufacturer can prove at a hearing that the transferee or its executive management is not of good moral character. Once the manufacturer is notified of the desired transfer, it may, within 60 days file a complaint requesting a finding that the proposed transferee is not qualified under s. 320.643, F.S. Upon making a determination, DHSMV must enter an order providing either: 1) that the proposed transferee is qualified; 2) that the proposed transferee is not qualified and cannot be qualified; or 3) that the proposed transferee can become qualified on certain conditions. While a hearing is pending, the original franchise agreement remains in effect.

Effect of Proposed Changes

The bill amends s. 320.643, F.S., so that the law presumes withholding of permission to transfer to be unreasonable if the transferee is of good moral character, its executive management's business experience meets the standards that the manufacturer applies to all of its dealers, **and its financial qualifications meet those applied to all of the dealers.** In addition, instead of requiring the manufacturer to file a complaint with DHSMV upon receiving a request for permission to transfer, the bill shifts the burden of going forward with the complaint to the dealer. Under the bill's provisions, the dealer may file a complaint with DHSMV within 60 days after receiving a rejection of its request for permission. Although the burden of going forward is shifted under the bill, the burden of proving that it is reasonable to withhold permission remains with the manufacturer. In the case of stock sales or transfers, the bill requires manufacturers to notify a dealer in writing within 60 days, setting forth the reasons, if it determines that the proposed transferee is not qualified. The dealer may then file a complaint with DHSMV alleging that the rejection violated the law or the franchise agreement. The manufacturer has the burden of proof.

Section 24. Restriction Upon Ownership of Dealership by a Manufacturer:

Present Situation

Manufacturers, dealers, and their agents, representatives or subsidiaries (licensees) are prohibited from selling or servicing vehicles in Florida in competition with their franchised dealers. However, a licensee may operate a dealership: 1) for up to one year during the transition from one owner to another; 2) for up to one year in a bona fide relationship with an independent investor who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership on reasonable terms and conditions; or 3) if DHSMV determines in an administrative hearing that no independent person is available in the community or territory to own and operate a dealership consistently with the public interest.

Effect of Proposed Changes

Section 320.645, F.S., is amended to clarify that a licensee may not be issued a motor vehicle dealer license pursuant to s. 320.27, F.S. For the purposes of the section, the bill extends the term "licensee" to include a distributor. In addition, the bill requires licensee operation of a dealership in connection with an independent person to be for the exclusive purpose of broadening diversity

among dealers, and for enhancing opportunities for qualified persons who are part of a historically underrepresented group in the manufacturer's dealer body. The bill defines the terms "independent person," "reasonable terms and conditions," and "significant investment." It also exempts from its application, persons or companies that rent motor vehicles and industrial or construction equipment for no more than a year, so long as those persons or companies do not sell their motor vehicles or equipment new, and do not perform warranty repairs except on those vehicles or equipment that they own. The bill also exempts distributors that owned or operated a dealership in Florida on or before July 1, 1996 that sells or services motor vehicles other than any line-make of motor vehicles distributed by the distributor.

Section 25. Administrative Hearings and Adjudications: Amends s. 320.699(2), F.S., as it applies to administrative hearings and adjudications, to provide that a hearing must be held no sooner than 180 days, and no later than 240 days after a protest is filed. In addition, the bill provides that s. 320.699(2), F.S., shall govern the schedule of hearings, notwithstanding any provision regarding administrative hearings conducted by DHSMV or the Division of Administrative Hearings, including performance standards of state agencies, which may be included in current and future appropriations acts.

Section 26. Severability: Specifies that if any provision of ss. 320.60 – 320.70, F.S., as amended in the bill or its application to any person or circumstance is held invalid, the other provisions or applications can be given effect without the invalid provision or application. To that end the provisions are declared severable.

Section 27. Automobile Dealers Industry Advisory Board: The bill creates s. 320.691, F.S., which is the Automobile Dealers Industry Advisory Board within DHSMV. The board will make recommendations on proposed legislation, rules and procedures, and provide industry input to the DHSMV, the Governor and the Legislature. The board will consist of 12 members appointed by the Executive Director of DHSMV from names submitted by various industry entities. Private sector members of the board will be responsible for their own travel costs.

Sections 28 through 31. Florida Deceptive and Unfair Trade Practices Act:

Present Situation

Although s. 320.27, F.S., provides for civil fines and/or the denial, suspension, or revocation of a motor vehicle dealer license for certain violations, current law does not specifically address violations by motor vehicle dealers within the context of the Florida Deceptive and Unfair Trade Practices Act, or "FDUTPA" (ch. 501, part II, F.S.).

Motor Vehicle Dealers

Section 320.27(1)(c), F.S., defines the term "motor vehicle dealer" to mean 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, or who may service and repair motor vehicles pursuant to a franchise agreement. No person may engage in business as, serve in the capacity of, or act as a motor vehicle dealer in this state without first obtaining a license from DHSMV.

Section 320.27(9), F.S., provides the following grounds upon which DHSMV may deny, suspend, or revoke any license:

- Willful violation of any other law of this state related to dealing in or repairing motor vehicles, willful failure to comply with any administrative rule promulgated by DHSMV, or, in the case of used motor vehicles, the willful violation of certain federal laws;

- Commission of fraud or willful misrepresentation in application for or in obtaining a license;

- Perpetration of a fraud upon any person as a result of dealing in motor vehicles including, without limitation, the misrepresentation to any person by the licensee of the licensee's relationship to any manufacturer, importer, or distributor;

- Representation that a demonstrator is a new motor vehicle, or the attempt to sell or the sale of a demonstrator as a new motor vehicle without written notice to the purchaser that the vehicle is a demonstrator;

- Unjustifiable refusal to comply with a licensee's responsibility under the terms of the new motor vehicle warranty issued by its respective manufacturer, distributor, or importer;

- Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles;

- Requirement by any motor vehicle dealer that a customer accept equipment on his or her motor vehicle which was not ordered by the customer;

- Requirement by any motor vehicle dealer that any customer finance a motor vehicle with a specific financial institution or company;

- Failure by any motor vehicle dealer to provide a customer with an odometer disclosure statement and a copy of any bona fide written, executed sales contract, or agreement of purchase connected with the purchase of the motor vehicle;

- Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle;

- Requirement by the motor vehicle dealer that the purchaser of a motor vehicle contract with the dealer for physical damage insurance;

- Violation of any of the provisions of s. 319.35, F.S., (regarding unlawful acts in connection with motor vehicle odometer readings) by any motor vehicle dealer;

- Either a history of bad credit or an unfavorable credit rating as revealed by the applicant's official credit report or by investigation by DHSMV;

- "[F]ailure to disclose damage to a new motor vehicle as defined in s. 320.60(10) [, F.S.,] of which the dealer had actual knowledge if the dealer's actual cost of repair, excluding tires, bumpers, and glass, exceeds 3 percent of the manufacturer's suggested retail price; provided, however, if only the application of exterior paint is involved, disclosure shall be made if such touch-up paint application exceeds $100";

- Failure to apply for transfer of a title as prescribed in s. 319.23(6), F.S.;

- Use of the dealer license identification number by any person other than the licensed dealer or his or her designee;

- Conviction of a felony;

- Failure to continually meet the requirements of the licensure law;

- When a motor vehicle dealer is convicted of a crime which results in his or her being prohibited from continuing in that capacity, the dealer may not continue in any capacity within the industry;

- Representation to a customer or any advertisement to the general public representing or suggesting that a motor vehicle is a new motor vehicle if such vehicle lawfully cannot be titled in the name of the customer or other member of the general public by the seller using a manufacturer's statement of origin as permitted in s. 319.23(1), F.S.;

- Failure 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 that the bank draft or check has been dishonored; or

- Sale by a motor vehicle dealer of a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer, unless the customer provides written authorization for the sale of the trade-in vehicle prior to delivery of the newly acquired vehicle.

Section 320.27(12), F.S., provides that DHSMV may levy and collect a civil fine, in an amount up to $1,000 for each violation, against any licensee if it finds that the licensee has violated any provision of this section or has violated any other law or regulation of this state or the federal related to dealing in motor vehicles.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), is designed to protect commercial and individual consumers. More specifically, it is designed to:

- Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection. (s. 501.202, F.S.)

Section 501.204, F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. The section further states it is the intent of the Legislature that due consideration and great weight be given to the interpretations of the Federal Trade Commission (FTC) and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1).

Section 501.205, F.S., further provides that the Department of Legal Affairs (DLA) may adopt rules that set forth with specificity acts or practices that violate FDUTPA and which prescribe procedural rules for the administration of FDUTPA. All substantive rules promulgated under FDUTPA must not

be inconsistent with the rules, regulations, and decisions of the FTC and the federal courts in interpreting the provisions of s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1).

Effect of Proposed Changes

The bill substantially codifies the Department of Legal Affairs' repealed rule 2-19.005, F.A.C.

By codifying most of the violations proscribed in a repealed Department of Legal Affairs rule regarding motor vehicle sales, the bill specifically provides that certain motor vehicle dealer practices are actionable under the Florida Deceptive and Unfair Trade Practices Act. The bill also requires a trial court to consider certain information when awarding attorney's fees to a person in civil litigation resulting from a violation of the provisions established in the bill.

Definitions

The bill defines:

- "Vehicle" to mean any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under ch. 320, F.S., for operation over the roads of Florida, but not including trailers, mobile homes, travel trailers, or trailer coaches without independent motive power;
- "Replacement item" to mean a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the "new motor vehicle" is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident; and
- "Threshold amount" to mean 3 percent of the manufacturer's suggested retail price for a motor vehicle, or $650, whichever is less.

Unfair or Deceptive Acts or Practices

The bill provides that it is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

- Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless such vehicle was purchased directly from the manufacturer or a subsidiary of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary, or a dealer for the commercial or personal use of the manufacturer's, subsidiary's, or dealer's employees;
- Represent directly or indirectly that a vehicle is a demonstrator, unless the vehicle was driven by prospective customers of a dealership selling the vehicle, and such vehicle complies with the definition of a demonstrator in section 320.60(3), Florida Statutes.
- Represent the previous usage or status of a vehicle to be something that it was not, or make usage or status representations unless the dealer has correct information regarding the history of the vehicle to support the representations.
- Represent the quality of care, regularity of servicing, or general condition of a vehicle unless known by the dealer to be true and supportable by material fact.
- Represent orally or in writing that a particular vehicle has not sustained structural or substantial skin damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his agent to determine whether the vehicle has incurred such damage.

- Sell a vehicle without fully and conspicuously disclosing in writing at or before the consummation of sale any warranty or guarantee terms, obligations, or conditions that the dealer or manufacturer has given to the buyer. If the warranty obligations are to be shared by the dealer and the buyer, the method of determining the percentage of repair costs to be assumed by each party must be disclosed. If the dealer intends to disclaim or limit any expressed or implied warranty, the disclaimer must be in writing in a conspicuous manner and in layman's terms in accordance with chapter 672, Florida Statutes, and the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act.
- Provide an express or implied warranty and fail to honor such warranty unless properly disclaimed pursuant to subsection (6).
- Misrepresent warranty coverage, application period, or any warranty transfer cost or conditions to a customer.
- Obtain signatures from a customer on contracts that are not fully completed at the time the customer signs or which do not reflect accurately the negotiations and agreement between the customer and the dealer.
- Require or accept a deposit from a prospective customer prior to entering into a binding contract for the purchase and sale of a vehicle unless the customer is given a written receipt that states how long the dealer will hold the vehicle from other sale and the amount of the deposit, and clearly and conspicuously states whether and upon what conditions the deposit is refundable or nonrefundable.
- Add to the cash price of a vehicle as defined in section 520.02(2), Florida Statutes, any fee or charge other than those provided in that section and in Rule 3D-50.001, Florida Administrative Code. All fees or charges permitted to be added to the cash price by Rule 3D-50.001, Florida Administrative Code, must be fully disclosed to customers in all binding contracts concerning the vehicle's selling price.
- Alter or change the odometer mileage of a vehicle.
- Sell a vehicle without disclosing to the customer the actual year and model of the vehicle.
- File a lien against a new vehicle purchased with a check unless the dealer fully discloses to the purchaser that a lien will be filed if purchase is made by check and fully discloses to the buyer the procedures and cost to the buyer for gaining title to the vehicle after the lien is filed.
- Increase the price of the vehicle after having accepted an order of purchase or a contract from a buyer, notwithstanding subsequent receipt of an official price change notification. The price of a vehicle may be increased after a dealer accepts an order of purchase or a contract from a buyer if:
  - A trade-in vehicle is reappraised because it subsequently is damaged, or parts or accessories are removed;
  - The price increase is caused by the addition of new equipment, as required by state or federal law;
  - The price increase is caused by the revaluation of the U.S. dollar by the Federal Government, in the case of a foreign-made vehicle;
  - The price increase is caused by state or federal tax rate changes; or
  - Price protection is not provided by the manufacturer, importer, or distributor.

- Advertise the price of a vehicle unless the vehicle is identified by year, make, model, and a commonly accepted trade, brand, or style name. The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing. State and local taxes, tags, registration fees, and title fees, unless otherwise required by local law or standard, need not be disclosed in the advertisement. When two or more dealers advertise jointly, with or without participation of the franchiser, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, but

the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.

- Charge a customer for any pre-delivery service required by the manufacturer, distributor, or importer for which the dealer is reimbursed by the manufacturer, distributor, or importer.
- Charge a customer for any pre-delivery service without having printed on all documents that include a line item for pre-delivery service the following disclosure: "This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."
- Add an additional charge for pre-delivery service other than those shown on a conspicuous label attached to the window of the vehicle specifying any charge for pre-delivery services and describing the charges as pre-delivery services, delivery and handling, dealer preparation, or in similar terms the dealer's charge for each dealer-installed option, and a total price line.
- Fail to disclose damage to a "new motor vehicle," as defined in subsection 320.60(10), Florida Statutes," of which the dealer had actual knowledge, if the dealer's actual cost of repairs exceeds the threshold amount, excluding replacement items.

The bill also provides that in any civil litigation resulting from a violation of this section, when evaluating the reasonableness of an award of attorney's fees to a private person, the trial court shall consider the amount of actual damages in relation to the time spent by the attorney.

Applicability

The bill provides that sections 28 and 29 of this bill apply to any vehicle sold after October 1, 2001.

Repeal of s. 320.27(9)(n), F.S.

The bill repeals s. 320.27(9)(n), F.S., which provides that a dealer's failure to disclose to the buyer damage to a new motor vehicle can be a ground for revocation or suspension of a dealers license. A provision in this bill making such failure a ground for claiming unfair or deceptive trade practices appears to replace the repealed paragraph.

Section 32. Motor Vehicle Retail Sales Finance Act/Penalties: In s. 520.07(1)(c), F.S., Florida's Motor Vehicle Retail Sales Finance Act (Act) requires the seller of a motor vehicle to deliver to the buyer a copy of the contract signed by the seller. A sale is not consummated until the buyer receives the copy or a separate statement containing all required disclosures. If a sale is not consummated (the buyer has not received a copy of the retail installment contract), a buyer who has not received delivery of the motor vehicle has the right to rescind the agreement and receive a refund of all payments made and goods traded in (or their value) on account of the contract. Section 520.12 (2), F.S., of the Act provides a penalty for willful violation of the act's provisions relating to retail installment sales. That section provides that in the case of a willful violation of any provision in the Act relating to retail installment sales, the buyer may recover from the violator (or set off or counterclaim in an action against a violator) the amount of finance charges and fees charged to the to the buyer for delinquency, in addition to attorney's fees and costs incurred by the buyer to assert rights under the Act. The bill specifies that s. 520.12(2), F.S., does not require the seller to deliver to the buyer a copy of the contract signed by the seller if the buyer was given an exact copy of the contract at the time he or she signed it.

Sections 33 through 35. Pilot Recreational Vehicle Mediation & Arbitration Program: Section 681.1096, F.S., creates the Pilot Recreational Vehicle Mediation and Arbitration Program to resolve disputes between RV manufacturers and consumers. This pilot program is repealed effective September 30, 2001. The bill revises the automatic repeal provision so that the program will

continue to operate until September 30, 2002, and recreational vehicle disputes will not be subject to the lemon law provisions of ss. 681.109 and 681,1095, F.S. In addition, the bill amends s. 681.1097, F.S., to allow a party in arbitration to request that the arbitrator make a technical correction to a decision upon filing a request within 10 days after receipt of the decision. The arbitrator's decision is binding unless a party appeals by filing a petition with the circuit court within the prescribed timeframe. The bill also voids motor vehicle warranty dispute agreements which require as a condition that a consumer not disclose the terms of the agreement.

Sections 36 & 37. Towing/Required Notification: Currently, s. 713.78, F.S., only requires a towing company to notify the owner, a lien holder and the DHSMV when a vehicle has been towed. If, after storing a towed vehicle or vessel for 35 days, the towing company has not been paid for its reasonable costs related to towing and storage, it may sell the vehicle or vessel at auction. In some cases, car rental companies have indicated that they do not receive notice soon enough to pay a towing company before 35 days have passed. The bill amends this section to add the insurance company to the list of individuals that must be notified when a vehicle has been towed. The bill 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. These changes are intended to insure proper notification is given to all parties that may have an interest in a towed vehicle. In addition, the bill requires a towing company to wait 50 days before selling a vehicle or vessel, if that vehicle or vessel is 3 years old or less. Since car rental companies generally own and rent only newer vehicles, this change appears to solve the problem discussed above.

Section 38. Motor Vehicle Sales Tax: Section 212.08(10), F.S., provides a partial sales tax exemption to a resident of another state who buys a motor vehicle in Florida. Under this subsection, a person from another state who buys a vehicle in Florida is only liable for the amount of tax on the sale equal to the amount that would be owed in the buyer's home state (unless that amount is greater than the amount of tax in Florida). The buyer must remit the tax to the Florida Department of Revenue and file in its home state a notarized statement certifying the payment. The bill provides that taxpayers who protested assessments prior to August 1, 1999, and who have paid the tax directly to the home state instead of Florida, are not required to pay the tax to the state of Florida.

Section 39. Motor Home Length Limit: The definition of "motor home" contained in chapter 320, F.S., provides that a motor home may not exceed 40 feet in length. This limitation conflicts with the provisions of chapter 316, F.S., which allows motor homes up to 45 feet in length. The bill amends s. 320.01(1)(b)4, F.S., to delete the length restriction. Motor homes would then be subject to the length requirements of s. 316.515(15), F.S., which provides for a length of up to 45 feet.

Section 40. Motor Vehicle Auctions: Section 320.27(1)(c), F.S., provides that only licensed motor vehicle dealers may buy or sell motor vehicles at an auction to the highest bidder. Subsection (7) of that section requires that 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. The bill provides that only the buyer of a motor vehicle sold at auction must be a licensed motor vehicle dealer. This change would allow other entities such as financial institutions and rental companies to sell motor vehicles at auctions. The bill 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.

Bona Fide Employees: Section 320.27(1)(c)3, F.S., defines a "wholesale motor vehicle dealer" as any person who buys, sells, or deals in motor vehicles at wholesale or at auction. These wholesale motor vehicle dealers must be licensed by the state, and may not sell or auction a vehicle to any other person who is not a licensed dealer. However, a "bona fide employee" of a licensed motor

vehicle dealer who buys or sells at wholesale or auction on behalf of a licensed dealer need not be licensed separately. Section 320.27 does not provide a definition of "bona fide employee." The bill defines "bona fide employee" and includes in its definition both regular employees who receive IRS form W-2, and independent contractors that have a written contract and receive IRS form 1099.

Section 41. Effective Date: The bill takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS below.

2. Expenditures:

See FISCAL COMMENTS below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to substantially impact the revenues of local governments.

2. Expenditures:

The bill does not appear to substantially impact the expenditures of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a substantial economic impact on the private sector.

D. FISCAL COMMENTS:

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. Effective July 1, 2001, the bill codifies this proviso language in s. 328.76, F.S. This will pay for DHSMV vessel registration administrative costs by depositing $1.4 million from vessel registration fees in the Highway Safety Operating Trust Fund on an annual basis.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of this bill because it does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

DHSMV has established a rule for processing hearings requested by a citizen when that person's driver's license is suspended or revoked for medical reasons. The DHSMV's statutory authority to have a rule has been questioned by the Joint Administrative Procedures Committee. The bill creates s. 322.222, F.S., to provide specific statutory authority for the department to hold administrative hearings for medical cases.

C. OTHER COMMENTS:

Certain provisions of CS/CS/HB 807, 2nd Eng., and HB 1239, as amended passed in this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Originally entitled "An act relating to motor vehicles dealers," and addressing only the issue of unfair or deceptive acts by motor vehicle dealers, the bill was amended on the floor of the Senate on April 27, 2001. The Senate floor amendments added provisions defining "motor vehicle" and amending the schedule of DHSMV administrative hearings. In addition, the Senate amended the bill, entitling it "An act relating to motor vehicles."

On May 3, 2001, the House of Representatives adopted a "strike everything" amendment that included the provisions of CS/SB 1956 and portions CS/CS/HB 807, 2nd Eng., and HB 1239, and passed the bill as amended.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON TRANSPORTATION:

Prepared by:	Staff Director:
William C. Garner	Phillip B. Miller