

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.)

Prepared By: Criminal Justice Committee

BILL: SB 1344

SPONSOR: Senator Sebesta

SUBJECT: Motor Vehicles

DATE: March 16, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/4 amendments
2.	Erickson	Cannon	CJ	Favorable
3.			JU	
4.			TA	
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 1344 addresses a number of issues primarily affecting the duties of the Department of Highway Safety and Motor Vehicles (DHSMV). The bill amends numerous sections of law relating to off-highway vehicles, traffic control, license plates, motor vehicle titles and registration, driver's licenses and identification cards, and wrecker operator liens. Many of the bill's provisions are technical or administrative in nature. Major changes within the bill are:

- Amending off-highway vehicle (OHV) titling provisions to mirror motor vehicle, mobile home and vessel titling provisions which guide the DHSMV in handling liens and title transfers, establishing penalties for cases of fraud, and providing for a title validation sticker to be placed on off-highway motor vehicles for the purpose of proving the OHV is titled;
- Clarifying that portion of the license plate which must be clear and plainly visible. Specifically, the word "Florida," the registration decal, and the alphanumeric designation must be plainly visible and free from obscuring objects;
- Amending commercial motor vehicle licensing and license disqualification provisions to comply with regulations of the Federal Motor Carrier Safety Administration (FMCSA);

- Revising provisions concerning documents acceptable to prove identity for the purposes of obtaining a driver's license or Florida identification card;
- Pursuant to the federal Patriot Act, providing fees to pay for more extensive background checks of applicants for hazardous materials endorsements on commercial driver's licenses;
- Clarifying when urine testing is required pursuant to Florida's DUI implied consent law;
- Expanding the authority of the DHSMV to expend funds on promotional and educational campaigns;
- Authorizing the DHSMV to modify records of persons committing traffic infractions so a full penalty may be imposed when the clerk of court fails to report the traffic citation in a timely manner;
- Expanding the authority of the DHSMV to place a stop on driver's license and motor vehicle records when a person pays a fee, tax, or penalty with a dishonored check;
- Clarifying licensed motor vehicle dealers must maintain records for 5 years that they are currently required to keep for an unspecified period of time; and
- Providing a traffic citation may be admitted as evidence at trial in limited circumstances including as proof of forgery or of fraud, or as physical evidence resulting from a forensic examination of the citation.

This bill substantially amends sections 261.03, 316.003, 316.0775, 316.122, 316.183, 316.1932, 316.1936, 316.194, 316.1967, 316.2074, 316.605, 316.613, 316.650, 317.0003, 317.0004, 317.0005, 317.0006, 317.0007, 317.0010, 317.0012, 317.0013, 318.14, 319.23, 319.27, 320.06, 320.0601, 320.0605, 320.0843, 320.131, 320.18, 320.27, 322.01, 322.05, 322.051, 322.07, 322.08, 322.09, 322.11, 322.12, 322.135, 322.142, 322.161, 322.17, 322.18, 322.19, 322.21, 322.212, 322.22, 322.251, 322.30, 322.53, 322.54, 322.57, 322.58, 322.61, 322.63, 322.64, 713.78, and 843.16; creates sections 316.1576, 316.1577, 316.6131, 317.0014, 317.0015, 317.0016, 317.0017, and 317.0018; and repeals section 317.0008(2), of the Florida Statutes.

II. Present Situation:

Off-Highway Vehicles

Chapter 261, F.S., governs off-highway vehicle safety and recreation. An OHV is defined as any all-terrain vehicle (ATV) or off-highway motorcycle used off-road for recreational purposes that is not licensed as a motor vehicle for highway use. This definition does not expressly include two-rider ATVs.

Although, OHVs are not titled or registered as motor vehicles to be operated on the roads in Florida, during the 2002 Session, the Legislature created ch. 317, F.S., or the "Florida Off-Highway Vehicle Titling Act," which requires the titling of all off-highway vehicles purchased in the state after July 1, 2002, or which are used on public lands. The act provides for titling of

OHVs in a manner differing significantly from the method of titling motor vehicles, vessels, and mobile homes. In addition, the new chapter is mostly silent with respect to the handling of liens, transfers of ownership, and penalties for fraud.

Unlike a motor vehicle registered annually by the owner who is required to carry evidence of registration, OHVs are not registered and do not carry a registration license plate. An owner operating an OHV on public land must carry the actual title or the title receipt in case he or she is asked to prove the OHV is titled. An off-highway vehicle title must be transferred within 30 days after the sale of the vehicle. The fee for a title is \$29. There is a \$10 fee for title transfer applications after the 30-day period. Five dollars of that fee is retained by the county tax collector.

Traffic Control

Traffic Signal Preemption System

State traffic laws are provided in ch. 316, F.S. Section 316.0775, F.S., provides criminal penalties for persons who interfere with official traffic control devices or railroad signs or signals. Certain emergency response vehicles, primarily fire trucks and ambulances, carry a device known as a traffic signal preemption transmitter, which allows the user to alter the operation of traffic control signals. By activating the transmitter, the user alters the normal operation of the signal by causing it to release traffic traveling in the same direction as the vehicle carrying the transmitter. The transmitter works only at intersections equipped with a compatible receiver. The purpose of such devices is to allow emergency response personnel to expedite travel to the scene of an emergency.

Recently, such devices have become available for prices below \$500, making them affordable for purchase online by members of the general public. The use of such devices by the general public to alter the regular operation of traffic control signals poses an obvious danger to motorists, and may exacerbate gridlock and other problems caused by high-volume traffic.

Vehicles Passing on the Left

Section 316.122, F.S., requires the driver of a vehicle making a left turn within an intersection or alley, private road, or driveway to yield the right-of-way to any vehicle approaching from the opposite direction. However, the law is silent with respect to whether a left-turning vehicle must yield the right-of-way to a lawfully passing vehicle that is traveling in the same direction and is passing on the left of the turning vehicle. According to the DHSMV, historically, law enforcement officers have cited drivers who fail to yield the right-of-way to vehicles lawfully passing to the left under s. 316.085 (2), F.S.

Insufficient Clearance at Railroad Crossings

Federal regulations require states to provide for the disqualification of a driver for a commercial driver's license upon conviction of offenses punishing various acts at a railroad-highway grade crossing.

Among these acts are failure to have sufficient space to drive completely through the crossing without stopping and failure to negotiate a crossing because of sufficient undercarriage clearance. While current Florida law prohibits most of the acts requiring disqualification under federal law, it does not specifically prohibit failure to have sufficient space to drive completely

through a crossing without stopping or failure to negotiate a crossing because of sufficient undercarriage clearance. According to the DHSMV, compliance by the states with these regulations is mandatory, with consequences for noncompliance ranging from loss of federal funds to decertification of a state to issue commercial licenses.

Minimum Speed Limit Increase on Highways

Section 316.183, F.S., establishes the maximum and minimum speeds allowed on all state streets and state highways. Currently, the minimum speed limit on all highways that are a part of the National System of Interstate and Defense Highways with not fewer than four lanes is 40 miles per hour.

Traffic Accident Investigation Officers

Section 316.194, F.S., provides for the removal of certain vehicles upon authorization by a law enforcement officer. Specifically, the Florida Highway Patrol (FHP) utilizes trained, non-sworn personnel to respond to and handle many non-emergency, non-life threatening calls for service, enabling sworn members to dedicate a greater amount of time to pro-active enforcement and in-depth investigation of traffic related offenses. Currently, these FHP community service officers, also known as traffic crash investigation officers, have the following powers and duties:

- Investigate traffic crashes that do not involve a reported disturbance or the possibility of criminal charges;
- Assist disabled motorists and remove abandoned vehicles that obstruct roadways;
- Provide traffic direction and control at traffic crash scenes, road closures, inoperative or damaged traffic control devices, and other situations requiring manual traffic control direction;
- Patrol assigned areas;
- Report crimes in progress without becoming involved;
- Act as scribes or runners at command posts established at major crime or disaster scenes;
- Present testimony regarding official duties; and
- Perform other duties as assigned by supervisors.

Although, the duties of the FHP community service officers include the removal of abandoned vehicles obstructing roadways, the law authorizes only sworn law enforcement officers to provide for the removal of such vehicles.

Parking Tickets of Leased Vehicles

Section 316.1967, F.S., provides that the owner of a vehicle is responsible and liable for payment of any parking ticket violations unless evidence is furnished to prove the vehicle, at the time of the parking violation, was in the care, custody, or control of another person. In the case of a leased vehicle registered to the lessee, the owner is responsible for the parking violation unless he or she furnishes evidence the vehicle was leased at the time.

Motor Vehicle License Plates and Registration

License Plate Obstruction

Section 316.605, F.S., provides that vehicles in this state are required to display license plates on the rear of the vehicle, except government vehicles having a gross weight of 26,001 pounds or

more. License plates must be securely fastened to the vehicle to prevent swinging. In addition, all letters, numerals, printing, writing, and other identification marks on the plates must be clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they are visible from 100 feet. A violation of this section is punishable as a non-moving violation (\$30 fine).

License Plate Credit

Section 320.06, F.S., provides for license plates to be issued for renewal every 5 years. The fees include a \$2 yearly credit towards the next \$10 replacement fee. A credit or refund is not allowed when the plate is replaced or surrendered before the end of the 5-year period. However, specialty license plates may be discontinued by the DHSMV if the number of valid registrations falls below 1,000 license plates for 12 consecutive months.

Registration of Leased Vehicles

Section 320.0601, F.S., does not specify whether a motor vehicle subject to a long-term lease should be registered in the name of the lessee or the lessor.

Fleet Vehicle Registrations

Section 320.0605, F.S., requires a motor vehicle operator to carry the certificate of registration at all times while operating a registered motor vehicle, or to have the certificate in the vehicle while it is being operated, and to exhibit it upon demand of any authorized law enforcement officer or any agent of the DHSMV, but fleet vehicles participating in the Fleet Registration Program pursuant to s. 320.0657, F.S., are exempt from this provision. However, it does not specifically state that a registration certificate is not required for vehicles registered with the fleet program. Vehicles registered as part of the fleet program bear fleet license plates, and have the name, logo of the company, and unit number displayed so they are readily identifiable. The company that owns such vehicles is issued a single certificate evidencing registration of the entire fleet. It is unnecessary for such vehicles to carry proof of registration because the owner of the vehicle is readily identifiable from the name and company logo displayed on the vehicle. According to the DHSMV, because of the interpretation of the law made by some law enforcement agencies, those agencies persist in requiring registered fleet vehicle operators to exhibit registration documents on demand despite the exemption from this requirement.

License Plates for Persons with Disabilities

Section 320.0843, F.S., provides that certain persons with a disability are eligible for a permanent disabled parking permit. Disabled parking permits are issued in the form of placards that can be carried by the disabled person and used in any car in which that person is a passenger or operator. Each placard carries the name and driver's license or identification card number of the person to whom it was issued, and a warning such identification must be carried at all times while the placard is used. This enables law enforcement personnel to ascertain whether the person eligible to have the placard is the one actually using it. Some persons who are eligible for the permanent disabled parking permit elect to obtain a license plate for persons with disabilities rather than the placard. The license plate, adorned with the international symbol of accessibility, is affixed to a single vehicle and cannot be carried from one vehicle to another. In many cases, motor vehicles are registered to more than one owner making it difficult for law enforcement personnel to ascertain whether the driver of the car bearing a disabled license plate is the person entitled to the benefits conferred by the plate.

Electronic Temporary License Tags

Section 320.131, F.S., authorizes the DHSMV to issue temporary tags for a \$2 fee. The section does not provide for an electronic temporary license plate system, but depends on a paper system. Currently, motor vehicle dealers issue certain car buyers a temporary paper license plate valid for 30 days. Dealers also use temporary tags when transporting vehicles for off-site sales. According to the DHSMV, this paper system is outdated, and lags in time between issuance of paper tags and the reporting of owner information to the DHSMV, which causes difficulty for law enforcement personnel who are unable to immediately retrieve information that allows for verification of ownership and identification.

Motor Vehicle Titles/Liens***Marking Titles to Reflect "Sold"***

Section 319.23, F.S., provides that, when a motor vehicle or mobile home is sold by a licensed dealer, the dealer must file for the transfer of title with DHSMV within 30 days of the sale of the vehicle or motor home. However, this section does not require the dealer to file a notice of sale on vehicles taken in trade; therefore, the dealer is not required to apply for a new certificate of title, which leaves the previous owner as the owner of record with the DHSMV.

Lien Creditors

Section 319.27, F.S., currently references s. 679.301(3), F.S., which is an incorrect cross-reference. The statutory definition of lien creditor in the year 2000 was found in s. 679.301, F.S. This definition was later repealed and readopted as s. 679.1021 F.S., to include a numerical listing of lien creditor's qualifications. Current statutory references relating to motor vehicle title laws do not reflect the changes made.

Motor Vehicle Dealers***Continuing Education***

Currently, s. 320.27(4), F.S., does not require continuing education prior to renewing a motor vehicle dealer license.

Maintenance of Records

Section 320.27(6), F.S., provides that motor vehicle dealers must keep a book of record of:

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

Currently, this section does not specify how long such records must be kept.

Denial, Suspension or Revocation of License

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

This section also allows the DHSMV to deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed certain activities with sufficient frequency so as to establish a pattern of wrongdoing on the part of a licensee. These activities include a willful failure to comply with any administrative rule adopted by the DHSMV.

Driver's Licenses and Identification Cards***Placement of Consent Warning***

The law regarding alcohol, chemical, or controlled substance testing of drivers is provided in s. 316.1932, F.S. Under these provisions, by applying for, accepting, and using a driver's license, the person holding the driver's license is deemed to have expressed his or her consent to the provisions of the implied consent law concerning tests for alcohol, chemical substances, or controlled substances, upon a lawful arrest for DUI, or upon reasonable cause under certain circumstances. Also, a nonresident or other person who is not required to have a Florida driver's license, by his or her act of driving in such exempt status, is deemed to have expressed his or her consent to these tests. A consent warning to submit to these tests must be printed above the signature line on each new or renewed driver's license. Currently, such warnings are printed below the signature line on driver's licenses.

Identity Documents

Sections 322.051 and 322.08, F.S., provide requirements for the issuance of an identification card or driver's license. An applicant must submit the following proof of identity:

1. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required by DHSMV;
2. A certified copy of a United States birth certificate;
3. A valid United States passport;
4. An alien registration receipt card (green card);
5. An employment authorization card issued by the United States Department of Homeland Security; or
6. Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove such nonimmigrant classification, applicants may produce but are not limited to the following documents:
 - (a) A notice of hearing from an immigration court scheduling a hearing on any proceeding.
 - (b) A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
 - (c) Notice of the approval of an application for adjustment of status issued by the United States Immigration and Naturalization Service.
 - (d) Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Immigration and Naturalization Service.

- (e) Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Immigration and Naturalization Service.
- (f) Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to asylum.

A naturalization certificate is not included among the list of documents required to be shown as part of the proof that is satisfactory to the DHSMV. In addition, according to the DHSMV, for the purposes of proving identity, an expired passport is equally acceptable as an unexpired valid one.

Full-Face Image Required

Currently, all driver's licenses issued by the DHSMV must bear a full-face photograph or digital image of the licensee. Specifically, s. 322.142, F.S., authorizes the DHSMV, upon receipt of the required fee, to issue to each qualified applicant for an original driver's license a color photographic or digital imaged driver's license bearing a full-face photograph or digital image of the licensee. However, no such requirement exists for identification cards. This issue has been the subject of recent litigation in which persons objected to the requirement based on religious grounds. The DHSMV prevailed in this litigation and was not required to issue a driver's license not bearing a full-face image of the applicant.

Chapter 761, F.S., provides the state may not substantially burden a person's exercise of religion unless the state demonstrates it is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. This section further provides that a person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

Application by Minors

Section 322.09, F.S., requires that every application for a driver's license by a person under the age of 18 years must be signed and verified by the father, mother, or guardian, or if there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under ch. 322, F.S., upon a person signing the application for a minor, unless such minor is married.

Section 322.11, F.S., authorizes the DHSMV to revoke a minor's driver's license upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license. Such license may not be re-issued until such time as the new application is signed by a person authorized under s. 322.09, F.S.

Tax Collector Driver License Services and Transfer of Funds

Section 322.135, F.S., provides that the DHSMV may authorize tax collectors to serve as agents for the purposes of issuing driver's licenses and other driver's licensing services. Tax collectors who serve as driver's license agents may charge an additional \$5.25 fee for driver's license services they provide. One dollar of this fee must be deposited into the Highway Safety Operating Trust Fund and is used to meet technology requirements of the driver's licensing system. This section also provides for the transfer of driver's license fees and charges from county collectors to the DHSMV. Although no specific authority is provided in the law, tax

collectors currently transfer funds to the DHSMV by check, wire transfer, and electronic funds. Also, the DHMSV currently requires checks to be postmarked by the 7th working day after the week's transactions.

Correct Cross-references

Section 322.17(3), F.S., provides that, if a licensee establishes his or her identity for a driver's license using an employment authorization card or proof of nonimmigrant classification issued by the United States Department of Homeland Security, the licensee may not obtain a duplicate or replacement instruction permit or driver's license except in person and upon submission of such documentation.

Section 322.19, F.S., provides for the issuance of a driver's license as a result of the applicant's change of address or name. If the licensee established his or her identity for a driver's license using certain identification documents outlined in s. 322.08, F.S., the licensee may not apply for a new driver's license reflecting the change except in person and upon submission of certain identification documents.

Commercial Driver's Licenses

Elimination of the Class D Driver's License

Currently, the law provides for three classes of commercial driver's licenses (Class A, Class B, and Class C) and for two classes of non-commercial driver's licenses (Class D and Class E). The Class D driver's license is, in most respects, the same as the Class E driver's license, except that it authorizes the licensee to operate a vehicle with a gross, declared, or actual weight of 8,000 pounds up to 26,000 pounds. The qualifications for the Class D driver's license are the same as for the standard non-commercial Class E license, except that Class D licensees are subject to an additional 20 questions on the written examination. No additional driving examination is administered to applicants for a Class D license. Currently, drivers of emergency vehicles and farmers transporting machinery or agricultural products within 150 miles of their farms are exempt from a commercial license; however, they must obtain a Class D driver's license. According to the DHSMV, confusion persists among the public regarding which drivers are required to have a Class D driver's license.

Requirements and references of Class D driver's licenses are found in ss. 316.1936, 322.05, 322.07, 322.12, 322.161, 322.21, 322.251, 322.30, 322.53, 322.54, 322.58, and 322.61, F.S.

Election of Driver Improvement School and Plea of Nolo Contendere

Section 318.14(9), F.S., allows persons committing certain traffic infractions to attend a basic driver improvement course approved by the DHSMV in lieu of a court appearance. Adjudication will be withheld, points as provided in s. 322.27, F.S., will not be assessed, and the civil penalty imposed will be reduced by 18 percent for persons making this election.

Section 318.14(10), F.S., allows any person committing certain traffic infractions to enter a plea of nolo contendere in lieu of payment of fine or court appearance and adjudication will be withheld.

Drivers with a commercial driver's license are not permitted these elections under the federal regulation.

Gross Vehicle Weight Rating

Section 322.01, F.S., provides that any vehicle with a declared and actual weight of 26,001 pounds or more is classified as a commercial motor vehicle. Also, the definition of conviction does not correspond with the federal definition. The term “out-of-service order” in Florida law does not currently include authorizing entities.

No Commercial Driver License (CDL) or Special Licensing/Endorsement Requirements

Currently, every person who drives a commercial motor vehicle in this state is required to possess a valid commercial driver’s license (CDL). However, s. 322.53, F.S., exempts military personnel and drivers of emergency vehicles or drivers transporting farm equipment or supplies within 150 miles of their farms from having a CDL. This section does require such drivers to obtain a Class D driver’s license endorsed to operate the types of vehicles being driven.

Expiration of Hazmat Endorsement

Currently, s. 322.18, F.S., provides that a person applying for an original issuance driver’s license will be issued a driver’s license valid for six years. A renewed driver’s license is valid for six years if the applicant has no convictions on his or her driving record for the preceding three years. Otherwise, the renewal is valid for four years. The same is true for commercial driver’s licenses. Federal law requires commercial motor vehicle operators who carry hazardous materials to be fingerprinted every four years.

Hazmat Endorsement Background Checks

Section 322.21, F.S., provides the fee structure for driver’s license fees and requires the fees to be deposited into the General Revenue Fund. Currently, the fee for a hazardous materials endorsement for a commercial driver’s license is \$5. This is the same fee charged for all driver’s license endorsements. However, federal law requires criminal history and fingerprint checks of every person operating a commercial motor vehicle carrying hazardous materials; therefore, the cost of issuing a hazardous materials endorsement is substantially higher than the cost of issuing other endorsements.

No Class C License Required to Operate Certain Vehicle Combinations

Section 322.54, F.S., requires commercial motor vehicle drivers who operate vehicle combinations with a gross, declared, or actual weight of 26,001 pounds or more to obtain a Class C driver’s license. A Class C driver’s license is also required to operate any vehicle for which any kind of special endorsement on a CDL is required, even if the vehicle’s weight is less than 26,001 pounds. Federal law only requires drivers to meet the requirements necessary to obtain a Class C driver’s license when a special endorsement on the CDL is required.

School Bus Driver Endorsement

Section 322.57, F.S., establishes CDL endorsement requirements for commercial vehicle operators. Florida law currently requires school bus drivers to have the “P” or passenger endorsement on the driver’s license to operate any vehicle designed to carry 16 or more passengers. Until recently, this endorsement complied with federal law. Recent changes in the Federal Motor Carrier Safety Administration regulations require school bus drivers to be specifically tested, and to hold a corresponding commercial driver’s license endorsement for operating school buses. Compliance with these federal regulations is mandatory on the states

with consequences of noncompliance ranging from loss of federal funds to decertification of the state to issue commercial driver's licenses. States have been granted a grace period until September 2005, to achieve compliance.

Federal Motor Carrier Safety Administration Regulations – Disqualifications

Section 322.61, F.S., establishes criteria for disqualifying a commercial driver licensee from operating a commercial motor vehicle if the violations were committed in a commercial motor vehicle. The criteria consist of specified violations that, if made within certain timeframes, result in a temporary disqualification to operate a commercial motor vehicle. These violations and specifications mirror requirements provided by the Federal Motor Carrier Safety Administration (FMCSA) regulations, which the states are required to implement. Recent changes in the regulations require Florida to change its law to mirror new federal standards. Failure to comply can result in consequences ranging from loss of federal funds to decertification of the state to issue commercial driver's licenses.

Currently, the law provides for disqualification of a commercial motor vehicle operator for 60 days if he or she is convicted of committing two of the following traffic violations while driving a commercial motor vehicle within three years, or 120 days if convicted of three violations within three years:

- A violation of any traffic control law arising in connection with a crash resulting in death or personal injury to any person;
- Reckless driving;
- Careless driving;
- Fleeing or attempting to elude law enforcement;
- Unlawful speed of 15 mph or more above the limit;
- Driving a self-owned commercial vehicle that is not properly insured;
- Improper lane change; or
- Following too closely.

If a commercial driver is convicted of committing one of the following violations, he or she will be disqualified for one year from operating a commercial motor vehicle:

- Driving a commercial motor vehicle under the influence;
- Driving with a BAC of .04 percent or higher;
- Leaving the scene of a crash involving the driver;
- Using the commercial motor vehicle in the commission of a felony;
- Driving a commercial motor vehicle while in possession of a controlled substance; or
- Refusing to submit to test of alcohol concentration while driving a commercial motor vehicle.

Section 322.212, F.S., provides for penalties for unauthorized possession of, and other unlawful acts regarding driver's licenses and identification cards. Currently, commercial motor vehicle drivers are not disqualified from operating if caught providing false information when applying for his or her CDL.

Also, s. 322.64, F.S., provides that law enforcement officers or correctional officers shall disqualify commercial vehicle operators who have been arrested for a violation of driving with an unlawful blood alcohol level or have refused to submit to a breath, urine, or blood test from operating a commercial motor vehicle. Such officers shall provide the person disqualified with a 10-day temporary driving permit, if otherwise eligible for the driving privilege, and also issue the person a notice of disqualification.

Implied Consent/Urine Tests

Section 322.63, F.S., provides for alcohol or drug testing for commercial motor vehicle operators. Generally, any person who accepts the privilege extended by the laws of Florida of operating a motor vehicle or a vessel in this state is deemed, by so operating a motor vehicle or vessel, to have given his or her consent to submit to an approved chemical or physical test including, but not limited to, certain tests to detect the presence of alcohol, and a urine test for the purpose of detecting the presence of certain chemical substances or controlled substances. The urine test must be incidental to a lawful arrest, and must be administered at a detention facility, or any other facility equipped to administer the tests, at the request of a law enforcement officer who has reasonable cause to believe that the person tested was driving or was in actual physical control of a motor vehicle in Florida while under the influence of controlled substances.

In 2003, the Legislature separated the urine test provisions in the implied consent law from the provisions relating to tests to detect the alcoholic content of the blood or breath. However, in doing so, the Legislature did not address parallel provisions concerning alcohol or drug testing for commercial motor vehicle operators.

Department Operations

Educational/Promotional Expenditures

Section 316.613 (4), F.S., authorizes the DHSMV to expend funds for the purchase of promotional items as part of a public information and education campaign relating to child restraints, safety belts, driver improvement programs, and recycling programs.

Traffic Citations/Evidence

Section 316.650, F.S., provides that the Uniform Traffic Citation is not admissible as evidence in any trial. As a matter of public policy, the Legislature has determined that the prejudicial effect of the citation as evidence outweighs its probative value. While an official document like a Uniform Traffic Citation conveys a sense of reliability in its contents, it is still little more than a charging document containing the observations and impressions of a law enforcement officer. The form charges a person with a violation of a traffic infraction or offense, but does not establish guilt. Additionally, the law enforcement officer who completed the form is able to testify as to his or her observations which are recorded in citation form.

Because the law prohibits the admission of the citation into evidence at any trial, the document is excluded not only for the purposes of proving the infraction or offense charged or the acts alleged in the citation, but also as physical evidence of a crime, or as documentary evidence of a crime like forgery or fraud. For example, if a driver stopped for speeding does not possess a driver's license, and that driver gives the law enforcement a false name and signs the traffic citation with the false name, in a subsequent trial for forgery, the citation with the false signature cannot be used as evidence of the forgery. In another example, if the driver is stopped for

speeding and is issued a citation and, out of a sudden impulse to flee shoots and kills a law enforcement officer, at a subsequent trial for the murder of the officer, the citation bearing the defendant's fingerprints placing him or her at the scene of the crime is inadmissible. In such cases, the public policy served by the statutory privilege does not apply. The prejudicial effect of admitting the citation does not outweigh the probative value of the evidence because the crime or acts alleged are not described or charged in the document, rather the document is physical or documentary evidence of acts or crimes alleged in an indictment.

In a 2002 case, the First District Court of Appeal reversed a forgery conviction based on the admission of a Uniform Traffic Citation into evidence. The court reasoned that, because the statutory language unambiguously provides that traffic citations are not admissible in any trial, it was bound to reverse the conviction. *Dixon v. State*, 812 So.2d 595 (Fla. 1st DCA 2002). The Second District Court of Appeal recently decided a case in direct conflict with the *Dixon* decision. In *Maddox v. State*, 862 So.2d 783 (Fla. 2nd DCA 2003), the court upheld a forgery conviction and reasoned that the purpose of the statute was to protect the person to whom the citation was issued; because the deputy believed he was giving the citation to someone other than the defendant, the statutory protection did not apply. The court certified its decision as being in conflict with the *Dixon* decision, thereby providing the Florida Supreme Court with jurisdiction to settle the conflict.

Correction of Citations/Authorization to Modify Records

Section 318.14(7), F.S., provides that an official having jurisdiction over an infraction must certify to the DHSMV, within ten days after payment of the civil penalty or final disposition, if the charge resulted in a hearing. The law does not authorize the DHSMV to correct or modify records, or to take administrative action against drivers when dispositions and payments are reported late, resulting in lapsed or partially lapsed suspension or revocation periods before the DHSMV is able to take administrative action against a violator.

Payment by Dishonored Check

Currently, s. 320.18, F.S., provides that the DHSMV has the authority to withhold registration of any motor vehicle or mobile home if the owner of that vehicle or mobile home has failed to register a vehicle or mobile home as required by law for any previous period. In addition, if the owner pays for a license plate, fuel-use tax decal, or any tax liability, penalty or interest specified in ch. 207, F.S., by a dishonored check, the DHSMV may cancel any license plate or fuel-use tax decal of the person paying by a dishonored check. Likewise, s. 322.22, F.S., authorizes the DHSMV to cancel the driver's license of a person who fails to pay the correct fees, or who pays for the driver's license, or any related fees, tax liabilities, penalties, or interest specified in ch. 207, F.S., by a dishonored check.

Wrecker Liens

Section 713.78, F.S., provides guidelines regarding liens for recovering, towing, and storing vehicles and vessels. This section provides a method for a registered owner of a vehicle, vessel, or mobile home to dispute a wrecker operator's lien if at least one of the following applies:

1. The registered owner presents a notarized bill of sale proving that the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.

2. The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

If the registered owner's dispute of a wrecker operator's lien complies with one of these criteria, the DHSMV must immediately remove the registered owner's name from the list of those persons who may not register a vehicle. (Section 320.03(8), F.S., provides that when a wrecker puts a lien on a vehicle for unpaid towing or storage charges, and files the appropriate documentation with the DHSMV, the person who owns such vehicle is barred from registering any vehicle.)

Emergency Vehicles and Equipment

Section 843.16, F.S., provides that no person, firm, or corporation shall install in any motor vehicle or business establishment, unless designated by the DHSMV, a sheriff or a chief of police, any frequency modulation radio receiving equipment that receives messages from frequencies assigned by the Federal Communications Commission to police or law enforcement officers. The penalty for violating these provisions is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

III. Effect of Proposed Changes:

This bill amends numerous sections of law relating to off-highway vehicles, traffic control, license plates, motor vehicle titles and registration, driver's licenses and identification cards, and wrecker operator's liens. The following discussion represents a section-by-section analysis of the bill.

Section 1 amends s. 261.03, F.S., to revise the definition of "off-highway vehicle" by deleting the requirement that vehicles be used "for recreational purposes," and by including "two-rider" vehicles in the definition. It also provides a definition of "two-rider ATV" to mean any ATV specifically designed by the manufacturer for a single operator and one passenger.

Section 2 amends s. 316.003, F.S., to define a "traffic signal preemption system," as "any system or device with the capability of activating a control mechanism mounted on or near traffic signals which alters a traffic signal's timing cycle."

Section 3 amends s. 316.0775, F.S., to provide that the unauthorized use of a traffic signal preemption device is a moving violation punishable as provided in ch. 318, F.S. (\$60 fine/ 4 points).

Section 4 amends s. 316.122, F.S., to provide that a driver of a vehicle turning left must also yield the right-of-way to vehicles lawfully passing on the left side of the turning vehicle. A violation of this offense is punishable as a moving violation. This provision is intended to provide law enforcement officers with clarification as to the correct citation of this violation.

Section 5 creates s. 316.1576, F.S., to provide clearance specifications for railroad-highway grade crossings. Specifically, a person may not drive any vehicle through a railroad-highway

grade crossing not having sufficient space or sufficient undercarriage clearance to drive completely through the crossing without stopping. A violation of this provision is a noncriminal traffic infraction, punishable as a moving violation in ch. 318, F.S. Enactment of these provisions provides a basis for the DHSMV to disqualify commercial driver's licenses, as required by federal law, and brings Florida into compliance with federal law.

Section 6 creates s. 316.1577, F.S., to make employers responsible for violations pertaining to railroad-highway grade crossings. An employer may not knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle in violation of a federal, state, or local law or rule pertaining to railroad-highway grade crossings. A violator of this provision is subject to a civil penalty of not more than \$10,000.

Section 7 amends s. 316.183, F.S., to increase the minimum speed limit on interstate highways with no fewer than 4 lanes from 40 to 50 miles per hour when the posted speed limit is 70 miles per hour. According to the DHSMV, this could potentially enhance traffic safety and the traffic flow on the National System of Interstate and Defense Highways.

Section 8 amends s. 316.1932(1), F.S., relating to the statutorily implied consent given by licensed drivers to submit to breath, blood and urine tests for alcohol or other substances. It removes the form restriction that requires the notice of implied consent to be printed solely above the licensee's signature line. The bill provides the DHSMV with the flexibility to place such notice of implied consent anywhere on the front or back of the driver's license. Currently, DHSMV prints the consent warning below the signature line; therefore, this amendment will conform the statute to current practice.

Section 9 amends s. 316.1936, F.S., to remove the references to Class D licenses in an exemption from this section for a passenger of a vehicle in which the driver is operating the vehicle pursuant to a contract to provide transportation for passengers and such driver holds a Class D driver's license, and for a passenger of a bus in which the driver holds a Class D driver's license. Therefore, such passengers could receive a nonmoving traffic violation for open container possession in the vehicle or bus.

Section 10 amends s. 316.194, F.S., to authorize a traffic accident investigation officer to provide for the removal of an attended, unattended, or abandoned vehicle. This provision is intended to give Community Service Officers (CSOs), Public Service Aides (PSAs), and other non-sworn traffic accident investigation officers the authority to remove vehicles creating a roadway hazard.

Section 11 amends s. 316.1967, F.S., to provide that the owner of a leased vehicle is not responsible for a parking ticket violation and is not required to submit an affidavit or other specified evidence if the vehicle is registered in the name of the person who leased the vehicle. The section is further amended to direct the county court or its traffic violations bureau to notify the registered vehicle lessee by mail upon failure of the registered lessee to comply with the direction on the ticket. Under current law, the owner of the vehicle is liable for payment of parking ticket violations unless the owner can furnish evidence the vehicle was, at the time the violation occurred, in the care, custody, or control of another person.

Section 12 amends s. 316.2074, F.S., to provide that, for the purposes of this section, ATV includes two-rider ATVs.

Section 13 amends s. 316.605, F.S., to clarify what portion of the license plate must be clear and plainly visible. Specifically, the word “Florida,” the registration decal, and the alphanumeric designation must be clear and distinct and free from obscuring matter.

Section 14 amends s. 316.613, F.S., to strike language that deletes the DHSMV’s authorization to expend funds for the purchase of promotional items as part of the public information and education campaigns provided for in ss. 316.613(4), 316.614, 322.025, and 403.7145, F.S.

Section 15 creates s. 316.6131, F.S., as a result of the relocation of s. 316.613(4)(b), F.S. This relocated provision shifts and broadens the authority of the DHSMV to expend current funds for public awareness campaigns. The revised provision broadens the authority to expend such funds to purchase educational items for promoting highway safety and awareness campaigns as provided in chapters 316 (state uniform traffic control), 320 (registration requirements), 322 (driver’s licenses), and s. 403.7145 (recycling), F.S., and for community-based initiatives.

Section 16 amends s. 316.650, F.S., to provide an exception to the existing law by allowing uniform traffic citations to be admissible evidence in a trial of falsification, forgery, uttering, fraud or perjury or when used as physical evidence resulting from a forensic examination of the citation.

Section 17 amends s. 317.0003, F.S., to revise the definition of “off-highway vehicle” by deleting the requirement that vehicles be used “for recreational purposes,” and by including “two-rider” vehicles in the definition. It also provides a definition of “two-rider ATV” to mean any ATV specifically designed by the manufacturer for a single operator and one passenger.

Section 18 amends s. 317.0004, F.S., correcting a reference to clarify that the DHSMV shall administer all off-highway vehicle titling laws in the chapter. In addition, this section provides that the provisions of ch. 319, F.S. (title certificates), are applicable to this ch. 317, F.S., unless otherwise explicitly stated.

Section 19 amends s. 317.0005, F.S., to clarify that the section’s provisions apply to all of ch. 317, F.S.

Section 20 amends s. 317.0006, F.S., to clarify that the section’s provisions apply to all of ch. 317, F.S.

Section 21 amends s. 317.0007, F.S., to authorize the DHSMV to issue validation stickers to OHVs as proof of issuance of title. The DHSMV and county tax collectors are also authorized, upon application, to replace lost or destroyed validation stickers and charge the fees established in ss. 320.03(5), 320.031, and 320.04, F.S., for original and replacement stickers.

According to the DHSMV, it would purchase validation decals and oversee their issuance as proof of title, in addition to administering the corresponding revenue collection and distribution process. There have been 83,518 ATVs and OHVs titled since legislative inception in July of

2002, with 40,895 estimated to be titled annually. The DHSMV would incur estimated annual expenditures of \$7,708 for issuance of two decals per vehicle, in addition to mailing expenses to implement. An estimated \$61,342 in annual recurring revenue is based on collection of the \$1 Decal on Demand fee and \$.50 FRVIS fee per 40,895 estimated annual transactions. Tax collectors statewide would realize additional estimated annual revenue of \$122,685, based on collection of \$3 service and branch fee service charges for each vehicle transaction.

Section 22 repeals s. 317.0008(2), F.S., relating to the expedited issuance of duplicate certificates of title for off-highway vehicles. These provisions are moved to s. 317.0016, F.S.

Section 23 amends s. 317.0010, F.S., to clarify that the section's provisions apply to all of ch. 317, F.S. Specifically, except as otherwise provided, funds collected pursuant to ch. 317, F.S., shall be deposited into the Incidental Trust Fund of the Division of Forestry of the Department of Agriculture and Consumer Services.

Section 24 amends s. 317.0012, F.S., to clarify that the section's provisions apply to all of ch. 317, F.S.

Section 25 amends s. 317.0013, F.S., to clarify that the section's provisions apply to all of ch. 317, F.S.

Section 26 creates s. 317.0014, F.S., to provide procedures for the issuance of titles for off-highway vehicles and for the handling of liens and encumbrances. In addition, it allows the DHSMV to assign a number to each certificate of title and allows the data base record to serve as the duplicate record. These procedures are consistent with those found in s. 319.24, F.S., which applies to titles for motor vehicles and vessels.

This section also creates a second degree misdemeanor for failing, within 10 days after receipt of a demand by the DHSMV by certified mail, to return a certificate of title to the department as required, or, upon satisfaction of a lien, failing within 10 days after receipt of such demand to forward the appropriate document as required.

Section 27 creates s. 317.0015, F.S., to provide for the application of certain provisions of law currently applicable to the titling of motor vehicles and vessels to off-highway vehicles. They include: (1) Encumbrance of a co-owned off-highway vehicle; (2) Removal of liens from record; (3) Cancellation of certificates; (4) Notice of lien notation on certificate recording of lien; (5) Transfer of ownership by operation of law; and (6) Applications provided by electronic or telephonic means.

Section 28 creates s. 317.0016, F.S., to provide procedures for expedited service on title transfers, title issuances, duplicate titles, recordation of liens, and certificates of repossession for off-highway vehicles. The procedures are consistent with expedited services for motor vehicles and vessels as provided in s. 319.323, F.S., except that the bill provides \$3.50 of the fee is to be retained by the processing agency and the remaining \$3.50 is to be deposited in the Incidental Trust Fund of the Division of Forestry.

According to the DHSMV, this section will minimally increase revenues deposited into the Incidental Trust Fund, based upon application of the current percentage of non-OHVs having fast titles issued. Ten percent or 4,090 of 40,895 OHVs or ATVs would generate increased annual estimated revenues of \$14,315 each to the Incidental Trust Fund and statewide tax collectors, based on a 50 percent split of the \$7 transaction fee; however, this service is optional for customers.

Section 29 creates s. 317.0017, F.S., which creates the following third degree felony offenses:

- Altering or forging any certificate of title to an off-highway vehicle or any assignment thereof or any cancellation of any lien on an off-highway vehicle.
- Retaining or using such certificate, assignment, or cancellation knowing that it has been altered or forged.
- Procuring or attempting to procure a certificate of title to an off-highway vehicle, or pass or attempt to pass a certificate of title or any assignment thereof to an off-highway vehicle, knowing or having reason to believe that the off-highway vehicle has been stolen.
- Possessing, selling or offering for sale, concealing, or disposing of in this state an off-highway vehicle, or major component part thereof, on which any motor number or vehicle identification number affixed by the manufacturer or by a state agency has been destroyed, removed, covered, altered, or defaced, with knowledge of such destruction, removal, covering, alteration, or defacement, except as provided in s. 319.30(4), F.S.
- Using a false or fictitious name, giving a false or fictitious address, or making any false statement in any application or affidavit required under ch. 317, F.S., or in a bill of sale or sworn statement of ownership or otherwise committing a fraud in any application.
- Knowingly obtaining goods, services, credit, or money by means of an invalid, duplicate, fictitious, forged, counterfeit, stolen, or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of an off-highway vehicle.
- Knowingly obtaining goods, services, credit, or money by means of a certificate of title to an off-highway vehicle, which certificate is required by law to be surrendered to the department.
- Knowingly and with intent to defraud have in his or her possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, bill of sale, or other indicia of ownership of an off-highway vehicle or conspire to do any of the foregoing.
- Knowingly possess, manufacture, sell or exchange, offer to sell or exchange, supply in blank, or give away any counterfeit manufacturer's or state-assigned identification number plates or serial plates or any decal used for the purpose of identifying an off-

highway vehicle. It is specified that this offense applies to a person, firm, or corporation. An officer, agent, or employee of any person, firm, or corporation, or any person may not authorize, direct, aid in exchange, or give away, or conspire to authorize, direct, aid in exchange, or give away, such counterfeit manufacturer's or state-assigned identification number plates or serial plates or any decal. However, this offense does not apply to any approved replacement manufacturer's or state-assigned identification number plates or serial plates or any decal issued by the DHSMV or any state.

Any off-highway vehicle used in violation of this section constitutes contraband that may be seized by a law enforcement agency and that is subject to forfeiture proceedings pursuant to ss. 932.701-932.704. This section is not exclusive of any other penalties prescribed by any existing or future laws for the larceny or unauthorized taking of off-highway vehicles, but is supplementary thereto.

These provisions conform this section to prohibited actions concerning motor vehicles and vessels found in s. 319.33, F.S.

Section 30 creates s. 317.0018, F.S., to provide the following actions are prohibited, unless otherwise authorized in ch. 317, F.S.:

- Purporting to sell or transferring an off-highway vehicle without delivering to the purchaser or transferee of the vehicle a certificate of title to the vehicle duly assigned to the purchaser as provided in ch. 317, F.S.
- Operating or using in this state an off-highway vehicle for which a certificate of title is required without the certificate having been obtained in accordance ch. 317, F.S., or upon which the certificate of title has been canceled.
- Failing to surrender a certificate of title upon cancellation of the certificate by the department and notice thereof as prescribed in ch. 317, F.S.
- Failing to surrender the certificate of title to the department as provided in ch. 317, F.S., in the case of the destruction, dismantling, or change of an off-highway vehicle in such respect that it is not the off-highway vehicle described in the certificate of title.
- Violating any other provision of ch. 317, F.S., or a lawful rule adopted pursuant to ch. 317, F.S.

A violator shall be fined not more than \$500 or imprisoned for not more than 6 months, or both, for each offense, unless otherwise specified.

Section 31 amends s. 318.14(7), F.S., to require that all dispositions requiring a correction and returned to a county be resubmitted to the DHSMV within 10 days after notification of the error. This section further authorizes the DHSMV to modify the effective date of any resulting suspension or revocation action resulting from citation dispositions reported to the DHSMV more than 180 days after the disposition of the citation as if the citation had been reported in a timely manner.

Also, subsections (9) and (10) of s. 318.14, F.S., regarding certain citation procedures and proceedings, are amended to provide applicability only to persons who do not hold a CDL. Specifically, the amended section prohibits CDL holders who are cited for traffic infractions and certain traffic offenses from making an election to attend a basic driver improvement course or entering into a plea of nolo contendere. This change is necessary to conform to the federal regulation.

Section 32 amends s. 319.23, F.S., to require a licensed dealer to file with the DHSMV a notice of sale signed by the seller on motor vehicles or mobile homes taken in trade. The DHSMV will update its database for the respective title record to indicate a status of “sold.”

Section 33 amends s. 319.27, F.S., to correct an obsolete cross-reference.

Section 34 amends s. 320.06, F.S., allows a credit to those license registrants who are required by the DHSMV to replace a specialty license plate due to the plate being discontinued for lack of sales.

Section 35 amends s. 320.0601, F.S., to require long-term leased motor vehicles to be registered in the name and address of the lessee. According to the DHSMV, this provision will assist law enforcement with the registration that corresponds with the driver’s license and insurance identification, just as required for non-leased vehicles.

Section 36 amends s. 320.0605, F.S., to clarify that fleet vehicles are exempt from the requirement to carry the certificate of registration in each registered motor vehicle.

Section 37 amends s. 320.0843, F.S., to provide a method for distinguishing who is eligible to use a disabled person’s license plate when the vehicle is registered to more than one person. Specifically, the provision requires that when more than one registrant is listed on the registration for a wheelchair license plate, the eligible license plate applicant must be noted on the registration certificate.

Section 38 amends s. 320.131, F.S., to authorize the DHSMV to administer an electronic system for licensed motor vehicle dealers to use in issuing temporary plates. Dealers must enter into the system the appropriate vehicle and owner information upon the issuance of a temporary tag or temporary license plate within the DHSMV’s specified timeframe. Failure to comply is punishable by denial, suspension, or revocation of the motor vehicle dealer’s license. This system will assist law enforcement through immediate retrieval of temporary license plate information.

Section 39 amends s. 320.18, F.S., to authorize the DHSMV to cancel any vehicle or vessel registration, driver’s license, identification card, or fuel-use tax decal if the owner pays by a dishonored check. This change would allow the DHSMV to cancel all documents issued by the DHSMV if any document is paid for with a bounced check.

Section 40 amends s. 320.27(4), F.S., to require motor vehicle dealer principals to provide certification of completing 8 hours of continuing education prior to filing license renewal forms

with the DHSMV; such certification must be filed once every 2 years beginning in 2006. The continuing education must include 2 hours of legal or legislative issues, 1 hour of department issues and 5 hours of relevant motor vehicle industry topics. The continuing education must be provided by a licensed dealer school either in a classroom or by correspondence. Dealer schools must provide completion certificates to both the DHSMV and the customer and the schools are authorized to charge a fee for providing continuing education.

This section of the bill amends s. 320.27(6), F.S., to require motor vehicle dealers to maintain a record of all purchases, sales, exchange or receipt for sales, and temporary license plates for a period of 5 years. In addition, s. 320.27(9), F.S., is amended to provide grounds for the denial, suspension, or revocation of a dealer's license for willful failure to comply with the DHSMV's requirements for issuing temporary tags using the electronic system. To take action against a licensee, the DHSMV must prove sufficient frequency of violations to establish a pattern of wrongdoing by the licensee.

Section 41 amends s. 322.01, F.S., to delete references to "declared" or "actual" weight ratings from the definition of commercial motor vehicle, basing the weight classification of commercial motor vehicles specifically on the gross vehicle weight rating of 26,001 pounds or more. The bill also provides that the definition of "conviction" provided in 49 CFR part 383.5 applies to offenses committed in a commercial motor vehicle, which corresponds with the state definition. In addition, the bill amends the definition of "out-of-service order" to mean a prohibition issued by an authorized local, state, or federal government official.

Section 42 amends s. 322.05, F.S., to eliminate the Class D driver's license and delete references thereto.

Section 43 amends s. 322.051, F.S., to revise identification card application requirements to include a naturalization certificate issued by the United States Department of Homeland Security as sufficient proof to entitle an applicant to an identification card. The bill also clarifies that a U.S. passport, valid or invalid, is an acceptable proof of identity document. The DHSMV advised staff that, for purposes of proving identity to obtain a driver's license, the DHSMV will accept a passport that has expired. The bill further provides that the requirement of a full-face photograph or digital image of the identification cardholder may not be waived, regardless of the provisions of ch. 761, F.S.¹

Section 44 amends s. 322.07, F.S., to remove the requirements for a Class D driver's license.

Section 45 amends s. 322.08, F.S., to revise proof of identity for the purpose of obtaining a driver's license to include a naturalization certificate issued by the United States Department of Homeland Security as sufficient proof to entitle an applicant to a driver's license or temporary

¹ Chapter 761, F.S., provides that the state must not substantially burden a person's exercise of religion unless the state demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding.

permit. The bill also clarifies that a U.S. passport, valid or invalid, is an acceptable proof of identity document. DHSMV advised staff that, for purposes of proving identity to obtain a driver's license, the DHSMV will accept a passport that has expired. The section is amended to conform documentation requirements for driver's licenses and identification cards. This section also specifies what constitutes proof of nonimmigrant classification to entitle an applicant to an original driver's license or temporary permit for a period not to exceed the expiration date of the document presented or 2 years, whichever occurs first. Such proof includes:

1. A notice of hearing from an immigration court scheduling a hearing on any proceeding.
2. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
3. A notice of the approval of an application for adjustment of status issued by the United States Immigration and Naturalization Service.
4. Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Immigration and Naturalization Service.
5. A notice of action transferring any pending matter from another jurisdiction to this state issued by the United States Immigration and Naturalization Service.
6. An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to, asylum.

Section 46 amends s. 322.09, F.S., to authorize a secondary guardian to sign a driver's license application for a minor if the primary guardian dies before the minor reaches 18 years of age.

Section 47 amends s. 322.11, F.S., to require the DHSMV to provide 90 days notice to a minor before canceling the minor's license due to the death of the person who co-signed the initial driver's license application.

Section 48 amends s. 322.12, F.S., to remove the requirements for a Class D driver's license.

Section 49 amends s. 322.135, F.S., to require all tax collectors serving as agents for the DHSMV to provide all services available from a state facility as deemed appropriate by the DHSMV. In addition, the section is amended to authorize the tax collectors serving as agents for the DHSMV to retain the entire \$5.25 service fee. According to the DHSMV, this change will result in an approximate \$1,150,000 revenue loss to the Highway Safety Operating Trust Fund.

Section 322.135(9), F.S., is added to require the electronic transfer of driver's license fees and charges to the DHSMV from the county tax collector within 5 business days from the close of the business day in which the county officer received the funds. This provision is similar to provisions already found in ss. 319.32, 320.03, and 328.73, F.S., which mandate a 5-day transfer period for fees collected for motor vehicle titles, motor vehicle registration, and vessel registration certificates.

Section 50 amends s. 322.142, F.S., to authorize the DHSMV to issue a color photographic or digital imaged driver's license to qualified applicants. The bill provides that the requirement of a fullface photograph or digital image of the licensee may not be waived, regardless of the provisions of ch. 761, F.S.²

² *Id.*

Section 51 amends s. 322.161, F.S., to remove the requirements for a Class D driver's license.

Section 52 amends s. 322.17, F.S., to correct a cross-reference in s. 322.08, F.S., which will change as a result of the bill.

Section 53 amends s. 322.18, F.S., to correct a cross-reference in s. 322.08, F.S., which will change as a result of the bill. In addition, Florida's participation in the federal program to conduct security checks on all hazmat applicants is mandatory, which requires security checks be repeated at no more than five-year intervals. The bill provides that a CDL with a hazardous-materials endorsement shall expire at midnight on the licensee's birthday that next occurs four years after the month of expiration of the license being issued or renewed, which will be consistent with the requirements of federal law.

Section 54 is a conforming provision and amends s. 322.19, F.S., to correct a cross-reference in s. 322.08, F.S., which will change as a result of the bill.

Section 55 amends s. 322.21, F.S., to remove the requirements for a Class D driver's license. This section of the bill also creates s. 322.21(1)(f), F.S., to provide a hazardous-materials endorsement fee must be set by the DHSMV by rule, as required by s. 322.57(1)(d), F.S., and must reflect the cost of the state and federal fingerprint check, and the cost to the DHSMV for issuing the license; the fee must not exceed \$100. This fee must be deposited into the Highway Safety Operating Trust Fund. According to the DHSMV, the portion of the fee required to cover the criminal history and fingerprint checks would be forwarded to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI).

According to the DHSMV, this amendment is required to authorize the deposit of the hazardous-material endorsement fee into the Highway Safety Operating Trust Fund and to allow the DHSMV to set the fee by rule, policy, or procedure. The DHSMV estimates a \$91 fee will be established, which consists of an \$81 cost for conducting criminal history checks with the FDLE, the FBI, and the Transportation Safety Administration (TSA) and a \$10 administrative cost. Based on a 40,000 annual population, it is estimated this bill will generate \$3,640,000, of which \$400,000 will be retained in the Highway Safety Operating Trust Fund to recover administrative costs and \$3,240,000 will be distributed to the FDLE, the FBI, and the TSA for conducting criminal history checks.

Section 56 amends s. 322.212, F.S., to provide that any person giving false information when applying for a commercial driver's license will be disqualified from operating a commercial motor vehicle for 60 days. This change is a federal regulation, which the states are required to implement or be penalized.

Section 57 amends s. 322.22, F.S., to authorize the DHSMV to cancel an identification card, driver's license, vehicle or vessel registration, or fuel-use decal if the licensee fails to pay the correct fee or pays by a dishonored check, regardless of which one he or she is paying for. This change would allow the DHSMV to cancel all documents issued by the DHSMV if any document is paid for with a dishonored check.

Section 58 amends s. 322.251, F.S., to remove the requirements for a Class D driver's license.

Section 59 amends s. 322.30, F.S., to remove the requirements for a Class D driver's license.

Section 60 amends s. 322.53, F.S., to clarify that military personnel do not need a CDL to drive vehicles for military purposes. Currently, Florida law exempts military personnel driving military vehicles from CDL requirements; however, federal regulations require exemption of military personnel from CDL requirements when driving vehicles operated for military purposes. The bill also removes the specialty licensing and endorsement requirements for emergency and farm CDL exemptions. Also, this section is amended to remove the requirements for a Class D driver's license.

Section 61 amends s. 322.54, F.S., to remove the requirement that a Class C driver's license is required to operate a motor vehicle combination having a gross vehicle weight rating, a declared weight, or an actual weight of 26,001 pounds or more. The bill amends Florida law to mirror federal law so that a Class C license is required only for those drivers who must have a commercial driver's license with a special endorsement. Also, this section is amended to remove the requirements for a Class D driver's license.

Section 62 amends s. 322.57, F.S., to provide a new endorsement category implementing changes to the FMCSA regulations, which require school bus drivers to test their knowledge and driving skills in a school bus and hold a corresponding CDL endorsement for that type of vehicle. In addition, the bill removes obsolete language in this section regarding the weight restriction of vehicles operated by Class C licensees.

Section 63 amends s. 322.58, F.S., to remove the requirements for a Class D driver's license and changes those requirements to a Class E driver's license.

Section 64 amends s. 322.61, F.S., to remove the requirements for a Class D driver's license. Also, this section is amended to mirror the FMCSA regulations. Specifically, the bill provides for disqualification to operate a commercial motor vehicle for 60 or 120 days, if the driver commits the listed violations while operating a non-commercial motor vehicle and the violations result in suspension, revocation, or cancellation of the license holder's driving privilege. In addition, the bill adds the following violations that may be considered for the 60 or 120-day disqualification purposes:

- Driving a commercial motor vehicle without obtaining a commercial driver's license.
- Driving a commercial motor vehicle without a commercial driver's license in possession.
- Driving a commercial motor vehicle without the proper class of commercial driver's license or without the proper endorsements.

In addition, the bill adds the following violations that may be considered for the purposes of a one-year disqualification:

- Driving a commercial motor vehicle while the commercial driver's license is suspended, revoked, cancelled or while the driver is disqualified from driving a commercial motor vehicle.
- Causing a fatality through the negligent operation of a commercial motor vehicle.

Section 65 amends s. 322.63, F.S., to clarify provisions concerning alcohol or drug testing for commercial motor vehicle operators. Under the bill, blood and breath tests are to be used to measure the concentration of alcohol in a person's blood, while urine tests are to be used to determine the presence of certain chemical substances or of controlled substances. Further, DHSMV is given the flexibility to place the notice of implied consent anywhere on the front or back of the commercial driver's license.

Section 66 amends s. 322.64, F.S., to implement changes to the FMCSA regulations which require states to apply similar noncommercial motor vehicle traffic violations as disqualifying offenses, and which adds new disqualifying offenses. Basically, if a commercial driver is arrested with an unlawful blood-alcohol level or refuses to submit to a breath, urine, or blood test while operating a commercial motor vehicle, the driver is disqualified from operating such vehicle and will only be issued a 10-day temporary permit for noncommercial vehicles. Also, s. 322.634(14), F.S., is reenacted.

Section 67 amends s. 713.78, F.S., to provide that a registered owner may dispute a wrecker operator's lien, if the DHSMV's records were marked sold prior to the date of the tow. The section is further amended to provide that the lien dispute resolution process in subsection (13) does not apply to a leased vehicle registered in the name of the lessor. Specifically, the section provides a wrecker lien on a leased vehicle does not prevent the lessor (the leasing company) from registering other vehicles.

Section 68 amends s. 843.16, F.S., to prohibit the transport of radio receiving equipment assigned to fire and rescue personnel, except in emergency or crime watch vehicles of law enforcement officers or fire rescue personnel. This section also amends the definition of "emergency vehicle" to provide that a fire chief can designate any motor vehicle as an emergency vehicle if assigned the use of frequencies assigned to the local government's fire department. The bill changes the penalty for violating any provision of the section from a second degree misdemeanor to a first degree misdemeanor.

Section 69 provides that the act will take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill creates s. 317.0016, F.S., to provide for a fee of \$7 for persons who choose expedited services of all title transactions for off-highway vehicles. The DHSMV estimates this would generate approximately \$28,630 annually, half (\$14,315) of which would be deposited in the DACS Incidental Trust Fund and the remainder retained by the processing agency.

B. Private Sector Impact:

The bill creates a penalty of not more than \$10,000 for employers who knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle in violation of federal, state, or local law or rule pertaining to railroad-highway grade crossings. This could have an indeterminate negative fiscal impact on the private sector employers of commercial drivers.

Persons requesting an expedited title for an off-highway vehicle would pay a \$7.00 service fee. Also, a person titling an off-highway vehicle would pay fees established per ss. 320.03(5) and 320.04, F.S.

Owners of lease vehicles, usually a leasing company, will likely see an indeterminate positive fiscal impact from provisions of the bill releasing them from paying parking tickets.

There will be an indeterminate negative fiscal impact to motor vehicle dealers associated with the cost of completing continuing education requirements prior to renewing their dealer licenses.

The bill requires the DHSMV to set the fee for a hazardous materials commercial driver's license endorsement at an amount (up to \$100) that reflects the cost of issuing the license and the costs of required criminal history and fingerprint checks. Applicants for such an endorsement will be required to pay the fee, which the DHSMV estimates to be \$91.00.

In addition, the bill requires more frequent renewals of hazardous materials endorsements. Commercial operators requiring the endorsement will be required to obtain a renewal every four years instead of six.

C. Government Sector Impact:

The DHSMV would require 2,630 hours of contracted programming modifications to the Motor Vehicle License Software Systems and 1,290 hours of contracted programming

modifications to the Florida Driver License Information Systems. However, the DHSMV will absorb programming costs within current budget.

Section 21 of the bill authorizes the DHSMV to issue validation stickers to OHVs as proof of title. The DHSMV and tax collectors are also authorized, upon application, to replace lost or stolen validation stickers and charge the fees established in ss. 320.03(5), and 320.04, F.S., for original and replacement stickers. According to the DHSMV, the estimated implementation of this section will generate \$122,685 annually for the county tax collectors, based on processing 40,895 transactions annually.

Section 28 of the bill provides for tax collectors, or the issuing agency, to retain \$3.50 of the \$7.00 expedited title fee for off road vehicles. The DHSMV estimates this will generate \$14,315 assuming 4,090 expedited title transactions being processed annually.

According to the DHSMV, by implementing section 49 of the bill, tax collector revenues will increase by \$1,150,000 on an annual basis based on redirecting \$1 of the service fee authorized in s. 322.135, F.S., from the Highway Safety Operating Trust Fund. There will be a corresponding decrease to the Highway Safety Operating Trust Fund.

The bill streamlines the time period and manner in which county tax collectors are to transfer driver's license fees and charges to the DHSMV. Under the bill, applicable funds must be transferred electronically to the DHSMV within 5 business days. This will enable the DHSMV to distribute funds to various payees more quickly, as well as earn more interest income from the earlier investment of those funds. Tax collectors reportedly have the current capability to comply with this provision.

The DHSMV estimates a \$91 fee will be established, which consists of an \$81 cost for conducting criminal history checks with the FDLE, the FBI, and the TSA and a \$10 administrative cost. Based on a 40,000 annual population, it is estimated this bill will generate \$3,640,000 of which \$400,000 will be retained in the Highway Safety Operating Trust Fund to recover administrative costs and \$3,240,000 will be distributed to the FDLE, the FBI, and the TSA for conducting criminal history checks.

The Department of Transportation (FDOT) has been advised by the U.S.D.O.T. Federal Motor Carrier Safety Administration that the commercial driver's license provisions contained in SB 1344 are mandatory. Should the state fail to adopt these mandatory standards by September 30, 2005, the State of Florida is subject to withholding of an amount equal to five percent of the Federal-aid funds required to be apportioned to any state, as well as its MCSAP grant funds.

The FDOT has been advised that in the first year, approximately \$50 million in apportioned Federal-aid funds, and approximately \$3.5 million in MCSAP funds could be withheld. After the second and subsequent year(s) of noncompliance, the amount of Federal-aid funds withholding increases to ten percent, along with the MCSAP funds.

The Criminal Justice Impact Conference, which provides the final, official estimate on the prison bed impact of bills that create or amend felony offenses, has not yet met to

consider the impact of the bill. However, because the third degree felonies created by the bill are unranked, they receive a default ranking to level 1, which means that it is unlikely that a person who commits any of these offenses will receive a prison sentence, absent the presence of other factors, such as additional offenses and prior offenses. Therefore, staff anticipates that the bill will probably have a minimal or insignificant impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 892432 by Transportation:

Amends s. 316.302, F.S., to reference the most recent version of the Code of Federal Regulations relating to commercial vehicles, which was updated in 2004. (WITH TITLE AMENDMENT)

Barcode 260922 by Transportation:

Authorizes DHSMV to adopt the necessary rules to administer the provisions in the specified sections of the bill.

Barcode 100140 by Transportation:

Amends s. 322.2615, F.S., to include unlawful breath alcohol level in the provisions relating to the administrative suspension of driver's licenses. Also, allows a formal review hearing to be conducted upon a review of documents relating to the refusal to take a urine test. (WITH TITLE AMENDMENT)

Barcode 312938 by Transportation:

Amends s. 322.27, F.S., to correct an erroneous reference. In addition, the bill creates a new point value for violations of s. 316.0775, F.S.; therefore, the clarifying amendment provides a conviction under s. 316.0775(2), F.S., regarding a violation of the unauthorized use of a traffic signal preemption device, is assigned a four point value. (WITH TITLE AMENDMENT)

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