

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB1697 (FORMERLY PCB TR 05-02) Highway Safety & Motor Vehicles  
**SPONSOR(S):** Committee on Transportation and Rep. Evers  
**TIED PCBS:** **IDEN./SIM. PCBS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	14 Y, 0 N	Thompson	Miller
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) _____			
3) _____			
4) _____			
5) _____			

**SUMMARY ANALYSIS**

HB 1697 contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of major provisions in the bill include:

- Off-highway vehicle (OHV) titling provisions are amended to mirror motor vehicle, mobile home and vessel titling provisions; establishes penalties for cases of fraud; and, provides for a title validation sticker to be placed on OHVs for the purpose of proving that the OHV is titled;
- Commercial motor vehicle licensing and license disqualification provisions are amended to comply with regulations of the Federal Motor Carrier Safety Administration (FMCSA);
- Pursuant to the federal Patriot Act, fees are provided to pay for more extensive background checks of applicants for hazardous materials endorsements on a commercial driver's licenses;
- Expands the authority of 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;
- Provides that 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.
- Provides that volunteer surgeons and licensed health professionals appointed by the Director of Florida Highway Patrol and working under the medical direction of a Florida Highway Patrol Troop Surgeon, are considered employees of the state for sovereign immunity purposes;
- Provides for interlocal agreements between municipalities and counties to transfer traffic regulatory authority within the municipality to the county;
- Authorizes DHSMV to withhold registration when a dealer has not been paid for tag and title fees by the vehicle purchaser.

Many of the bill's provisions are technical or administrative in nature and will have no fiscal impacts. Some of the provisions are expected to have a fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—HB 1697 :

- Expands the OHV titling program and gives DHSMV more enforcement authority;
- Expands the authority of traffic crash investigators with respect to removing abandoned and crashed vehicles;
- Imposes new restrictions on the operation of commercial motor vehicles, and imposes new criteria for commercial drivers' license disqualification;
- Expands the authority of DHSMV to expend funds for promotional and educational campaigns;
- Requires DHSMV to create an electronic temporary license tag system to be used by motor vehicle dealers;
- Expands the authority of DHSMV to place stops on its records for customers who pay by a dishonored check;
- Authorizes the DHSMV to withhold motor vehicle registrations when the owner or co-owner fails to pay a dealer for registration fees.

Ensure Lower Taxes—HB 1697:

- Increases fees for a commercial driver's license hazardous materials endorsements;
- Requires an endorsement to operate a school bus, for which a fee is required.

Safeguard Individual Liberty—HB 1697:

- Imposes new restrictions on motor vehicles crossing railroad-highway grades;
- Requires commercial drivers with a hazardous materials endorsement to renew the endorsement more frequently;
- Requires more intensive criminal history and fingerprint checks for persons applying for a hazardous materials endorsement;
- Requires school bus drivers to obtain a special commercial driver's license endorsement;
- Provides new prohibited acts that may result in disqualification for a commercial driver's license;
- Requires motor vehicle dealers to maintain records for a certain period of time;
- Requires motor vehicle dealers to use an electronic temporary tag system to be created by DHSMV;
- Imposes new restrictions on audible distance of radios, mechanical sound-making devices or instruments in vehicles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Off-Highway Vehicles**

Florida statutes define off-highway vehicles (OHVs) as any all-terrain vehicle (ATV) or off-highway motorcycle used off-road in this state for recreational purposes, and that is not licensed as a motor vehicle for use on the roads. This definition does not expressly include two-rider ATV's.

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., which provides for titling of OHVs in a manner differing significantly from the method of titling motor vehicles, vessels and mobile homes. The new chapter does not address the handling of liens, transfers of ownership, and penalties for fraud. The chapter also prohibits operation of OHVs on public land without a title. Unlike a motor vehicle that is

registered annually by the owner who is required to carry proof of registration, OHVs are not registered and don't 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 that the OHV is titled.

HB 1697 amends ss. 261.03 and 316.2074, F.S., to change the definition of OHV to expressly include two-rider ATVs. A two rider ATV is defined in the bill as any ATV that is specifically designed by the manufacturer for a single rider and one passenger. The changes make current statutory provisions relating to ATVs effective with respect to two-rider ATV's.

In addition, the bill changes ch. 317, F.S., to mirror current titling provisions for vehicles, vessels, and mobile homes, including the handling of liens, transfers of ownership, and enforcement of fraud offenses. The bill creates sections governing the issuance of titles in duplicate, delivery of title, and liens and encumbrances. All current statutory provisions dealing with encumbrances of co-owned vehicles, removal of liens from DHSMV records, cancellation of title certificates, notice and recording of liens, transfer of ownership by operation of law, and electronic or telephonic transactions for motor vehicles and mobile homes are made to apply to OHVs. In addition, the bill provides a process for obtaining expedited titles for OHVs.

The bill prohibits fraudulent and larcenous offenses involving OHV vehicle identification numbers, applications for title, certificates of title, and other documents. These offenses are punishable as third-degree felonies. The bill also imposes a fine of up to \$500 for failure to deliver title when ownership of an OHV is transferred.

In addition, the bill authorizes DSHMV to issue title validation decals to be placed on the OHV as proof that a title has been issued. DHSMV or a local tax collector may replace lost or stolen decals and may charge the fees established for motor vehicle registration validation decal issuance.

## **Traffic Control**

### Traffic Signal Preemption System

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. Recently, such devices have become available for prices below \$300, 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.

The bill amends ss. 316.003 and 316.0775, 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." The term includes "any electronic transmission device capable of changing, altering, or otherwise interfering with the normal operation of any official traffic control signal."

The bill provides that a person may not, without lawful authority, possess or use any traffic signal preemption device as defined under s. 316.003, F.S. A person who violates this provision commits a moving violation, punishable as provided in ch. 318, F.S., and will also have four points assessed against his or her driver's license as set forth in s. 322.27, F.S.

### Vehicles Passing on the Left

Current law requires vehicles turning left to yield the right of way to vehicles approaching from the opposite direction that are in an intersection or that are so near as to constitute an immediate hazard.

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.

The bill amends s. 316.122, F.S., to clarify that a vehicle turning left must yield the right of way to a vehicle that is lawfully passing on the left of the turning vehicle.

#### Insufficient Clearance at Railroad Crossings

Federal regulations require states to provide for the disqualification of a person's commercial driver's license upon conviction of violations of certain railroad-highway grade crossing safety regulations. Among these violations are failure to have sufficient space to drive completely through the crossing without stopping and failure to negotiate a crossing because of insufficient undercarriage clearance. While current Florida law prohibits most of the acts that require 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 DHSMV, compliance by the states with these regulations is mandatory, with consequences for non-compliance ranging from loss of federal funds to decertification of a state to issue commercial drivers licenses.

The bill creates ss. 316.1576 and 316.1577, F.S., and prohibits any person from driving any vehicle through a railroad-highway grade crossing which does not have sufficient space to drive completely through the crossing without stopping. The bill also prohibits any person from driving any vehicle through a railroad-highway grade crossing without sufficient undercarriage clearance to drive completely through the crossing without stopping. Enactment of these provisions provides a basis for DHSMV to disqualify commercial driver's licenses as required by federal law, and brings Florida into compliance with federal law.

The bill also makes 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 violation of this provision is subject to a civil penalty of not more than \$10,000.

#### Minimum Speed Limit Increase on Highway

Currently the minimum speed limit on highways that comprise a part of the National System of Interstate and Defense Highways that have not fewer than four lanes is 40 miles per hour. The bill amends s. 316.183, F.S. to raise the minimum speed limit on the National System of Interstate and Defense Highways that have not fewer than four lanes to 50 miles per hour.

#### Motorcycle Regulations

Current law requires any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, to be equipped with footrests for passengers. No person is to operate any motorcycle with handlebars more than 15 inches in height above the portion of the seat occupied by the operator. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in Chapter 318, F.S.

The bill amends s. 316.2095, F.S., to require handholds for passengers. The bill also amends the motorcycle handlebar height requirements to eliminate the 15 inch restriction and instead to prohibit handlebars which are higher than the top of the shoulders of the person operating the motorcycle.

#### Vehicle Audio Regulations

Currently it is unlawful for any person operating a motor vehicle to amplify the sound produced by a radio, tape player, or other soundmaking device so that the sound is:

- Plainly audible at a distance of 100 feet or more from the motor vehicle or,
- Louder than necessary for the convenient hearing by persons in the vehicle in areas adjoining churches, schools, or hospitals.

The Department of Highway Safety and Motor Vehicles is to promulgate rules defining "plainly audible" and establish standards regarding how sound should be measured by law enforcement personnel. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

The bill amends s. 316.3045, F.S., to change the audible distance standard for the operation of radios or other mechanical soundmaking devices from 100 feet or more to 25 feet or more from the vehicle.

#### Jurisdiction to Control Traffic

Under current law chartered municipalities have original jurisdiction over all streets and highways located within their boundaries, except state roads, and may place and maintain traffic control devices on all streets and highways under their jurisdiction to regulate, warn, or guide traffic. A municipality may exercise traffic control jurisdiction over private roads pursuant to a written agreement between the municipality and the private owner.

The bill amends s. 316.006, F.S., to provide that a municipality may, by interlocal agreement with a county, agree to transfer traffic regulatory authority over areas within the municipality to the county.

#### **Driver's Licenses and Identification Cards**

##### Placement of Consent Warning

By applying for a driver's license and by accepting and using a driver's license, the holder 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. Statutes provide a warning of this consent provision must be printed above the signature line on each driver's license. Currently, such warnings are printed below the signature line on driver's licenses.

The bill amends s. 316.1932, F.S., to authorize DHSMV to place this warning in a position on the license other than above the signature line.

##### Identity Documents

Under current law, a person must establish his or her identity to be eligible for a driver's license or an identification card by providing one of the following documents:

- A driver's license record or identification card record from another jurisdiction with documentation requirements as stringent as those in Florida;
- A certified copy of a United States birth certificate;
- A valid United States passport;
- An alien registration receipt card (green card);
- An employment authorization card issued by the United States Department of Justice; or
- Proof of nonimmigrant classification provided by the United States Department of Justice.

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

The bill amends s. 322.051, F.S., to provide that DHSMV may accept as proof of identity for driver's licenses and Florida identification cards, a United States passport, whether expired or not, and may accept a naturalization certificate issued by the United States Department of Justice. In addition, the bill amends s. 322.08, F.S., to provide which documents may be acceptable as proof of nonimmigrant classification for the purposes of proving identity for a driver's license, and limits the period of validity of such driver's licenses to two years or the period such documents authorize a person's presence in the United States, whichever period is shorter.

#### Full-Face Image Required

Currently, a driver's license issued by DHSMV must bear a full-face photograph or digital image of the licensee. 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. DHSMV prevailed in this litigation and was not required to issue a driver's license that did not bear a full-face image of the applicant.

The bill amends s. 322.142, F.S., to require that a full-face photograph or digital image of the cardholder must appear on all state issued identification cards, in addition to all drivers' licenses, and specifies that the requirement for a full-face image may not be waived, even on religious grounds.

#### Tax Collector Driver License Services and Transfer of Funds

Currently, some tax collectors act as agents of DHSMV for the purposes of issuing driver's licenses and other driver's licensing services. An additional \$5.25 convenience fee is collected by the tax collectors to cover the costs of providing these services. Of that amount, \$1 is transferred to DHSMV and is used to meet technology requirements of the driver's licensing system. Tax collectors also act as agents of DHSMV for the purposes of titling and registering motor vehicles. Funds collected by the tax collectors related to titling and registration of motor vehicles is transferred within five working days to the state treasury by means of electronic funds transfer. Although no specific authority is provided in the law for tax collectors to transfer driver's licensing proceeds in this manner, according to DHSMV, it is the current practice.

The bill amends s. 322.135, F.S., to require county officers in Florida, acting as agents of DHSMV for the purposes of driver's licensing services, to transfer funds collected for those services to the state treasury within five working days by means of electronic funds transfer. In addition, the bill provides that tax collectors keep the entire \$5.25 convenience fee. According to DHSMV, the new driver's license vendor contract provides for entire replacement of the statewide driver's license system, and provides for a complete technology "refresh" after five years. Due to these technology upgrades, the \$1 portion of the convenience fee is no longer required for technology maintenance.

#### Application by Minors

Currently, the application of any person under the age of 18 for a driver's license must be signed and verified by a person authorized to administer oaths by the father, mother, or guardian.

The bill amends s. 322.11, F.S., to provide that a secondary guardian may sign the application if the primary guardian dies before the minor reaches 18 years of age. The bill also requires the DHSMV to provide 90 days notice to a minor before canceling the minor's license due to the death or withdrawal of consent by the person who co-signed the initial driver's license application.

## Administrative Suspension of Driver's License

Section 322.2615, F.S., mandates the administrative suspension of the license of a person arrested for a DUI violation under s. 316.193, F.S., when the person has a breath or blood alcohol level of .08 or higher or if the person refuses to submit to a breath, urine or blood test. The suspension is effective immediately and the arresting officer takes possession of the driver's license. The officer will issue the driver a temporary permit valid for 10 days from the date of arrest, provided the driver is otherwise eligible, to allow the driver to request an agency hearing on the suspension.

In some provisions of this section references to the breath alcohol level are not included and only the blood alcohol level is mentioned. The bill amends this section to add appropriate references to breath alcohol level. During the agency hearing the section specifically allows documents related to refusal to take a breath or blood test to be reviewed, but refusal to take a urine test is not included. The bill adds language that will allow documents relating to refusal to take a urine test to be reviewed by the agency hearing officer.

## Voluntary Contributions

Currently the law requires applications for driver's license to include language permitting voluntary contributions to certain funds which includes a voluntary contribution check-off of \$2 for the Hearing Research Institute, Incorporated, for the purpose of infant hearing screening in Florida.

The bill amends s. 322.08, F.S., allowing funds collected from the voluntary contribution of \$2 per applicant to the Hearing Research Institute, Incorporated, to be used for hearing screening for all age groups.

## Correct Cross References

The bill amends ss. 322.17, 322.18 and 322.19, F.S., to correct cross references related to application for driver licenses and amends 322.27 to correct a cross reference to the Florida litter law.

## **Commercial Driver's Licenses**

### Gross Vehicle Weight Rating

Currently under Florida driver's license laws, any vehicle with a declared and actual weight of 26,001 pounds or more is classified as a commercial motor vehicle. Further, the definition of "conviction" provided in law is not consistent with federal regulations, and the term "out-of-service order" in Florida law presently does not provide which agencies are authorized to issue such an order.

The bill amends ss. 322.01 and 322.54, F.S., to delete references to "declared" and "actual" weight ratings for commercial motor vehicles, and bases the weight classification of commercial motor vehicle specifically on the gross vehicle weight rating of 26,001 pounds or more. The bill also adds the definition of conviction as provided in federal regulation 49 C.F.R. Part 383.5 to coincide with the state definition. In addition, the bill amends the definition of "out-of-service order" to mean a prohibition issued by local, state or federal government officials.

### 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 it authorizes the licensee to operate a vehicle with a gross, declared, or actual weight of 8,000 pounds up to 26,000 pounds. According to DHSMV, this license class replaced the former chauffeur's license. 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 licenses are subject to an additional 20 questions on the written examination. No driving examination is administered to applicants for 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 DHSMV, confusion persists among the public regarding which drivers are required to have a Class D driver's license.

The bill amends ss. 316.1936, 322.05, 322.07, 322.12, 322.16, 322.251, 322.30, and 322.58, F.S., eliminating the Class D driver's license, and eliminating the requirement that emergency drivers and farmers must obtain a Class D license. DHSMV indicates that it would implement the provisions of the bill by adding Class D materials to the standard driver's licensing handbook, and ask questions on the standard written examination that had been only asked of applicants for a Class D license.

#### Expiration of Hazmat Endorsement

Currently, a person applying for an original issuance driver's license will be issued a driver's license that is 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.

The bill amends s. 322.18, F.S., to change the period of validity for commercial motor vehicle licenses bearing a hazardous materials endorsement to four years so that it is consistent with the requirements of federal law.

#### Hazmat Endorsement Background Checks

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.

The bill amends s. 322.21, F.S., to require DHSMV to set the hazardous endorsement fee to reflect the cost of the required criminal history checks, including the costs of the state and federal fingerprint checks, and the cost of production and issuance of the license by DHSMV. According to 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 and the Federal Bureau of Investigation.

#### 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 CDL. Among the exemptions are military personnel and drivers of authorized emergency vehicles and farmers transporting farm supplies or farm machinery within 150 miles of their farm, or transporting agricultural products to or from the first place of storage or processing or directly to or from market, within 150 miles of their farm. However, drivers of authorized emergency vehicles and farmers meeting this qualification must obtain a Class D driver's license endorsed to authorize the operation of the particular type of vehicle he or she is operating.

The bill amends s. 322.53, F.S., to clarify that military personnel are exempt from this requirement. The bill also removes the specialty licensing and endorsement requirements for emergency and farm CDL exemptions.



## No Class C License Required to Operate Certain Vehicle Combinations

Current law 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 commercial driver's license 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 commercial driver's license is required.

The bill amends s. 322.54, F.S., 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.

## School Bus Driver Endorsement

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 a mandatory requirement for 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.

The bill amends s. 322.57, F.S., to create a new endorsement category for school bus drivers implementing the changes in the Federal Motor Carrier Safety Administration regulations.

## Federal Motor Carrier Safety Administration Regulations – Disqualifications

Current law establishes a number of criteria for the disqualification of a commercial motor vehicle operator to operate commercial motor vehicles. 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 Federal Motor Carrier Safety Administration 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 allude 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 blood alcohol content (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 a BAC test while driving a commercial motor vehicle.

The bill amends s. 322.61, F.S., to mirror Federal Motor Carrier Safety Administration 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; or
- 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; or
- Causing a fatality through the negligent operation of a commercial motor vehicle.

Currently commercial motor vehicle drivers are not disqualified from operating a commercial motor vehicle if caught providing false information when applying for their commercial driver license. The bill amends s. 322.212, F.S., to provide that any person giving false information when applying for a commercial driver license will be disqualified from operating a commercial motor vehicle for 60 days. These violations and specifications mirror requirements provided by Federal Motor Carrier Safety Administration regulations, which the states are required to implement. Failure to comply can result in consequences ranging from loss of federal funds to decertification of the state to issue commercial driver's licenses.

#### Implied Consent/Urine Tests

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 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, thereby eliminating the requirement that urine tests must be approved by FDLE. However, in doing so, the Legislature did not address parallel provisions concerning alcohol or drug testing for commercial motor vehicle operators.

The bill amends s. 322.63, F.S., to apply this clarification to provisions concerning alcohol or drug testing for commercial motor vehicle operators. Under the bill, the law specifies that 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.

### Code of Federal Regulations Update

The bill amends s. 316.302(1)(b), F.S., to update the reference to the current safety regulations contained in the Code of Federal Regulations. DOT's Motor Carrier Compliance Office is charged with enforcement of laws relating to the operation of commercial motor vehicles within the state, including those safety regulations applicable to owners or drivers engaged in intrastate commerce. The proposed change to this section, would authorize DOT to enforce the most current (October 2004) safety regulations applicable to these owners or drivers.

### **Traffic Regulatory Authority**

#### Florida Highway Patrol Community Service Officers

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 FHP community service officers includes the removal of abandoned vehicles that obstruct roadways, the law authorizes only sworn law enforcement officers to provide for the removal of such vehicles.

The bill amends s. 316.194, F.S., to authorize FHP's traffic crash investigation officers (also called community service officers) to move a vehicle unlawfully obstructing the roadway, or to order the person in control of the vehicle to do so. In addition, these non-sworn personnel are authorized to order the towing of such vehicles.

### **Motor Vehicle Licenses and Registrations**

#### Registration of Leased Vehicles

Current law 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. The law provides that the owner of a motor vehicle with a wrecker operator's lien may not be issued a license plate or revalidation sticker for any motor vehicle. In cases where a wrecker operator tows a leased motor vehicle that has been registered in the name of the leasing company, and the fees have not been paid by the lessee, the leasing company or its customers are prohibited from obtaining a license plate or revalidation sticker for their motor vehicles.

In addition, the law provides that the owner of a motor vehicle is responsible for parking violations unless that owner can furnish evidence that 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 that is registered to the lessee, the owner is responsible for the parking violation unless it furnishes evidence that the vehicle was leased at the time.

The bill amends s. 320.0601, F.S., to require all motor vehicles subject to a long-term lease to be registered in the name of the lessee. In addition, the bill clarifies that a wrecker operator's lien against a leased motor vehicle registered to the lessor will not prevent the issuance of a license plate or revalidation sticker to the lessor. The bill also provides that the owner of a leased vehicle is not responsible for parking violations if the vehicle is registered to the lessee, and that in such cases, the owner need not furnish evidence to shift responsibility to the lessee.

### Fleet Vehicle Registrations

A motor vehicle operator is required 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 DHSMV. These requirements do not apply to vehicles that are registered as part of the fleet program, that bear fleet license plates, and that have the name, logo of the company and unit number displayed so that 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 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.

The bill 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 vehicle.

### Withholding of Registration

Section 320.18, F.S., authorizes the DHSMV to withhold the registration of any motor vehicle or mobile home if the owner failed to register the vehicle in a prior registration period. The DHSMV may cancel any license plate or fuel-use tax decal if the owner pays for the license plate, fuel-use tax decal, or any tax liability or penalty by a dishonored check, or if the vehicle owner or motor carrier has failed to pay a penalty for a truck weight or safety violation.

The bill amends s. 320.02, F.S., to authorize DHSMV to withhold registration of any motor vehicle if the owner's name is submitted by a licensed motor vehicle dealer to the department for failure to pay for a previous registration. The dealer must maintain evidence that the owner acknowledged the dealer's authority to submit the list to the department if they failed to pay, and note the amount for which the owner would be responsible. This subsection would not affect the issuance of a title to a motor vehicle. The motor vehicle owner may dispute the claim that money is owed to a dealer for registration fees by submitting documentary proof to the department that the registration fees have been paid to the dealer. If the registered owner provides the required proof of payment, the DHSMV must remove the motor vehicle owner's name from the list and allow the issuance of a license plate or revalidation sticker to be issued. The bill also provides that DHSMV may deny, suspend, or revoke any motor vehicle dealer license for failure to maintain evidence of the required notification to the owner regarding registration or titling fees.

### License Plates for Persons with Disabilities

Under current law, 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

that 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.

The bill amends s. 320.0843, F.S., to require that a registration certificate indicating two owners of a vehicle that has a license plate for persons with disabilities must note on the registration which owner is eligible to have the license plate.

#### Electronic Temporary License Tags

Currently, motor vehicle dealers issue certain car buyers a temporary paper license plate that is valid for 30 days. Dealers also use temporary tags when transporting vehicles for off-site sales. According to DHSMV this paper system is outdated, and lags in time between issuance of paper tags and the reporting of owner information to DHSMV cause difficulty for law enforcement personnel who are unable to immediately retrieve information that allows for verification of ownership and identification.

The bill amends s. 320.131, F.S., to authorize DSHSMV to implement an electronic temporary license plate system that must be used by licensed motor vehicle dealers. Upon issuance of a temporary license plate by a dealer, that dealer is required to access the electronic system and enter the appropriate vehicle and owner information within the timeframe specified by DHSMV rules. Failure to comply with the requirements of the electronic system will result in denial, suspension, or revocation of the dealer's license.

#### License Plate Credit

Currently specialty license plates are issued for renewal every five 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 five-year period. Specialty license plates may be discontinued by the department if the number of valid registrations falls below 1,000 license plates for 12 consecutive months. The bill amends s. 320.06, F.S., to allow credits to those customers being forced by DHSMV to replace a specialty license plate due to the plate being discontinued for lack of sales.

#### License Plate Obstruction

Current law provides 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 they are visible from 100 feet. A violation of this section is punishable as a non-moving violation (\$30 fine) plus applicable fees and court costs.

The bill amends s. 316.605, F.S., to clarify 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.

#### Exclusive License Plates

Currently an owner or lessee of a private vehicle who is a resident of the state and an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, or an active member of any branch of the United States Armed Forces Reserve, may apply to DHSMV and be issued either a "National Guard," "Pearl Harbor Survivor," "Combat-Wounded Veteran," or "U.S. Reserve," license plate.

The bill amends s. 320.089, F.S., to allow retired members of the U.S. Armed Forces Reserve to also be issued U.S. Reserve license plates.

### Specialty License Plates

Currently the proceeds from the Animal Friend License Plates annual use fees (\$25 per year) must be distributed to the Humane Society of the United States for animal welfare programs and spay and neuter programs in the state. The bill amends s. 320.08058, F.S., to modify the use of the annual use fee to exclude animal welfare programs, so that the proceeds may only be used for spay and neuter programs.

## **Department Operations**

### Educational/Promotional Expenditures

Currently, DHSMV may authorize the expenditure of funds for the purchase of promotional items as part of public information and education campaigns regarding child restraint requirements, safety belt usage, driver safety awareness, and recycling.

The bill creates s. 316.6131, F.S., to authorize DSHMV to also expend funds for the purchase of educational items as part of the public information and education campaigns promoting highway safety and awareness and the department's community-based initiatives.

### Correction of Citations/Authorization to Modify Records

Under current law, Clerks of the Court are required to notify DHSMV within 10 days of payment of a traffic infraction fine or final disposition of a traffic infraction, if the charge results in a hearing. In the past, certain court employees have delayed reporting traffic infraction citations to DHSMV for periods ranging from many months to several years. The law does not authorize 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 DHSMV is able to take administrative action against a violator.

The bill amends s. 316.6131, F.S., requiring county clerks to re-submit to DHSMV within 10 days any disposition that has been returned to the clerk for corrections or modifications, and authorizes DHSMV to modify any suspension or revocation action submitted more than 180 days after the final hearing, or after payment of the civil penalty, to begin as if the citation were reported in a timely manner.

### Payment by Dishonored Check

Under current law, 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 chapter 207, F.S., by a dishonored check, DHSMV may cancel any license plate or fuel-use tax decal of the person paying by dishonored check. Likewise, DHSMV is authorized 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, by a dishonored check.

The bill amends s. 322.22, F.S., to authorize DHSMV to cancel the identification card, driver's license, vehicle registration, or fuel-use tax decal if the person applying for an identification card, driver's license, vehicle registration, or fuel-use tax decal pays for any of them or any related fees, tax liabilities, penalties, or interest specified in chapter 207, by a dishonored check.

### Traffic Citations/Evidence

Under current law, the Uniform Traffic Citation is not admissible as evidence at 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 it is also excluded 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 officer 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 information or 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, that 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, and because the deputy believed he was giving the citation to someone other than the defendant, that the statutory protection did not apply. The court certified the decision as being in conflict with the *Dixon* decision, providing jurisdiction to the Florida Supreme Court to settle the conflict.

The bill amends s. 316.650, F.S., to provide that traffic citations shall not be admissible evidence in any trial, except when presented as evidence of falsification, forgery, uttering, fraud or perjury, or when presented as physical evidence resulting from a forensic examination of the citation. Proponents of this legislation assert that the change is necessary because of the perceived likelihood that the Supreme Court will hold the Second District Court of Appeal in error, and because the decision in *Maddox*, even if upheld, does not address the second hypothetical example offered above, where the law enforcement officer issued the citation to its intended recipient.

### Sovereign Immunity

Currently s. 768.28, F.S., provides that no officer, employee, or agent of the state will be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered in the scope of her or his employment or function, unless the officer, employee, or agent acted in bad faith

or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Under current law the titles, "officer, employee, or agent" includes, any volunteer firefighter, any health care provider who contracts with the state to provide free medical services to underserved populations pursuant to s. 766.1115, F.S., any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons, and any public defender or their employee or agent.

The bill amends the definition of "employee" in s. 768.28, F.S., to include any volunteer Florida Highway Patrol troop surgeon appointed by the Florida Highway Patrol, and any volunteer licensed health professional appointed by the Florida Highway Patrol to work under the medical direction of a Florida Highway Patrol troop surgeon. These medical professionals would not be personally liable in tort while acting as a volunteer for the Florida Highway Patrol.

### Driver Education Programs

Currently the "Dori Slosberg Driver Education Safety Act" allows county commissioners to require, by ordinance, that the clerk of the court collect an additional \$3 with each civil traffic penalty, which is to be used to fund driver education programs in public and nonpublic schools. The ordinance provides for the board of county commissioners to administer the funds for direct educational expenses and is not to be used for administration.

The bill amends s. 318.1215, F.S., to clarify that funds from the "Dori Slosberg Driver Education Safety Act", are to be used for enhancement, and not replacement, of driver education program funds. The bill also requires each driver education program receiving funds to ensure that a minimum of 30 percent of a student's time in the program be behind-the-wheel training.

### **Motor Vehicle Titles/Liens**

#### Marking titles to reflect "sold"

Under current law, when a motor vehicle dealer takes a motor vehicle on trade, that dealer is not required report the transaction to DHSMV or to apply for a new certificate of title, leaving the previous owner as the owner of record with DHSMV. The law also provides for a wrecker operator's lien that is effective against the owner of record when a vehicle is towed and no towing or storage charges have been paid. According to DHSMV, in some circumstances, consumers who have traded a motor vehicle in a transaction for a new one have become subject to wrecker operator's liens due to the acts of persons or entities that possess the trade-in vehicle.

The bill amends s. 319.23, F.S., to specify that when a licensed dealer takes a motor vehicle or mobile home in on trade, that dealer must file with DHSMV a notice of sale signed by the seller. DHSMV must then update its database for that title record to reflect that the traded vehicle has been sold. In addition, the bill allows the registered owner of a motor vehicle, vessel, or mobile home to dispute a wrecker operator's lien if DHSMV's records were marked to reflect that a sale occurred prior to the date of the tow.

#### Lien Creditors

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 related to motor vehicle title laws do not reflect the changes made. The bill amends s. 319.27, F.S., to correct the references to s. 679.1021, F.S.

### **Motor Vehicle Dealers**



## Maintenance of Records

Currently, a licensed motor vehicle dealer is required to keep a book or record of:

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

The law does not provide any limitation or minimum amount of time that a dealer must maintain such records.

The bill amends s. 320.27, F.S., to require motor vehicle dealers to complete eight hours of continuing education prior to filing renewal forms with DHSMV; and to keep record of all purchase, sale, or exchange or receipt for sale for a period of five years.

## **Emergency Vehicles and Equipment**

Currently s. 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 or s. 775.083 F.S.

The bill prohibits the transport of frequency modulation radio receiving equipment tuned to frequencies assigned to fire rescue personnel except in emergency or crime watch vehicles of law enforcement officers or fire rescue personnel. The bill 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 also changes the penalties for violating these provisions from a second degree misdemeanor to a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083 F.S.

### C. SECTION DIRECTORY:

**Section 1** amends s. 261.03, F.S. , to add a "two-rider ATV" to the definition of "off-highway vehicle," and to provide a definition of "two-rider ATV";

**Section 2** amends s. 316.003, F.S., to define a Traffic Signal Preemption System;

**Section 3** amends s. 316.006, F.S., to allow counties and municipalities to transfer regulatory authority by interlocal agreement;

**Section 4** amends s. 316.0775, F.S., to make it unlawful for anyone to use a Traffic Signal Preemption System without authority and makes it punishable as a moving violation with four points assessed to a driver's license record;

**Section 5** amends section s. 316.122, F.S., to provide the right of way for any vehicle passing another vehicle (from behind) attempting to make a left hand turn;

**Section 6 & 7** creates ss. 316.1576 and 316.1577, F.S., to prohibit a vehicle from driving through a railroad-highway grade crossing when there is not enough space to do so without stopping. Establishes a basis for traffic citations that will allow disqualification of commercial vehicle operators in compliance with the applicable federal requirements. In addition, provides employer responsibility for violations under certain conditions and violators are subject to a civil penalty of not more than \$10,000;

**Section 8** amends s. 316.183, F.S., to make the minimum speed on a highway with no fewer than four lanes 50 mph when the maximum is 70 mph;

**Section 9** amends s. 316.1932, F.S., to change the location of the consent provision statement on the driver license;

**Section 10** amends s. 316.1936, F.S., to remove the references to Class D licenses;

**Section 11** amends s. 316.194, F.S., to authorize a "traffic investigation officer" to remove a disabled vehicle from the roadway;

**Section 12** amends s. 316.1967, F.S., to release the owner of a leased vehicle from payment of a parking ticket violation received by the lessee;

**Section 13** amends s. 316.2074, F.S., to include the definition of "two-rider ATV";

**Section 14** amends s. 316.2095, F.S., to revise the physical requirements of motorcycles to prohibit handholds and handlebars which are higher than the top of the shoulders;

**Section 15** amends s. 316.302, F.S., to update the reference to Code of Federal Regulations for commercial motor vehicles;

**Section 16** amends s. 316.3045, F.S., to reduce the audible distance of radios, mechanical sound making devices or instruments in vehicles from being plainly audible at 100 feet to being plainly audible at a distance of 25 feet;

**Section 17** amends s. 316.605, F.S., to clarify that "Florida", the registration decal, and the alphanumeric designation shall be clearly seen on the license plate;

**Section 18** amends s. 316.613, F.S., to strike language that says the department can only authorize expenditure of funds for child restraints;

**Section 19** creates s. 316.6131, F.S., to authorize DHSMV the expenditure of funds for educational campaigns promoting highway safety;

**Section 20** amends s. 316.650, F.S., to allow uniform traffic citations to only be used as evidence in cases of forgery, fraud or perjury;

**Sections 21 thru 34** amends Ch. 317, F.S., to mirror the title process of "off-highway vehicles" to that of motor vehicles; adds the definition of "two-rider ATV"; and also conforms cross references;

**Section 35** amend s. 318.1215, F.S., to clarify that funds from the Dori Slosberg Driver Education Act are to be used for enhancement of driver education programs in schools and to provide specific time for behind-the-wheel training;

**Section 36** amends s. 318.14, F.S., to require counties to submit any tickets that are corrected to the department within 10 days. It also provides that the department may modify a suspension that is the result of infraction not being submitted within 180 days of the final hearing or payment. Also, amends

certain citation procedures and proceedings to provide applicability only to persons who do not hold a commercial driver's license;

**Section 37** amends s. 319.23, F.S., to require a motor vehicle dealer or mobile home dealer to file a "notice of sale" signed by seller to the department when a vehicle is traded in;

**Section 38** amends s. 319.27, F.S., to clean up and correct references to 679.1021;

**Section 39** amends s. 320.02, F.S., to authorize DHSMV to withhold registration when a dealer has not been paid for tag and title fees by the vehicle purchaser;

**Section 40** amends s. 320.06, F.S., to allow credits only to those customers being forced to replace a specialty plate due to that plate being discontinued;

**Section 41** amends s. 320.0601, F.S., to require leasing companies to register a long term leased vehicle in the lessee's name;

**Section 42** amends s. 320.0605, F.S., to exempt fleet vehicles from carrying certificate of registration at all times in vehicle;

**Section 43** amends s. 320.08058, F.S., to restrict the use of Animal Friend specialty license plate revenues to spay and neuter programs in Florida;

**Section 44** amends s. 320.0843, F.S., to provide that where more than one registrant is listed on a handicapped license plate, the handicapped person is to be noted on the registration;

**Section 45** amends s. 320.089, F.S., to add retired members of any branch of the United States Armed Forces Reserve to the list of qualified persons for U.S. Reserve license plates;

**Section 46** creates s. 320.131(8), F.S., to establish an electronic temporary license plate system and establish regulations. This change would require dealers to notify the department electronically which temporary license plate number they assigned to a particular customer;

**Section 47** amends s. 320.18, F.S., to authorize the department to cancel a vehicle registration, vessel registration, ID card, drivers license, or fuel-use tax decal if it is paid for with a dishonored check or if the owner has failed to pay a weight violation to DOT. This change would allow the department to cancel all documents issued by the department if any one is paid for with a bounced check;

**Section 48** amends s. 320.27, F.S., to require motor vehicle dealers to complete 8 hours of continuing education prior to filing renewal forms with the department; and to keep record of all purchase, sale, or exchange or receipt for sale for a period of 5 years. Provides for license discipline for willful failure to comply with temporary license plate provisions;

**Section 49** amends s. 322.01, F.S., to delete references to "declared" or "actual" weight of 26,001 pounds or more" from the definition of commercial motor vehicle; definition will be based on "gross vehicle weight rating" of 26,001 pounds or more. Also, adds that the definition of "conviction" provided in federal regulation applies to offenses committed in a commercial motor vehicle. Amends the definition of "out-of-service order" to mean a prohibition issued by an authorized local, state, or federal government official;

**Section 50** amends s. 322.05, F.S., by striking all references to Class D licenses;

**Section 51** amends s. 322.051, F.S., to clarify that a United States passport is an acceptable document as proof of name, date of birth, and citizenship for ID cards, regardless of expiration. Also, adds a

naturalization certificate issued US Department of Homeland Security as a document acceptable for issuance of an ID card and clarifies the requirement for a full face photograph;

**Section 52** amends s. 322.07, F.S., by striking all references to Class D licenses;

**Section 53** amends s. 322.08, F.S., to allow funds collected from a voluntary contribution to the Hearing Research Institute, Incorporated, on driver's license applications and renewals to be used for hearing screening for all age groups;

**Section 54** amends s. 322.09, F.S., to allow for a secondary guardian to sign a minor consent form if the primary guardian dies before the minor reaches 18 years of age;

**Section 55** amends s. 322.11, F.S., to require that the department must give the minor 90 days after a written notice of death of the primary guardian before canceling the license;

**Section 56** amends s. 322.12, F.S., by striking all references to Class D licenses;

**Section 57** amends s. 322.135, F.S., to require all tax collectors serving as agents for the department to provide all services available as deemed appropriate by the department. Allows tax collectors to retain the full \$5.25 driver license service fee, currently \$1 goes to the department's operating trust fund. Also, requires tax collectors who act as driver license agents to deposit funds collected within 5 working days after the close of business day;

**Section 58** amends s. 322.142, F.S., to require a full-face photograph;

**Section 59** amends s. 322.161, F.S., by striking all references to Class D licenses;

**Section 60** amends s. 322.17, F.S., to correct cross references regarding driver's license duplicates;

**Section 61** amends s. 322.18, F.S., to require drivers license applicants that hold a CDL with hazmat endorsement to be issued a 4-year license to expire on their birthday. Corrects cross references;

**Section 62** amends s. 322.19, F.S., to correct cross references regarding driver license and ID card change of address;

**Section 63** amends s. 322.21, F.S., to authorize the department to include in the fees for a hazmat endorsement the cost of the required criminal history check, state & federal fingerprinting check. Includes \$100 cap for fee. In addition, strikes all references to Class D licenses;

**Section 64** 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;

**Section 65** amends s. 322.22, F.S., to authorize the department to cancel a vehicle registration, vessel registration, ID card, drivers license, or fuel-use decal if it is paid for with a dishonored check or if the owner has failed to pay a weight violation to DOT. This change would allow the department to cancel all documents issued by the department if any one is paid for with a bounced check;

**Section 66** amends s. 322.251, F.S., by striking all references to Class D licenses;

**Section 67** amends s. 322.2651, F.S., to revise suspension of license provisions to include references to breath alcohol level and urinalysis;

**Section 68** amends s. 322.27, F.S., to correct cross reference relating to points assigned for littering violations;

**Section 69** amends s. 322.30, F.S. by striking all references to Class D licenses;

**Section 70** amends s. 322.53 F.S., to clarify military personnel do not need a CDL to drive vehicles for military purposes. Also, repeals s. 322.53(4) F.S., removing special licensing and endorsement requirements for emergency and farm CDL exemptions. Strikes all references to Class D licenses;

**Section 71** amends s. 322.54, F.S., to remove the requirement for a Class C license for vehicle combinations, leaving the Class C for endorsed vehicles under 26,001 lbs. This change will parallel Florida law with the Federal requirements. Also deletes the requirement for (and strikes all references to) Class D licenses;

**Section 72** amends s. 322.57, F.S., to provide a new endorsement category implementing changes to the Federal Motor Carrier Safety Administration (FMCSA) regulations which require school bus drivers to be specifically tested and hold a corresponding CDL endorsement for that type of vehicle. Also, removes the requirement for a Class C license for vehicle combinations, leaving the Class C for endorsed vehicles under 26,001 lbs;

**Section 73** amends s. 322.58, F.S., by striking all references to Class D licenses;

**Section 74** amends s. 322.61, F.S., to implement changes to the FMCSA regulations which require states to apply similar non-commercial motor vehicle traffic violations as disqualifying offenses, and adds new disqualifying offenses. In addition, strikes all references to Class D licenses;

**Section 75** amends s. 322.63, F.S., to clarify a urine test is to be used for the purpose of detecting the presence of chemical substances or of controlled substances for commercial motor vehicle operators. Also makes conforming changes;

**Section 76** amends s. 322.64, F.S., to implement changes to the FMCSA regulations which require states to apply similar non-commercial motor vehicle traffic violations as disqualifying offenses, and adds new disqualifying offenses. 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;

**Section 77** amends s. 713.78, F.S., to allow a person to dispute a towing company's lien if the vehicle's records were marked "sold" prior to the date of the tow. Provides that a wrecker lien on a leased vehicle does not prevent the lessor (the leasing company) from registering other vehicles;

**Section 78** amends s. 768.28, F.S., to provide that volunteer surgeons and licensed health professionals appointed by the Director of Florida Highway Patrol and working under the medical direction of a Florida Highway Patrol troop surgeon, are considered employees of the state for sovereign immunity purposes;

**Section 79** amends s. 843.16, F.S., to prohibit the transport of radio receiving equipment tuned to frequencies assigned to fire and rescue personnel except in emergency or crime watch vehicles of law enforcement officers or fire rescue personnel. 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 from a second degree misdemeanor to a first degree misdemeanor; and

**Section 80** The bill takes effect July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section, below.

D. FISCAL COMMENTS:

**State Impacts**

Expiration of Hazmat Endorsement

According to DHSMV a shift in the renewal cycle for a hazardous materials commercial driver's license endorsement from six to four years would have an indeterminate positive fiscal impact on DHSMV.

Dishonored Checks

To the extent that provisions of the bill regarding dishonored checks increases department collections, the bill will have a positive fiscal impact on the department.

Tax Collector Driver License Services

Under the provisions of the bill, local tax collectors acting as agents of DHSMV for the purposes of providing driver's licensing services will retain the entire \$5.25 convenience fee paid by customers instead of remitting \$1 of that amount to DHSMV. This change will result in an approximately \$1,150,000 annual negative fiscal impact to the department. However, the \$1 portion of the fee currently remitted to DHSMV is used for driver's license technology maintenance and upgrades, and according to DHSMV, the new driver's license technology contract funded last year covers these technology costs.

**Local Impacts**

School Bus Driver Endorsement

To the extent that local governments pay for any necessary training, testing, and fees for school bus drivers to be endorsed pursuant to the provisions of this bill, there may be an indeterminate negative fiscal impact to local governments.

Tax Collector Driver License Services

Under the provisions of the bill, local tax collectors acting as agents of DHSMV for the purposes of providing driver's licensing services will retain the entire \$5.25 convenience fee paid by customers instead of remitting \$1 of that amount to DHSMV. This change will result in a positive fiscal impact to those tax collectors. DHSMV is analyzing the impact. According to the department, this is intended to encourage tax collectors to provide more driver licensing services.

## **Private Sector Impacts**

### Withholding Registration

Motor vehicle dealers will benefit from the bill's provisions relating to DHSMV withholding vehicle registration if the purchaser has not paid the registration fees to the dealer.

### Leased Vehicles

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

### Hazmat Endorsement Background Checks and Renewals

The bill requires 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. DHSMV estimates that this fee will be approximately \$91. Of this fee, \$81 would be remitted to the U.S. Transportation Safety Administration and the Florida Department of Law Enforcement for background checks, and \$10 would go to DHSMV for administrative costs.

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. Currently, the hazardous materials endorsement fee is \$5, however, the bill raises the fee amount to cover the costs of criminal history and fingerprint checks.

### School Bus Driver Endorsement

To the extent that local governments require their school bus drivers to pay the fees required to be endorsed pursuant to the provisions of this bill, each such school bus driver will be required to pay a \$5 endorsement fee.

### Motor Vehicle Dealers

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 license.

### Railroad Crossing Violations

The bill also 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 a 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.

### Sovereign Immunity

Volunteer surgeons and licensed health professionals appointed by the Director of Florida Highway Patrol and working under the medical direction of a Florida Highway Patrol troop surgeon, are considered employees of the state for sovereign immunity purposes.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

DHSMV has sufficient rule-making authority to carry out the provisions of this bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

**On February 22, 2005** the Committee on Transportation considered PCB TR 05-02 and adopted 13 amendments which added the following issues to the proposed bill.

- Amendment #1: Revises the physical requirements of motorcycles to prohibit handholds and handlebars which are higher than the top of the shoulders. Current standard is based on 15 inches above the seat;
- Amendment #2: Reduces the distance of radios, mechanical sound making devices or instruments in vehicles from being plainly audible at 100 feet to being plainly audible at a distance of 25 feet;
- Amendment #3: Statutory cross reference correction relating to points assigned for littering violations;
- Amendment #4: Revises suspension of license provisions to include references to breath alcohol level and urinalysis;
- Amendment #5: Provides that volunteer surgeons and licensed health professionals appointed by the Director of Florida Highway Patrol and working under the medical direction of a Florida Highway Patrol troop surgeon, are considered employees of the state for sovereign immunity purposes;
- Amendment #7: Clarifies that funds from the Dori Slosberg Driver Education Act are to be used for enhancement of driver education programs in schools and also provides that 30 percent of a student's time in the program is to be behind-the-wheel training;
- Amendment #8: Adds rule making authority to the DHSMV regarding motor vehicle dealer compliance with the electronic license plate system and hazardous-materials endorsement;
- Amendment #9: Provides for interlocal agreements between municipalities and counties transferring traffic regulatory authority over areas within the municipality to the county;
- Amendment #10: Adds retired members of any branch of the United States Armed Forces Reserve to the list of qualified persons for U.S. Reserve license plates;
- Amendment #11: Allows funds collected from a voluntary contribution to the Hearing Research Institute, Incorporated, on driver's license applications and renewals to be used for hearing screening for all age groups;
- Amendment #14: Updates the reference to Code of Federal Regulations for commercial motor vehicles. This was requested by FDOT.
- Amendment #15: Authorizes DHSMV to withhold registration when a dealer has not been paid for tag and title fees by the vehicle purchaser.



- Amendment #16: Restricts the use of Animal Friend specialty license plate revenues to spay and neuter programs in Florida.

The bill was then reported favorably as amended. The legislation was filed and became HB 1697.