

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—HB 7079:

- The bill gives DHSMV the authority to make rules regarding settlement or compromise of taxes, penalties or interest;
- The bill requires that upon original registration of any motorcycle, motor driven cycle or moped the owner must prove they have obtained necessary endorsement on the driver license;
- The bill requires every first time applicant for licensure to operate a motorcycle to provide proof of completion of the motorcycle safety course.
- The bill gives law enforcement agencies the authority to appeal any decision of DHSMV invalidating a driver license suspension by a petition for writ of certiorari to the circuit court in the county where a formal review was conducted.

Promote Personal Responsibility—HB 7079:

- The bill increases driver license points, requires a mandatory hearing, and doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more;
- The bill increases the points for a red light violation resulting in a crash to six points (same as speeding resulting in a crash);
- The bill increases the fines for failing to secure loads from \$100 to \$200, and increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of 1 year to a minimum of one year and a maximum of two years;

Safeguard Individual Liberty—HB 7079:

- The bill provides for the operation of "ATV's" by licensed drivers and minors under the supervision of a licensed driver on unpaved roadways where the speed limit is 35 mph or less;
- The bill removes the requirement for a franchise motor vehicle dealer to attend eight hours of continuing education when applying for an initial license;

B. EFFECT OF PROPOSED CHANGES:

Settlement or Compromise of Taxes, Penalty or Interest

Background

In 1981 the legislature passed HB 439¹ transferring the taxation of motor fuel and special fuel from the Public Service Commission to the Department of Revenue. In 1987 the legislature passed HB 761² transferring the fuel use tax functions of the Department of Revenue to DHSMV. Since the transfer of the administration of Chapter 207, F.S., to DHSMV from the Department of Revenue, DHSMV's authority to settle or compromise assessments and enter into stipulation agreements has been uncertain. The bill addresses three areas related to taxes, penalties and interest assessed by DHSMV: record-keeping requirements; informal settlement conferences; and scheduling payments.

¹ Chapter 81-151, Laws of Florida

² Chapter 87-198, Laws of Florida

Records

Section 207.008, F.S., requires each registered motor carrier to maintain records and papers as required by the Department of Revenue for the administration of the settlement or compromise of taxes, penalty or interest. Motor carriers are to preserve these records until expiration of the time within which the Department of Revenue is able to make an assessment with respect to that tax pursuant to Florida law³. The bill amends s. 207.008, F.S., to provide that records must be maintained for four years.

Informal Conferences

Section 207.021, F.S., only allows DHSMV to settle or compromise penalties or interest imposed under Chapter 207, F.S., using the provisions of Section 213.21, F.S., which relates to the Department of Revenue. There is no specific authority in Chapter 207, F.S., for DHSMV to conduct informal conferences for the resolution of disputes arising from the assessment of taxes, penalties, or interest.

The bill grants DHSMV statutory rulemaking authority regarding settlement or compromise of chapter 207, F.S., taxes, penalties or interest. The bill also specifies that during any proceeding arising under this section, the motor carrier has the right to be represented at and record all procedures at the motor carrier's expense.

The bill authorizes the executive director of DHSMV or his or her designee to enter into closing agreements with a taxpayer to settle or compromise tax liabilities. These agreements are to be in writing and prohibit further assessments by DHSMV for taxes settled and prohibit the taxpayer from seeking recovery of amounts paid under terms of the agreement. A taxpayer's liability for chapter 207, F.S., tax or interest may be compromised by DHSMV on the grounds of doubt as to liability for or the ability to collect the tax or interest. The bill specifies that doubt as to the liability of a taxpayer for tax and interest exists if the taxpayer reasonably relied on a written determination of DHSMV. A taxpayer's liability can only be settled or compromised to the extent allowable under International Fuel Tax Agreement (IFTA)⁴. A taxpayer's liability for penalties may be settled or compromised if DHSMV determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. DHSMV is also authorized to enter into agreements for scheduling payments of taxes, penalties, and interest resulting from audit assessments.

The International Registration Plan

The International Registration Plan (IRP) is a program for licensing commercial vehicles in interstate operations among member jurisdictions. The member jurisdictions of IRP are all states (except Alaska and Hawaii), the District of Columbia, and the Canadian provinces (except Yukon and Northwest Territory).

Under this program, an interstate carrier files an apportioned registration application in the state or province where the carrier is based (the base jurisdiction). The fleet vehicles and the miles traveled in each state are listed on the application. The base jurisdiction collects the full license registration fee. They distribute the fees to the other jurisdictions based on the percentage of miles the carrier will travel, or has traveled, in each jurisdiction. The base jurisdiction also issues a license plate showing the word "apportioned" and a cab card showing the jurisdictions and weights for which the carrier has paid fees.

Section 320.405, F.S., relating to the IRP, does not authorize DHSMV to enter into agreements for scheduling payments of taxes and penalties due to DHSMV as a result of audit assessments issues.

³ s. 95.091(3), F.S.

⁴ s. 207.0281(1), F.S.

The bill would allow DHSMV to enter into agreements for scheduling payments of such taxes and penalties due to the department as a result of audit assessments issued under this section.

Motorized Scooters and Miniature Motorcycles

Background

Motorized scooters are two-wheel vehicles, equipped with either a small two-cycle gasoline engine or an electric motor and a battery. To operate within the letter of the law some manufacturers are retrofitting these scooters with electric motors and kits. The gasoline-powered scooters usually cost between \$400 and \$1,300. Electric scooters range from under \$200 to about \$1,000.

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. A new year-long study released by CPSC⁵ finds there were an estimated 10,000 emergency room injuries involving powered scooters nationally from July 2003 through June 2004.

Chapter 322, F.S., relating to drivers' licenses, defines the term "motor vehicle" as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles. This definition requires the operator of any motor vehicle including motorized scooters, operating on the public roadways to have a class E driver's license.

Section 320.02, F.S., relating to motor vehicle registration, provides that every owner or person in charge of a motor vehicle which is operated or driven on the roads of this state must register the vehicle in this state. While that chapter requires any motor vehicle to be registered, s. 320.08, F.S., does not provide a license tax classification for motorized scooters. DHSMV has therefore advised that since such vehicles may not be registered, they may not be operated on the public streets and roads.

Section 316.1995, F.S., provides that no person may drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway and provides penalties. Motorized scooters are not exempted from the definition of "vehicle" in section 316.003(75), F.S., which defines the term as every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. Thus, motorized scooters appear to be prohibited from operating on sidewalks.

Section 316.003(83), F.S., defines electric personal assistive mobility devices as any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section. Section 316.2068, F.S., relating to electric personal assistive mobility devices, allows such devices to be operated on certain roads and on sidewalks without a driver's license and without being registered.

The bill creates s. 316.2128, F.S., to provide clarification that motorized scooters and miniature motorcycles are not street legal and to provide potential buyers with notice of these vehicles' current legal status. Section 316.2128, F.S., provides the following:

- Prohibits the operation of motorized scooters and miniature motorcycles on public roads, streets, or sidewalks and such vehicles may not be registered as a motor vehicle,

⁵ CONSUMER PRODUCT SAFETY REVIEW Fall 2005; VOL. 10, NO. 2: http://www.cpsc.gov/cpsc/pub/pubs/cpsr_nws38.pdf

- Requires the operator of motorized scooters and miniature motorcycles to keep proof of ownership in the form of a receipt, sales invoice, bill of sale, or other written documentation in his or her possession at all times;
- Prohibits a person from knowingly permitting his or her child or ward under 16 or between the ages of 16 and 18 years old to drive a motorized scooter or miniature motorcycle in violation of this section;
- Provides that a violation is a non-criminal traffic infraction punishable as a moving violation. A person violating this provision would be subject to a \$60 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from \$112.50 to \$118.50, and an assessment of three points against the driver's license; and
- Requires a person selling “motorized scooters” and “miniature motorcycles” to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the “Florida Deceptive and Unfair Trade Practices Act”⁶ and are liable for a civil penalty of not more than \$10,000 for each violation plus applicable court costs and attorney fees.

The bill amends s. 316.003, F.S., to make the following changes:

- Includes motorized scooters in the definition of “motor vehicle.” This change will subject motorized scooters to the traffic laws that apply throughout the state and counties and uniform traffic ordinances that apply in all municipalities;
- Excludes miniature motorcycles from the definition of motorcycle so that miniature motorcycles will not be classified as street legal motorcycles;
- Clarifies the definition of motorized scooter to inform the public that because of its small size, its design or lack of required safety equipment, or other non-compliance with federal regulations these scooters are not eligible for a manufacturer’s certificate of origin or for registration; and
- Creates the term “miniature motorcycle” and defines it as any vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and which because of its small size, its design or lack of required safety equipment, or other non-compliance with federal regulations, is not eligible for a manufacturer’s certificate of origin or for registration as a motorcycle. The term does not include off-highway vehicles. This definition will clarify that these vehicles are not “street legal” and will provide the public with notice of their legal status.

Motorcycle Riders

Equipment

The National Highway Traffic Safety Administration has a legislative mandate under Title 49 of the United States Code, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards (FMVSS) and Regulations to which manufacturers of motor vehicle and equipment items must conform and certify compliance. FMVSS Standard No. 218, establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users.

Currently, s. 316.211, F.S., provides the following requirements for motorcycle and moped riders:

- A person is not to operate or ride on a motorcycle unless the person is properly wearing protective headgear which complies with FMVSS Standard 218;
- A person may not operate a motorcycle unless the person is properly wearing an eye-protective device of a type approved by DHSMV;

⁶ S. 501.201, F.S.

- These regulations do not apply to persons riding within an enclosed cab or 16 years of age or older and operating or riding a motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or not rated in excess of two brake horsepower and which is not capable of propelling itself at a speed greater than 30 miles per hour on level ground;
- A person over 21 years of age is allowed to operate or ride a motorcycle without wearing protective headgear if they are covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle.
- A person under 16 years of age may not operate or ride a moped unless the person is properly wearing protective headgear which complies with FMVSS Standard 218; and
- DHSMV must make available a list of approved protective headgear, and the list must be provided on request.

The bill would amend s. 316.211, F.S., to require, effective January 1, 2007, that motorcycles registered to persons who have not attained 21 years of age must display a license plate that is unique in design and color. Because the helmet exemption applies to riders over 21, this would allow for better enforcement of the state's helmet law requirements.

Registration

Currently, under s. 320.02, F.S., every owner or person in charge of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or to its authorized agent for registration on a form prescribed by DHSMV.

The bill amends s. 320.02, F.S., to provide that before an original registration of a motorcycle, motor driven cycle or moped can be issued, the owner must present proof of successfully completing a test of his or her knowledge concerning the safe operation of the motorcycle or moped and a test of his or her driving skills on such vehicle. This provision will become effective January 1, 2007.

Examination of Applicants

Currently, s. 322.12, F.S., requires that every first-time applicant for licensure to operate a motorcycle who is under 21 years of age must provide proof of completion of a motorcycle safety course, as provided in 322.0255, F.S., before the applicant is licensed to operate a motorcycle. The bill amends this provision and would require that regardless of age, all first-time applicants for licensure to operate a motorcycle must provide proof of completion of a motorcycle safety course. This provision will become effective July 1, 2008.

According to DHSMV, fatalities among motorcyclists have risen in Florida. Statistics show that within the last two years, there have been no fatalities among those riders completing the Florida Motorcycle Safety Education Program. These changes to licensing and registration laws are intended to reduce crashes among motorcyclists.

All-Terrain Vehicles (ATV's)

Operation

Current law, s. 316.2074, F.S., does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency. All-terrain vehicles are defined in s. 316.2074, F.S., as any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger. The definition of "all-terrain vehicle" also includes any "two-rider ATV" as defined in s. 317.0003, F.S.

According to the Division of Forestry the speed limit on all roads within forests is 30 mph unless posted otherwise. These speed limits are based on road design and basic knowledge of maximum safe speeds within each park. The T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act, Chapter 261, F.S. provides the State of Florida with a set of guidelines to follow for maintaining and providing state lands for Off-Highway Motorcycle and All-Terrain Vehicle users. This act does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency.

Section 316.2074, F.S., also provides the following related to ATV's:

- No person under 16 years of age is allowed to operate, or ride an all-terrain vehicle unless the person wears an approved safety helmet and eye protection;
- If a crash results in the death of any person or injury of any person which results in treatment of the person by a physician, the operator of each all-terrain vehicle involved in the crash must give notice of the crash as required by s. 316.066, F.S.;
- An all-terrain vehicle having four wheels may be used by police officers on public beaches designated as public roadways for the purpose of enforcing the traffic laws of the state. All-terrain vehicles may also be used by the police to travel on public roadways within 5 miles of beach access only when getting to and from the beach;
- An all-terrain vehicle having four wheels may be used by law enforcement officers on public roads within public lands while in the course and scope of their duties; and
- A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, F.S.

The bill creates s. 316.2123, F.S., allowing "ATV's" to be operated by a licensed driver or a minor under the supervision of a licensed driver on un-paved roadways where the posted speed limit is less than 35 mph. The drivers are required to provide proof of ownership if requested by law enforcement.

Dump Trucks

Taillamps

Currently s. 316.221, F.S., relating to taillamps, requires taillamps or separate lamps to be constructed and placed to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, must be wired to light up whenever the headlamps or auxiliary driving lamps are lighted. The bill exempts dump trucks and vehicles with dump bodies from the requirements of this section relating to illumination of license plates.

License Plates

Section 320.0706, F.S., requires the owner of any commercial truck of gross vehicle weight of 26,001 pounds or more to display the registration license plate on both the front and rear of the truck in conformance with all the requirements of s. 316.605, F.S. However, the owner of a truck tractor is required to display the registration license plate only on the front of such vehicle. Current law does not provide for a height requirement for the display of license plates on commercial trucks of gross vehicle weight of 26,001 pounds or more.

The bill amends s. 320.0706, F.S., allowing the owners of dump trucks to place the rear license plate on the gate no higher than 60 inches from the ground to the top of the license plate to allow for better visibility.

Motor Carrier Compliance

Hours of Service

The federal Motor Carrier Safety Assistance Program (MCSAP) provides funding to all the states, territories and the District of Columbia for state enforcement of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the MCSAP financial assistance to states is to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMVs).

To be eligible for MCSAP funding, a state must adopt and enforce compatible regulations identical for interstate transportation and within the federal tolerance guidelines⁷ for intrastate transportation. The federal tolerance guidelines set forth limited deviations from the FMCSRs that are allowed in Florida's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce and are not subject to federal jurisdiction.

According to federal law, 49 C.F.R. 350.345, 100 percent funding for all states may be granted if the following criteria are met:

- If the state law achieves the same purpose as the corresponding federal regulations;
- If the additional variances do not apply to interstate commerce; and
- If the additional variances are not likely to have an adverse impact on safety.

Florida currently receives 50% (\$3.3 million) of its allocated federal funding (\$6.6 million) through MCSAP. The state does not receive 100 percent MCSAP funding because it is not in compliance with the federal hours of service regulations for intrastate truck drivers.

Sections 316.302, 316.003 and 316.515, F.S., provide the following variances that are not consistent with the safety goals of the U.S. Department of Transportation:

- All intrastate drivers (except hazardous materials drivers) may drive 15 hours (12 allowed under the tolerance guidelines);
- Citrus growers and forestry drivers are exempt from Florida's maximum driving time regulations, which are incompatible with federal allowances;
- 200-mile radius drivers are exempt from log requirements (150 allowed by the tolerance guidelines);
- Drivers can drive 72 hours in seven days, or 84 hours in eight days (70 hours in seven days and 80 hours in eight days are allowed by the tolerance guidelines); This restarts every 24 hours;
- Drivers of farm or forest products and unprocessed agricultural products during harvest season are exempt from the federal requirements relating to driver qualification, hours of service, inspection, repair and maintenance regulations.⁸
- Vehicles less than 26,000 pounds gross vehicle weight ratio, transporting petroleum products are exempt from safety regulations including driver qualification, hours of service, inspection, repair and maintenance regulations.⁹

The bill amends ss. 316.302, 316.003 and 316.515, F.S., to bring intrastate hours-of-service requirements into compliance with federal tolerance guidelines, and to provide for changes recently enacted into federal law for utilities and agricultural transportation. The bill also contains the following changes:

- Deletes the exemption from federal requirements relating to driving and resting, changing the time limit a commercial motor vehicle driver may drive in a 24 hour period from 15 hours to the federally required 12 hours;
 - This provision does not apply to utility service vehicles.
- Changes the weekly limit of on duty hours from 72 hours to 70 hours in any period of seven consecutive days, and from 84 to 80 hours in any period of eight consecutive days;

⁷ 49 C.F.R. 350.341

⁸ 49 C.F.R. 391, 395, 396

⁹ 49 C.F.R. 391, 395, 396

- This provision does not apply to drivers operating solely within the state and transporting agricultural commodities or farm supplies or to utility service vehicles.
- Updates the reference to current (October 1, 2005) federal rules and regulations applicable to commercial motor vehicles.

CDL Vision Exemption

Currently s. 316.302, F.S., contains a grandfather clause that exempts a person who was a regularly employed driver of a commercial motor vehicle on July 4, 1987, and whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the two-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under federal law¹⁰, and who operates a commercial vehicle in intrastate commerce only, from requirements of the federal law relating to minimum vision requirements in both eyes. However, such operators are still subject to the requirements of ss. 322.12 and 322.121, F.S., relating to the examination of driver license applicants. As proof of eligibility, such driver is to have in his or her possession a physical examination form dated within the past 24 months.

The bill would allow a person with normal vision in only one eye whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the two-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under 49 C.F.R. part 391, and who operates a commercial vehicle in intrastate commerce only, to be exempt from the vision requirements of 49 C.F.R. part 391, subpart E, s. 391.41(b)(10). The driver would have to have in his or her possession a physical examination form dated within the past 24 months. This change would make the state exemption consistent with federal waiver provisions.

Other Commercial Motor Vehicle Provisions

Currently s. 316.003, F.S., defines saddle mounts as an arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle and all of the wheels of the towing vehicle are upon the ground. The bill allows such towing combinations to include one full mount which is a smaller transport vehicle that is placed completely on the last towed vehicle.

Under current law s. 316.515, F.S., relating to maximum width, height, and length of commercial motor vehicles, provides that an automobile transporting new or used trucks may use a "saddle mount" if the overall length does not exceed 75 feet and no more than three saddle mounts are in tow. The bill increases the overall allowable length for saddle mount combinations to 97 feet. The bill allows these vehicles transporting new or used trucks to include one "full mount," bringing the state law in compliance with federal tolerance guidelines.

Forestry Equipment

Section 316.515, F.S., currently only allows the following machinery to operate on public roads from one point of production to another:

- Straight trucks,
- Agricultural tractors,
- Cotton module movers, not exceeding 50 feet in length,
- Any combination of up to and including three implements of husbandry including the towing power unit,
- Any single agricultural trailer with a load thereon,
- Agricultural implements attached to a towing power unit not exceeding 130 inches in width, and
- A self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width.

¹⁰ 49 C.F.R. part 391

This section only allows the above listed machinery to operate on public roads from one point of production to another for the following purposes:

- Transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage,
- Returning to the point of production,
- Moving the tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler.

The bill amends s. 316.515, F.S., to allow equipment used exclusively for the purpose of harvesting forestry products, not exceeding 136 inches in width and which is not capable of speeds exceeding 20 miles per hour, to operate on public roads to get from one point of harvest to another point of harvest not to exceed 10 miles, by a person engaged in the harvesting of forest products. These vehicles must be operated in accordance with all safety requirements prescribed s. 316.2295(5) and (6), F.S., relating to slow moving vehicle emblems on farm tractors, farm equipment and implements of husbandry.

Driver Education Program Surcharge

Currently s. 318.1215, F.S., (the "Dori Slosberg Driver Education Safety Act") allows county commissioners to adopt an ordinance requiring the clerk of the court to collect an additional \$3 with each civil traffic penalty. The funds are to be used to fund driver education programs in public and nonpublic schools. The ordinance must provide for the board of county commissioners to administer the funds for direct educational expenses and must prohibit using the funds for administration. The bill amends s. 318.1215, F.S., to increase the amount of money that a county may collect with each traffic penalty from \$3 to \$5. Currently 53 counties are collecting the \$3 surcharge.

Traffic Control—Speeding

Background on Speeding Violations

According to law enforcement, the number of speeders traveling in excess of 30 miles per hour over the speed limit on limited access highways throughout Florida is increasing. The maximum penalties for speeding are \$250 and four points on the driver's license. In addition to the \$250 statutory base fine, court costs and fees amount to \$52.50 making the speeding penalty \$302.50. Optional surcharges could add as much as \$24 to this. Florida Highway Patrol Troopers are writing 20 tickets a month for triple digit speeds on I-4, five tickets a month on state Road 417, and 20 to 30 tickets each week on Florida's Turnpike south of St. Cloud. The accidents caused by these excessive speeding violations are more severe than accidents that involve motor vehicles traveling at or around the speed limit.

Neighboring states have taken measures to inhibit the most dangerous of unlawful speed violators. Increased speeding fines and reckless driving charges have been instituted in these states to allow for stricter penalties when speeds reach untenable heights. Officers interviewed also suggested that more effort be made to revoke or suspend the licenses of motorists who drive at such high rates of speed. The following changes to speeding penalties could increase traffic safety by deterring excessive speeding.

Mandatory hearings

Current law s. 318.14, F.S., relating to noncriminal traffic infractions, provides that a person who does not hold a commercial driver's license and who is issued a citation for speeding may elect to pay the fine without appearing before a hearing officer or judge and to attend a basic driver improvement course approved by DHSMV. In such a case, adjudication is withheld, points as provided by s. 322.27, F.S., are not assessed, and the civil penalty is reduced by 18 percent. A person is allowed to attend a driver improvement course in lieu of appearing before a hearing officer or judge once every twelve months. A person may make no more than five total elections under this subsection.

Section 318.19, F.S., provides that citations for the following infractions require a mandatory hearing:

- Any infraction which results in a crash and causes the death of another person;
- Any infraction which results in a crash that causes “serious bodily injury” of another person;
- Any infraction of failing to stop for a school bus; or
- Any infraction of failing to secure loads on vehicles.

The bill amends s. 318.14, F.S., to provide that any person who is issued a citation for exceeding the posted speed limit by 30 miles per hour or more may not attend a driver improvement course in lieu of appearing before a hearing officer or judge. The bill also amends s. 318.19, F.S., requiring a mandatory hearing for a citation of exceeding the posted speed limit by 30 miles per hour or more.

Speeding Fines

Currently s. 318.18, F.S., relating to penalties for speeding, provides that for moving violations involving unlawful speed, the fines are as follows:

For speed exceeding the limit by:	Fine:
1-5 m.p.h.	Warning
6-9 m.p.h.	\$ 25
10-14 m.p.h.	\$100
15-19 m.p.h.	\$125
20-29 m.p.h.	\$150
30 m.p.h. and above	\$250

The bill amends s. 318.18, F.S., to provide that a person who is found guilty of a second violation of exceeding the posted speed limit by 30 miles per hour or more within a 12-month period must pay a fine double the amount listed in the table above. Also, the bill defines “conviction” for these violations as a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding that adjudication was withheld.

Florida’s Point System

Section 322.27, F.S., establishes a system of points that are assessed against a driver’s license when a person is convicted of violating certain motor vehicle laws. The point system is used for the evaluation and determination of the continuing qualification of a person to operate a motor vehicle. The DHSMV is authorized to suspend the license of any person if the licensee has been convicted of the violation of motor vehicle laws amounting to 12 or more points within a 12-month period. The suspension will be for a period of not more than one year. The point system statute has the following provisions:

The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving—four points.
2. Leaving the scene of a crash resulting in property damage of more than \$50—six points.
3. Unlawful speed resulting in a crash—six points.
4. Passing a stopped school bus—four points.
5. Unlawful speed:
 - a. Not in excess of 15 miles per hour of lawful or posted speed—three points.
 - b. In excess of 15 miles per hour of lawful or posted speed—four points.
6. All other moving violations (including parking on a highway outside the limits of a municipality)—three points.
7. Any moving violation, excluding unlawful speed, resulting in a crash—four points.
8. Dumping litter in an amount exceeding 15 pounds, which involves the use of a motor vehicle—three points.

9. Driving during restricted hours—three points.
10. Violation of curfew—three points.
11. Open container as an operator—three points.
12. Child restraint violation—three points.

When a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days. When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than three months. When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than one year.

The bill increases the number of points assessed for a conviction of exceeding the posted speed limit by 30 miles per hour or more from four points to six points. For purposes of speeding violations in excess of 30 miles per hour over the posted speed limit, the bill defines “conviction” as a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding that adjudication was withheld.

Traffic Control—Red Light Violations

According to the Federal Highway Administration (FHA), in 1999 there were 92,000 automobile crashes caused by running red lights in United States urban areas.¹¹ These accidents resulted in 90,000 injuries and 950 fatalities with estimated social costs, including property damage, injury, lost time and death, exceeding \$7 billion. The FHA also has done surveys in which 55.8% of Americans admit to running red-lights and 99.6% of drivers fear being hit by another driver running a red light.

Section 322.27 (3), F.S., establishes a system of points that are assessed against a driver’s license when a person is convicted of violating certain motor vehicle laws. It provides that for a violation of a traffic control signal device 4 points are assessed to the driver’s license. The point system is used for the evaluation and determination of the continuing qualification of a person to operate a motor vehicle. The provisions of the point system detailed above are under the heading, Florida’s Point System.

Under current law, it is possible that a red light runner could cause a crash seriously injuring someone and suffer no more than a \$60 fine and a brief suspension of driving privileges. The bill amends s. 322.27, F.S., to assess 6 points on the driver’s license for a conviction of a red light violation that results in a crash. This is the same number of points assessed for crashes resulting from speeding.

Failing to Secure Loads

Under current law, s. 316.520, F.S., a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent its load from dropping, shifting, leaking, blowing, or escaping. Also, it is the duty of the owner and driver, of vehicles hauling dirt, sand, lime rock, gravel, silica, trash, garbage, inanimate objects, or material that could fall or be blown from the vehicle, to prevent such materials from escaping by covering and securing the load with a close-fitting tarpaulin, cover or a load securing device meeting the requirements of 49 C.F.R. s. 393.100 or a device designed to reasonably ensure that cargo will not shift, or fall from the vehicle.

Section 318.18, F.S., provides the following penalties for violations of s. 316.520(1) or (2), F.S., failing to secure loads:

- One hundred dollars for a violation of s. 316.520(1) or (2), F.S., relating to failing to secure loads on vehicles [covering and securing the load with a tarp, cover or other load securing device is considered compliance with this section; and
- For a second or subsequent adjudication within a period of 5 years, the DHSMV must suspend the driver's license of the person for not less than 180 days and not more than one year.

¹¹ Inadvertent Red Light Violations: An Economic Analysis, Craig A. Depken, II; Department of Economics; University of Texas at Arlington; Arlington, Texas 76019-0479.

The bill amends s. 318.18, F.S., providing for an increase in penalties for failing to secure loads on vehicles. The bill doubles the \$100 fine making it \$200 plus applicable fees and court costs and increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years. This change could decrease traffic accidents caused by unsecured loads on vehicles and deter violations for failing to secure loads on vehicles.

Police Vehicles—Title Branding

Section 319.14, F.S., prohibits the sale, or exchange of any vehicle that has been licensed, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, or a vehicle that has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681 relating to motor vehicle sales warranties or the "lemon law," until DHSMV has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle or the title has been stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle. According to some law enforcement agencies, branding the title of non-pursuit vehicles as police vehicles reduces the resale value of these vehicles.

The bill amends the definition of "police vehicles" in s. 319.14, F.S., to include the words "marked and outfitted as a pursuit vehicle" so that only pursuit vehicles would have to be issued a title branded as a police vehicle. According to some law enforcement agencies this provision would increase the resale value of non-pursuit vehicles owned by the law enforcement agency.

Operation Iraqi Freedom and Operation Enduring Freedom 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 or retired 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 create Operation Iraqi Freedom and Operation Enduring Freedom license plates and qualifies Operation Iraqi Freedom and Operation Enduring Freedom veterans as the exclusive recipients of these plates. There would be no additional charge for the new license plate.

Motor Vehicle Dealers

Continuing Education & Training

Currently s. 320.27, F.S., requires all independent motor vehicle dealers to complete eight hours of continuing education prior to filing the renewal forms to DHSMV. The continuing education is to include at least two hours of legal or legislative issues, one hour of department issues, and five hours of relevant motor vehicle industry topics. The education may be provided in a classroom setting or by correspondence. This section also requires that for each initial license application, franchise motor vehicle dealers or an employee must attend an eight hour training and information seminar. The seminar includes, but is not limited to, dealer requirements, which include bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and other information that will promote good business practices.

The bill would require only independent motor vehicle dealers who have been in business for less than five years to complete the continuing education listed in s. 320.27, F.S. This change would limit the continuing education course requirement to only those independent dealers who are relatively new to the business. The bill would also delete the current provision requiring franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application.

Low Speed Vehicles

Currently, s. 320.27, F.S., relating to motor vehicle dealers, defines “motor vehicle” as any motor vehicle of the type and kind required to be registered and titled under chapters 319 and 327, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home.

The bill amends s. 320.27, F.S., by adding low speed vehicles to the list of vehicles excepted from the definition of “motor vehicles” for motor vehicle dealer licensing purposes. Low speed vehicles are defined in s. 320.01, F.S., as any four-wheeled electric vehicle complying with federal safety standards whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles.

Sellers of low speed vehicles are required to be licensed as motor vehicle dealers. These same businesses are not required to be licensed to sell golf carts. Low speed vehicles and golf carts are similar in design. This change would eliminate the requirement that sellers of low speed vehicles be licensed as motor vehicle dealers.

Driver’s Licenses and Identification Cards

Background: The REAL ID Act

The REAL ID Act of 2005, signed into law in May 2005, sets a May 2008 deadline for states to add detailed personal information to driver’s licenses and identification (ID) cards to ensure that licensed drivers and persons issued ID cards are U.S. citizens or legal immigrants. Florida has begun the implementation of the Real ID Act to ensure that Florida’s driver licenses and ID cards can be used for Federal identification purposes.

Currently the following provisions of the Real ID Act are being enforced in Florida:

- Requiring identity documents which evidences lawful presence;
- Obtaining minimum document requirements of full legal name, date of birth, and gender;
- Capturing and digitizing photographs and signatures;
- Obtaining the address of principle residence;
- Producing licenses and identification cards with three levels of security features – overt, covert, and forensic as well as the security of the equipment and materials;
- Utilizing common machine readable technology with defined minimum data elements;
- Obtaining proof of Social Security Number which is verified through the Social Security Administration;
- Verifying legal presence through the Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE);
- Issuing temporary and limited tenure licenses and identification cards for non-citizens based on term of legal presence;
- Providing digital scanning and storing of identity source documents of non-United States citizens and the use of document authentication equipment;
- Providing fraudulent document training for field staff statewide;
- Subjecting all persons authorized to manufacture or procedure cards to appropriate security clearances. (Criminal back ground checks for employees and vendors);
- Maintaining a state motor vehicles database that contains all data fields printed on the drivers’ licenses and identification cards; and their driving histories; and
- Limiting the period of validity of all driver’s licenses and identification cards to a period not to exceed eight years.

The bill contains revisions to definitions and the application process for driver's licenses and ID cards in Chapter 322, Florida Statutes, to ensure compliance with all the provisions of the federal Real ID Act.

Driver's License Definitions

Currently s. 322.01, F.S., defines "driver's license" as a certificate which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. Currently this section of law does not provide definitions for identification cards or temporary driver licenses.

The bill amends s. 322.01, F.S., to revise the following definitions to comply with federal codes:

- "Driver's license" denotes an operator's license as defined in 49 U.S.C. s. 30301;
- "Identification card" means a personal identification card issued by the department and which conforms to the definition in 18 U.S.C. s. 1028 (D);
- "Temporary driver license" means a certificate issued by the department, subject to all other requirements of law, which authorizes an individual to drive a motor vehicle, and which denotes an operator's license as defined in 49 U.S.C. s. 30301, and which denotes that the holder is permitted to stay for a short duration of time specified in the document issued and is not a permanent resident of the United States, and
- "Temporary identification card" means a personal identification card issued by the department that conforms to the definition in 18 U.S.C. s. 1028(D), and denotes that the holder is not a permanent resident of the United States but is permitted to stay in the United States for a short duration of time specified on the card.

Application for Licenses

Currently, s. 322.08, F.S., requires the following information for proof of nonimmigrant classification provided by the Department of Homeland Security, for an original driver's license:

- A notice of hearing from an immigration court scheduling a hearing;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Immigration and Naturalization Service,
- Any official documentation confirming the filing of a petition for asylum status or other relief issued by the Immigration and Naturalization Service;
- A notice of action transferring any pending matter from another jurisdiction to this state issued by the Immigration and Naturalization Service; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

The bill would allow the documentation of refugee status and evidence that an application is pending for adjustment of status to that of an alien or conditional permanent resident status in the United States to be used for proof of non-immigrant classification. To use such evidence a visa number must be available with a current priority date for processing by the Citizenship and Immigration Services.

Also under s. 322.08, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original driver's license, entitles the applicant to a driver's license for a period not to exceed the expiration date of the document presented or two years, whichever occurs first. The bill would change the maximum period of entitlement for a driver's license from two years to one year if these documents are presented by the applicant.

ID Cards

Currently s. 322.051, F.S., relating to ID cards, provides that any person who is 12 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking

permit¹², under Florida law can be issued an ID card by DHSMV upon completion of an application and payment of an application fee. The bill would amend s. 322.051, F.S., changing the minimum age requirement that ID cards may be issued from 12 years old to five years old.

Section 322.051, F.S., also requires the following documents to be presented in order to prove non-immigrant classification for purposes of obtaining an ID card:

- A notice of hearing from an immigration court scheduling;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Bureau of Citizenship and Immigration Services;
- Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the Bureau of Citizenship and Immigration Services;
- A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the Bureau of Citizenship and Immigration Services; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

The bill would allow evidence that an application is pending for adjustment of status to that of an alien or conditional permanent resident status in the United States to be used for proof of non-immigrant classification. To use such evidence a visa number must be available with a current priority date for processing by the Citizenship and Immigration Services.

Also under s. 322.051, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original identification card, entitles the applicant to an identification card for a period not to exceed the expiration date of the document presented or two years, whichever occurs first. The bill would change the maximum period of entitlement for driver's identification cards from two years to one year if these documents are presented by the applicant.

Driver License Digital Image and Record Sharing

The Help America Vote Act of 2002

On October 29, 2002, the U.S. Congress passed and the President signed the federal Help America Vote Act of 2002 ("HAVA"). It authorizes over \$3 billion dollars in federal aid over three years to the states to upgrade antiquated voting equipment, to assist the states in meeting the new election administration requirements in the bill, and for other election administration projects. It also contains several new, highly-technical substantive requirements. The Florida Legislature has already enacted a number of reforms that go a long way toward meeting the new federal requirements. There are still some provisions of Florida law that need amending to meet HAVA's new, somewhat technical substantive requirements.

One requirement of HAVA is:

Statewide Voter Registration System: By January 1, 2006 (pursuant to requested waiver of a 2004 deadline by the State of Florida), the State must make operational a statewide voter registration system that will serve as the official registration record for all federal elections; the system database must be cross-referenced against driver's license and social security administration records to confirm the identities of persons registering to vote.

HAVA Computerized Statewide Voter Registration List Requirements

¹² S. 320.0848, F.S.

The statewide voter registration list must be an interactive statewide list maintained and administered at the state level, containing the name and address of every voter, with a unique identifier having the following attributes:

- Serves as the single system for storing and managing the official list of voters;
- Must contain the name and registration information of every registered voter in the state;
- Must have a unique identifier assigned to each voter;
- Must coordinate with other agency databases;
- Any election official in the state must be able to obtain immediate electronic access to the information;
- Supervisors of elections must enter information in the database on an expedited basis;
- State must provide support to supervisors; and
- Serves as the official voter registration list for federal elections.

Section 322.142, F.S., relating to color photographic or digital imaged licenses, allows DHSMV to maintain a film negative or print file and requires the department to maintain a record of the digital image and signature of the licensees, with other data required by the department for identification and retrieval. Reproductions are only permitted for departmental administrative purposes or for the issuance of duplicate licenses, in response to law enforcement agency requests or to certain state agencies (including the Department of State) pursuant to interagency agreements.

This change would allow DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility. Current law allows this information to be shared with the Department of State for determining voter eligibility, but not with the Supervisors of Elections.

Suspension of License and Right to Review

Background: Driving Under the Influence (DUI)

Currently, when an individual is arrested for a violation of s. 316.193, F.S., and has an unlawful blood or breath level of .08 or higher or refuses to submit to a breath, blood or urine test when requested by a law enforcement officer, the individual's driving privilege is suspended at the time of arrest. The bill revises various provisions to Chapter 322, to provide clarification and consistency between driver license administrative suspension laws, ss. 322.2615 and 322.2616, and also addresses issues raised by courts in cases involving DHSMV's implementation of these sections.

Lawful Arrest

According to a recent Florida case¹³, Section 322.2615, F.S., provides that during a formal administrative review of a driver license suspension, the hearing officer must determine whether the person was placed under lawful arrest for a violation of s. 316.193, F.S., if the validity of the traffic stop is challenged. The court's opinion stated, "This provision contemplates that issues relating to the lawfulness of the stop... will be resolved under the issue concerning the lawfulness of the arrest."¹⁴

Driver License Suspension—Procedures & Reviews

The bill makes the following changes to s. 322.2615, F.S. to negate the need for DHSMV to show during the administrative review of a driver license suspension that a lawful arrest for a violation of s. 316.193, F.S. occurred in order to suspend the driver's license. The bill:

- Clarifies the following grounds for a suspension of driving privileges by a law enforcement or correctional officer:
 - Driving or in actual physical control of a motor vehicle with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher,

¹³ See Adam Schwartz v. State of Florida, Department of Highway Safety and Motor Vehicles, 920 So.2d 664 (Fla 3rd DCA 2005)

¹⁴ *Id.*

- Refusing to submit to a urine test, or a test of his or her breath-alcohol or blood-alcohol level;
- Provides that if a blood test has been administered and the results are not available at the time of arrest, the officer, or the agency employing the officer, is required to transmit the results to DHSMV within 5 days after receipt of the results.
- Requires the law enforcement officer to forward to DHSMV, within 5 days after issuing the notice of suspension of the driver's license, an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, or chemical or controlled substances;
- Clarifies the language relating to informal review by changing the word arrested to suspended;
- Clarifies the authority of hearing officer when suspension is under formal review, specifying that the hearing officer may subpoena and question officers and witnesses;
- Clarifies the issues within the scope of review for formal review hearings, specifying the blood and breath alcohol level for suspension, and removing the reference to arrest under s. 316.193, F.S.;
- Provides that materials submitted to DHSMV by law enforcement or correctional agencies are self-authenticating and are part of the record to be considered by the hearing officer;
- Requires the crash report to be considered by the hearing officer notwithstanding the prohibition of s. 316.066(4), F.S., against the use of crash reports in civil or criminal trials;
- Clarifies the language related to DHSMV procedures that follow the hearing officer's determination, specifying that the suspension period commences on the date of issuance of notice of suspension rather than the date of arrest;
- Allows a law enforcement agency to appeal any decision of DHSMV that invalidates the suspension by a petition for writ of certiorari to the circuit court; and
- Provides that DHSMV's decision, and any circuit court review of that decision, may not be considered in any DUI trial for a violation of s. 316.193, F.S.

Technical Changes

Reexamination of Drivers

The bill makes technical changes to s. 322.121, F.S., related to the periodic reexamination of drivers. This change would correct the cross references to paragraphs (a) through (f) of s. 322.57(1).

Motor Vehicle Dealers

The bill makes technical changes to s. 320.27(9) (b)18. F.S., of the motor vehicle dealer law to change the word 'owned' to 'owed' and to correct a cross reference to s. 320.02(17).

Gross Vehicle Weight

The bill makes technical changes to s. 316.302, F.S., related to commercial motor vehicle's safety regulations. This change would correct a reference to declared gross vehicle weight of less than 26,000 pounds to declared gross vehicle weight of less than 26,001 pounds.

Effective Date

Except as specifically provided in various sections of the bill, the act would become effective on October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 207.008, F.S., to revise the requirements for retention of records by motor carriers as required by DHSMV;

Section 2 amends s. 207.021, F.S., to provide for informal conferences to DHSMV to resolve disputes arising from the assessment of taxes, penalties, or interest;

Section 3 amends s. 316.003, F.S., to exclude miniature motorcycles from the definition of motorcycle; to provide a definition of “motorized scooter”; to define the term “miniature motorcycle”; and to conform current definitions of “saddle mount” to federal definitions;

Section 4 amends s. 316.211, F.S., effective January 1, 2007, to require motorcycle riders under 21 years old to display a license plate unique in design and color;

Section 5 creates s. 316.2123, F.S., to allow “ATV’s” to be operated by licensed drivers during the daytime on unpaved roads where the posted speed limit is less than 35 miles per hour; requiring proof of ownership by the operator;

Section 6 creates s. 316.2128, F.S., to prohibit the operation of “motorized scooters” and “miniature motorcycles” on public roads and sidewalks; to require the operator to have proof of ownership in possession at all times; to require a person selling “motorized scooters” and “miniature motorcycles” to provide a notice that these vehicles are not legal to operate on public roads or sidewalks; and to provide penalties for violations;

Section 7 amends s. 316.221, F.S., to provide a taillamp exemption for dump trucks;

Section 8 amends s. 316.302, F.S., to provide updates to federal regulations regarding commercial motor vehicle rules and regulations; to bring the intrastate hours-of-service requirements into compliance with federal tolerance allowances; to conform state utility and agricultural transportation law with federal law; and to revise the requirements for a CDL vision exemption;

Section 9 amends s. 316.515, F.S., to allow the operation of certain forestry equipment on public roads; and to conform current definitions of “automobile towaway and driveway operations” and “saddle mount” to federal definitions;

Section 10 amends s. 318.1215, F.S., the Dori Slosberg Driver Education Safety Act, to provide an increase in the amount of money the clerk of the court may collect for with each traffic penalty from \$3 to \$5;

Section 11 amends s. 318.14, F.S., to exclude drivers exceeding the speed posted speed limit by 30 miles per hour or more from paying a fine and attending traffic school in lieu of a court appearance;

Section 12 amends s. 318.18, F.S., to provide for a second offense in a twelve month period of exceeding the posted speed limit by 30 miles per hour or more an increase in fines from \$250 to \$500; and to increase the penalties for failing to secure loads;

Section 13 amends s. 318.19, F.S., to require a mandatory hearing for drivers exceeding the speed posted speed limit by 30 miles per hour or more;

Section 14 amends s. 319.14, F.S., to revise the definition of police vehicle for the purpose of title branding;

Section 15 amends s. 320.02, F.S., effective January 1, 2007, to require that for an original registration of any motorcycle, motor-driven cycle, or moped, the owner is to present proof that he or she has obtained the necessary endorsement as required in s. 322.57, F.S.;

Section 16 amends s. 320.0706, F.S., to revise the display of license plates on dump trucks;

Section 17 amends s. 320.089, F.S. to create the “Operation Iraqi Freedom” and the “Operation Enduring Freedom” license plates;

Section 18 amends s. 320.27, F.S., to provide that sellers of low speed vehicles do not have to be licensed as motor vehicle dealers; to revise the motor vehicle dealer licensing requirements for continuing education and for training and information seminar; to change the word owned to owed; to correct a cross reference to s. 320.02(17), F.S.

Section 19 amends s. 320.405, F.S., to provide that DHSMV is authorized to enter into agreements related to the International Registration Plan tax payments;

Section 20 amends s. 322.01, F.S., to revise the definition of “driver license”; to define “identification card”, “temporary driver license”, and “temporary identification card”;

Section 21 amends s. 322.051, F.S., to revise the age requirements for the issuance of ID cards from 12 years old to five; to revise the criteria related to the proof of nonimmigrant classification of an applicant for an identification card; and to reduce the maximum period that certain ID cards are valid to one year;

Section 22 amends s. 322.08, F.S., to revise the criteria related to the proof of nonimmigrant classification of an applicant for a driver’s license; and to reduce the maximum period that drivers licenses are valid to 1 year;

Section 23 amends s. 322.12, F.S., effective January 1, 2008, to revise the safety course requirements for first-time applicants for licensure to operate a motorcycle;

Section 24 amends s. 322.121, F.S., to clarify periodic license examination requirements;

Section 25 amends s. 322.142, F.S., to allow DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility;

Section 26 amends s. 322.2615, F.S., to clarify procedures, language and content related to suspension of license and right to review for driving with unlawful breath alcohol or blood-alcohol levels;

Section 27 amends s. 322.27, F.S., to increase driver license points from four to six for exceeding the posted speed limit by 30 miles per hour or more; to increase driver license points for a red light violation resulting in a crash to six points;

Section 28 provides that this bill takes effect October 1, 2006, except as otherwise provided.

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:

Traffic Control Violations

Sections 11, 12, 13, and 27 amend ss. 318.14, 318.18, 318.19, and 322.27, F.S., to increase driver license points for exceeding the posted speed limit, requires mandatory hearings, doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more. The bill also increases the driver's license points for a red light violation resulting in a crash and increases the penalty for failing to secure loads. These provisions could have an indeterminate fiscal impact on the private sector and on state and local governments if violations are committed and citations are issued.

To the extent that the bill deters unsafe traffic activity in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs.

State Impacts

Motor Carrier Compliance

Section 8 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Florida currently receives 50% (\$3.3 million) of its allocated federal funding (\$6.6 million) through the federal Motor Carrier Safety Assistance Program (MCSAP). The provisions of the bill relating to commercial motor vehicles would allow Florida to receive full federal allocation of \$6.6 million for the MCSAP. Failure to bring intrastate requirements within the federal tolerance guidelines could jeopardize additional federal highway funding.

Police Vehicles

Section 14 amends s. 319.14, F.S., related to title branding. This change could have a positive fiscal impact on state law enforcement agencies by increasing the resale value of non-pursuit vehicles owned by law enforcement agencies.

Local Impacts

The Dori Slosberg Driver Education Safety Surcharge

Section 10 amends s. 318.1215, F.S., to provide an increase in the amount of money the clerk of the court may collect for with each traffic penalty from \$3 to \$5. To the extent that local governments choose to increase their surcharge, this provision would have an indeterminate positive impact on the driver education programs in public and nonpublic schools that are funded from this surcharge.

Police Vehicles

Section 14 amends s. 319.14, F.S., related to title branding. This change could have a positive fiscal impact on local law enforcement agencies by increasing the resale value of non-pursuit vehicles owned by law enforcement agencies.

Private Sector Impacts

Pocket Motorcycles and Motorized Scooters

Section 6 creates s. 316.2128, F.S., requiring a person selling “motorized scooters” and “miniature motorcycles” to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the “Florida Deceptive and Unfair Trade Practices Act”¹⁵ and are liable for a civil penalty of not more than \$10,000 for each violation plus applicable court costs and attorney fees. This change could have an indeterminate negative fiscal impact on the sellers of these vehicles for complying with display and disclosure requirements, or if these requirements are violated.

Motor Carrier Compliance

Section 8 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Due to hour-of-service changes the bill could have a negative fiscal impact on the commercial motor carrier industry. The amount of the operational costs associated with these changes are unknown.

Forestry Equipment

Section 9 amends s. 316.515, F.S., to allow certain forestry equipment to operate on public roads to go from one point of harvest to another. This change could have an indeterminate positive fiscal impact on the owners of the equipment being transported.

Low Speed Vehicles

Section 18 amends s. 320.27, F.S., to eliminate the requirement for sellers of low speed vehicles to be licensed as motor vehicle dealers. This change could have an indeterminate positive fiscal impact on businesses that sell low speed vehicles.

Independent Motor Vehicle Dealers

Section 18 amends s. 320.27, F.S., to require only independent motor vehicle dealers who have been in business for less than five years to complete the continuing education courses, limiting the continuing education course requirement to only those independent dealers who are relatively new to the business. This could have an indeterminate positive fiscal impact on the independent dealers who have been in business five years or more and an indeterminate positive fiscal impact on the providers of the continuing education courses.

Franchise Motor Vehicle Dealers

Section 18 amends s. 320.27, F.S., to delete the current provision requiring new franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application. This could have an indeterminate positive fiscal impact on these franchise motor vehicle dealers and an indeterminate negative fiscal impact on the training and information seminar providers.

Motorcycle Riders

Section 23 amends s. 322.12, F.S., effective July 1, 2008 to require all applicants for a motorcycle driver's license endorsement, regardless of age, to successfully complete a motorcycle safety course. These courses are offered by different vendors throughout the state. The course registration fees vary

¹⁵ S. 501.201, F.S.

and will result in an indeterminate negative fiscal impact on motorcycle drivers over 21 and an indeterminate positive fiscal impact for the course providers.

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 7, 2006** the Committee on Transportation considered PCB TR 06-03 and adopted 10 amendments which added the following issues to the proposed bill.

- Amendment #1: Increased driver license points, requires a mandatory hearing, and doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more;
- Amendment #2: Increased the points for a red light violation resulting in a crash to six points (same as speeding resulting in a crash);
- Amendment #3: Increased the penalty for failing to secure loads from \$100 to \$200. Increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years;
- Amendment #5 Clarified the prohibition of the operation of "Pocket Motorcycles" and "Motorized Scooters" on public roads and sidewalks; required the operator to have proof of ownership; and sets out sales disclosure requirements;
- Amendment #6 Clarified the provisions on the bill relating to operating forestry equipment on public roads so that such movements are restricted to a maximum of 10 miles; and provided that such vehicles must comply with slow moving vehicle emblem requirements;
- Amendment #7: Allowed DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility. Current law allows this information to be provided to the Department of State for this purpose, but does not refer to Supervisors;
- Amendment #8: Relating to Motor Carrier Compliance this amendment did the following:
 - Brings the intrastate hours-of-service requirements into compliance with federal tolerance allowances;

- Conforms state law to changes recently enacted into federal law for utilities and agricultural transportation;
 - Conforms the current definitions of “automobile towaway and driveway operations” and “saddle mount” to federal definitions;
 - Updates the statutory reference to current Federal Motor Carrier Regulations; and
 - Makes a technical change to weight threshold requirements by changing “26,000” pounds to “26,001” pounds;
- Amendment #9: Removed the requirement for a franchise motor vehicle dealer to attend an 8 hour training and information seminar for each initial license application;
 - Amendment #10: Changed the effective date of the requirement that all first time applicants for licensure to operate a motorcycle complete a motorcycle safety course to July 1, 2008;
 - Amendment #11: Increased the amount of money the clerk of the court may collect with each traffic penalty from \$3 to \$5.

The bill was then reported favorably as amended. The legislation was filed and became HB 7079.