

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1179 Motor Vehicle Lien Enforcement  
**SPONSOR(S):** Burgin  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2000

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Roads, Bridges & Ports Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)	Full Appropriations Council on Education & Economic Development			
5)				

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**SUMMARY ANALYSIS**

This bill contains the recommendations of the Automobile Lenders Industry Task Force, created by the Legislature in 2008. Specifically, the bill:

- Expedites a writ of replevin in certain circumstances;
- Allows a sheriff, required to expedite execution of a writ of replevin, to recover additional expenses, including payment of off-duty deputy sheriffs;
- Requires the court to advance the cause on the calendar and rule on whether a writ of replevin or a prejudgment writ of replevin will be issued within three days after the date the civil action seeking issuance of the writ of replevin is filed;
- Directs the department to develop an electronic notification system that will notify motor vehicle floor plan financiers of any temporary tag issued on a motor vehicle in the inventory of a secured debtor;
- Allows a customer or lienholder to post a bond and preserve their rights in s. 713.78, F.S., proceedings; and
- Modifies procedures for enforcing liens for labor or services by sale of a motor vehicle.

This bill appears to have a negative fiscal impact on the Department of Highway Safety and Motor Vehicles of \$260,000 in FY 2009-2010 and \$75,000 recurring negative fiscal impact in the following years. This bill does not appear to have a fiscal impact on local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

During the 2008 Session, the Legislature passed SB 1992, which created the Automobile Lenders Industry Task Force within the department. The task force must make recommendations on proposed legislation and proposed department rules, present issues concerning the motor vehicle lending industry, consider any matters relating to the motor vehicle lending industry which are presented to it by the department, and submit a final report, including legislative proposal to the Governor, the President of the Senate, the Speaker of the House of Representatives and appropriate committees with the Legislature by June 30, 2009, when the task force shall cease to exist.

The task force is composed of 12 members appointed by each of the following organizations:

- One representative of the department;
- One representative of the independent motor vehicle industry, appointed by the Florida Independent Automobile Dealers Association;
- One representative of the franchise motor vehicle industry, appointed by the Florida Automobile Dealers Association;
- One representative of credit unions, appointed by the Florida Credit Union League;
- One representative of the banking industry, appointed by the Florida Bankers Association;
- One representative of the insurance industry, appointed by the Florida Insurance Council;
- One state attorney, appointed by the Florida State Attorneys Association;
- One representative of the Office of Financial Regulation of the Department of Financial Services;
- One representative of a law enforcement agency, appointed by the Florida Auto Theft Intelligence Unit;
- One representative of the auto repair industry, appointed by the Florida Automotive Services Association;
- One representative of the towing industry, appointed by the Professional Wrecker Operators of Florida; and
- One representative of independent motor vehicle finance companies, appointed by the Florida Financial Services Association.

The task force was required to elect a chair and vice chair at its initial meeting. In addition, the task force was required to meet at least four times in different areas of the state, including one meeting in Tallahassee. The task force was required to conduct all meetings pursuant to general law and must keep minutes of its meetings. The department must provide administrative support to the task force.

Section 30.231, F.S., authorizes a number of sheriff's fees to be assessed for action taken related to the execution of a writ, including docketing the writ, levying on property, advertising property for sale, safekeeping of property and selling of property.

Section 30.30, F.S., specifies it is the duty of a sheriff to levy upon property whenever any writ is issued and delivered to the sheriff commanding him or her to levy upon specified property.

To obtain an order authorizing the issuance of a writ of replevin prior to final judgment, the plaintiff must file with the clerk of court a complaint reciting and showing certain information specified in s. 78.055, F.S. Section 78.065, F.S., requires the court without delay to examine the filed complaint; and, if on the basis of the complaint and further showing of the plaintiff in support of it the court finds the defendant has waived his or her right to be notified and heard, the court must promptly issue an order authorizing the clerk of court to issue a writ of replevin.

Section 78.068, F.S., specifies a prejudgment writ of replevin may be issued and the property seized delivered forthwith to the petitioners when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the verified petition or by separate affidavit of the petitioner.

Section 319.24(5)(a), F.S., requires a lienholder, upon receipt of the final payment, to provide a satisfaction of the lien and the certificate of title indicating the satisfaction within 10 working days or notify the person satisfying the lien that the title is not available within 10 working days of receipt of such final payment.

Section 320.02, F.S., provides 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 department or to its authorized agent for registration on a form prescribed by department.

Section 320.0609, F.S., requires upon a sale, trade, transfer, or other disposition of a motor vehicle, the owner to remove the registration license plate and either return it or transfer it to a replacement motor vehicle. No registration license plate may be temporarily or permanently attached to any new or used replacement or substitute vehicle without filing an application for transfer of such registration license plate and paying the \$4.50 transfer fee to the department.

Florida law provides a variety of legal uses for a temporary tag. The primary reason for the issuance of temporary tags by motor vehicle dealers is to enable car buyers without a permanent license plate to operate their newly purchased vehicle. These temporary tags are valid for 30 days, which allows the dealer or the individual sufficient time to apply for a title and registration. Section 320.131, F.S., authorizes the department to issue temporary tags for a \$2 fee.

Section 320.131(8), F.S., requires the department to administer an electronic system for licensed motor vehicle dealers to use in issuing temporary tags. Dealers must enter into the system the appropriate vehicle and owner information upon the issuance of a temporary tag within the department's specified timeframe. In addition, the department is authorized to adopt the necessary rules to administer these specified provisions. Failure to comply is punishable by denial, suspension, or revocation of the motor vehicle dealer's license. This electronic system assists law enforcement through immediate retrieval of temporary tag information.

Section 559.903, F.S., provides the definitions used in the Florida Motor Vehicle Repair Act.<sup>1</sup>

Section 559.917(1), F.S., authorizes a customer to obtain the release of his or her motor vehicle from any lien claimed under part II of ch. 713, F.S., by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for

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<sup>1</sup> Sections 559-901-559.9221, F.S.

the payment of any judgment which may be entered on the lien. The bond must be in the amount stated on the required invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice. Upon posting bond, the clerk of the court must automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the customer's motor vehicle.

The lienor has 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney's fees. If the lienor fails to file suit within 60 days after the posting of bond, the bond shall be discharged.

Section 559.917(2), F.S., provides the failure of a lienor to release or return to the customer the motor vehicle upon which any lien is claimed, upon receiving a copy of the certificate giving notice of the posting of bond and directing release of the motor vehicle, shall subject the lienor to judicial proceedings which may be brought by the customer to compel compliance with the certificate.

Section 559.917(3), F.S., provides any motor vehicle repair shop, or any employee or agent who is authorized to release the motor vehicle who, upon receiving a copy of the certificate giving notice of the posting of the bond in the required amount and directing release of the motor vehicle, fails to release or return the property to the customer commits a second degree misdemeanor.<sup>2</sup>

Section 559.917(4), F.S., prohibits a customer who stops payment on a credit card charge or a check in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond from any recourse with respect to the motor vehicle repair shop.

Section 713.585, F.S., specifies certain procedures a person claiming a lien under s. 713.58, F.S., for performing labor or services on a motor vehicle must follow to enforce the lien by sale of the vehicle. Specifically, the lienor must give notice, by certified mail, return receipt requested, within 15 business days, excluding Saturday and Sunday, from the beginning date of the assessment of storage charges on the motor vehicle, to the registered owner of the vehicle, to the customer as indicated on the order for repair, and to all other persons claiming an interest in or lien thereon, as disclosed by the records of the department or of a corresponding agency of any other state in which the vehicle appears registered. The notice must contain:

- A description of the vehicle (year, make, vehicle identification number) and its location.
- The name and address of the owner of the vehicle, the customer as indicated on the order for repair, and any person claiming an interest in or lien thereon.
- The name, address, and telephone number of the lienor.
- Notice the lienor claims a lien on the vehicle for labor and services performed and storage charges, if any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the vehicle from the lien claimed by the lienor.
- Notice the lien claimed by the lienor is subject to enforcement and that the vehicle may be sold to satisfy the lien.
- If known, the date, time, and location of any proposed or scheduled sale of the vehicle. No vehicle may be sold earlier than 60 days after completion of the repair work.
- Notice the owner of the vehicle or any person claiming an interest in or lien thereon has a right to a hearing at any time prior to the scheduled date of sale by filing a demand for hearing with the clerk of the circuit court in the county in which the vehicle is held and mailing copies of the demand for hearing to all other owners and lienors as reflected on the notice.
- Notice the owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting bond in accordance with the provisions of s. 559.917, F.S.
- Notice any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be due and owing to the lienor will be deposited with the clerk of the circuit court for disposition upon court order.

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<sup>2</sup> Section 775.082, F.S., provides a second degree misdemeanor is punishable by a jail term of up to 60 days and a fine not to exceed \$500.

Section 818.01, F.S., provides whoever pledges, mortgages, sells, or otherwise disposes of any personal property belonging to him or her, or will be in his or her possession, and will be subject to any written lien, or will be subject to any statutory lien, whether written or not, or will be the subject of any written conditional sale contract under which the title is retained by the vendor, without the written consent of the person holding such lien, or retaining such title; and whoever removes or causes to be removed beyond the limits of the county where such lien was created or such conditional sale contract was entered into, any such property, without the consent aforesaid, or hides, conceals or transfers, such property with intent to defeat, hinder or delay the enforcement of such lien, or the recovery of such property by the vendor, is guilty of a first degree misdemeanor.<sup>3</sup>

### **Effect of Bill**

Section 1 amends s. 30.231, F.S., relating to sheriffs' fees for service of summons, subpoenas and writs of execution. It allows a sheriff, required to expedite execution of a writ of replevin, to recover additional expenses, including payment of off-duty deputy sheriffs.

Section 2 amends s. 30.30, F.S., to provide if a party to who a writ of replevin has been issued requests expedited service of the writ, the sheriff must expedite service no later than three days after such request, subject to payment of allowable additional expenses.

Section 3 amends s. 78.065, F.S., to require the court to advance the cause on the calendar and rule on whether a writ of replevin will be issued within three days after the date the civil action seeking issuance of the writ of replevin is filed.

Section 4 amends s. 78.068, F.S., to require the court to advance the cause on the calendar and rule on whether a prejudgment writ of replevin will be issued within three days after the date the civil action seeking issuance of the prejudgment writ of replevin is filed.

Section 5 amends s. 319.24, F.S., to increase the number of days from 10 to 15 for a lienholder to submit a lien satisfaction after receipt of final payment.

Section 6 amends s. 320.02, F.S., to allow the department to withhold registration, renewal of registration, or replacement registration of any motor vehicle owned by a person who has been reported pursuant to s. 818.01(3), F.S., if the person's name appears on a list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate pursuant to a written notice to surrender a vehicle submitted to the department by a lienor. The lienor must maintain proof the written notice was sent to each registered owner. A license plate, revalidation sticker, or replacement license plate may not be issued until the person's name no longer appears on the list or until the person presents documentation from the lienor that the vehicle has been surrendered to the lienor.

Section 7 creates s. 320.1315, F.S., to direct the department to develop an electronic notification system that will notify motor vehicle floor plan financiers of any temporary tag issued on a motor vehicle in the inventory of a secured debtor. In addition, the department is authorized to adopt rules to implement this section.

Section 8 amends s. 320.0609, F.S., to provide when a retail sale by a licensed motor vehicle dealer results in the transfer of a license plate, a temporary tag must be issued and displayed during the time the transfer of such application is being processed except when the department's records reflect the transfer has occurred.

Section 9 amends s. 320.131, F.S., relating to cases wherein the department is authorized and empowered to design, issue, and regulate the use of temporary tags. An additional use for temporary

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<sup>3</sup> Sections 775.082 and 775.083, F.S., respectively, provide that a first degree misdemeanor is punishable by a jail term of up to one year, and a fine not exceeding \$500 may be imposed.

tags is added to include for a retail sale by a licensed dealer when an application for the transfer of a registration license plate is being processed.

Section 10 amends s. 559.903, F.S., to add the definition of "lienholder" to mean the person or entity that holds a lien or security interest on the motor vehicle and who perfected the lien or security interest on the motor vehicle pursuant to s. 319.27, F.S. Also adds the definition of "owner" to mean the person or persons whose names appear on the title to the motor vehicle.

Section 11 amends s. 559.917, F.S., to allow a customer or lienholder to post a bond and preserve their rights in s. 713.78, F.S., proceedings.

Section 12 amends s. 713.585, F.S., modify procedures for enforcing liens for labor or services by sale of a motor vehicle. Specifically, this section is amended to:

- Decrease the number of business days from 15 to 10 that a lienor has to give notice by certified mail to all parties having an interest in the motor vehicle;
- Decrease the number of days from 60 to 50 after which a vehicle may be sold after completion of the repair work;
- Allow a lienholder the right to recover possession of the vehicle;
- Decrease the number of business days from 15 to 10 that a lienor has to notify law enforcement when the owner or lienholder is unable to be contacted;
- Eliminate the requirement to have a return receipt when sending notices of sale by certified mail; and
- Decrease the number of business days from 15 to 10, excluding Saturday and Sunday, that a lienor has to give notice to any person claiming an interest in a motor vehicle.

Section 13 amends s. 818.01, F.S., to provide any person who encumbers, removes, destroys, conceals, or otherwise disposes of, or conspires, aids, abets, or assents in the disposal of, any personal property, including any motor vehicle, belonging to the person or in the person's possession, which property is subject to any written or statutory lien, is the subject of any written conditional sale contract where the title is retained by the lienor, without the written consent of the person holding such lien, retaining such title commits a first degree misdemeanor.

Subsection (3) is added to s. 818.01, F.S., to authorize the department, upon receipt from a lienor of a written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed or destroyed by the lienee, to withhold registration, renewal of registration or replacement of registration of any vehicle owned by the lienee. The registered owner of the vehicle may dispute a notice to surrender the vehicle by notifying the department in writing and presenting proof the vehicle was sold to a motor vehicle dealer, mobile home dealer, or recreational vehicle dealer.

Subsection (4) is added to s. 818.01, F.S., to provide a secured party who reasonably believes an individual intends to conceal or remove property subject to a lien from the county where the lien was created or a conditional sale contract was entered into may, within 10 days after retaking possession of the property, move in a court of competent jurisdiction that the secured party be allowed to retain possession of the property as security for the debt.

Section 14 provides the act shall take effect July 1, 2009.

#### B. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., regarding sheriff's fees.

Section 2 amends s. 30.30, F.S., regarding writs and service of process by a sheriff.

Section 3 amends s. 78.065, F.S., regarding order to show cause related to writs of replevin.

Section 4 amends s. 78.068, F.S., regarding prejudgment writ of replevin.

Section 5 amends s. 319.24, F.S., regarding issuance of title certificates.

Section 6 amends s. 320.02, F.S., regarding registration of a motor vehicle.

Section 7 creates s. 320.1315, F.S., regarding notification upon issuance of a temporary motor vehicle tag.

Section 8 amends s. 320.0609, F.S., regarding transfer and exchange of motor vehicle license plates.

Section 9 amends s. 320.131, F.S., regarding temporary tags.

Section 10 amends s. 559.903, F.S., regarding definitions applicable to the Florida Motor Vehicle Repair Act.

Section 11 amends s. 559.917, F.S., regarding bonds to release a vehicle from a repair shop lien.

Section 12 amends s. 713.585, F.S., regarding enforcement of a lien against a motor vehicle.

Section 13 amends s. 818.01, F.S., regarding the criminal offense of disposing of property subject to a lien.

Section 14 provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None. See Fiscal Comments.

#### **2. Expenditures:**

The Department of Highway Safety and Motor Vehicles estimates that this bill will require expenditures of \$260,000 in FY 2009-2010, and recurring expenditures in the following fiscal years of \$75,000 a year.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Under current law, a customer who trades in a car immediately transfers the license plate. Section 8 of this bill requires issuance and use of a temporary tag while the owner awaits the new registration. This section will add the cost of a temporary tag (approximately \$10) to the cost of every vehicle trade-in.

### **D. FISCAL COMMENTS:**

This bill increases the duties of the courts and of the Department of Highway Safety and Motor Vehicles, yet does not create any user fees or provide any funding for the increased responsibilities.

As to State Revenues, the department did not prepare an estimate of the revenues or expenditures that would be required by the provision in this bill that would require a temporary tag on motor vehicle trade-in transactions.

On the provision for notification to floor plan finance companies, the department estimates that there will be approximately 1.1 million transactions and suggests a cost of \$0.25 each transaction. If the bill is so amended, the department estimates following costs and expenses:

	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
Total Recurring & Non-recurring Effects:			
Estimated Additional Revenue	\$ 281,750	\$281,750	\$281,750
Estimated Start-Up Costs	(\$110,000)		
Estimated Programming Costs	(\$150,000)		
Estimated Maintenance Costs		(\$75,000)	(\$75,000)
Net Revenue	\$ 21,750	\$206,750	\$206,750

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

Article V, section 2 gives the Supreme Court the exclusive right to set the rules of practice and procedure in the courts. This bill requires a court to grant a hearing and issue a ruling in certain circumstances within 3 days. It is possible that a court might find that this time requirement is a form of legislative rulemaking that is prohibited under art. V, s.2.

#### B. RULE-MAKING AUTHORITY:

None.

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

The short title to the bill provides that it is an act relating to motor vehicle lien enforcement, but the bill amends laws relating to enforcement of liens against any form of personal property (that is, in addition to motor vehicles, it applies to furniture, furnishings, equipment, boats, inventory, and the like).

This bill puts a civil provision regarding creation of a list of persons who may not register a motor vehicle into a criminal law section of law dealing with failure to return property subject to a lien.

The department has expressed concerns about the effective date of the bill allowing sufficient time for implementation to make necessary programming modifications. The department suggests an effective date of October 1, 2009. In addition, the department recommends amending s. 320.1351, F.S., to provide for a fee of \$0.25 per electronic notification to motor vehicle floor planners when a license plate is transferred and a temporary tag is issued for a vehicle in which the floor plan financiers have a security interest.



**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

n/a