

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1179 Motor Vehicle Lien Enforcement
SPONSOR(S): Civil Justice & Courts Policy Committee; Burgin; Rogers
TIED BILLS: None IDEN./SIM. BILLS: CS/CS/SB 2000

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 9 Y, 0 N, As CS, Bond, De La Paz.

SUMMARY ANALYSIS

This bill contains some of 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. A sheriff required to expedite execution of a writ of replevin may recover additional expenses;
Requires the court to advance the cause on the calendar when a person seeks a writ of replevin or a prejudgment writ of replevin;
Directs the Department of Highway Safety and Motor Vehicles to develop a system to limit a person from renewing an annual vehicle registration if that person has failed to surrender a motor vehicle to a lienholder after default and a demand for surrender;
Directs the Department of Highway Safety and Motor Vehicles 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; and
Modifies procedures for enforcing liens for labor or services by sale of a motor vehicle.

This bill appears to have a positive fiscal impact on the Department of Highway Safety and Motor Vehicles of \$21,700 in FY 2009-2010 and as much as \$206,750 recurring positive 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:

##### **Background**

During the 2008 Session, the Legislature created the Automobile Lenders Industry Task Force.<sup>1</sup> 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.

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<sup>1</sup> Section 44 of ch. 2008-176, L.O.F., from CS/CS/CS/SB 1992, 2nd Eng.

The task force was required to meet at least four times in different areas of the state, including one meeting in Tallahassee, and to suggest changes to the law regarding automobile lending. This bill includes some of the legislative suggestions of the Task Force.

### **Replevin**

Replevin is governed by ch. 78, F.S. A writ of replevin is a court order directing the sheriff to seize certain personal property that is the subject of a lawsuit. A writ of replevin that is issued before the final judgment in a case is known as a prejudgment writ of replevin, which is governed by s. 78.068, F.S. A prejudgment writ of replevin is uncommon, and is only available where the plaintiff can show a clear legal right to the writ and danger that the defendant may sell, conceal or destroy the property unless the court acts quickly. While a writ of replevin can be used to seize property of the plaintiff that is in the possession of the defendant, it's more common use is to seize property subject to a lien where the defendant refuses to voluntarily surrender the property to the lender.

Prior Florida law allowed any plaintiff to obtain a prejudgment writ of replevin simply by application to the clerk of the court, who issued the writ summarily. In *Fuentes v. Shevin*, 407 U.S. 67 (1972), the United States Supreme Court found that law to violate the Fourteenth Amendment to the United States Constitution because it deprived a person of property without due process of law. The current statute complies with the constitutional right to due process because a writ of replevin may only be issued by a court. However, the right to a hearing makes the process subject to delay due to court scheduling.

This bill amends replevin law at ss. 78.065 and 78.068, F.S., to require the court to advance the cause on the calendar when the plaintiff is seeking a writ of replevin.

### **Sheriff's Fees for Replevin**

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 the property. In general, the sheriff is entitled to his or her actual costs for the seizure of the property.<sup>2</sup>

This bill amends s. 30.30, F.S., to provide if a party to whom a writ of replevin for an automobile requests expedited service of the writ, the sheriff must execute the writ within three days after such request. This bill also amends s. 30.231, F.S., to provide that a sheriff serving an expedited writ of replevin may recover additional expenses, including overtime pay of deputy sheriffs.

### **Auto Registration and Failure to Surrender Vehicle**

Section 320.02, F.S., requires every owner of a motor vehicle operated or driven on the roads of the state to register the vehicle. Registration is required upon purchase, and must be renewed annually. The license plate and annual registration stickers are external evidence of registration.

The owner of a motor vehicle may agree to a lien against the motor vehicle as security on a loan. Upon the failure to pay the loan on its terms, the lender has the right to take possession of the motor vehicle, sell it, and apply the proceeds of the sale to the outstanding loan balance. Understandably, owners of motor vehicles are unhappy when their motor vehicle is taken by a lender, and some owners go to great lengths to hide or conceal their motor vehicle in an attempt to avoid a lender's attempt to seize their motor vehicle.

This bill amends s. 320.02, F.S., and creates s. 320.1316, F.S., to create a system by which a lender may send a written demand to the owner of a motor vehicle subject to lien demand the surrender of a motor vehicle. The department must create a form for use by lenders to demanding a motor vehicle. If the owner fails or refuses to surrender the vehicle, the lender may report the owner to the department

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<sup>2</sup> So, for instance, replevin of an automobile would require payment to a tow truck operator, replevin of a television might require rental of a van and one person to move it, replevin of a store's inventory might require many trucks and movers. Sheriff's deputies do not actually seize and move the property, they only stand by and keep the peace while a hired person or entity actually moves the property.

and the department must refuse to issue future annual registrations on any vehicle owned by that owner at the time that he or she was placed on the list. This restriction will not prohibit the owner from purchasing and registering another motor vehicle. An owner may contest being placed on the list if the owner can show that the motor vehicle in question was sold to a licensed dealer.

### **Notification to Floor Plan Finance Companies**

Retailers of goods, including motor vehicles, rely on floor plan financing to operate their business. Floor plan financing is a means to borrow the cash necessary to pay the manufacturer for goods that are on the sales floor and available for sale to retail customers. A floor plan finance company holds a lien against the retail inventory. Floor plan financing is not a fixed loan but is best described as a rolling line of credit account where funds go out from the lender as inventory is received and funds return to the lender as inventory is sold. The typical retailer sells the product for more than what is owed on the floor plan, keeping the difference to pay overhead and a profit to the business owner.

Retailers in financial trouble sometimes attempt to hide or delay reporting of retail sales to the floor plan lender in order to use that cash for other purposes. Floor plan lenders try to avoid this with various means of auditing retailers, often in the form of physical audits of the inventory on site. Such audits can be expensive and may not reveal problems until long after they have occurred.

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.

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.

This bill creates s. 320.1315, F.S., to create an electronic system whereby a floor plan lender can list with the department the motor vehicles that the lender has an interest in. The department will then provide the floor plan lender electronic notification upon sale of the vehicle. The floor plan lender can then utilize that information to audit compliance with the repayment terms of the floor plan agreement. The department may charge up to \$0.25 per motor vehicle record.

### **Motor Vehicle Repair Act**

The Florida Motor Vehicle Repair Act<sup>3</sup> provides, in part, that a motor vehicle repair shop has a possessory lien against a motor vehicle that the shop has stored or repaired. The shop may hold the vehicle until payment is received in full for the repair and storage of the motor vehicle.

Section 559.917, F.S., provides a means for the "customer" to regain possession and use of the motor vehicle should the customer object to the charges imposed. The customer must deposit with the clerk of the court the amount claimed by the shop. The clerk then issues an order to the shop directing the shop to release the vehicle. The shop must file suit against the customer within 60 days to recover monies due.

Section 559.903, F.S., defines the term "customer," as the person who brought the motor vehicle to the shop and signed the repair estimate. A shop is not required to determine who the owner of the motor vehicle is. By virtue of this definition, only the customer can retrieve the motor vehicle from shop, and

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<sup>3</sup> Sections 559-901-559.9221, F.S.

therefore the owner of a vehicle or a lienholder has no rights under the Motor Vehicle Repair Act. This bill amends s. 559.903, F.S., to create definitions of "owner" and "lienholder," and amends the Act to provide that an owner or lienholder has the same rights as a customer to post a cash bond to have a motor vehicle released from a shop.

Section 559.917(1)(b), F.S., provides that prevailing party in a lawsuit under the Motor Vehicle Repair Act is entitled to costs and attorney's fees. However, as the cash bond is only for the value of the repair, the shop may not easily recover costs and fees. This bill increases the cash bond requirement to provide that the customer, owner or lienholder must post 115% of the amount claimed by the shop in order to obtain an order releasing the motor vehicle.

### **Sale of Motor Vehicle by Shop**

Section 713.58, F.S., provides that a motor vehicle repair shop has a lien against a motor vehicle for the value of repairs performed on the motor vehicle, plus storage charges. Section 713.585, F.S., provides the procedure for the shop to enforce the lien through forced sale of the motor vehicle.

Section 713.585(1), F.S., requires the shop to give written notice by certified mail, return receipt requested, to the customer, owner and lienholders of the motor vehicle. The notice must be sent within 15 days of when storage charges start to accrue. The notice must describe the motor vehicle, the lien, and intended date for public sale of the motor vehicle. The vehicle may not be sold sooner than 60 days after the repair was completed. A notice changing the sale date, and a notice that the motor vehicle was sold, must likewise be sent certified mail, return receipt requested. This bill amends the procedures to:

- Reduce the notice time from 15 to 10 days.<sup>4</sup>
- Remove the requirement that mailings utilize the return receipt process.
- Reduce the minimum days before sale from 60 days to 50 days.

### **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. 320.02, F.S., regarding registration of a motor vehicle.

Section 6 creates s. 320.1315, F.S., regarding notification upon issuance of a temporary motor vehicle tag.

Section 7 creates s. 320.1316, F.S., regarding the failure to surrender a motor vehicle or vessel.

Section 8 amends s. 559.903, F.S., regarding definitions applicable to the Florida Motor Vehicle Repair Act.

Section 9 amends s. 559.917, F.S., regarding bonds to release a vehicle from a repair shop lien.

Section 10 amends s. 713.585, F.S., regarding enforcement of a lien against a motor vehicle.

Section 11 provides an effective date of July 1, 2009.

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<sup>4</sup> If the notice is sent after the deadline, the shop may not recover storage charges for the days past the notice deadline.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Department of Highway Safety and Motor Vehicles estimates that this bill will generate revenues of \$281,750 annually should the department charge the maximum rate of \$0.25 per transaction.

#### 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:

Floor plan finance companies that elect to receive notification of the sale of a secured vehicle may be charged as much as \$0.25 per transaction.

### D. FISCAL COMMENTS:

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. 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:

**B. RULE-MAKING AUTHORITY:**

None.

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

The Department of Highway Safety and Motor Vehicles may not be able to implement the programs created by this bill by the effective date of July 1, 2009.

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

On March 27, 2009, the Civil Justice & Courts Policy Committee adopted one amendment to the bill. The amendment:

- Provides that the provision creating a sheriff's expedited execution of a writ of replevin only applies to motor vehicles.
- Removes the provisions that would have required a court to conduct a hearing on a writ of replevin within 3 days.
- Removes an extension of time to return a title after payment in full of the lien.
- Removes a provision that would have required issuance of a temporary tag on trade-in transactions.
- Adds that a person posting a bond for release of a motor vehicle from shop must pay an additional 15%.
- Removes changes to the criminal penalties for unlawful sale of property subject to a lien.

The bill was then reported favorably as a committee substitute.