

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 2000

INTRODUCER: Commerce Committee and Senator Constantine

SUBJECT: Motor Vehicle Lien Enforcement

DATE: April 7, 2009

REVISED: 3/25/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/2 amendments
2.	O'Callaghan	Cooper	CM	Fav/CS
3.			JU	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This CS contains the recommendations of the Automobile Lenders Industry Task Force (task force), which was created by the Legislature in 2008.

Specifically, the CS:

- Expedites a writ of replevin in certain circumstances;
- Allows a sheriff, if required to expedite execution of a writ of replevin, to recover additional expenses, including payment of off-duty deputy sheriffs;
- Requires the court to rule on whether a writ of replevin or a prejudgment writ of replevin will be issued within 3 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 provide daily notification to motor vehicle floor plan financiers of any motor vehicle sold by a licensed motor vehicle dealer;
- Allows a owner or lienholder to post a bond to release his or her vehicle from certain liens;
- Modifies procedures for enforcing liens for labor or services by sale of a motor vehicle;

- Provides for a criminal penalty for the disposing or concealing of motor vehicles subject to a lien; and
- Modifies procedures for enforcing liens for recovering, towing, or storing vehicles and vessels.

This CS substantially amends, the following sections of the Florida Statutes: 30.231, 30.30, 78.065, 78.068, 319.24, 320.02, 322.34, 559.903, 559.917, 713.585, 713.78, and 818.01.

This CS creates an undesignated section of the Florida Statutes.

II. Present Situation:

Motor Vehicle Industry Oversight

During the 2008 Session, the Legislature passed SB 1992, which created the Automobile Lenders Industry Task Force within the department.¹ The task force is charged with presenting issues concerning the motor vehicle lending industry and considering any matters relating to the motor vehicle lending industry which are presented to it by the department. The task force must submit a final report, including legislative and department rule proposals, to the Governor, the President of the Senate, the Speaker of the House of Representatives and the appropriate committees within 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.

¹ See 2008-176, L.O.F.

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.

Writs of Replevin

A writ of “replevin” enforces a legal right of immediate possession of specified property, which is granted to a person who has the right to immediately possess the property against another who is holding property wrongfully or unlawfully.²

“Service of process” refers to the delivery by a sheriff or sheriff’s deputy of certain legal documents, including a writ of replevin.³

Sheriff’s fees may 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.⁴

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 a 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.

A “prejudgment writ of replevin” may be issued and the property subject to the writ must be delivered to the petitioners when the nature and amount of the claim, and the grounds relied upon for the issuance of the writ, clearly appear from specific facts shown by a verified petition or by separate affidavit of the petitioner.⁵

Satisfaction of Liens

A lienholder, upon receipt of the final payment of a lien, must provide a satisfaction of the lien and the certificate of title indicating the lien has been satisfied within 10 working days, or the lienholder must notify the person satisfying the lien that the title is not available within 10 working days of receipt of such final payment.⁶ If a title is not available, then the lienholder is responsible for the cost of the duplicate title.⁷

² 66 Am. Jur. 2d Replevin § 46

³ See Fla.R.Civ.P. Rule 1.070.

⁴ Section 30.231, F.S.

⁵ Section 78.068, F.S.

⁶ Section 319.24(5)(a), F.S.

⁷ *Id.*

License Plate Registration

Every owner of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state.⁸ The owner or person in charge must apply to the department or to its authorized agent for registration on a form prescribed by department.

The owner must remove a registration license plate and either return it or transfer it to a replacement motor vehicle upon a sale, trade, transfer, or other disposition of the motor vehicle.⁹ A registration license plate may not be temporarily or permanently attached to any new or used replacement or substitute vehicle without applying for the transfer of the registration license plate and paying a \$4.50 transfer fee to the department.¹⁰

Florida law provides a variety of legal uses for a temporary tag. The primary reason for the issuance of temporary tags 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.

Motor Vehicle Liens

A customer, who is subject to a 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, may obtain the release of his or her motor vehicle by filing a cash or surety bond with a clerk of the circuit court.¹¹ The bond must be payable to the person claiming the lien and conditioned for 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, but 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.

⁸ Section 320.02, F.S.

⁹ Section 320.0609, F.S.

¹⁰ *Id.*

¹¹ Section 559.917(1), F.S.

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 that any motor vehicle repair shop, or any employee or agent who is authorized to release the motor vehicle, that fails to release or return the property to the customer upon receiving a copy of a certificate giving notice of the posting of a bond in the required amount and directing release of the motor vehicle, commits a second degree misdemeanor.¹²

A customer who stops payment on a credit card charge or a check used to recompense a motor vehicle repair shop for charges on an invoice or who fails to post a cash or surety bond is prohibited from any recourse with respect to the motor vehicle repair shop.¹³

Section 713.585, F.S., specifies certain procedures a person claiming a lien 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.

¹² 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.

¹³ Section 559.917(4), F.S.

- 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.

A person that pledges, mortgages, sells, or otherwise disposes of any personal property belonging to him or her, or in his or her possession, and which is subject to any written or statutory lien or is subject to any written conditional sale contract, without the written consent of the lienor is guilty of a first degree misdemeanor.¹⁴ Furthermore, if a person removes the property beyond the limits of the county where the lien was created or the conditional sale contract was entered into, without the consent of the lienor, or hides, conceals or transfers, the property with intent to defeat, hinder, or delay the enforcement of the lien, or the recovery of the property, that person is guilty of a first degree misdemeanor.¹⁵

III. Effect of Proposed Changes:

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, if 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 whom a writ of replevin has been issued requests expedited service of the writ, the sheriff must expedite service no later than 3 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 3 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 3 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 for a lienholder to submit a lien satisfaction and the certificate of title after receipt of final payment from 10 working days to 15.

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

¹⁴ Section 818.01, F.S.

¹⁵ 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.

on the list or until the person presents documentation from the lienor that the vehicle has been surrendered to the lienor.

Section 7 creates an undesignated section of Florida law, to direct the department to develop an electronic notification system that will notify motor vehicle floor plan financiers of any motor vehicle sale of a secured debtor. A “floor plan” is an arrangement through which a dealership borrows money from a financing institution (frequently a subsidiary of the manufacturer) to finance its vehicle inventory,¹⁶ which is used as collateral for the loan.

The electronic notification must include vehicle information and dealer identification. A floor plan financier may authorize the department to use a third party vendor to facilitate the electronic notification. Floor plan financiers must notify the department when they no longer need electronic notification.

Subsection (4) authorizes the department to charge up to 25 cents per record transmitted, and such revenue is to be deposited into the Highway Safety Operating Trust Fund.

Section 8 amends s. 322.34, F.S., to delete the return receipt requirement for notices sent to registered owners, coregistered owners, and lienholders of vehicles when a vehicle has been impounded or immobilized. A lienholder is authorized to post a bond to have an impounded or immobilized vehicle released. A lienholder is also subject to impoundment or immobilization charges should the lienholder not prevail when challenging an impoundment or immobilization of the vehicle in court.

Section 9 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. This section also adds the definition of “owner” to mean the person or persons whose names appear on the title to the motor vehicle.

Section 10 amends s. 559.917, F.S., to allow a customer or lienholder to post a bond pursuant to s. 713.78, F.S., to release the customer’s vehicle.

Section 11 amends s. 713.585, F.S., to 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;

¹⁶ Internal Revenue Service, *Motor Vehicle Industry Overview-Industry Terms*, available at <http://www.irs.gov/businesses/article/0..id=170823.00.html> (Website last visited on April 1, 2009).

- 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 12 amends s. 713.78, F.S., to clarify that the law enforcement agency of the jurisdiction where a vehicle or vessel is being stored is responsible for contacting the department whenever the removal of a vehicle or vessel is authorized or whenever a towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel.

Paragraph (4)(d) clarifies that a public agency of the jurisdiction where the vehicle is stored must be notified in writing by the towing-storage operator that owner or lienholder of a vehicle cannot be located.

Paragraph (5)(a) limits the jurisdiction to the county where the vehicle is stored for an owner or lienholder to file a complaint in court to determine if his or her property was wrongfully taken or withheld.

Subsection (6) allows an owner or lienholder to file a complaint after a vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court is authorized to award damages, attorney's fees, and costs in favor of the prevailing party.

Subsection (10) authorizes lienholders to inspect towed vehicles that they have a lien against and receive personal property not affixed to the towed vehicle.

This section also deletes the return receipt requirements for certain notifications.

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, 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent this CS requires courts to implement certain court procedures, it may elicit a challenge under the Separation of Powers clause, art. II, s. 3, of the Florida Constitution.

Article V, s. 2, of the Florida Constitution, gives the Supreme Court the exclusive right to set the rules of practice and procedure in the courts. Sections 3 and 4 of the CS require a court to grant a hearing and issue a ruling in certain circumstances within 3 days. A court may find that the time requirement provided for in this CS is a form of legislative rulemaking that unconstitutionally encroaches upon authority exclusively bestowed upon the judicial branch in art. V, s. 2.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS contains the recommendations of the Automobile Lenders Industry Task Force to provide additional protections and potentially lower the cost of business for commercial lienholders, towing companies, repair shops, buy here/pay here dealers, floor planners, and new and used motor vehicle dealers. However, the exact fiscal impact is indeterminate.

C. Government Sector Impact:

Local Government Impact:

The CS provides for payment to law enforcement for additional expenses, including payment of off-duty deputy sheriffs, to expedite the execution of a writ of replevin.

In addition, the courts may be impacted by the advancement rule on whether a writ of replevin will be issued within 3 days after the date the civil action is filed. It is unknown if this fiscal impact is material or not.

State Government Impact:

According to the fiscal analysis provided by the department, the following is an estimate of approximately 1.1 million notifiable transactions at \$0.25 each, which may be higher or lower based upon the number of actual transactions processed and attributable to maintenance costs.

	<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

VI. Technical Deficiencies:

Section 13 of the CS allows a secured party, who believes property subject to a lien may be removed from the “county,” to make a motion in court to retain possession of that property. However, this section allows a court, in response to such motion, to order the secured party to retain the property if it finds reasonable cause to believe that the individual intends to remove the property from the “state.” It seems that either the word “county” in line 823 of the CS should be changed to “state” or the word “state” in line 829 of the CS should say “county” to make this provision consistent.

VII. Related Issues:

The department has expressed concerns about the effective date of the CS allowing sufficient time for implementation to make necessary programming modifications. The department suggests an effective date of October 1, 2009.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce on April 6, 2009:**

- Deletes certain provisions in the bill relating to temporary tags.
- Requires the department by January 1, 2010, to implement a system providing daily electronic notifications, as opposed to notification upon issuance of a temporary tag, to motor vehicle floor-plan financiers when a motor vehicle is sold by a licensed motor vehicle dealer.
- Authorizes the department to charge up to \$0.25 per motor vehicle record and directs such revenues to be deposited in to the Highway Safety Operating Trust Fund.
- Eliminates the requirement to have a return receipt when sending notices of impoundment by certified mail to registered owners, co-registered owners, and to persons of record claiming a lien against the impounded vehicle.
- Allows a lienholder the right to recover possession of a vehicle impounded or immobilized under certain conditions.
- Clarifies the law enforcement agency of the jurisdiction where a vehicle or vessel is being stored is responsible for contacting the department whenever the removal of a vehicle or vessel is authorized or whenever a towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., F.S.,(relating to towing or removal of a vehicle or vessel from private property).
- Limits the jurisdiction to the county where the vehicle is stored for an owner or lienholder to file a complaint in court to determine if his or her property was wrongfully taken or withheld.
- Deletes return receipt mailing requirements provided in s. 713.78, F.S.
- Allows an owner or lienholder to file a complaint after a vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court is authorized to award damages, attorney's fees, and costs in favor of the prevailing party.

B. Amendments:

None.