

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 Finance and Tax Committee

BILL: CS/CS/SB 2400

INTRODUCER: Finance and Tax Committee, Transportation Committee and Senator Gardiner

SUBJECT: Department of Highway Safety and Motor Vehicles

DATE: April 13, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	Dugger	Cannon	CJ	Favorable
3.	ODonnell	McKee	FT	Fav/CS
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill makes changes to numerous programs administered by or affecting the Department of Highway Safety and Motor Vehicles (DHSMV or department). Examples of major provisions in the bill include:

- Regulates “tri-vehicles” by defining the term, classifying a tri-vehicle as an inherently low-emission vehicle (ILEV), modifying the definition of “motorcycle” as it relates to driver licenses, to exclude tri-vehicles, and including tri-vehicles among the types of vehicles upon which annual license taxes are levied;
- Mirrors the Federal Motor Carrier Safety Administration (FMCSA) regulations and remedies in order to prevent inconsistencies;
- Amends requirements for agencies and persons performing impoundment services;
- Permits certain license tags for motorcycles or mopeds to be affixed perpendicularly to the ground if a transponder is on the motorcycle or moped;
- Allows GPS devices to be attached to a motor vehicle’s windshield;
- Exempts additional vehicles from sunscreening prohibitions;

- Clarifies that the department is authorized to suspend the driver's license of a person convicted of operating a motor vehicle without insurance even in the event the court fails to issue the order;
- Creates unique license plate numbers for legislative plates;
- Allows a disabled veteran's plate to be renewed biennially;
- Provides an enhanced penalty for exceeding the speed limit in a designated school crossing;
- Requires lienholders repossessing vehicles in Florida to apply to a Florida tax collector's office or to the department for a certificate of repossession or certificate of title;
- Prohibits the possession of a vehicle that imitates the Florida Highway Patrol;
- Clarifies that Florida Highway Patrol officers have the same arrest or other authority provided for law enforcement officers generally by ch. 901, F.S., and that they have statewide jurisdiction;
- Removes the road signs re-exam requirement that certain drivers must pass at the time of license renewal;
- Allows a licensed physician at a federally established veterans hospital to administer the Florida vision exam;
- Deletes the requirement that law enforcement officers must submit the crash report along with all other documentation when an administrative suspension for driving with an unlawful blood alcohol level is reviewed; however, the submission of the crash report is permitted;
- Allows the court to withhold adjudication on a charge of driving while a license is suspended, revoked or cancelled if the underlying suspension is non-driving related; and
- Specifies additional circumstances under which the department may deny, suspend or revoke the license or certificate of a commercial driving school.

The bill has no revenue impact.

This bill substantially amends ss. 316.003, 316.066, 316.0741, 316.159, 316.193, 316.2085, 316.2952, 316.29545, 316.605, 316.646, 318.14, 318.18, 319.28, 319.30, 320.071, 320.08, 320.0807, 320.084, 321.03, 321.05, 322.01, 322.121, 322.18, 322.2615, 322.34, 322.61, and 488.06 of the Florida Statutes.

II. Present Situation:

Tri-Vehicles

Current Florida law provides for the legal operation on public roads of motorcycles, automobiles, and trucks, as well as several different types of non-traditional vehicles. These include: golf carts¹, all-terrain vehicles², utility vehicles³, and low speed vehicles.⁴ However, no provision is made for "tri-vehicles," which are 3-wheeled, enclosed-cabin vehicles. Tri-vehicles do not fit within the current definitions of an automobile or a motorcycle

Currently, s. 316.003, F. S., does not define a tri-vehicle.

¹ Section 212.212, F.S.

² Section 316.2123, F.S. See also, s. 316.2074, F.S.

³ Sections 316.2126, 316.21265, and 316.2127, F.S.

⁴ Section 316.2122, F.S.

Section 320.01(27), F.S., defines a motorcycle to mean a motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, a moped, or a vehicle in which the operator is enclosed by a cabin. Based on this definition, a tri-vehicle is not a motorcycle.

Section 316.0741, F.S., defines a “hybrid vehicle” to mean a motor vehicle that:

- Draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using combustible fuel and a rechargeable energy-storage system; and
- In the case of a passenger automobile or light truck, has received a certificate of conformity under the Clean Air Act, 42 U.S.C. ss. 7401 et seq., and meets or exceeds the equivalent qualifying California standards for a low-emission vehicle.

In addition, s. 316.0741, F.S., authorizes the following vehicles to use a high-occupancy-vehicle lane (HOV lane) without regard to occupancy:

- Inherently low-emission vehicles certified and labeled in accordance with federal regulations; and
- Hybrid vehicles upon the state’s receipt of written notice authorizing such use.

Section 316.0741, F.S., requires all hybrid and other low-emission and energy-efficient vehicles that do not meet the minimum occupancy requirement and are driven in an HOV lane to comply with federally mandated minimum fuel economy standards.

The department is required by statute to issue decals for the use of HOV lanes by such vehicles. The department may charge a fee for a decal, not to exceed the costs of designing, producing, and distributing each decal, or \$5, whichever is less. The proceeds from sale of the decals shall be deposited in the Highway Safety Operating Trust Fund (HSOTF.) Rulemaking authority with regard to s. 316.0741, F.S., relating to HOV lanes currently rests with the department.

Section 320.08, F.S., provides for an annual license tax levied on the operation of motor vehicles, mopeds, motorized bicycles, and mobile homes that are collected by the department at the time of registration or renewal of a registration. These fees vary by vehicle type and weight class. Revenues derived from the annual license tax are distributed as provided in s. 320.20, F.S.

Commercial Motor Vehicle Operators’ Responsibilities at Railroad Crossings

Section 316.159(1), F.S., specifies the driver of any motor vehicle carrying passengers for hire, excluding taxicabs, any school bus carrying any school child, or any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet, but not less than 15 feet, from the nearest rail of the railroad and, while so stopped, shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, except as provided, and shall not proceed until he or she can do so safely. After stopping as required and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in a gear of the vehicle so that there will be no necessity for changing gears while traversing the crossing, and the driver shall not shift gears while crossing the track or tracks. Section 316.159(2), F.S.,

provides no stop need be made at any such crossing where a police officer, a traffic control signal, or a sign directs traffic to proceed. However, any school bus carrying any school child shall be required to stop unless directed to proceed by a police officer.

Federal Motor Carrier Safety Administration Regulations – Disqualifications

Section 322.61, F.S., establishes criteria for disqualifying a commercial driver licensee from operating a commercial motor vehicle if the violations were committed in a commercial motor vehicle. The criteria consist of specified violations that, if made within certain timeframes, result in a temporary disqualification to operate a commercial motor vehicle. These violations and specifications mirror requirements provided by the FMCSA regulations, which the states are required to implement. Failure to comply can result in consequences ranging from loss of federal funds to decertification of the state to issue commercial driver's licenses.

Out-of-service orders are issued to commercial motor vehicle operators for significant safety violations. Section 322.061, F.S., penalizes commercial operators who continue to drive while under an out-of-service order. Currently, the law provides for disqualification of a commercial motor vehicle operator for not less than 90 days nor more than 1 year if he or she is convicted of committing a first violation of an out-of-service order while driving a commercial motor vehicle. A second violation of an out-of-service order occurring during any 10-year period results in at least a one year and not more than 5 years disqualification.

Crash Reports

Section 316.066, F.S., requires a law enforcement officer to file a written report for a motor vehicle crash if the crash:

- Resulted in death or personal injury;
- Resulted in damage to a vehicle or other property; or
- Rendered the vehicle inoperative and required a wrecker to remove it from traffic.⁵

Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt for a period of 60 days after the date the report is filed.⁶ Such reports are immediately available to:

- The party involved in the crash and his or her legal representative, licensed insurance agent, insurer, or person under contract with such insurer to provide claims or underwriting information;
- Prosecutorial authorities;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices;
- Free newspapers of general circulation; and
- Any local, state, or federal agency.

Impoundment and Immobilization

⁵ Section 316.066(3)(a), F.S.

⁶ Section 316.066(5), F.S.

Section 316.193, F.S., provides specific definitions of “immobilization,” “immobilization agency,” “impoundment,” and “person” and requires a court’s notice of impoundment or immobilization to include the name and telephone numbers of all immobilization agencies that meet specified criteria. All costs and fees for the impoundment or immobilization are to be paid directly to the person immobilizing or impounding the vehicle.

The section further establishes professional criteria for businesses immobilizing vehicles pursuant to s. 316.193, F.S. In judicial circuits where personnel of the court or Sheriff’s office are not responsible for immobilizing vehicles under s. 316.193, F.S., the private entities and/or individuals responsible for these duties are required to:

- Have a class “R” license issued pursuant to part IV of chapter 493;
- Have at least three years of verifiable experience in immobilizing vehicles;
- Maintain, for at least three years, accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court’s order of impoundment or immobilization, and any other documents relevant to each immobilization; and
- The person performing the immobilization must not have been convicted of any felony or of any DUI or boating-under-the-influence charge.

A violation of these standards is a misdemeanor offense, punishable as provided in s. 775.082 or 775.083, F.S. Section 316.193(13), F.S., grants standing to bring a civil action for violations of these standards to any person aggrieved by a person’s violation of the standards. The action may include injunctive relief, damages, reasonable attorney’s fees and costs, as well as any other remedy in law or equity. Furthermore, if in such an action, it is proven a person violated the specified criteria for persons who immobilize vehicles then that proof conclusively establishes clear legal right to injunctive relief, that irreparable harm will be caused if an injunction is not issued, no adequate remedy at law exists, and that public policy favors issuance of injunctive relief.

Motorcycles/Mopeds

Section 316.2085, F.S., provides for the proper operation of a motorcycle – including a requirement that the license tag of a motorcycle must be “permanently affixed to the vehicle,” and incapable of being adjusted or “flipped up.” The section also provides a prohibition regarding the visibility or legibility of a tag specifying that “[n]o device for or method of concealing or obscuring the legibility of the license tag of a motorcycle shall be installed or used” by a rider.

Section 316.605, F.S., provides vehicle license plates must be affixed and displayed in such a manner that the letters and numerals shall be read from left to right parallel to the ground.

Section 320.08(1)(d), F.S., provides for the annual license taxes of \$13.50 for the operation of an ancient or antique motorcycle which is collected by the department upon registration or a renewal of a registration.

Windshield Restrictions, Sunscreening

Section 316.2952(2), F.S., provides that no devices, sunscreen materials, products, or other coverings may be attached to a windshield except:

- A certificate or paper required to be displayed by law,

- Sunscreening material in a strip at the top of the windshield, if the material is in compliance with federal standards, or
- A device issued by a governmental entity for the purpose of electronic toll payments,

Sections 316.2953 – 316.2956, F.S., generally restrict motor vehicle operators from applying window tint beyond a certain level of opacity. A medical exclusion currently exists in s. 316.29545, F.S., for persons with Lupus, and for law enforcement vehicles that are used for undercover or canine operations.

Financial Responsibility

Section 316.646, F.S., requires law enforcement officers to verify proof of insurance and to verify the driver carries the right type of coverage based on the violations the person may have committed. Violation of this provision is a nonmoving traffic violation. If the violator provides the necessary proof before the court date, the fine and court appearance may be waived. Failure to furnish proof may result in suspension of the registration and driver’s license of the person. The department currently takes action only when the violator is unable to provide proof of liability to the court and the court orders the department to suspend the driving privilege of the offender. According to the department, a conviction alone does not automatically generate the suspension.

Signatures on Citations

Section 318.14(2), F.S., provides that, except for a toll violation, a person cited for an infraction under s. 318.14, F.S., must sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in s. 318.14, F.S.

Section 318.14(3), F.S., provides any person who willfully refuses to accept and sign a summons is guilty of a second degree misdemeanor.

Speeding in a Designated School Crossing

Section 318.18(3), F.S., provides the following fines for moving violations involving unlawful speed:

For speed exceeding the limit by:	Fine
1-5 mph	Warning
6-9 mph	\$25
10-14 mph	\$100
15-19 mph	\$150
20-29 mph	\$175
30 mph and above	\$250

In addition, s. 318.18(c), F.S., provides that a person cited for exceeding the speed limit by up to 5 mph in a legally posted school zone will be fined \$50. A person exceeding the speed limit in a school zone must pay a fine double the amounts listed above.

Certificates of Repossession/Title

Section 319.28, F.S., allows a lienholder who has repossessed a vehicle to apply to the tax collector's office or to the department for a certificate of repossession or to the department for a certificate of title.

Apportioned Motor Vehicle Renewals

Section 320.071, F.S., provides that an owner of any apportioned motor vehicle currently registered in the state may apply for renewal of the registration with the department any time during the five months preceding the date of expiration of the registration period.

License Plates for Elected Officials

Currently, s. 320.0807, F.S., regarding special license plates for Governor and federal and state legislators, provides that upon application by any member of the House of Representatives of Congress, a United States Senator, member of the state House of Representatives, a state senator, or the Governor, and payment of personalized prestige license plates fees, DHSMV is authorized to issue a license plate stamped "Member of Congress," "State Legislator," "State Senator," or for the Governor, "Florida 1" and "Florida 2." Pursuant to s. 320.0807(2), F.S., one license plate provided to a legislator shall have the legislator's appropriate district number. If additional plates are requested, they will have numbers assigned by DHSMV. In addition, s. 320.0807, F.S., authorizes upon application and payment of the fees the issuance of legislative license plates to any current or former Senate President and any current or former House Speaker. These special license plates must be stamped in bold letters "Senate President" or "House Speaker" followed by the number assigned by DHSMV or chosen by the applicant if it is not already in use.

Biennially Registration Renewal of Disabled Veteran Plates

During the 2007 Session, the Legislature passed HB 275⁷, which provided for an optional extended (biennial) motor vehicle registration period for motorcycles, passenger cars, trucks, mobile homes, and vessels; however, conforming sections to include the Disabled Veteran plates were inadvertently omitted.

Section 320.084, F.S., provides one free motor vehicle license number plate shall be issued by the department for use on any motor vehicle owned or leased by any disabled veteran who has been a resident of this state continuously for the preceding 5 years or has established a domicile in this state, and who has been honorably discharged from the United States Armed Forces, upon application, accompanied by specified proof. With the issuance of each new permanent "DV" numerical motor vehicle license plate, the department shall initially issue, without cost to the applicant, a validation sticker reflecting the owner's birth month and a serially numbered validation sticker reflecting the year of expiration. The initial sticker reflecting the year of expiration may not exceed 15 months and may be renewed annually.

Florida Highway Patrol (FHP)

Chapter 321, F.S., outlines the duties and responsibilities of the Florida Highway Patrol (FHP), which are primarily traffic-related. Specifically, s. 321.03, F.S., provides it is unlawful for any person or persons in the state to color or cause to be colored any motor vehicle or motorcycle the same or similar color as the color or colors so prescribed for FHP. Any person who violates this

⁷ Chapter 2007-242, L.O.F.

section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Section 321.05, F.S., establishes the duties, functions, and powers of FHP officer.

Driver License Renewal Examinations

Section 322.121, F.S., provides it is the intent of the Legislature that all licensed drivers in Florida be reexamined upon renewal of their licenses. With only a small percentage categorized as problem drivers, the Legislature intends renewals be processed expeditiously by examinations of the licensee's eyesight and hearing only. Applicant's for a renewal drivers license with no convictions on his or her driving record for the preceding 3 years, or no revocations, disqualifications, or suspensions over the preceding 7 years are only subject to an eyesight and hearing examination. All other licensees must be tested, in addition to the eyesight and hearing examinations, with respect to their ability to read and understand highway signs, regulation, warning, and directing traffic.

Vision Tests

Section 322.18(5)(a)2., F.S., requires driver's license applicants over the age of 80 to submit to vision tests administered by a physician or optometrist licensed by the State of Florida. Doctors at federal hospitals must be licensed by a U.S. state, but are not necessarily licensed by the state in which the federal hospital is located.

Hearings

Section 322.2615(2), F.S., requires a law enforcement officer to forward to the department, within 5 days after issuing the notice of suspension, the driver's license; an affidavit stating the officer's grounds for belief 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; the results of any breath or blood test or an affidavit stating a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and the person refused to submit; the officer's description of the person's field sobriety test, if any; the notice of suspension; and a copy of the crash report, if any. The failure of the officer to submit materials within the 5-day period specified in this subsection does not affect the department's ability to consider any evidence submitted at or prior to the hearing. The officer may also submit a copy of a videotape of the field sobriety test or the attempt to administer such test. Materials submitted to the department by a law enforcement agency or correctional agency shall be considered self-authenticating and must be in the record for consideration by the hearing officer. Notwithstanding s. 316.066(7), the crash report must be considered by the hearing officer.

Withhold of Adjudication

Sections 318.14(9) and (10) F.S., provide conditions for the court to withhold adjudication for certain violations and upon such action it shall not be considered a conviction. Currently, s. 318.14(10), F.S., provides a person may elect to have adjudication withheld by the court upon proof of compliance to the court for certain tag, license, or insurance violations. This option is available to the person once every 12 months and shall not be allowed more than a total of three times. Presently, a withhold of adjudication for a non-criminal traffic infraction⁸ is not a

⁸ s. 318.14(1), F.S.

“conviction.”⁹ However, a withhold for criminal traffic offenses is considered a “conviction.”¹⁰ An infraction is defined as “a non-criminal violation that may require community service hours under s. 316.027(4), F.S., but is not punishable by incarceration and for which there is not right to a trial by jury or a right to court-appointed counsel.”

Section 322.34(2), F.S., provides criminal penalties for knowingly driving with a suspended, revoked, or canceled license. Any person whose driver’s license or driving privilege has been suspended, revoked, or canceled (except a habitual traffic offender) who drives with knowledge of such suspension, revocation, or cancellation, commits a second degree misdemeanor on the first conviction (up to 30 days in jail and a \$500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a \$1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a \$5,000 fine). (Subsection (1) of this section provides it is a moving violation if a person does not have knowledge of the suspension and drives with a suspended, revoked, or canceled license.)

A habitual traffic offender who drives with a suspended, revoked, or canceled license commits a third degree felony under s. 322.34(5), F.S. One way to become a habitual traffic offender is to drive with a suspended or revoked license three times within five years under s. 322.264(1)(d), F.S. Prior to 2008, there was no distinction under either of these statutes regarding what underlying violation was committed to qualify a person for driving with a suspended license conviction. For instance, underlying violations can be for failing to pay child support, failing to pay court fines or fees, or failing to comply with a court order. However, during the 2008 Session, the Legislature passed CS/SB 1988 which subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or canceled for underlying violations as enumerated below, to a second degree misdemeanor penalty for the first conviction and a first degree misdemeanor penalty for the second or subsequent conviction.

Specifically, s. 322.34 (10), F.S., provides the underlying enumerated violations (allowing a driver to be subject to a first degree misdemeanor penalty rather than the third degree felony penalty for a third or subsequent conviction) are as follows:

- Failing to pay child support under s. 322.245 or s. 61.13016, F.S.;
- Failing to pay any other financial obligation under s. 322.245, F.S., (other than those specified criminal offenses in s. 322.245(1), F.S.);
- Failing to comply with a required civil penalty (paying traffic tickets and fees) under s. 318.15, F.S.;
- Failing to maintain required vehicular financial responsibility under ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors under s. 322.091, F.S.; or
- Having been designated a habitual traffic offender under s. 322.264(1)(d), F.S., (driving with a suspended license three times in five years) as a result of license suspensions for any of the underlying violations listed above.

The first degree misdemeanor penalty is only available to drivers who do not have a prior forcible felony conviction.

⁹ s. 318.14(11), F.S.

¹⁰ *Raulerson v. State*, 763 So.2d 285, 290-291 (Fla. 2000).

Commercial Driving Schools

Chapter 488, F.S., requires all commercial driving schools (except truck driving schools) and their instructors to obtain a license from DHSMV in order to operate in Florida. The chapter contains license and application requirements, requires the school and agents of the school to obtain identification cards from DHSMV; and provides for revocation or suspension of a school or instructor's license for violations of the chapter. Violations are considered first degree misdemeanors.

III. Effect of Proposed Changes:

The following discussion represents a section-by-section analysis of the bill:

Section 1 amends s. 316.003, F.S., to define a "tri-vehicle" to mean an enclosed three-wheeled passenger vehicle designed to operate with three wheels in contact with the ground; has a minimum unladen weight of 900 pounds; has a single, completely enclosed occupant compartment; is produced by its manufacturer in a minimum quantity of 300 in any calendar year; is capable of a speed greater than 60 m.p.h. on level ground; and is equipped with:

- Seats certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 207, "Seating systems," as described in 49 C.F.R. s. 571.207.
- A steering wheel used to maneuver the vehicle.
- A propulsion unit located forward or aft of the enclosed occupant compartment.
- A seat belt for each vehicle occupant which is certified to meet the requirements of Federal Motor Vehicle Safety Standard No. 209, "Seat belt assemblies," as described in 49 C.F.R. s. 571.209.
- A windshield and appropriate windshield wiper and washer system certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, "Glazing materials," as described in 49 C.F.R. s. 571.205 and Federal Motor Vehicle Safety Standard No. 104, "Windshield wiping and washing systems," as described in 49 C.F.R. s. 571.104.
- A vehicle structure certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 216, "Rollover crush resistance," as described in 49 C.F.R. s. 571.216.

Section 2 amends s. 316.066, F.S., to authorize copies of certain crash reports held by an agency to be provided to law enforcement agencies and county traffic operations .

Section 3 amends s. 316.0741, F.S., to classify a "tri-vehicle" as an ILEV. The department issues HOV decals based upon the Federal EPA certifying a vehicle to be a hybrid vehicle or an ILEV. If tri-vehicles are federally certified as an ILEV, then the department would issue a HOV decal.

Section 4 amends s. 316.159, F.S., to require the driver of a commercial motor vehicle to slow down and check that the tracks are clear of an approaching train before crossing at grade any track or tracks of a railroad. In addition, a violation of this provision is punishable as a noncriminal moving violation. These changes are required by the FMCSA in order for Florida to remain compliant with federal law.

Section 5 amends s. 316.193, F.S., to delete the provisions requiring all companies providing towing and impounding services for the court system, as it relates to drivers convicted of offenses requiring impoundment or immobilization, to hold a Class R license. However, any immobilization agency engaged in the business of immobilizing vehicles must provide to the clerk of the court an affidavit attesting that the agency:

- Has verifiable experience in immobilizing vehicles;
- Maintains, for at least three years, accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court's order of impoundment or immobilization, and any other documents relevant to each immobilization; and
- Employs and assigns persons to immobilize vehicles that meet the following requirements:
 - Not have been adjudicated incapacitated under s. 744.331, F.S., or a similar statute in another state, unless his or her capacity has been judicially restored; involuntarily placed in a treatment facility for the mentally ill under ch. 394, F.S., or a similar law in any other state, unless his or her competency has been judicially restored; or diagnosed as having an incapacitating mental illness unless a psychologist or psychiatrist licensed in this state certifies that he or she does not currently suffer from the mental illness.
 - Not be a chronic and habitual user of alcoholic beverages to the extent that his or her normal faculties are impaired; not have been committed under ch. 397, F.S., former ch. 396, F.S., or a similar law in any other state; not have been found to be a habitual offender under s. 856.011(3), F.S., or a similar law in any other state; or not have had any convictions under s. 316.193, F.S., or a similar law in any other state within 2 years of the affidavit.
 - Not have been committed for controlled substance abuse or have been found guilty of a crime under ch. 893, F.S., or a similar law in any other state, relating to controlled substances in any other state.
 - Not have been found guilty of or entered a plea of guilty or nolo contendere to, regardless of adjudication, or been convicted of a felony, unless his or her civil rights have been restored.
 - Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.

The immobilization agency must conduct a state criminal history check through the Florida Department of Law Enforcement to ensure the person hired to immobilize vehicles meets certain requirements.

Section 316.193(13)(c), F.S., is repealed.

Section 316.193(14)(b), F.S., amends the definition of "immobilization agency" to include and mean any person who meets all of the conditions of subsection (13).

Section 6 amends s. 316.2085, F.S., to allow the license tag of a motorcycle or moped to be affixed and displayed parallel to the ground in a manner that the numbers and letters read from left to right. However, a license tag for a motorcycle or moped may be affixed and displayed perpendicularly to the ground in a manner that the numbers and letters read from top to bottom,

if the registered owner of the motorcycle or moped maintains a prepaid toll account in good standing and an affixed transponder.

Section 7 amends s. 316.2952, F.S., to add an additional category of devices that may lawfully be attached to a windshield. The bill permits a global positioning system (GPS) device or similar satellite receiver device using the GPS system for the purpose of obtaining navigation or routing information while the motor vehicle is being operated.

Section 8 amends s. 316.29545, F.S., to expand the medical exception. DHSMV is directed to consult with its Medical Advisory Board,¹¹ to establish exceptions for persons with certain autoimmune disorders. The bill also exempts vehicles owned or leased by private investigative agencies licensed under Ch. 493, Florida Statutes.

Section 9 amends s. 316.605, F.S., provides an exception for motorcycles and mopeds to the requirement that vehicle license plates must be affixed and displayed in such a manner that the letters and numerals shall be read from left to right parallel to the ground.

Section 10 amends s. 316.646, F.S., to require the court to notify the department of all convictions for failure to maintain insurance as required by law. The department is authorized to suspend the driver licenses of all persons convicted of operating a motor vehicle without insurance even in the event the court fails to issue the order. The DHSMV is charged with enforcement of the financial responsibility laws in Florida and according to the department, this provision provides the department with additional tools to ensure compliance with current laws.

Section 11 amends s. 318.14(1), F.S., to correct a statutory reference.

Section 318.14(2), F.S., is amended. The current requirement that all citations be submitted to the clerk of court with a signature is modified to only require the signature in those cases in which a mandatory court appearance is prescribed in law. Specifically, s. 318.14(2), F.S., is amended to provide that a person cited for a violation requiring a mandatory hearing listed in s. 318.19, F.S., or any other criminal traffic violation listed in ch. 316, F.S., must sign and accept a citation requiring him or her to appear. For all other infractions, the officer must certify by electronic, electronic facsimile, or written signature the citation was delivered to the person cited. This certification is prima facie evidence that the person cited was served with the citation.

The bill amends s. 318.14(3), F.S., to provide any person who refuses to accept and sign a summons to appear commits a misdemeanor of the second degree.

This bill amends s. 318.14(10), F.S., to provide any person who does not hold a commercial driver's license and who is cited for operating a motor vehicle with a license suspended for failure to pay child support or failure to pay any other financial obligation or operating a motor vehicle with a license which has been suspended for non attendance of school may elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau.

¹¹ Created in s. 322.125, F.S.

Section 12 amends s. 318.18, F.S., to provide a person exceeding the speed limit in a designated school crossing must pay a fine double the amounts established for unlawful speed ranging from \$50 to \$500.

Section 13 amends s. 319.28, F.S., to require lienholders repossessing vehicles in Florida to apply to a Florida tax collector's office or to the department for a certificate of repossession or certificate of title.

Section 14 amends s. 319.30, F.S., to define "independent entity" to mean a business or entity that may temporarily store damaged or dismantled motor vehicles pursuant to an agreement with an insurance company and is engaged in the sale or resale of damaged or dismantled motor vehicles. The term does not include a wrecker operator, towing company, or a repair facility.

Section 319.30(9), F.S., is created to establish notice requirements for vehicles in the possession of an independent entity that have been released to the owner by the insurance company. The insurance company is required to provide a release statement on a form prescribed by the department authorizing the independent entity to release the vehicle to the owner. The independent entity in possession of a motor vehicle is required to send notice via certified mail to the owner of the vehicle that the vehicle has been released. The notice must inform the owner that he or she has 30 days to pick up the vehicle from the independent entity. Thereafter, the independent entity may apply for a certificate of destruction or certificate of title for unclaimed vehicles after 30 days.

Section 15 amends s. 320.071, F.S., to correct and conform the advanced registration renewal period for apportioned motor vehicles from five months to three months to be consistent with the advanced registration renewals of other vehicles.

Section 16 amends s. 320.08, F.S., to include tri-vehicles among the types of vehicles upon which annual license taxes are levied. Section 320.08(1)(d), F.S., is amended to reduce the annual license tax of an ancient or antique motorcycle from \$13.50 to \$8.50.

Section 17 amends s. 320.0807, F.S., to create unique license plate numbers for legislative plates. Specifically, a Member of Congress license plate will be stamped with the letters "MC," a State Legislator license plate for a House of Representatives member will be stamped with the letters "HR," and the State Senator license plate will be stamped with the letters "SN." Any of these designations may have any other configuration chosen by the member, which is not already in use.

According to the department, this will eliminate the need for the use of acronyms as part of the license plate number as is currently the practice with these plate configurations.¹² This change will facilitate the ongoing movement in Florida to open road tolling.¹³ Without this change open road tolling would not be practical or implementable while continuing the use of acronyms as part of the plate numbering system.¹⁴

¹² Department of Highway Safety and Motor Vehicles Agency Bill Analysis, PCS-SB 2400 (on file with the Transportation Committee).

¹³ *Id.*

¹⁴ *Id.*

Section 18 amends s. 320.084, F.S., to extend the registration expiration date from a maximum of 15 months to a maximum of 27 months and allow for a biennial registration renewal or annual renewal, which is a customer service convenience. Biennial renewals became available in 2008; however, conforming sections to include the Disabled Veteran plates were inadvertently omitted. This change would conform this plate type with that of all others.

Section 19 amends s. 321.03, F.S., to provide unless specifically authorized by the Florida Highway Patrol, it is unlawful for a person in the state to possess or color or cause to be colored any motor vehicle or motorcycle the same or similar color as the color given for the Florida Highway Patrol.

Section 20 amends s. 321.05, F.S., to clarify FHP officers have the same arrest or other authority provided for law enforcement officer generally in ch. 901, F.S., and have statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15, F.S. A FHP officer is authorized to serve all processes of the court in the same manner as all other state law enforcement agencies.¹⁵

Section 21 amends s. 322.01, F.S., to modify the definition of “motorcycle” as it relates to driver licenses, to exclude tri-vehicles. The exclusion clarifies motorcycle requirements (motorcycle endorsements and testing) would not apply to tri-vehicles.

Section 322.01(46), F.S., is created to provide a definition for a “tri-vehicle.”

Section 22 amends s. 322.121, F.S., to remove the road signs re-exam requirement that certain drivers must pass at the time of license renewal. According to the department, currently, over 95 percent of all drivers required to take the road signs exam at the time of renewal pass the exam on the first attempt.¹⁶

Section 23 amends s. 322.18(5), F.S., to allow a licensed physician at a federally established veterans hospital to administer the Florida vision exam for purposes of renewing a driver’s license.

Section 24 amends s. 322.2615, F.S., to delete the requirement that law enforcement officers must submit the crash report along with all other documentation when an administrative suspension for driving with an unlawful blood alcohol level is reviewed. Instead, the CS permits the crash report as an optional document for submission, but does not require the crash report to uphold a driver license suspension.

Section 25 amends s. 322.34, F.S., to provide a person who does not hold a commercial driver license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled and the underlying suspension, revocation, or cancellation is non-driving related may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official or

¹⁵ *Id.*

¹⁶ *Id.*

authorized operator of a traffic violations bureau. This section is further amended to allow adjudication to be withheld; however, a person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections. If adjudication is withheld, such action is not considered a conviction.

The significance of not classifying withholds on infractions as convictions means that the offender will not accumulate the predicate convictions to qualify under the habitual traffic offender statute, s. 322.264(2), F.S.¹⁷

Section 26 amends s. 322.61, F.S., to mirror the FMCSA regulations. Specifically, the bill lengthens disqualification periods for violations of out-of-service orders to a minimum of 180 days for the first violation and a minimum of 2 years for the second violation. These changes are required by the FMCSA in order for Florida to remain compliant with federal law.

Section 27 amends s. 488.06, F.S., to specify additional circumstances under which the department may deny, suspend, or revoke a license or certificate of a commercial driving school. Specifically, the DHSMV may deny, suspend, or revoke a license or certificate of a commercial driving school if an instructor, agent, or employee of the commercial driving school has:

- Been convicted of, pled no contest to, or had adjudication withheld for any felony offense or misdemeanor offense, as shown by a criminal background check, the cost of which must be borne by the applicant, instructor, agent, or employee;
- Committed of any fraud or willful misrepresentation in applying for or obtaining a license; or
- Solicited business on any premises, including parking areas, used by the department or a tax collector for the purpose of licensing drivers.

Section 28 provides this act shall take effect September 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Requires fifteen “convictions” for moving traffic offenses to qualify as a habitual traffic offender.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference determined that Section 16 of CS/SB 2400 has a negative cash impact on the General Revenue Fund of \$1 million in 2010-11 and a negative annualized impact on the Fund of \$1.3 million. The impact of remainder of the remainder of the bill is indeterminate.

The provisions contained in Section 16 of CS/SB 2400 were removed on being heard by the Finance and Tax Committee. Since the bill no longer includes the provisions found to cause a negative revenue impact, the bill has no revenue impact.

B. Private Sector Impact:

A person exceeding the speed limit in a designated school crossing must pay a fine double the amounts established for unlawful speed ranging from \$50 to \$500.

A person eligible for a permanent "DV" numerical motor vehicle license plate may opt to renew his or her registration biennially.

C. Government Sector Impact:

According to the department, the bill will require some modifications to the driver license and motor vehicle systems, which will be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Finance and Tax on April 13, 2010:

- Authorizes law enforcement agencies and county traffic operations to access certain crash reports held by an agency within the 60 day exemption period.
- Modifies requirements for agencies and persons performing impoundment services.
- Allows GPS devices to be attached to a motor vehicle's windshield.
- Exempts additional vehicles from suncreening prohibitions.
- Allows motorcycle license plates to be affixed and displayed perpendicularly relative to the ground if the registered owner of the motorcycle maintains a prepaid toll account in good standing and an affixed transponder.

- Authorizes “service” of a citation for infractions not requiring a mandatory hearing by delivery of the citation to the violator rather than requiring the signature of the violator.
- Requires a lienholder who repossesses a motor vehicle in Florida to apply for a certificate of repossession or certificate of title in Florida.
- Defines the term “independent entity,” establishes notice requirements for vehicles in the possession of an independent entity, and allows the independent entity to apply for a certificate of destruction or certificate of title for vehicles unclaimed after 30 days.
- Reduces the annual license tax of an antique motorcycle from \$13.50 to \$8.50.
- Revises the unique numbering system for specialty license plates for state legislators to specify the State Senator license plate will be stamped with the letters “SN.”
- Removes the provisions providing that a person issued a driver’s license using proof of nonimmigrant classifications under specified provisions is not eligible to renew that license.

CS by Transportation on March 17, 2010:

Deleted the following provisions that:

- Corrected statutory cross-references that would have changed as a result of the bill.
- Removed references to “traffic record centers,” and replaced the term with “investigating law enforcement agency.”
- Allowed a person to be cited for “aggressive careless” driving to provide law enforcement a mechanism to issue a single citation to a driver who has committed more than one violation. (Penalties include: moving violation, \$120 fine, 4 points, court appearance, and traffic school).
- Clarified the definition of conviction, as it relates to fleeing or attempting to elude a law enforcement officer, and included the “adjudication withheld” in the definition.
- Clarified a person under 16 may not operate a motorcycle or moped;
- Conformed Florida Statutes to the International Registration Plan as it relates to the term “apportionable vehicle.”
- Moved current language found in s. 320.0863, F.S., to s. 319.14, F.S., to conform the titling process of unique license plates for custom and street rod vehicles.
- Moved certain motor vehicles to a birth date registration vs. a December registration. (Currently, heavy trucks having a net weight between 5,000-8,000 pounds have a December renewal period for vehicle registrations.)
- Allowed the department to sanction a motor vehicle dealer for failure to obtain an off-premises permit and for submitting a dishonored check to the department.
- Required a mobile home dealer to have certain indicia of ownership for mobile homes consistent with that of motor vehicles.
- Required notification to the department when a mobile home or recreational vehicle manufacturer fails to maintain the required surety bond during the license period and authorized the department to take action.
- Deleted the certification of instructors of the traffic law and substance abuse education program.

- Increased the penalty for driving school employees to a third degree felony and required the court to impose at least 10 days jail for anyone convicted of driver license fraud.
- Authorized the department to cancel, suspend or revoke an identification card obtained by fraud.
- Clarified revocation authority when two DUI convictions occur on the same day resulting from separate offenses.

Included the following provisions that:

- Regulate “tri-vehicles” by defining the term, classify a tri-vehicle as an inherently low-emission vehicle (ILEV), modify the definition of “motorcycle” as it relates to driver licenses, to exclude tri-vehicles, and include tri-vehicles among the types of vehicles upon which annual license taxes are levied.
- Specify additional circumstances under which DHSMV may suspend or revoke a license or certificate of a driving school.
- Provide for certain persons cited for specified offenses to provide proof of compliance to a designated official.
- Provide alternative citation disposition procedures for the offense of operating a motor vehicle with a license that has been suspended for failure to pay certain financial obligations or failure to comply with specified education requirements.
- Provide a person issued a driver’s license using proof of nonimmigrant classification under specified provisions is not eligible to renew that license.
- Specify additional circumstances under which DHSMV may suspend or revoke a license or certificate of a driving school.

In addition, the effective date of the CS changes from October 1, 2010 to September 1, 2010.

B. Amendments:

None.