

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 925 Liens on Motor Vehicles & Vessels

SPONSOR(S): Rooney, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N	Kiner	Miller
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee	15 Y, 0 N	Kiner	Creamer

SUMMARY ANALYSIS

HB 925 revises the process for a motor vehicle or vessel owner that wishes to dispute his or her placement on the Department of Highway Safety and Motor Vehicles' (DHSMV) "registration stop" list for failing to comply with a request to surrender a motor vehicle or vessel that is subject to a lien. Instead of DHSMV handling the dispute internally, the bill provides that a registered owner may dispute his or her inclusion on the "registration stop" list by bringing a civil action in the county in which he or she resides. The bill specifies that if the registered owner prevails in the civil action, his or her name will be removed from the "registration stop" list.

The bill requires the court hearing the civil action to first determine whether the lienholder's lien was recorded and whether the lienholder made a proper written demand for surrender of the motor vehicle or vessel. If the lien was recorded, and if the written demand for surrender was made properly, the bill requires the court to next determine whether "good cause" exists for the registered owner's failure to surrender the motor vehicle or vessel.

If the court finds that "good cause" exists for the registered owner's failure to surrender the motor vehicle or vessel, the bill requires the court to issue an order removing the registered owner's name from DHSMV's "registration stop" list.

The bill awards the prevailing party reasonable attorney fees and costs that are actually incurred for the proceedings.

The bill has an indeterminate fiscal impact on state revenues and expenditures.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under Florida law, if a motor vehicle¹ or vessel is subject to a lien and the lienholder wants to enforce the lien by recovering the motor vehicle or vessel, the lienholder may request that the registered owner surrender it.² Sometimes, the registered owner of the motor vehicle or vessel may fail to comply with this request by disposing of, concealing, removing, or destroying the motor vehicle or vessel. If this happens, Florida law authorizes the lienholder to submit a written notice to surrender the motor vehicle or vessel to DHSMV.

Specifically, Florida law requires that the written notice to surrender sent to DHSMV includes the following:

- the lienholder's name, address, and telephone number;
- the registered owner's name and the address to which the lienholder sent the request to surrender the vehicle;
- a general description of the vehicle, including its color, make, model, body style, and year;
- the VIN number, license plate number – if known, or other identification number.³

When DHSMV receives proper written notification from the lienholder that the registered owner has refused to comply with the request to surrender, DHSMV is required by law to place the registered owner's name on a "registration stop" list – although two sections of Florida law are inconsistent with respect to the administrative process for doing so.⁴ Specifically, a "registration stop" list is a list of "those persons who may not be issued a license plate, revalidation sticker, or replacement license plate for any of the registered owner's vehicles".⁵ Additionally, if there is more than one registered owner, DHSMV is required to place each registered owner's name on the "registration stop" list.⁶ Currently, DHSMV does not charge the lienholder for processing the "registration stop".

Although the lienholder is required to submit the notice to surrender in writing, it should be noted that the lienholder is not required to be signed under oath by the lienholder.

Florida law does, however, allow the registered owner(s) to dispute the written notice to surrender the motor vehicle or vessel. To do so, the registered owner(s) must notify DHSMV in writing and present proof that the motor vehicle or vessel was sold to a properly licensed motor vehicle, mobile home, or recreational vehicle dealer.⁷ Currently, the dispute process is handled by DHSMV internally. To have his or her name removed from the "registration stop" list, the registered owner must present documentation from the lienholder that the vehicle has been surrendered to the lienholder. There is no other method by which a registered owner may have his or her name removed from the "registration stop" list.⁸

From September 1, 2011, through August 31, 2012, DHSMV processed 18,850 "registration stops" based on a lienholder's submission of proper written notice to surrender a motor vehicle or vessel.⁹ All 18,850 of the "registration stops" were processed free of charge.¹⁰

¹ The definition of "motor vehicle" in this area of Florida law includes, but is not limited to "automobile", "motorcycle", "truck", "recreational vehicle." See s. 320.01, F.S.

² s. 320.1316, F.S.

³ Id.

⁴ See ss. 320.1316(1) and 320.02(17), F.S.

⁵ s. 320.1316, F.S.

⁶ Id.

⁷ Id.

⁸ See DHSMV's Agency Bill Analysis for HB 925. A copy of the analysis is on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

⁹ Id.

Effect of Proposed Change

The bill amends s. 320.02, F.S., to revise the process for a motor vehicle or vessel owner that wishes to dispute his or her placement on DHSMV's "registration stop" list for failing to comply with a request to surrender a motor vehicle or vessel that is subject to a lien. Instead of DHSMV handling the dispute internally, the bill provides that a registered owner may dispute his or her inclusion on the "registration stop" list by bringing a civil action in the county in which he or she resides. The bill specifies that if the registered owner prevails in the civil action, his or her name will be removed from the "registration stop" list.

The bill amends s. 320.1316, F.S., to require the notice of surrender of vehicle shall be signed under oath by lienholder. The bill requires the court hearing the action to first determine whether the lienholder's lien was recorded and whether the lienholder made a proper written demand for surrender of the motor vehicle or vessel. If the lien was recorded, and if the written demand for surrender was made properly, the bill requires the court to next determine whether "good cause" exists for the registered owner's failure to surrender the motor vehicle or vessel.

Under the bill's provisions, "good cause" is limited to proof that:

- the motor vehicle or vessel at issue was traded into a licensed motor vehicle dealer before the date of the written demand for surrender;
- the registered owner has paid the lien in full, or has otherwise satisfied the lien;
- there is ongoing litigation relating to the validity or enforceability of the lien;
- the registered owner was in compliance with all of his or her contractual obligations with the lienholder at the time of the written demand for surrender;
- the motor vehicle or vessel was reported to law enforcement as stolen by the registered owner before the written demand for surrender; or
- the motor vehicle or vessel was repossessed.

If the court finds that "good cause" exists for the registered owner's failure to surrender the motor vehicle or vessel, the bill requires the court to issue an order removing the registered owner's name from DHSMV's "registration stop" list.

The bill awards the prevailing party reasonable attorney fees and costs that are actually incurred for the proceedings.

Under the bill, a registered owner may still have his or her name removed from the "registration stop" list if he or she surrenders the motor vehicle or vessel as provided under current law.

The bill clarifies in s. 320.02(17), F.S., that DHSMV "shall" place the registered owner of a motor vehicle or vessel on its "registration stop" list when required by s. 320.1316, F.S., instead of "may." The bill also amends an incorrect cross-reference to s. 320.03(8), F.S., and correctly references s. 320.02(17), F.S.

The bill is effective on July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.02, F.S., to clarify that DHSMV "shall" place the registered owner of a motor vehicle or vessel on its "registration stop" list when required by s. 320.1316, F.S., and specifies that a registered owner may have his or her name removed from DHSMV's "registration stop" list if a court orders the registered owner's name removed from the list;

Section 2: Amends s. 320.1316, F.S., to require the written notice to surrender a motor vehicle or vessel be signed under oath by the lienholder, and allows a registered

¹⁰ Id.

owner to dispute his or her placement on DHSMV's "registration stop" list by bringing a civil action in the county in which he or she resides;
Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The number of motor vehicle or vessel registered owner's that may bring a civil action in the county in which he or she resides to challenge placement on DHSMV's "registration stop" list is unknown. Therefore, the amount the courts will collect in filing fees is indeterminate.

2. Expenditures:

The number of motor vehicle or vessel registered owner's that may bring a civil action in the county in which he or she resides to challenge placement on DHSMV's "registration stop" list is unknown. Therefore, expenditures related to scheduling and conducting hearings under the bill are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A registered owner of a motor vehicle or vessel will incur court filing fees if he or she wishes to dispute his or her placement on DHSMV's "registration stop" list. However, if the registered owner prevails, he or she will be awarded reasonable attorney fees and costs that are actually incurred for the proceedings.

D. FISCAL COMMENTS:

The department states it can accommodate the 60 hours of programming costs associated with provisions in the bill related to DHSMV's "registration stop" list within existing resources.

At the present time, the State Courts System has not provided a judicial impact statement assessing the provisions in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not explicitly require DHSMV to make rules. However, the bill does require that the written notice to surrender be submitted on a form developed by DHSMV and be signed under oath by the lienholder. Currently, the lienholder is not required to sign the form under oath. As such, DHSMV may be required to redesign its form.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES