

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1091 Advertisement of Vehicle and Metals Purchasing

SPONSOR(S): Business & Professions Subcommittee; Cortes

TIED BILLS: **IDEN./SIM. BILLS:** SB 1510

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------------|---------------------|-------------|------------------------------------------|
| 1) Business & Professions Subcommittee | 13 Y, 0 N, As CS | Brown-Blake | Anstead |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) licenses and regulates motor vehicle dealers in Florida pursuant to ch. 320, F.S. The Department of Revenue (DOR) has a statewide registration system for secondary metals recyclers pursuant to ch. 323, F.S. Local law enforcement enforces secondary metals recycler compliance with registration requirements.

The bill amends current law relating to motor vehicle dealers and secondary metal recyclers. Specifically, the bill:

- Provides that licensure requirements for individuals or entities selling three or more motor vehicles a year do not apply to nonprofit organizations.
- Provides that a motor vehicle dealer or secondary metal recycler must provide their license or registration numbers on advertisements placed on temporary or permanent signs, online, in print, or any other form of media.
- Provides administrative action for anyone who fails to comply with licensing and advertising requirements.
- Provides that the advertising requirements do not apply to signs attached to, on the property of, or on an easement directly adjacent to a dealership or a recycler's facility.
- Prohibits an unlicensed motor vehicle dealer or an unregistered secondary metals recycler from using a wrecker or other vehicle to transport motor vehicles bought or sold in violation of the licensure or registration requirements.
- Permits law enforcement to immediately impound and hold the wrecker or other vehicle used in violation of licensure requirements.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Dealers

The DHSMV licenses and regulates motor vehicle dealers in Florida pursuant to ch. 320, F.S. The Dealer License Section, Bureau of Issuance Oversight functions not only as a licensing unit but also as a regulating agency to ensure compliance by licensed dealers to protect consumers.¹

A motor vehicle dealer is, generally any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business.²

The classifications of motor vehicle dealers include:

- Franchised motor vehicle dealer;
- Independent motor vehicle dealer;
- Wholesale motor vehicle dealer;
- Motor vehicle auction;
- Salvage motor vehicle dealer.

The definition of motor vehicle dealer does **not** include:

- Persons not engaged in the purchase or sale of motor vehicles as a business who are disposing of vehicles acquired for their own use or for use in their business or acquired by foreclosure or by operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the provisions of law;
- Persons engaged in the business of manufacturing, selling, or offering or displaying for sale at wholesale or retail no more than 25 trailers in a 12-month period;
- Public officers while performing their official duties;
- Receivers;
- Trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;
- Banks, finance companies, or other loan agencies that acquire motor vehicles incident to their regular business;
- Motor vehicle brokers; and
- Motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under this section.

Licensure

A person must obtain a license as a motor vehicle dealer from the DHSMV to engage in business as, serve in the capacity of, or act as a motor vehicle dealer in Florida.³ This includes the prohibition against advertising for sale any motor vehicle belonging to another party unless it's the result of a bona fide legal proceeding, court order, settlement of an estate, or by operation of law. A motor vehicle dealer may not allow any person other than a bona fide employee to use the dealer's license while acting in the capacity of a motor vehicle dealer or conducting motor vehicle sales transactions.⁴

¹ Department of Highway Safety and Motor Vehicle, *Dealer License Section Bureau of Issuance Oversight*, https://www.flhsmv.gov/dmv/dealers_county.html, (last visited on January 29, 2016).

² s. 320.27(1)(c), F.S.

³ s. 320.27(2), F.S.

⁴ s. 320.27(4), F.S.

Any individual acting as a motor vehicle dealer without being properly licensed to do so is guilty of:

- Unfair and deceptive trade practices as defined in part II of ch. 501, F.S.;
- A second degree misdemeanor.

Any individual who misrepresents to any person his or her relationship with any manufacturer, importer, or distributor of motor vehicles is:

- Guilty of unfair and deceptive trade practices as defined in part II of ch. 501, F.S.;
- Guilty of a second degree misdemeanor;
- Subject to disciplinary action against his or her motor vehicle dealer license pursuant to s. 320.27(9), F.S.⁵

Owners of motor vehicles that have the motor vehicle's title in their names may advertise and offer vehicles for sale on their own behalf.⁶

Any person in violation of licensure requirements for motor vehicle dealers is guilty of a second degree misdemeanor.⁷

The DHSMV is authorized to request a circuit court with jurisdiction to grant a temporary or permanent injunction, upon a hearing and for cause shown, restraining any individual from violating the motor vehicle dealer licensure requirements.⁸ Additionally, DHSMV may levy and collect a civil fine in an amount not to exceed \$1,000 for each violation, against any licensee, if DHSMV finds the licensee has violated motor vehicle licensure requirements, or any other law of the state or federal law and administrative rule related to dealing in motor vehicles.⁹

Secondary Metal Recyclers

The DOR has a statewide registration system for secondary metals recyclers and sends registration information to local law enforcement on request pursuant to ch. 323, F.S. Local law enforcement enforces secondary metals recycler compliance with registration, record keeping, holding period, and inspection requirements.¹⁰

A secondary metals recycler is, generally, a person who is engaged, from a fixed location,¹¹ in the business of obtaining ferrous¹² or nonferrous¹³ metals or converting metals into raw material products, or who has facilities for converting metals into raw material products.¹⁴ Secondary metals recyclers are currently regulated by the DOR under part II of ch. 538, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ s. 320.27(9), F.S.

⁸ s. 320.27(11), F.S.

⁹ s. 320.27(12), F.S.

¹⁰ Department of Revenue, *Secondhand Dealers and Secondary Metals Recycler*, http://dor.myflorida.com/dor/taxes/secondhand_dealers_recyclers.html, (last visited on January 29, 2016).

¹¹ Section 538.18(4), F.S., defines a "fixed location" as any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

¹² Section 538.18(3), F.S., defines "ferrous metals" as any metals containing significant quantities of iron or steel.

¹³ Section 538.18(6), F.S., defines "nonferrous metals" as metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys, excluding precious metals.

¹⁴ *See* s. 538.18(11), F.S.

Registration

A person must register with DOR to engage in business as a secondary metals recycler.¹⁵ A person acting as a secondary metals recycler who is not registered with DOR commits a third degree felony.¹⁶ The registration must be conspicuously displayed at the place of business set forth on the registration.¹⁷

DOR is authorized to impose a civil fine of up to \$10,000 for each knowing and intentional violation of the registration requirements in s. 538.25, F.S.¹⁸ If the fine is not paid within 60 days, DOR may bring a civil action, under s. 120.69, F.S.,¹⁹ to recover the fine.²⁰

In addition to assessing a civil fine, DOR may deny, revoke, restrict, or suspend a registration if, within a 24-month period immediately preceding the denial, revocation, restriction or suspension:

- The applicant or registrant has been convicted of knowingly and intentionally:
 - Violating provisions related to inspections of regulated metals property or hold notice requirements;
 - Engaging in a pattern of failing to keep records;
 - Making a material false statement in an application for registration; or
 - Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;
- The applicant or registrant has been convicted of or has entered a plea of guilty or nolo contendere to a felony against state or federal laws involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler; or
- The applicant has, after receipt of written notice from DOR of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to DOR.²¹

Effect of the Bill

Motor Vehicle Dealers

The bill defines the term “advertise” to mean “the act of offering to buy, sell, or deal in motor vehicles, or to offer or display motor vehicles for sale at wholesale or retail, or to service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1), by use of a paid or unpaid announcement, in any form, to the public, including print, televised, radio, or online advertisements, or by using permanent or temporary signs.”

The bill provides that advertising to provide services as a motor vehicle dealer is prohibited unless the individual is licensed as a motor vehicle dealer. Furthermore, the bill requires licensed motor vehicle dealers that choose to advertise to provide their company name as filed with the Department of State, physical address, phone number, and motor vehicle dealer license number on the advertisement. Failure to do so shall subject the dealer's license to suspension, revocation, or licensure denial at application, upon proof that the dealer has violated the advertising requirements with sufficient frequency to establish a pattern of wrongdoing.

¹⁵ s. 538.25(1), F.S.

¹⁶ s. 538.23(5), F.S.

¹⁷ s. 538.25(2), F.S.

¹⁸ s. 538.25(3), F.S.

¹⁹ s. 120.69, F.S., provides that an agency may seek enforcement of an action by filing a petition for enforcement in the circuit court where the subject matter of the enforcement is located.

²⁰ s. 538.25(3), F.S.

²¹ s. 538.25(4), F.S.

The advertising requirements do not apply to signage physically attached to the outside of a dealership, or located on dealership property or on an easement directly adjacent to the dealership property.

The bill prohibits individuals from utilizing a tow truck, or other vehicle to transport motor vehicles purchased, sold, or dealt with in violation of the licensure requirements set forth in s. 320.27, F.S., or to offer or display motor vehicles for sale such vehicles at wholesale or retail, without being licensed as or employed by a licensed motor vehicle dealer.

If an individual does use a tow truck or other vehicle in violation of the licensure provisions, law enforcement offices are authorized to immediately impound the tow truck or other vehicle, at the owner's expense. The tow truck or other vehicle must be stored at an authorized law enforcement impound facility and cannot be released until the impounding authority provides a release form verifying that the cost recovery fine has been paid. The cost recover fine, as set forth in s. 323.002(3)(b), F.S., is \$500 for a first violation and a fine of \$1,000 for each subsequent violation. The tow truck or vehicle must remain impounded unless the cost recovery fine is paid or the vehicle is sold in public auction.

The owner may request a hearing with the local jurisdiction within 10 business of the impoundment, to show that he or she had no knowledge that the vehicle was being used in violation of s. 320.27, F.S. If he or she is able to do so, the vehicle shall be released.

The bill amends the definition of motor vehicle dealers in s. 320.27(1)(c)5., F.S., to:

- Clarify that the definition does not apply to persons who buy or sell vehicles titled in their own names;
- Exempt from the definition all nonprofit organizations recognized under s. 501(c)(3) of the Internal Revenue code.

Secondary Metal Recyclers

The bill defines the term "advertise" to mean "the act of offering to perform the services as a secondary metal recycler by use of a paid or unpaid announcement, in any form, to the public, including print, televised, radio, or online advertisements, or by using permanent or temporary signs."

The bill provides that advertising to provide services as a secondary metals recycler is prohibited unless the individual is registered as a secondary metal recycler. Furthermore, the bill requires registered secondary metal recyclers that choose to advertise to provide their company name as filed with the Department of State, physical address, phone number, and secondary metal recycler registration number on the advertisement. Failure to do so shall subject the recycler's registration to suspension, revocation, or licensure denial at application, upon proof that the recycler has violated the advertising requirements with sufficient frequency to establish a pattern of wrongdoing.

The advertising requirements do not apply to signage physically attached to the outside of a recycler's facility, or located on a registrant's property or on an easement directly adjacent to the registrant's property.

The bill prohibits individuals from utilizing a tow truck, or other vehicle to transport ferrous or nonferrous metals purchased by the individual without being registered as or employed by a registered secondary metals recycler.

If an individual does use a tow truck or other vehicle in violation of the licensure provisions, law enforcement offices are authorized to immediately impound the tow truck or other vehicle, at the owner's expense. The tow truck or other vehicle must be stored at an authorized law enforcement impound facility and cannot be released until the impounding authority provides a release form verifying that the cost recovery fine has been paid. The cost recover fine, as set forth in s. 323.002(3)(b), F.S., is \$500 for a first violation and a fine of \$1,000 for each subsequent violation. The tow truck or vehicle must remain impounded unless the cost recovery fine is paid or the vehicle is sold in public auction.

The owner may request a hearing with the local jurisdiction within 10 business of the impoundment, to show that he or she had no knowledge that the vehicle was being used in violation of s. 320.27, F.S. If he or she is able to do so, the vehicle shall be released.

B. SECTION DIRECTORY:

Section 1 amends s. 320.27, F.S., requiring a motor vehicle dealer who advertises the purchase of vehicles to display specific information in the advertisement.

Section 2 amends s. 538.18, F.S., providing a definition.

Section 3 amends s. 538.25, F.S., requiring a secondary metals recycler who advertises the purchase of vehicles or vessels to display specific information in the advertisement.

Section 4 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments may experience a minimal increase in revenues due to an increased number of impounded tow trucks and an increased amount of fines paid by persons in violation of the bill language.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals and entities would have to update advertisements to include license numbers, addresses, and business names. The cost is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 2, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Reorganized the location of the language in existing statute.
- Provided that licensure requirements for individuals or entities selling three or more motor vehicles a year do not apply to nonprofit organizations.
- Provided that a motor vehicle dealer or secondary metal recycler must provide their license or registration numbers on advertisements placed on temporary or permanent signs, online, in print, or any other form of media.
- Provides administrative action for anyone who fails to comply with licensing and advertising requirements.
- Provides that the advertising requirements do not apply to signs attached to, on the property of, or on an easement directly adjacent to a dealership or a recycler's facility.
- Prohibited an unlicensed motor vehicle dealer or an unregistered secondary metals recycler from using a wrecker or other vehicle to transport motor vehicles bought or sold in violation of the licensure or registration requirements.
- Permitted law enforcement to immediately impound and hold the wrecker or other vehicle used in violation of licensure requirements.

This staff analysis is drafted to reflect the committee substitute.