

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 676

INTRODUCER: Infrastructure and Security Committee and Senator Hooper

SUBJECT: Certificates of Title for Vessels

DATE: April 17, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	<b>Fav/CS</b>
2.	Wells	Hrdlicka	ATD	<b>Recommend: Fav/CS</b>
3.	Wells	Kynoch	AP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 676 incorporates the Uniform Certificate of Title for Vessels Act into Florida's existing vessel titling and lien law. The bill contains numerous revisions to current title application requirements, revises information that must be included on a certificate of title for a vessel, provides for the perfection of security interests in a vessel and for the rights of a secured party, provides requirements for the transfer of ownership in a vessel, and revises various duties and responsibilities of the Department of Highway Safety and Motor Vehicles (DHSMV) with respect to titling of vessels.

Generally, the bill:

- Provides requirements for applications for certificates of titles for vessels, including their detailed content, and provides exceptions from the requirement to apply for a certificate.
- Provides responsibilities of an owner and insurer of a hull-damaged vessel and of the DHSMV when creating a certificate of title.
- Specifies that possession of a certificate of title does not by itself provide a right to obtain possession of a vessel, but nothing prohibits enforcement of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel.
- Provides the DHSMV with duties relating to the creation, issuance, refusal to issue, or cancellation of a certificate of title, and provides additional requirements for obtaining a duplicate certificate of title.
- Sets out requirements for the determination and perfection of a security interest in a vessel and for the delivery of a statement of the termination of a security interest.

- Provides for the rights of a purchaser of a vessel who is not a secured party and for the rights of a purchaser who is a secured party.
- Specifies circumstances by which the DHSMV may create a new certificate of title after the receipt of an application for a transfer of ownership or termination of a security interest, without the applicant providing a certificate of title.
- Provides requirements for the voluntary transfer of vessel title ownership, transfer by a secured party, and transfer by operation of law.
- Applies the bill to any transaction, certificate of title, or record relating to a vessel entered into or created before July 1, 2023, but provides for certain exceptions.

The bill will have an insignificant fiscal impact on the DHSMV, which will be absorbed within existing resources. The bill has an indeterminate, but possibly neutral impact to the Marine Resources Conservation Trust Fund of the Fish and Wildlife Conservation Commission.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Uniform Law Commission

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, is a body “appointed by state governments as well as the District of Columbia, Puerto Rico[,] and the U.S. Virgin Islands to research, draft[,] and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.”<sup>1</sup> The ULC aims to strengthen the federal system by providing rules and procedures that are consistent from state to state.

### Uniform Certificate of Title for Vessels Act

The Uniform Certificate of Title for Vessels Act was drafted by the ULC in 2011.<sup>2</sup> The principal objectives of the act are to:

- Qualify as a state titling law that the Coast Guard will approve;
- Facilitate transfers of ownership of a vessel;
- Deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel;
- Accommodate existing financing arrangements for vessels;
- Work seamlessly with the Uniform Commercial Code;
- Manage, to the extent possible, the complications that can arise from a vessel’s transition in or out of federal documentation;
- Provide clear rules on the consequences of compliance or noncompliance;
- Impose minimal or no new burdens or costs on state titling offices; and

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<sup>1</sup> Uniform Law Commission, *About Us*, available at <http://www.uniformlaws.org/aboutulc/overview> (last viewed March 28, 2019).

<sup>2</sup> See National Conference of Commissioners on Uniform State Laws, *Uniform Certificate of Title for Vessels Act*, at p. 2, available at [http://www.lawrev.state.nj.us/UCOTVA/UCOTVA\\_FinalAct\\_2011.pdf](http://www.lawrev.state.nj.us/UCOTVA/UCOTVA_FinalAct_2011.pdf) (last viewed March 28, 2019).

- Protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

The uniform act has been enacted in Virginia (2013), Connecticut (2014), Washington D.C. (2015), and Hawaii (2018).<sup>3</sup>

### **Vessel Titling in Florida**

The bill substantially revises part I of ch. 328, F.S., related to titling for vessels. For ease of organization and readability, the present situation for each section of the bill is discussed in conjunction with the effect of proposed changes.

### **III. Effect of Proposed Changes:**

The bill revises current law by enacting the Uniform Certificate of Title for Vessels Act. **Section 1** of the bill creates s. 328.001, F.S., providing the short title for part I of ch. 328, F.S., the "Uniform Certificate of Title for Vessels Act." **Section 2** of the bill creates s. 328.0015, F.S., to establish definitions for terms used in the uniform act.

The bill defines a "vessel" to mean a watercraft used or capable of being used as a means of transportation on water, *except*:

- A seaplane;
- An amphibious vehicle for which a certificate of title is issued pursuant to ch. 319, F.S. or a similar statute of another state;
- Watercraft less than 16 feet in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower;
- Watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;
- A stationary floating structure that:
  - Does not have and is not designed to have a mode of propulsion of its own;
  - Is dependent for utilities upon a continuous utility hookup to a source originating on shore; and
  - Has a permanent, continuous hookup to a shoreside sewage system.
- Watercraft owned by the United States, a state, or a foreign government, or a political subdivision of either; and
- Watercraft used solely as a lifeboat on another watercraft.

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<sup>3</sup> See Uniform Law Commission, *Certificate of Title for Vessels Act*, table entitled "Legislation," available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=61fb3255-092e-4e91-982b-6fa1ae66fd82> (last viewed March 29, 2019).

## Application for Certificate of Title

### *Present Situation*

An owner of a vessel that is required to be titled must apply to the DHSMV or county tax collector for a certificate of title. The application<sup>4</sup> must be signed by the owner and include the:

- True name of the owner;
- Address of the owner;
- Hull identification number; and
- Complete description of the vessel.

The owner must provide valid identification and pay the prescribed fee.<sup>5</sup>

An original copy of the manufacturer's statement of origin for the vessel must be submitted with the application for title of a manufactured vessel sold in Florida. The owner of a manufactured vessel initially sold outside of Florida must provide an original copy of the manufacturer's statement of origin, or the original copy of the executed bill of sale, and the most recent certificate of registration for the vessel.<sup>6</sup>

The owner of a homemade vessel must establish proof of ownership by submitting with the application a notarized statement of the builder (if the vessel is less than 16 feet in length) or a certificate of inspection from the Fish and Wildlife Conservation Commission and a notarized statement of the builder (if the vessel is 16 feet or more in length).<sup>7</sup>

The owner of a non-titled vessel registered outside of Florida must establish proof of ownership by surrendering the original copy of the most current certificate of registration issued by the other state or country.<sup>8</sup> If a vessel is titled in another state or country, the DHSMV will not issue a Florida title until all existing titles are surrendered to the DHSMV.<sup>9</sup>

In making application for a title upon transfer of ownership of a vessel, the new owner must surrender a properly executed last title document issued for that vessel. If a lien exists and the application for transfer of title is based upon a contractual default, the recorded lienholder must establish proof of right to ownership by submitting with the application the original certificate of title and a copy of the applicable contract upon which the claim of ownership is made. If the claim is based upon a court order or judgment, a copy of such document must accompany the application for transfer of title. If there appears to be any other lien on the vessel, the certificate of title must contain a statement of such a lien.<sup>10</sup>

In making application for transfer of title from a deceased titled owner, the new owner or surviving co-owner must establish proof of ownership by submitting with the application the

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<sup>4</sup> Department of Highway Safety and Motor Vehicles, *Application for Certificate of Title With/Without Registration*, HSMV 82040, Revised November 2015, available at <https://www.flhsmv.gov/dmv/forms/btr/82040.pdf> (last viewed March 28, 2019).

<sup>5</sup> Section 328.01(1)(a), F.S.

<sup>6</sup> Section 328.01(2)(a) and (b), F.S.

<sup>7</sup> Section 328.01(2)(c), F.S.

<sup>8</sup> Section 328.01(2)(d), F.S.

<sup>9</sup> Section 328.01(2)(e), F.S.

<sup>10</sup> Section 328.01(3)(a) and (b), F.S.

original certificate of title and the decedent's probated last will or letters of administration appointing the personal representative of the decedent. In lieu of a probated last will and testament or letters of administration, a copy of the decedent's death certificate, a copy of the decedent's last will and testament, and an affidavit by the decedent's surviving spouse or heirs affirming rights of ownership may be accepted by the DHSMV.<sup>11</sup>

An owner who has made a valid sale or transfer of a vessel and has delivered possession to a purchaser will not be considered the owner of the vessel and subject to civil liability for the operation of the vessel as long as the owner has surrendered the properly endorsed certificate of title to the DHSMV.<sup>12</sup>

### *Effect of Proposed Changes*

**Section 3** amends s. 328.01, F.S., providing that with certain newly created and amended statutory exceptions (discussed below), only an owner ("a person who has legal title to a vessel") may apply for a certificate of title.

The bill requires that an application for certificate of title must be signed by the applicant and contain the following information:

- The applicant's name, street address, and, if different, mailing address;
- The name and mailing address of each other owner of the vessel;
- The hull identification number for the vessel or, if none, an application for the issuance of a hull identification number for the vessel;
- The vessel number for the vessel or, if none issued by the DHSMV, an application for a vessel number;
- A description of the vessel, which must include:
  - The official number for the vessel, if any, assigned by the United States Coast Guard;
  - The name of the manufacturer, builder, or maker;
  - The model year or in which year the vessel was completed;
  - The overall length of the vessel;
  - The vessel type;
  - The hull material;
  - The propulsion type;
  - The engine drive type, if any; and
  - The fuel type, if any;
- The name and mailing address of any party with a security interest in the vessel;
- A statement that the vessel is not a documented vessel or a foreign-documented vessel;
- Any title brand<sup>13</sup> known to the applicant and, if known, the jurisdiction under whose law the title brand was created;
- A statement that the vessel is hull damaged,<sup>14</sup> if applicable;

<sup>11</sup> Section 328.01(3)(c), F.S.

<sup>12</sup> Section 328.01(3)(d), F.S.

<sup>13</sup> The bill defines "title brand" as a designation of previous damage, use, or condition that must be indicated on a certificate of title.

<sup>14</sup> The bill defines "hull damaged" as compromised with respect to the integrity of a vessel's hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel's hull.

- If the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price if any, and the date of the transfer; and
- If the vessel was previously registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.

Additionally, the application may include an electronic address for the owner, transferor, or secured party.

The application for certificate of title must be accompanied by:

- A certificate of title signed by the owner shown on the certificate and that:
  - Identifies the applicant as the owner of the vessel; or
  - Is accompanied by a record that identifies the applicant as the owner; or
- If there is no certificate of title:
  - If the vessel was a documented vessel, a record issued by the United States Coast Guard which shows the vessel is no longer a documented vessel and identifies the applicant as the owner;
  - If the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or
  - In all other cases, a certificate of origin,<sup>15</sup> bill of sale, or other record that to the satisfaction of the DHSMV identifies the applicant as the owner.

The bill requires the DHSMV to maintain any records submitted in connection with an application, and authorizes the DHSMV to require an application for a certificate of title to be accompanied by payment of all fees and taxes by the applicant.

The bill repeals provisions related to registration of homemade vessels. The bill also repeals provisions related to nontitled vessels, vessels titled in other jurisdictions, vessels documented by the federal government, and transfer of ownership, including from a deceased owner, that may be covered by the more extensive application requirements created by the bill.

## **DHSMV Records**

### *Effect of Proposed Changes*

**Section 4** creates s. 328.015, F.S., to require the DHSMV to retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title. The DHSMV must retain all information, by hull identification number, regarding a security interest in a vessel for at least 10 years after the DHSMV receives a termination statement regarding the security interest.

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<sup>15</sup> The bill defines "certificate of origin" as a record created by a manufacturer or importer as the manufacturer's or importer's proof of identity of a vessel. The term includes a manufacturer's certificate or statement of origin and an importer's certificate or statement of origin. The term does not include a builder's certificate.

A person<sup>16</sup> who submits a record to the DHSMV may request an acknowledgement of the filing by the DHSMV. The acknowledgment from the DHSMV must show the hull identification number, the information in the filed record, and the date and time the record was received by or the submission was accepted by the DHSMV.

The DHSMV must send the following information to any person who requests it and pays a fee:<sup>17</sup>

- Whether the DHSMV's files indicate, as of the a date specified by the DHSMV but no earlier than three days before the request is received, a copy of any certificate of title, security interest, termination statement, or title brand that relates to a vessel;
  - Identified by a hull identification number designated in the request;
  - Identified by a vessel number designated in the request; or
  - Owned by a person designated in the request.
- With respect to the vessel:
  - The name and address of any owner and the secured party as indicated in the DHSMV's files;
  - A copy of any termination statement indicated in the DHSMV's files and the statement's effective date; and
  - A copy of any certificate of origin, secured party transfer statement, transfer-by-law statement, and other evidence of previous or current transfers of ownership.

The DHSMV must, upon request, send the requested information in a record that is self-authenticating.

## **Governing Vessel Law**

### ***Effect of Proposed Changes***

**Section 5** creates s. 328.02, F.S., providing that the law of the state under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate, or becomes a documented vessel, even if no relationship exists between the jurisdiction and the vessel or its owner. A vessel becomes covered when an application and the applicable fee are delivered to the DHSMV or to the governmental agency that creates a certificate in another jurisdiction.

## **Certificate of Title Required**

### ***Present Situation***

All vessels operated, used, or stored on the waters of Florida must be titled by the DHSMV unless the vessel is:

- A vessel operated, used, or stored exclusively on private lakes and ponds;

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<sup>16</sup> The bill defines the term "person" more broadly than under s. 1.01, F.S., to mean an individual, corporation, business trust, estate, trust, statutory trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

<sup>17</sup> Currently, s. 320.05(3)(b), F.S., sets forth fees for photocopied and certified copies of records (ranging from 50 cents to \$3 per record, or \$1 per page). Fees are deposited into the Highway Safety Operating Trust Fund.

- A vessel owned by the United States Government;
- A non-motor-powered vessel less than 16 feet in length;
- A federally documented vessel;
- A vessel already covered by a registration number, if the vessel is not located in this state for a period in excess of 90 consecutive days;
- A vessel from a country other than the United States temporarily used, operated, or stored on the waters of this state for a period that is not in excess of 90 days;
- An amphibious vessel for which a vehicle title is issued by the DHSMV;
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer; or
- A vessel owned and operated by the state or a political subdivision.<sup>18</sup>

A person may not operate, use, or store a vessel in Florida if the vessel has no certificate of title. However, a vessel may be operated, used, or stored for up to 180 days after the date of application for a certificate of title while the application is pending.<sup>19</sup>

When selling, assigning, or transferring a titled vessel, the seller must deliver a valid certificate of title to the purchaser. The purchaser has 30 days to file with the county tax collector an application for title transfer. The purchaser will be charged a \$10 fee for filing a transfer application after the 30-day period.<sup>20</sup> A certificate of title is prima facie evidence of the ownership of the vessel.<sup>21</sup>

### *Effect of Proposed Changes*

**Section 6** amends s. 328.03, F.S., requiring a vessel owner to deliver an application and fee for certificate of title for the vessel, not later than 30 days from the date of ownership or the date Florida becomes the state of principal use.

The bill creates new exceptions for titling vessels in Florida. An application for a certificate is not required for:

- A documented vessel;<sup>22</sup>
- A foreign-documented vessel;
- A barge;
- A vessel before delivery if the vessel is under construction or completed pursuant to contract;
- A vessel held by a dealer for sale or lease; and
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer.

The bill repeals other current law exceptions because the definition of “vessel” created under the bill excludes certain vessels from the definition, and thus part I of ch. 328, F.S., no longer applies to them. This includes non-motor-powered vessels less than 16 feet in length; amphibious vessels

<sup>18</sup> Section 328.03(1), F.S.

<sup>19</sup> Section 328.03(2), F.S.

<sup>20</sup> Section 328.03(3), F.S.

<sup>21</sup> Section 328.03(4), F.S.

<sup>22</sup> The bill defines “documented vessel” as a vessel covered by a certificate of documentation issued pursuant to 46 USC 12105 by the federal government.



for which a vehicle title is issued by the DHSMV; and vessels owned and operated by the state or political subdivisions.

Additionally, the bill provides requirements for issuing, transferring, or renewing a certificate of number of an undocumented vessel issued under federal law.

The bill repeals the provisions providing that a vessel may be operated, used, or stored for up to 180 days after the date of application for a certificate of title while the application is pending; and the provisions providing that when selling, assigning, or transferring a titled vessel, the seller must deliver a valid certificate of title to the purchaser.

Lastly, the bill specifies that a certificate of title is not only prima facie evidence of the ownership of the vessel, but also of the accuracy of the information in the record that constitutes the certificate.

### **Content of the Certificate of Title**

#### *Effect of Proposed Changes*

**Section 7** creates s. 328.04, F.S., to provide requirements for the content of a certificate of title. A certificate must contain:

- The date the certificate was created;
- The name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the DHSMV's files;
- The mailing address of the owner of record;
- The hull identification number;
- A description of the vessel as required in s. 328.01(2)(e), F.S. (see above in discussion of Section 3 of the bill);
- The name and mailing address of the secured party of record, when applicable;
- All title brands indicated in the DHSMV's files, including identification of the jurisdiction under whose law the title brand was created; and
- Previous registration or title in a foreign county, if applicable.

The written certificate of title must contain a form and certification that all owners can sign, subject to penalties of perjury, to consent to a transfer of an ownership interest to another person. The written certificate of title must also contain a form for the owner of record to indicate that the vessel is hull damaged.

### **Title Brands for Hull-Damaged Vehicles**

#### *Effect of Proposed Changes*

**Section 8** creates s. 328.045, F.S., providing responsibilities of an owner and insurer of a hull-damaged vessel. If damage occurred to a vessel while the individual was the owner of the vessel and the owner has notice of the damage at the time of the transfer, the owner must:

- Deliver to the DHSMV an application for a new certificate and include the "Hull Damaged" title brand designation; or

- Indicate on the certificate that the vessel is hull damaged and deliver the certificate to the transferee.

Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the DHSMV, the insurer must deliver an application to the DHSMV and include the title brand “Hull Damaged.”

Once the DHSMV receives the above information from an owner, transferee, or insurer, the DHSMV has 30 days to create a new certificate that includes the title brand designation “Hull Damaged.” An owner or insurer who fails to comply with the above disclosures or a person who solicits or colludes in a failure by an owner commits a noncriminal infraction under s. 327.73, F.S.,<sup>23</sup> for which the penalty is:

- \$5,000 for the first offense,
- \$15,000 for a second offense, and
- \$25,000 for each subsequent offense.

### **Maintenance and Access to Vessel Title Files**

#### *Effect of Proposed Changes*

**Section 9** creates s. 328.055, F.S., requiring the DHSMV to maintain the information contained in all certificates of title and the information submitted with the application. Specifically, the DHSMV must:

- Ascertain or assign the hull identification number for the vessel.
- Maintain the hull identification number and all the information submitted with the application, including the date and time the record was delivered to the DHSMV.
- Maintain in its files for each vessel:
  - All title brands;
  - The name of each secured party known to the DHSMV;
  - The name of each person known to the DHSMV to be claiming an ownership interest in the vessel; and
  - All stolen property reports received by the DHSMV.
- Index the files of the DHSMV by hull identification number, vessel number, name of the owner of record, and any other method used by the DHSMV.

The DHSMV is required to release the information in its files to federal, state, or local governments. The bill specifies that information contained on the certificate of title is a public record and that all records relating to a certificate of title must be maintained by the DHSMV for public inspection.

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<sup>23</sup> This section of current law provides penalties for violations of the state’s vessel laws. All fees and civil penalties assessed and collected pursuant to s. 327.73, F.S., are remitted by the clerk of court to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund for boating safety education purposes.

## **Creation of Certificate of Title**

### *Effect of Proposed Changes*

**Section 10** creates s. 328.06, F.S., setting forth responsibilities of the DHSMV when creating a certificate of title. On creation of a written or electronic certificate of title, the DHSMV must promptly send the certificate or record evidencing the certificate to the secured party or owner of record.

If the DHSMV creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate.

Before the DHSMV creates an electronic certificate of title, any written certificate must be surrendered to the department. If the DHSMV creates an electronic certificate, the DHSMV must destroy the written certificate or provide on the face of the certificate that it has been canceled.

The DHSMV must maintain in its files the date and time of cancellation of the electronic certificate or destruction or cancellation of the written certificate.

## **Effect of Possession of Certificate of Title**

### *Effect of Proposed Changes*

**Section 11** creates s. 328.065, F.S., specifying that possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Nothing prohibits enforcement of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of such a lien on a certificate does not invalidate the lien.

## **Duties Relating to Refusal to Issue/Authority to Cancel a Certificate of Title or Registration**

### *Present Situation*

The DHSMV may refuse to issue a certificate of title or registration to any applicant who provides a false statement pertaining to the application for a certificate of title. If the DHSMV determines that an owner or dealer named in a certificate of title provided a false statement in applying for the certificate of title, the DHSMV may cancel the certificate.

The DHSMV may cancel any pending application or certificate of title if the DHSMV determines that any title or registration fee or sales tax pertaining to such registration has not been paid, upon reasonable notice. The DHSMV may not issue a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer under s. 823.11, F.S.<sup>24</sup>

### *Effect of Proposed Changes*

**Section 12** substantially amends s. 328.09, F.S., providing the DHSMV with duties relating to the creation, issuance, refusal to issue, or cancellation of a certificate of title. Unless an

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<sup>24</sup> Section 328.09, F.S.

application for a certificate of title is rejected, the DHSMV must create a certificate for the vessel no later than 30 days after delivery of the application to the DHSMV. If the DHSMV creates electronic certificates of title, then the DHSMV must create an electronic certificate of title unless the owner requests a written certificate.

The DHSMV may reject an application for a certificate of title only if:

- The application is not in compliance;
- The application does not contain sufficient documentation for the DHSMV to determine whether the applicant is entitled to a certificate;
- There is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or
- The application does not comply with Florida law.

The DHSMV must reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

The DHSMV may cancel a created certificate of title only if the DHSMV:

- Could have rejected the application for the certificate;
- Is required to cancel the certificate under another provision of part I of ch. 328, F.S.; or
- Receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

Lastly, a DHSMV decision to reject an application for a certificate of title under this new section of law is subject to an administrative hearing during which the owner and any other interested person may present evidence in support of or opposition to the rejection of application for a certificate of title or the cancellation of a certificate of title.

### **Effect of Missing or Incorrect Information**

#### *Effect of Proposed Changes*

**Section 13** creates s. 328.101, F.S., specifying that a certificate of title is effective even if it contains unintended scrivener's errors or does not contain required information if the DHSMV determines the missing information to be inconsequential to the issuance of a certificate of title. This also applies to other records required or authorized by part I of ch. 328, F.S.

### **Duplicate Certificate of Title**

#### *Present Situation*

The DHSMV may issue a duplicate certificate of title if it receives an application from the person entitled to hold such a certificate and if the DHSMV is satisfied that the original certificate has been lost, destroyed, or mutilated. The fee for issuing a duplicate certificate is \$6 and additional \$5 for expedited service to issue a duplicate certificate of title.<sup>25</sup> The expedited service must issue the certificate within 5 working days after receipt of a proper application or the \$5 additional fee will be refunded upon written request of the applicant.

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<sup>25</sup> Section 328.11(1) and (2), F.S.

If the certificate is lost in transit and is not delivered to the addressee, the owner of the vessel or the holder of a lien may, within 180 days after the date of issuance of the title, apply to the DHSMV for reissuance of the certificate of title. An additional fee may not be charged by the DHSMV for this reissuance. If the address shown on the application is different from the address on record with the department for the applicant, then the DHSMV will verify that the certificate is delivered to an authorized receiver.<sup>26</sup>

### *Effect of Proposed Changes*

**Section 14** amends s. 328.11, F.S., to provide additional requirements for obtaining a duplicate certificate of title. The bill also allows the owner of record to apply for a duplicate certificate of title if the document is stolen or otherwise becomes unavailable or illegible.

The secured party, or if there is no secured party indicated in the DHSMV files then the owner of record, may apply for a duplicate certificate of title and, by furnishing information satisfactory to the DHSMV, obtain a duplicate certificate in the name of the owner of record.

An applicant for a duplicate certificate of title must sign the application and comply with all requirements for title application. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

The bill provides that a duplicate certificate of title created by the DHSMV must comply with all the requirements for the contents of a certificate of title and must state on its face that it is a “duplicate.” If a person receiving a duplicate certificate of title finds the original certificate, the person must destroy the original certificate.

The bill does not change the fees for a duplicate certificate of title or for expedited service.

Lastly, the bill repeals the provision allowing an applicant for duplicate certificate of title to apply for reissuance of the certificate if the applicant has not received the duplicate title from the DHSMV within 180 days after the date of issuance of the certificate.

### **Perfection of Security Interest**

#### *Effect of Proposed Changes*

**Section 15** creates s. 328.12, F.S., providing requirements for the determination and perfection of a security interest in a vessel. A security interest in a vessel can be perfected by delivery of an application for a certificate of title to the DHSMV that identifies the secured party and otherwise complies with all application requirements.<sup>27</sup> An application identifies a person as a secured party if a person named as an owner, lessor, consignor, or bailor in an application for a certificate of title has a security interest.

The bill provides that if the DHSMV has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the DHSMV of an application to have the

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<sup>26</sup> Section 328.11(3) and (4), F.S.

<sup>27</sup> The security interest may also be perfected upon attachment under s. 679.2031, F.S.

security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include:

- The name of the owner of record;
- The name and mailing address of the secured party;
- The hull identification number for the vessel; and
- The written certificate, if the DHSMV created a written certificate of title for the vessel.

On delivery of an application and payment of fees, the DHSMV must create a new certificate of title and deliver the new certificate or a record evidencing an electronic certificate. The DHSMV must maintain in its files the date and time of delivery of the application.

If a secured party assigns a perfected security interest in a vessel, the receipt by the DHSMV of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest. A purchaser of a vessel subject to a security interest who obtains a release from the secured party takes free of the security interest and of the rights of a transferee, unless the transfer is indicated in the files of the DHSMV or on the certificate.

Section 328.12, F.S., expressly does not apply to a security interest:

- Created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;
- In a barge for which no application for a certificate of title has been delivered to the DHSMV; or
- In a vessel before delivery if the vessel is under construction, or completed, pursuant to a contract and for which no application for a certificate has been delivered to the DHSMV.

However, the new section does apply if a certificate of documentation for a documented vessel is deleted or canceled. If such a security interest was valid immediately before the deletion or cancellation, then the security interest remains perfected until the earlier of 4 months after cancellation of the certificate or becomes perfected under this law.

The bill also contains provisions specifying when perfected security interests attach, depending on the law under which the security interest arises.

### **Termination Statement of a Security Interest**

#### *Effect of Proposed Changes*

**Section 16** creates s. 328.125, F.S., providing requirements for the delivery of a statement of the termination of a security interest. A secured party must deliver a termination statement to the DHSMV and, on the debtor's request, to the debtor, by the earlier of:

- Twenty days after the secured party receives a signed demand from an owner for a termination statement if there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or
- If the vessel is consumer goods, 30 days after there is no obligation secured by the vessel under the same conditions.

If a written certificate of title has been created and delivered to a secured party and a termination statement is required, the secured party must deliver the certificate to the debtor or to the DHSMV with the termination statement.

The security interest ceases to be perfected upon delivery to the DHSMV of a termination statement authorized by the secured party. If the security interest is indicated on the certificate of title, the DHSMV must create and deliver a new certificate. Additionally, the DHSMV must maintain in its files the date and time of delivery of the termination statement to the DHSMV.

Lastly, the bill provides that a secured party that fails to comply with the new section of law is liable for any loss that the secured party had reason to know might result from its lack of compliance and for the cost of an application for certificate of title.

### **Rights of a Purchaser Other Than Secured Party**

#### *Effect of Proposed Changes*

**Section 17**, creates s. 328.14, F.S., providing rights of a purchaser of a vessel who is not a secured party. A buyer in the ordinary course of business is afforded protection under state law even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

### **Rights of Secured Party**

#### *Effect of Proposed Changes*

**Section 18** creates s. 328.145, F.S., providing rights of a secured party. The effect of a security interest on the rights of a purchaser or creditor, including a lien creditor, are governed by the Uniform Commercial Code.

If a security interest in a vessel is perfected and the DHSMV creates a certificate of title that does not indicate that the vessel is subject to, or may be subject to, the security interest:

- A buyer of the vessel takes free of the security interest if the buyer, without knowledge of the security interest, acts in good faith and pays for and receives possession of the vessel; and
- The security interest is subordinate to a conflicting security interest in the vessel that is perfected after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

### **Notice of Lien on Vessel and Recording**

#### *Present Situation*

A lien for purchase money or as security for a debt in the form of a retain-title contract, conditional bill of sale, chattel mortgage, or otherwise on a vessel, is not enforceable unless a sworn notice of such lien is recorded. The lien certificate must contain the following information:

- Name and address of the registered owner;
- Date of lien;
- Description of the vessel, including make, type, motor, and serial number; and

- Name and address of lienholder.

The lien shall be recorded by the DHSMV.<sup>28</sup>

The DHSMV will not record a lien unless the official certificate of title is furnished with the notice of lien. Once the lien is recorded, the certificate of title will be held by the first lien holder until the lien is paid in full.<sup>29</sup>

When a vessel is registered in the names of two or more people by the use of the word “or” each person has the right to place a lien or notice of lien with only his or her signature. When the vessel is registered by the use of the word “and,” the signature of each co-owner is required in order to place a lien on the vessel.<sup>30</sup>

If the owner of the vessel or the director of the state child support enforcement program desires to place a second or subsequent lien against the vessel when the title certificate is in the possession of the first lienholder, the owner must send a written request to the first lienholder by certified mail and the first lienholder must forward the certificate to the DHSMV for endorsement.<sup>31</sup>

Once the lien is paid in full, the lienholder must provide the owner with a satisfaction of lien, which will be filed with the DHSMV.<sup>32</sup> The DHSMV may promulgate rules to substitute the formal satisfaction of liens.<sup>33</sup>

The DHSMV may collect a fee of \$1 for the recording of each notice of lien, but no fee may be collected for recording the satisfaction of a lien. The revenues from this fee are deposited into the Marine Resources Conservation Trust Fund.<sup>34</sup>

A lienholder holding a satisfied lien who fails to issue a satisfaction of the lien within 30 days of satisfaction will be held liable for all costs, damages, and expenses of the registered owner of the vessel. If the certificate of title shows a subsequent lien that has not been discharged, an executed satisfaction of the first lien must be delivered by the lienholder to the owner and the certificate of title showing satisfaction of the first lien must be forwarded by the lienholder to the DHSMV within 10 days after satisfaction of the lien.<sup>35</sup> A lienholder who is noncompliant with the 10-day time period commits a misdemeanor of the second degree.<sup>36</sup> If the original certificate of title cannot be returned to the DHSMV by the lienholder, and all liens have been satisfied, upon application by the owner, a duplicate copy of the certificate of title without lien will be issued to

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<sup>28</sup> Section 328.15(1), F.S.

<sup>29</sup> Section 328.15(2)(a), F.S.

<sup>30</sup> Section 328.15(2)(b), F.S.

<sup>31</sup> Section 328.15(2)(c), F.S.

<sup>32</sup> Section 328.15(3), F.S.

<sup>33</sup> Section 328.15(4), F.S.

<sup>34</sup> Section 328.15(6), F.S.

<sup>35</sup> Section 328.15(7), F.S.

<sup>36</sup> Section 328.15(9), F.S. A second degree misdemeanor is punishable by a term of jail up to 60 days and a fine of up to \$500. Sections 775.082 and 775.083, F.S.



the owner.<sup>37</sup> If the original lienholder assigns his or her lien to another person, the new lienholder may have his or her name substituted as lienholder.<sup>38</sup>

### *Effect of Proposed Changes*

**Section 19** amends s. 328.15, F.S., to repeal provisions, some of which are modified in new statutes created by the bill, including the following:

- Requirements relating to enforceable liens and the content of lien certificates;
- Direction to the DHSMV regarding entry of a lien in its records;
- Provisions specifying the result of vessel registration in the names of two or more persons as co-owners using the conjunctives “or” and “and.”
- The process for second or subsequent liens placed on a vessel by the owner or by the state child support enforcement program.
- The \$1 fee to the DHSMV for recording each notice of lien.

The bill sunsets the following provisions of s. 328.15, F.S., on October 1, 2026:

- Authorization of a debtor or registered owner to demand and receive a satisfaction of lien.
- Provisions allowing the DHSMV to adopt rules permitting the use of other methods of lien satisfaction, such as a stamp.
- Assessment of liability for costs and attorney fees for failure to furnish a debtor or registered owner of a vessel a satisfaction of lien and related provisions governing satisfaction of liens.
- Authorization for duplicate certificates of title.
- Misdemeanor penalty for failure to return a certificate of title after demand by the DHSMV or for failure to forward satisfactions of lien after such demand.
- Requirement that the DHSMV use the last known address of record when sending any required notice.
- Provisions for substitution of an original lienholder’s name on the certificate of title by an assignee.

### **Transfer of Ownership or Termination of Security Interest Without Certain Records**

#### *Effect of Proposed Changes*

**Section 22** creates s. 328.215, F.S., specifying circumstances by which the DHSMV may create a new certificate of title after the receipt of an application for a transfer of ownership or termination of a security interest, without the applicant providing a signed certificate of title or a termination statement.

If the DHSMV receives an application for a new certificate of title unaccompanied by a signed certificate of title or termination statement, the DHSMV may create a new certificate of title if:

- The requirements for application for and information to be included in a certificate of title as well as the requirements for fraud prevention are met.
- The applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement.
- The applicant provides the DHSMV with evidence that:

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<sup>37</sup> Section 328.15(8), F.S.

<sup>38</sup> Section 328.15(11), F.S.

- Proper notification of the application has been sent to the owner of record and anyone with a security interest indicated in the DHSMV records;
- At least 45 days have passed since the notification was sent; and
- The DHSMV has not received an object from the owner or anyone with a security interest.
- The applicant submits any other information required by the DHSMV as evidence of the applicant's ownership or right to terminate the security interest.
- The DHSMV has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

The DHSMV may indicate in the certificate of title that the certificate was created without submission of a signed certificate or termination statement. If after one year, the DHSMV has not received any credible information indicating theft, fraud, unsatisfied security interest, or lien on the vessel, the DHSMV must remove the indication from the certificate if requested by the applicant.

The bill authorizes the DHSMV to require the applicant to post a reasonable bond or provide an equivalent source of indemnity or security to receive a certificate of title under this new section. Unless the DHSMV receives a claim for indemnity within one year after creation of the certificate of title, the DHSMV must release any bond, indemnity, or other security at the request of the applicant.

The DHSMV is not liable to a person or entity for creating a certificate under this new section when the DHSMV issues the certificate in good faith based on the information provided by the applicant. An applicant that submits erroneous or fraudulent information with intent to mislead the DHSMV is subject, in addition to any other criminal or civil penalties provided by law, to the following penalties:

- \$5,000 for the first offense,
- \$15,000 for a second offense, and
- \$25,000 for each subsequent offense.

## **Transfer of Ownership**

### *Effect of Proposed Changes*

**Section 23** creates s. 328.22, F.S., providing requirements for the transfer of ownership in a vessel:

- If the transferor's interest is noted on the written certificate, the transferor must promptly sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transfer.
- If the certificate of title is an electronic certificate, the transferor must promptly sign by hand, or electronically if available, and deliver to the transferee a record evidencing the transfer of ownership to the transferee.
- The transferee has a right to enforce, by specific performance, the transfer of the certificate of title from the transferor.

Failure to comply with the above requirements does not render the transfer of ownership of a vessel ineffective between the parties; however, the transfer may not be effective against another person claiming an interest in the vessel. A transferor who complies with the above requirements is not liable as owner of the vessel for an event occurring after the transfer.

### **Transfer of Ownership by Secured Party**

#### *Effect of Proposed Changes*

**Section 24** creates s. 328.23, F.S., providing requirements for the transfer of ownership based upon a secured party's transfer statement.

A "secured party's transfer statement" is defined as a record signed by the secured party of record stating:

- That there has been a default on an obligation secured by the vessel;
- That the secured party of record is exercising or has exercised post-default remedies with respect to the vessel;
- That by reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner;
- The name and last known mailing address of the owner of record and the secured party of record;
- The name of the transferee;
- Other information required in the application for certificate of title; and
- One of the following:
  - That the certificate of title is an electronic certificate;
  - That the secured party does not have possession of the written certificate of title created in the name of the owner of record; or
  - That the secured party is delivering the written certificate of title to the DHSMV with the secured party's transfer statement.

Unless the DHSMV has cause to reject a secured party's transfer statement, within 30 days after delivery of the statement and payment of all fees and taxes the department must:

- Accept the statement;
- Amend its files to reflect the transfer; and
- If the name of the owner whose interest is being transferred is indicated on the certificate:
  - Cancel the certificate even if the certificate has not been delivered to the DHSMV;
  - Create a new certificate indicating the transferee as owner; and
  - Deliver the new certificate or a record evidencing an electronic certificate.

The secured party still must meet the duties under the Uniform Commercial Code for secured transactions.

### **Transfer by Operation of Law**

#### *Effect of Proposed Changes*

**Section 25** creates s. 328.24, F.S., providing requirements for a transfer of ownership by operation of law.

“By operation of law” is defined as pursuant to a law or judicial order affecting ownership of a vessel:

- Because of death, divorce, or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;
- Through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or
- Through other legal process.

A transfer-by-law statement must contain:

- The name and last known mailing address of the owner of record and the transferee;
- Other information required in the application for certificate of title;
- Documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest;
- A statement that:
  - The certificate of title is an electronic certificate of title;
  - The transferee does not have possession of the written certificate of title created in the name of the owner of record; or
  - The transferee is delivering the written certificate to the DHSMV with the transfer-by-law statement; and
- Evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the DHSMV’s files as having an interest, including a security interest, in the vessel (for transfer other than because of death, divorce, family law proceeding, merger, consolidation, dissolution, or bankruptcy).

Unless the DHSMV has cause to reject the transfer, within 30 days after delivery of the statement and payment of all fees and taxes the department must:

- Accept the statement;
- Amend its files to reflect the transfer; and
- If the name of the owner whose interest is being transferred is indicated on the certificate:
  - Cancel the certificate even if the certificate has not been delivered to the DHSMV;
  - Create a new certificate indicating the transferee as owner;
  - Indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and
  - Deliver the new certificate or a record evidencing an electronic certificate.

Transfer-by-law does not apply to defaults under the Uniform Commercial Code.

### **Supplemental Principles of Law and Equity**

**Section 26** creates s. 328.25, F.S., to provide that the principles of law and equity supplement the provisions of the bill.

### **Rulemaking**

**Section 27** creates s. 328.41, F.S., authorizing the DHSMV to adopt rules to implement part I of ch. 328, F.S.

### **“Grandfather” Provisions**

**Sections 31** creates an undesignated section of law providing that the rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before the effective date of the bill, July 1, 2023, remains valid.

The bill does not affect an action or proceeding commenced before July 1, 2023.

A security interest that is enforceable immediately before July 1, 2023, that would have priority over the rights of a lien creditor at that time, is deemed a perfected security interest. A security interest perfected immediately before the same date remains perfected until the earlier of:

- The time perfection would have ceased under the law under which the security interest was perfected; or
- July 1, 2026.

The bill does not affect the priority of a security interest in a vessel if immediately before July 1, 2023, the security interest is enforceable and perfected, and that priority is established.

### **Retroactive Application**

**Section 31** creates an undesignated section of law, subject to the provisions relating to transfer of ownership by law described above, applying the bill to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate, or record was entered into or created before July 1, 2023.

### **Technical Revisions**

**Sections 20, 21, 28, 29, and 30** of the bill amend ss. 328.16, 328.165, 409.2575, 705.103, and 721.08, F.S., conforming provisions and cross-references to changes made by the bill.

### **Effective Date**

**Section 32** provides that the bill takes effect July 1, 2023.

## **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill requires owners of vessels that become hull-damaged and insurers that transfer ownership in hull-damaged vessels to apply to the DHSMV for a new certificate of title that includes the title brand, "Hull Damaged." The existing fee for issuance of each vessel certificate of title is \$5.25, of which \$3.75 is retained by the tax collector.<sup>39</sup> An owner transferring ownership of a vessel has the option to simply indicate on the certificate at the time of transfer that the hull is damaged and could avoid paying the fee for a new certificate of title.

While the bill does not impose any new fee, the bill may result in an existing fee applying to a new transaction (application for a branded title). Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Article VII, s. 19 of the Florida Constitution may apply if the provisions in the bill relating to applications for new branded title certificates are interpreted to be new transactions requiring payment of an existing title fee.

The tax collector offices could see an increase in vessel certificate of title applications and application fees. However, the number of additional transactions is unknown.

B. Private Sector Impact:

The bill may improve the integrity of the vessel titling process by requiring a more detailed description of the vessel on the title and requiring the DHSMV to maintain the information contained in certificates of title and title applications.

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<sup>39</sup> However, if the vessel was previously registered outside the state, the DHSMV is directed to charge an additional fee of \$4. Section 328.03(6) and (7), F.S.

### C. Government Sector Impact:

All funds collected by the DHSMV under ch. 328, F.S., are deposited into the Marine Resources Conservation Trust Fund of the Fish and Wildlife Conservation Commission.<sup>40</sup>

The DHSMV estimates an insignificant, but negative impact on the Marine Resource Conservation Trust Fund due to the elimination of the \$1 recording of lien fee.<sup>41</sup> In addition, the DHSMV also estimates an insignificant, but positive impact in the Marine Resource Conservation Trust Fund due to the potential increase in the number of transactions related to hull-damaged vessel titling. The number of additional title transactions is unknown.<sup>42</sup>

The bill creates two noncriminal infractions punishable by a civil penalty for failure to provide proper notice of hull damage (s. 328.045(4), F.S.) and for submitting a fraudulent or misleading application for transfer of title or termination of a security interest without certificate the title (s. 328.215(4), F.S.). The first offense is \$5,000; the second offense is \$15,000; and each subsequent offense is \$25,000. These penalties would be remitted by the clerk of court to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund for boating safety education purposes. The number of penalties that would be assessed and collected under either provision is indeterminate.

Section 19 of the bill repeals subsection (2) of s. 328.15, F.S., effective July 1, 2023. Paragraph (c) of subsection (2) deals with attachment of child support enforcement liens on vessel titles. Repeal of s. 328.15(2)(c), F.S., could impact the state's eligibility for funding pursuant to Title IV-D of the Social Security Act because after July 1, 2023, Florida would no longer have a procedure for filing liens against this type of personal property to collect child support enforcement liens. The state is required to have a procedure for filing liens against all personal property to collect unpaid child support. See Section VII. The Department of Revenue's Child Support Program's State Fiscal Year 2017-2018 appropriation for Title IV-D matching funds and federal performance incentives are \$156.7 million and \$33.5 million respectively. Further, failure to comply with Title IV-D requirements could result in a penalty being assessed to the Title IV-A TANF (Temporary Assistance to Needy Families) grant. For the first year of noncompliance, the penalty is 1-2 percent of TANF funds; for the second year, the penalty is 2-3 percent of TANF funds; and for subsequent years, the penalty is 3-5 percent of the amounts otherwise payable to the state. Florida's TANF grant is \$559.1 million for Federal Fiscal Year 2017-2018. The penalty would be applied to all or part of the grant.<sup>43</sup>

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<sup>40</sup> Sections 328.20 and 379.208, F.S.

<sup>41</sup> The DHSMV collects about \$2,300 per year for this fee. Email from DHSMV staff dated April 2, 2019 (On file in the Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee).

<sup>42</sup> See email from DHSMV staff dated March 18, 2019 (On file in the Senate Infrastructure and Security Committee).

<sup>43</sup> Email from the Department of Revenue to Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee staff, *CS/SB 676*, April 8, 2019. (On files in the Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee.)

The bill will require the DHSMV to implement changes to vessel titling procedures and databases. However, with a delayed effective date of July 1, 2023, the DHSMV can incorporate the required changes utilizing existing resources.<sup>44</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The bill authorizes the DHSMV to adopt rules to implement part I of ch. 328, F.S.

On lines 898 and 899 of the bill, the provision seems to imply that the DHSMV has the *option* of creating electronic certificates of title. The bill states “if the department creates electronic certificates of title...” Section 328.15, F.S., requires the DHSMV to establish and administer an electronic titling program.

Section 19 of the bill amends s. 328.15, F.S., F.S., deleting current subsections (1), (2), and (6) and re-designating the remaining subsections. A new subsection (9) included in the revisions to s. 328.15, F.S., provides that re-designated subsections (1), (2), and (4)-(8) expire on October 1, 2026. The remaining provision requires the DHSMV to adopt rules to administer “this section,” including rules about notarization of satisfaction of liens and forms; allow the DHSMV to provide copies of satisfactions of liens for \$1, which are admissible in court; and directs the DHSMV to establish and administer an electronic titling program.

Current s. 328.15(2)(c), F.S., contains the procedure for obtaining a certificate of title for a vessel that reflects a child support lien filed by the Department of Revenue Child Support Program. Thus, no procedure for obtaining a certificate of title for a vessel that reflects a child support lien filed by the Child Support Program would exist after the effective date of the bill, as no alternative procedure is provided for in the bill.

The Department of Revenue (DOR) notes that “It is unclear how the cross-reference or amended s. 328.15, F.S., applies to the Child Support Program’s authority to petition the circuit court for an order enforcing the requirements of s. 328.15. It is also unclear what if any procedure is available to the [DOR] to have a support lien reflected on a new or amended certificate of title.”<sup>45</sup>

The DOR advises that under Title IV-D of the Social Security Act, which authorizes federal assistance for state child support enforcement programs, states must have a state plan that sets out and implements a procedure for filing liens against personal property to collect unpaid child support.<sup>46</sup> Should this procedure be repealed, the state’s plan would be out of compliance, which

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<sup>44</sup> *Id.*

<sup>45</sup> See the DOR 2019 Agency Legislative Bill Analysis of identical language contained in CS/HB 475 (March 16, 2019). (On file in the Senate Infrastructure and Security Committee.)

<sup>46</sup> See 42 U.S.C. 666(a)(4) and 42 U.S.C. 666(c)(1)(G)(iv).



could ultimately lead to a significant loss of federal funding.<sup>47</sup> However, the state would have the opportunity to correct the noncompliance before the federal government enforces any penalty.<sup>48</sup>

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 328.01, 328.03, 328.09, 328.11, 328.15, 328.16, 328.165, 409.2575, 705.103, and 721.08.

This bill creates the following sections of the Florida Statutes: 328.001, 328.0015, 328.015, 328.02, 328.04, 328.045, 328.055, 328.06, 328.065, 328.101, 328.12, 328.125, 328.14, 328.145, 328.215, 328.22, 328.23, 328.24, 328.25, and 328.41.

## IX. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Infrastructure and Security on March 20, 2019:**

The committee substitute:

- Increases the penalties for an owner or insurer who fails to comply with the required disclosures relating to a hull-damaged-branded certificate of title, or a person who solicits or colludes in such a failure by an owner, or an insurer that fails to apply for a new, branded certificate.
- Expands the DHSMV's rulemaking authorization from just one section in the bill to the entire part I, ch. 328, F.S.
- Removes provisions relating to creation of a certificate of title for a vessel valued at less than \$5,000, and removes a limitation on the bond amount the DHSMV is authorized to require, in connection with an application for transfer of ownership or termination of security interest without a certificate of title.
- Provides the DHSMV is not liable to a person or entity for creating a certificate of title when the certificate is issued in good faith based on information provided by an applicant, and specified penalties for an applicant that submits erroneous or fraudulent information with intent to mislead the DHSMV.
- Provides 30-day periods within which to take specified actions, rather than 20-day periods in the as-filed bill, in various sections of the bill.
- Revises the effective date of the act from October 1, 2019, to July 1, 2023.
- Delays the expiration of the specified subsections of s. 328.15, F.S., until October 1, 2026.
- Makes numerous non-substantive editorial revisions.

### B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>47</sup> Conversation with DOR staff, March 18, 2019.

<sup>48</sup> *Supra* note 43.