

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL: SB 676

INTRODUCER: Senator Hooper

SUBJECT: Certificates of Title for Vessels

DATE: March 19, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

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:

- Defines numerous terms relating to titling of vessels.
- 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 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 rights of a purchaser who is a secured party.
- Repeals provisions replaced by the bill’s provisions.

- 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 rules for the voluntary transfer of vessel title ownership, transfer by a secured party, and transfer by operation of law.
- Sets out “grandfathering” provisions, provides for application, and makes technical and conforming changes.

The bill appears to have an indeterminate, negative fiscal impact on resources of the DHSMV. See the Fiscal Impact Statement heading for details.

The bill takes effect October 1, 2019.

II. Present Situation:

The bill substantially revises Part I of Chapter 328, F.S. 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.

Current Situation

Vessel Titling

Application for Certificate of Title

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 application¹ must include the true name of the owner, the address of the owner, and the complete description of the vessel, including the hull identification number. The application must be signed by the owner, and the owner must provide valid identification and pay the prescribed fee.²

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.³

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

¹ Department of Highway Safety and Motor Vehicles, *Application for Certificate of Title With/Without Registration*, available at <https://www.flhsmv.gov/dmv/forms/btr/82040.pdf> (last viewed March 17, 2019).

² Section 328.01(1)(a), F.S.

³ Section 328.01(2)(a)&(b), F.S.

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).⁴

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.⁵ 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 DHSMV.⁶

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.⁷

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 original certificate of title and the decedent's probated last will and, 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 DHSMV.⁸

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 DHSMV.⁹

Certificate of Title Required

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

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

⁴ Section 328.01(2)(c), F.S.

⁵ Section 328.01(2)(d), F.S.

⁶ Section 328.01(2)(e), F.S.

⁷ Section 328.01(3)(a)&(b), F.S.

⁸ Section 328.01(3)(c), F.S.

⁹ Section 328.01(3)(d), F.S.

- An amphibious vessel for which a vehicle title is issued by 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.¹⁰

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.¹¹ 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 an application for title transfer. The purchaser will be charged a \$10 fee for filing a transfer application after the 30-day period.¹² A certificate of title is prima facie evidence of the ownership of the vessel.¹³

Refusal to Issue and Authority to Cancel a Certificate of Title or Registration

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 DHSMV determines that an owner or dealer named in a certificate of title provided a false statement in applying for the certificate of title, DHSMV may cancel the certificate. DHSMV may cancel any pending application or certificate of title if DHSMV determines that any title or registration fee or sales tax pertaining to such registration has not been paid, upon reasonable notice. DHSMV may not issue a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer.¹⁴

Duplicate Certificate of Title

DHSMV may issue a duplicate certificate of title if it receives an application from the person entitled to hold such a certificate and if DHSMV is satisfied that the original certificate has been lost, destroyed, or mutilated. DHSMV must charge a fee of \$6 for issuing a duplicate certificate. DHSMV may impose a fee of \$5 for expedited service in issuing a duplicate certificate of title.¹⁵

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 DHSMV for reissuance of the certificate of title. An additional fee may not be charged by DHSMV. If the address shown on the application is different from the address shown for the applicant, DHSMV will verify the certificate is delivered to an authorized receiver.¹⁶

¹⁰ Section 328.03(1), F.S.

¹¹ Section 328.03(2), F.S.

¹² Section 328.03(3), F.S.

¹³ Section 328.03(4), F.S.

¹⁴ Section 328.09, F.S.

¹⁵ Section 328.11(1)-(2), F.S.

¹⁶ Section 328.11(3)-(4), F.S.

Notice of Lien on Vessel and Recording

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 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 to include make, type, motor and serial number; and
- Name and address of lienholder.

The lien must be recorded by DHSMV.¹⁷

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.¹⁸

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.¹⁹

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 DHSMV for endorsement.²⁰

Once the lien is paid in full, the lienholder must provide the owner with a satisfaction of lien, which will be filed with DHSMV.²¹ DHSMV may promulgate rules to substitute the formal satisfaction of liens.²²

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.²³

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 by the registered owner of such 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.²⁴ A lienholder who is noncompliant with the 10-day time period commits a misdemeanor of the second degree.²⁵

¹⁷ Section 328.15(1), F.S.

¹⁸ Section 328.15(2)(a), F.S.

¹⁹ Section 328.15(2)(b), F.S.

²⁰ Section 328.15(2)(c), F.S.

²¹ Section 328.15(3), F.S.

²² Section 328.15(4), F.S.

²³ Section 328.15(6), F.S.

²⁴ Section 328.15(7), F.S.

²⁵ Section 328.15(9), F.S.

If the original certificate of title cannot be returned to 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 the owner.²⁶ If the original lienholder assigns his or her lien to another person, the new lienholder may have his or her name substituted as lienholder.²⁷

Uniform Law Commission

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, was established in 1892 and provides states with legislation that strives to bring clarity to areas of state statutory law.²⁸ ULC commissioners must be lawyers qualified to practice law. State governments as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands appoint ULC commissioners to research, draft, and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.²⁹ The ULC aims to strengthen the federal system by providing rules and procedures that are consistent from state to state.³⁰

Uniform Certificate of Title for Vessels Act

The Uniform Certificate of Title for Vessels Act (UCOTVA) was drafted by the ULC in 2011.³¹ The principal objectives of the UCOTVA 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
- 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 UCOTVA has been enacted in Virginia (2013), Connecticut (2014), Washington D.C. (2015), and Hawaii (2018).³²

²⁶ Section 328.15(8), F.S.

²⁷ Section 328.15(11), F.S.

²⁸ Uniform Law Commission, *About Us*, available at <http://www.uniformlaws.org/aboutulc/overview> (last viewed March 17, 2019).

²⁹ *Id.*

³⁰ *Id.*

³¹ See National Conference of Commissioner on Uniform State Laws, *Uniform Certificate of Title for Vessels Act*, at p. 6, available at http://www.lawrev.state.nj.us/UCOTVA/UCOTVA_FinalAct_2011.pdf (last viewed March 17, 2019).

³² 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 17, 2019).

Effect of Proposed Changes

Short Title

Section 1 of the bill creates s. 328.001, F.S., providing the short title for Part I of Chapter 328, F.S., the “Uniform Certificate of Title for Vessels Act.”

Definitions

Section 2 creates s. 328.0015, F.S., to establish definitions for numerous terms. Specifically, the bill creates the following definitions of terms:

The bill creates s. 328.0015, F.S., providing the following definitions:

- "Barge" means a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.
- "Builder's certificate" means a certificate of the facts of the build of a vessel described in 46 C.F.R. s. 67.99.
- "Buyer" means a person who buys or contracts to buy a vessel.
- "Cancel," with respect to a certificate of title, means to make the certificate ineffective.
- "Certificate of origin" means 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.
- "Certificate of title" means a record, created by the department or by a governmental agency of another jurisdiction under the law of that jurisdiction that is designated as a certificate of title by the department or agency and is evidence of ownership of a vessel.
- "Dealer" means a person, including a manufacturer, in the business of selling vessels.
- "Department" means the Department of Highway Safety and Motor Vehicles.
- "Documented vessel" means a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. s. 12105. The term does not include a foreign-documented vessel.
- "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- "Electronic certificate of title" means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.
- "Foreign-documented vessel" means a vessel of which the ownership is recorded in a registry maintained by a country other than the United States which identifies each person who has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.
- "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- "Hull damaged" means 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.
- "Hull identification number" means the alphanumeric designation assigned to a vessel pursuant to 33 C.F.R. part 181.

- "Lien creditor," with respect to a vessel, means:
 - A creditor that has acquired a lien on the vessel by attachment, levy, or the like;
 - An assignee for benefit of creditors from the time of assignment;
 - A trustee in bankruptcy from the date of the filing of the petition; or
 - A receiver in equity from the time of appointment.
- "Owner" means a person who has legal title to a vessel.
- "Owner of record" means the owner indicated in the files of the department or, if the files indicate more than one owner, the one first indicated.
- "Person" means 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.
- "Purchase" means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.
- "Purchaser" means a person who takes by purchase.
- "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- "Secured party," with respect to a vessel, means a person:
 - In whose favor a security interest is created or provided for under a security agreement, regardless of whether any obligation to be secured is outstanding;
 - Who is a consignor as defined under chapter 679, F.S.; or
 - Who holds a security interest arising under s. 672.401, s. 672.505, s. 672.711(3), or s. 680.508(5), F.S.
- "Secured party of record" means the secured party whose name is indicated as the name of the secured party in the files of the department or, if the files indicate more than one secured party, the one first indicated.
- "Security interest" means an interest in a vessel which secures payment or performance of an obligation if the interest is created by contract or arises under s. 672.401, s. 672.505, s. 672.711(3), or s. 680.508(5), F.S. The term includes any interest of a consignor in a vessel in a transaction that is subject to chapter 679, F.S. The term does not include the special property interest of a buyer of a vessel on identification of that vessel to a contract for sale under s. 672.501, F.S., but a buyer also may acquire a security interest by complying with chapter 679. Except as otherwise provided in s. 672.505, F.S., the right of a seller or lessor of a vessel under chapter 672 or chapter 680, F.S., to retain or acquire possession of the vessel is not a security interest, but a seller or lessor also may acquire a security interest by complying with chapter 679, F.S.. The retention or reservation of title by a seller of a vessel, notwithstanding shipment or delivery to the buyer under s. 672.401, F.S., is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined as provided in part II of chapter 671, F.S.
- "Sign" means, with present intent to authenticate or adopt a record, to:
 - Make or adopt a tangible symbol; or
 - Attach to or logically associate with the record an electronic symbol, sound, or process.
- "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

- "State of principal use" means the state on the waters of which a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year.
- "Title brand" means a designation of previous damage, use, or condition that must be indicated on a certificate of title.
- "Transfer of ownership" means a voluntary or involuntary conveyance of an interest in a vessel.
- "Vessel" means 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 chapter 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.
- "Vessel number" means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. s. 12301.
- "Written certificate of title" means a certificate of title consisting of information inscribed on a tangible medium.

The bill also incorporates by reference numerous terms currently defined elsewhere in Florida law.

Application for Certificate of Title

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 also requires additional information on the application for a certificate of title. The bill requires that an application for certificate of title must be signed by the applicant and contain:

- The applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's 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 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 the year in which the manufacture or build of 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;
- An indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;
- A statement that the vessel is not a documented vessel or a foreign-documented vessel;
- Any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;
- If the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;
- If the application is made in connection with a transfer of ownership, the transferor's name, the street address of the transferor's principal residence 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 bill amends s. 328.01, F.S., authorizing an application for a certificate of title to contain 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, bill of sale, or other record that to the satisfaction of the DHSMV identifies the applicant as the owner.

Lastly, the bill amends s. 328.01, F.S., requiring the DHSMV to maintain any records submitted in connection with an application, and authorizing the DHSMV to require an application for a certificate of title to be accompanied by payment of all fees and taxes by the applicant.

DHSMV Records

Section 4 creates s. 328.015, F.S. requiring 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 regarding a security interest in a vessel for at least 10 years after the DHSMV receives a termination statement regarding the security interest. The information must be accessible by the hull identification number for the vessel.

A person who submits a record to the DHSMV may request an acknowledgement of the filing by the DHSMV. The DHSMV must send the person an acknowledgment showing 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 \$1 fee:³³

- 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

Section 5 creates s. 328.02, F.S., providing that the local law of the jurisdiction 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.

³³ Section 320.05(3)(b)2., F.S.

Certificate of Title Required

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 20 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, providing that an application for a certificate is not required for:

- A documented vessel;
- 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 also deletes the following current exceptions:

- A non-motor-powered vessel less than 16 feet in length;
- A federally documented vessel;
- An amphibious vessel for which a vehicle title is issued by DHSMV;
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer; and
- A vessel owned and operated by the state.

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

The bill deletes 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. The bill also deletes the provisions providing that when selling, assigning, or transferring a titled vessel, the seller must deliver a valid certificate of title to the purchaser. The bill amends the provision requiring the purchaser to file an application for title transfer within 30 days and changes it to 20 days.

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.

Certificate of Title Content

Section 7 creates s. 328.04, F.S., providing 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);
- The name and mailing address of the secured party of record; and
- All title brands indicated in the DHSMV's files.

Each title brand indicated on a certificate of title must identify the jurisdiction under whose law the title brand was created. If the vessel was previously registered or titled in a foreign country, the DHSMV must indicate such fact on the certificate of title. The written certificate of title must contain a form, signed under penalty of perjury that all owners 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

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 owner 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 title brand designation "Hull Damaged"; 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, the DHSMV has 20 days to create a new certificate that indicates that the vessel is branded "Hull Damaged." An owner or insurer who fails to comply with the above disclosures is subject to a civil penalty of \$1,000.

Maintenance and Access to Vessel Title Files

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 pursuant to which the record relates, including the date and time the record was delivered to the DHSMV;
- Maintain the files for public inspection; and
- Index the files of the DHSMV by hull identification number, vessel number, and name of the owner of record, and any other method used by the DHSMV.

Additionally, the DHSMV must also 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 DHSMV to be claiming an ownership interest in the vessel, and all stolen property reports the DHSMV has received. The DHSMV is required to release the information in its files to federal, state, or

local governments, and the information provided on the certificate of title is subject to public record.

Creation of Title

Section 10 creates s. 328.06, F.S., providing 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. The DHSMV must maintain in its files the date and time of destruction.

Effect of Possession of Title

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, but 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

Section 12 substantially amends s. 328.09, F.S., providing the DHSMV with duties relating to creation, issuance, refusal to issue, or cancellation of a certificate of title. Unless an application for a certificate of title is rejected, the DHSMV must create a certificate for the vessel not later than 20 days after delivery of the application to the DHSMV. 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 the laws of this state.

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 this part; or
- Receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

Lastly, the bill provides for the opportunity for a hearing during which the owner may present evidence in support of or opposition to cancellation of a certificate of title.

Effect of Missing or Incorrect Information

Section 13 creates s. 328.101, F.S., specifying that a certificate of title is effective even if it contains incorrect information or does not contain required information.

Duplicate Certificates of Title

Section 14 creates s. 328.11, F.S., providing additional requirements for obtaining a duplicate certificate of title. In addition to a certificate of title being lost, destroyed, or mutilated, if a certificate is stolen, the owner of record may apply for 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. The duplicate certificate of title must state 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.

Lastly, the bill removes 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 Interests

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 only by delivery of an application for a certificate of title to the DHSMV that identifies the secured party and otherwise complies with all title application requirements. An application identifies a person as a secured party if a person named as an owner, lessor, consignee, or bailor in an application for a certificate of title is 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 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
- If DHSMV has created a written certificate of title for the vessel, the certificate.

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 the DHSMV's files or on the certificate. This section of the bill 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.

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

Lastly, the bill authorizes DHSMV to adopt rules to administer the new section of law created by the bill.

Termination Statements

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 statement.

The bill provides that on delivery to the DHSMV of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. If the security interest to which the statement relates 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 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.

Rights of a Purchaser Other Than Secured Party

Section 17, creates s. 328.14, F.S., providing for the 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

Section 18 creates s. 328.145, F.S., providing for the rights of a secured party. 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 the security interest:

- A buyer of the vessel takes free of the security interest if the buyer, without knowledge of the security interest, 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 Vessel Lien

Section 19 amends s. 328.15, F.S., to repeal provisions replaced 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.
- Repeal of the \$1 fee to the DHSMV to recording each notice of lien.

The bill sunsets the following provisions of s. 328.15, F.S., on October 1, 2022, at which time the expired provisions in this section are replaced by those in the bill:

- 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.
- Penalties for failure to return a certificate of title after demand by the DHSMV or for failure to forward satisfactions of lien after such demand.

- The 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.

Applications for Transfer of Ownership or Termination of Security Interest

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 certificate of title. If the DHSMV receives an application for a new certificate of title unaccompanied by a signed certificate of title, 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 proper notification of the application has been sent to the owner of record; and
- The applicant submits any other information required by the DHSMV as evidence of the applicant's ownership or right to terminate the security interest, and 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 DHSMV to require a bond, indemnity, or other security for a vessel title that has a transfer of ownership or security interest and is titled without a signed certificate of title. Unless the value of a vessel is less than \$5,000, DHSMV may require the applicant to post a bond or provide an equal source of indemnity or security (not to exceed twice the value of the vessel). Unless DHSMV receives a claim for indemnity within one year after creation of the certificate of title, DHSMV must release any bond, indemnity, or other security at the request of the applicant.

Transfer of Ownership

Section 23 creates s. 328.22, F.S., providing rules for the transfer of ownership in a vessel. On a voluntary transfer of vessel title ownership, the following rules apply:

- If the transferor's interest is noted on the paper 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 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 rules 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 rules is not liable as owner of the vessel for an event occurring after the transfer.

Transfer of Ownership by Secured Party

Section 24 creates s. 328.23, F.S., providing a definition for “secured party’s transfer statement.” “Secured party’s transfer statement” means 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, and the name of the 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:
 - The certificate of title is an electronic certificate.
 - The secured party does not have possession of the written certificate of title created in the name of the owner of record.
 - The secured party is delivering the written certificate of title to DHSMV with the secured party's transfer statement.

Additionally, the bill provides DHSMV’s duties upon receipt of a secured party’s transfer statement. Unless DHSMV has cause to reject a secured party’s transfer statement, 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 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 is still held to the duties under the Uniform Commercial Code for secured transactions.

Transfer by Operation of Law

Section 25 creates s. 328.24, F.S., providing a definition for “by operation of law”. “By operation of law” means 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.

The bill provides the requirements for a transfer of ownership by operation of law. A transfer-by-law statement must contain:

- The name and last known mailing address of the owner of record and the transferee, and the other information required for application 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 department with the transfer-by-law statement; and
- Except for a transfer due to death, divorce, family law proceeding, merger, consolidation, dissolution, or bankruptcy, 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.

Unless the DHSMV has cause to reject the transfer, 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.

This new section of 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., provides that the principles of law and equity supplement the provisions of the bill.

“Grandfather” Provisions

Sections 30 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 October 1, 2019, remains valid.

The bill does not affect an action or proceeding commenced before October 1, 2019.

A security interest that is enforceable immediately before October 1, 2019, 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
- October 1, 2022.

The bill does not affect the priority of a security interest in a vessel if immediately before October 1, 2019, 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 October 1, 2019.

Technical Revisions

Sections 20, 21, 27, 28, and 29 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 30 requires the bill take effect October 1, 2019.

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:

Section 8 of the bill requires, at or before the time an owner of record transfers an ownership interest in a hull-damaged vessel covered by a certificate of title created by the DHSMV, if the damage occurred while that person was an owner and the person has notice of the damage at the time of the transfer, the owner shall either apply to the DHSMV for a new certificate that includes the title brand, "Hull Damaged," or indicate on the certificate that the vessel is hull damaged. Additionally, before an insurer transfers an ownership in a hull-damaged vessel covered by a certificate of title created by the DHSMV, the insurer must apply for a new certificate that includes the title brand. The existing fee for issuance of each vessel certificate of title is \$5.25, of which \$3.75 is retained by the tax collector.³⁴ However, the requirement to obtain a new certificate as described above is a new requirement that imposes a fee previously not required. These revisions may be subject to Amendment 5 to the Florida Constitution adopted by voters in November of 2018, prohibiting the Legislature from imposing, authorizing, or raising a state tax or fee except through legislative approval by a two-thirds vote of each house of the Legislature containing no other subject. The bill may require a supermajority vote.

The tax collector offices could see an increase in vessel certificate of title applications and application fees.

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.

C. Government Sector Impact:

Indeterminate. The bill requires the DHSMV to implement extensive changes to vessel titling procedures. The DHSMV has indicated that the bill will likely require additional resources and could negatively impact the delivery of the on-going Motorist Modernization initiative.³⁵

VI. Technical Deficiencies:

None.

³⁴ 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.

³⁵ See email from DHSMV staff dated March 18, 2019. (On file in the Senate Infrastructure and Security Committee.)

VII. Related Issues:

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, 2019.

Current s. 328.15(2), 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 notes that “It is unclear how the cross-reference or amended s. 328.15 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.”³⁶

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.³⁷ Should this procedure be repealed, the state’s plan would be out of compliance, which could ultimately lead to a significant loss of federal funding.³⁸

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, 328.09, 328.101, 328.12, 328.125, 328.14, 328.145, 328.215, 328.22, 328.23, 328.24, and 328.25.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

³⁶ See the DOR 2019 Agency Legislative Bill Analysis of identical language contained in CS/HB 475. (On file in the Senate Infrastructure and Security Committee.

³⁷ See 42 U.S.C. s. 666(a)(4) and 42 U.S.C. 666(c)(1)(G)(iv).

³⁸ Conversation with DOR staff, March 18, 2019.

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