

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 Commerce and Tourism

BILL: CS/SB 1636

INTRODUCER: Transportation Committee and Senator Wright

SUBJECT: Rescission or Cancellation of a Motor Vehicle Sale

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Fav/CS
2.	Baird	McKay	CM	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1636 establishes a process, within specified timeframes and using certain documentation, which authorizes a motor vehicle dealer, a motor vehicle purchaser, and any lienholder to agree to rescind or cancel the sale of a vehicle, if all fees, taxes, and other moneys associated with the rescinded or canceled sale, less specified titling fees, are returned to the relevant parties. In such event, the bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to rescind, cancel, or revoke an application for a certificate of title or a title that has already been issued.

An agreement among the parties subject to the rescinded or canceled sale invalidates any subsequent requirements imposed on the dealer to submit an application for a certificate of title or to remit any fees or taxes if all fees, taxes, and other moneys associated with the rescinded or canceled sale are returned. A dealer is authorized to obtain a duplicate certificate of origin or a duplicate certificate of title or obtain a new certificate of title, documents that would be required for a re-sale. A dealer is prohibited from offering a vehicle subject to the authorized rescission or cancellation until the dealer has received a certificate of title from the DHSMV. A rescission, cancellation, or revocation does not negate the fact that the vehicle has been the subject of a previous retail sale.

The fiscal impact is indeterminate. See the "Fiscal Impact Statement" heading below.

The bill takes effect July 1, 2023.

II. Present Situation:

Rescission or cancellation of a motor vehicle sale currently occurs when the contract for sale authorizes such or when the motor vehicle dealer otherwise agrees to cancel the contract and accept return of the vehicle. Current law makes no provision for refund of titling and registration fees in the event of a rescission or cancellation agreement voluntarily entered into by the dealer, the purchaser, and any lienholders.

Motor Vehicle Dealers and Motor Vehicle Sales and Use Taxes

Currently, a motor vehicle dealer¹ may sell motor vehicles² in this state if the dealer first registers with the Florida Department of Revenue (FDOR) to collect and report specified taxes and obtains a dealer's license from the DHSMV.³ Florida sales and use tax,⁴ plus any applicable discretionary sales surtax,⁵ is due on all new or used motor vehicles sold, leased, delivered into, imported into, or used in Florida, unless a specific exemption applies.⁶

The sales and use tax is due on the sale price of the motor vehicle,⁷ including any separately itemized charge or fee for items such as any accessory sold with the vehicle; preparation,

¹ Defined in s. 320.27(1)(c), F.S., to mean any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms "selling" and "sale" include lease-purchase transactions. According to the FDOR, a motor vehicle dealer is any dealer registered with the FDOT to sell motor vehicles. *See* floridarevenue.com, *Sales and Use Tax on Motor Vehicles*, available at [gt800030.pdf \(floridarevenue.com\)](https://www.floridarevenue.com/gt800030.pdf) (last visited April 3, 2023).

² Defined in s. 320.27(1)(b), F.S., to mean any motor vehicle of the type and kind required to be registered and titled under chapter 319 and this chapter, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home. According to the FDOR, a motor vehicle is an automobile, motorcycle, truck, trailer, semi-trailer, truck tractor and semi-trailer combination, or any other vehicle operated on the roads of Florida used to transport persons or property, and propelled by power other than muscle power. This includes recreational vehicles, such as a travel trailer, camping trailer, truck camper, motor home, private motor coach, van conversion, park trailer, and fifth-wheel trailer; and any other vehicle that is of a class or type that is required to be titled, licensed, or registered in Florida.

³ *See* generally s. 320.27, F.S., and floridarevenue.com, *Sales and Use Tax on Motor Vehicles*, available at [gt800030.pdf \(floridarevenue.com\)](https://www.floridarevenue.com/gt800030.pdf) (last visited April 3, 2023).

⁴ The Florida Revenue Act of 1949, codified in Chapter 212, F.S., establishes and regulates taxes on sales, use, and other transactions in Florida, including motor vehicle sales. The general state sales tax under the Act is currently set at 6 percent of the sales price. Section 212.05(1)(a)1.a., F.S.

⁵ According to the FDOR, most counties impose a local option discretionary sales surtax, which is due when the purchaser's residing address on the registration or title to the motor vehicle is a location within a county imposing a surtax, applicable to the first \$5,000 of the purchase price. *Id.*, floridarevenue.com.

⁶ *Id.* The FDOR document provides examples of motor vehicle sales that are exempt, or partially exempt, from the sales and use tax. Section 212.08, F.S., sets out various exemptions for general groceries; medical products and supplies or medicine; certain farm equipment; items bearing other excise taxes; items exempt on account of use; sales made to the United States government, a state, or any county, municipality, or political subdivision of a state; and other miscellaneous exemptions. That section also sets out a number of partial exemptions from the sales and use tax.

⁷ No title certificate may be issued on any motor vehicle, or, if no title is required by law, no license or registration may be issued for any vehicle, unless there is filed with such application for title certificate or license or registration certificate a receipt, issued by an authorized dealer or a designated agent of the FDOR, evidencing the payment of the tax imposed by Chapter 212, F.S., where the same is payable. A presumption of sales and use tax applicability is created if the motor vehicle is registered in this state. For the purpose of enforcing this provision, all county tax collectors and all persons or firms authorized to sell or issue boat, mobile home, and motor vehicle licenses are hereby designated agents of the department and

settlement, or closing fees, and any other expense or cost of the dealer that the dealer required the purchaser to pay.⁸ The taxes are generally due, along with a tax return,⁹ on the first day of the month following each reporting period (whether monthly, quarterly, twice a year, or yearly), and are late after the 20th day of the month following each reporting period.¹⁰ Any separately itemized fee or charge required by a state law for titling, licensing, or registering the motor vehicle, or for recording a lien on the motor vehicle, is not subject to the sales and use tax.¹¹

Currently, under Chapter 212, F.S., if a motor vehicle purchase is returned to a dealer by the purchaser after the sales tax has been collected from or charged to the account of the purchaser, the dealer is entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the FDOR.¹²

If the dealer has not remitted the sales tax to the FDOR, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement by the dealer as to the gross amount of such refunds during the period covered by the signed statement, which may not exceed 90 days.¹³ The FDOR must then issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. If a dealer has retired from business and filed a final return, a refund of the tax may be made if it can be established to the FDOR's satisfaction that the tax was not due.¹⁴

Statements of Origin and Certificates of Title

A manufacturer's statement of origin (MSO), also referred to as a manufacturer's certificate of origin (MCO), is the original ownership document for a vehicle. The document, provided by the new vehicle dealer, provides specific vehicle information, such as the year, make, and vehicle identification number. When the vehicle is sold at retail, the document is surrendered to the appropriate jurisdiction, and a title is issued.¹⁵

Florida law currently prohibits a manufacturer, distributor, licensed dealer, or other person from selling or otherwise disposing of a new motor vehicle to a distributor, licensed dealer, or other person without delivering to such distributor, licensed dealer, or other person an MSO duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof, on forms approved by the DHSMV. An MSO must also contain a certification of the identification and description of the motor vehicle delivered and the name and address of the

are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. Section 212.06(10), F.S.

⁸ *Id.*

⁹ *See* s. 212.11, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 212.17(1)(a), F.S. The suggestion is made, however, that a refund of the sales tax paid by the dealer on the sale of a motor vehicle cannot occur after a dealer *re-purchases* a vehicle from a customer who wishes to return that vehicle, as opposed to a rescission or cancellation of the sale.

¹³ Section 212.17(1)(b), F.S.

¹⁴ Section 212.17(1)(c), F.S.

¹⁵ *See* aamva.org, [Manufacturer's Certification of Origin - American Association of Motor Vehicle Administrators - AAMVA](http://aamva.org) (last visited April 3, 2023).

distributor, licensed dealer, or other person to whom the motor vehicle was originally sold, over the signature of an authorized official of the manufacturer who made the original delivery.¹⁶

A certificate of title (COT) is the record that is evidence of ownership of a vehicle, whether in paper or electronic form.¹⁷ Generally, application for a COT must be made upon a form prescribed by the DHSMV, must be filed with that agency, and be accompanied by the statutorily prescribed fee. If a COT has previously been issued for a motor vehicle in this state, the application must be accompanied by the COT duly assigned. If the motor vehicle for which COT application is made is a new vehicle for which an MSO is required, the application must be accompanied by such MSO.¹⁸

In the case of the sale of a motor vehicle by a licensed dealer to a general purchaser, the COT must be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. If such sale is to a general purchaser who resides in another state or country, the dealer is not required to apply for a certificate of title for the motor vehicle; however, the dealer must transfer ownership and reassign the COT or MSO to the purchaser, and the purchaser must sign an affidavit, as approved by the DHSMV, that the purchaser will title and register the motor vehicle in another state or country.¹⁹

Certificate of Title Fees and Service Charges

Section 319.32, F.S., requires the DHSMV to charge specified fees and service charges relating to issuing, duplicating, or otherwise processing COTs, including, but not limited to:

- For each original COT, \$70;²⁰
- For each duplicate copy of a COT, \$70;²¹
- For each assignment by a lienholder, \$3;
- For noting a lien on a COT, \$2.
- For issuance of an original or duplicate COT to cover the cost of materials used for security purposes;
- For shipping and handling for each paper title mailed by the DHSMV, a service fee of \$2.50; and
- For each application handled in connection with the issuance, duplication, or transfer of any COT, a service charge of \$4.25.²²

¹⁶ Section 319.21(1), F.S.

¹⁷ Section 319.001(1), F.S.

¹⁸ Section 319.23(1), F.S.

¹⁹ Section 319.23(6)(a), F.S. A licensed dealer is required to apply for a registration and title within 30 days of delivery of the vehicle. See flhsmv.gov, [Buying from a Licensed Dealer - Florida Department of Highway Safety and Motor Vehicles \(flhsmv.gov\)](#) for additional tax, tag, and title information (last visited April 3, 2023).

²⁰ Except for a COT for a motor vehicle for hire for which the title fee is \$49.

²¹ *Id.*

²² This service charge must be collected by the DHSMV on any application handled directly from its office. Otherwise, these service charges must be collected and retained by the tax collector who handles the application. Section 319.32(b), F.S. If the tax collector contracts with a license plate agent, the tax collector is authorized to determine additional service charges to be collected by the privately owned license plate agents approved by the tax collector. Section 319.32(c), F.S. The DHSMV must also charge an additional fee of \$10 for each original COT issued for a vehicle previously registered outside this state. Section 319.32(3), F.S.

Motor Vehicle Registration and Related Fees

Florida’s definition of the term “motor vehicle” for registration purposes is quite broad,²³ and all vehicles meeting the definition, with some exceptions, are required to be registered in this state.²⁴ Current law imposes an initial registration fee (a license tax) of \$225 on automobiles and tri-vehicles for private use, certain trucks, and motor homes and truck campers.²⁵ Thereafter, registration is generally based on the class and weight of the vehicle.²⁶

Additional fees and service charges also apply.²⁷ For example:

- License plates are issued for a ten-year period and must be replaced upon registration renewal. The license plate fee is \$28, which is paid at the rate of \$2.80 per each year before the plate is replaced and credited toward the next \$28 replacement fee.²⁸
- A service charge of \$2.50 is imposed on each application handled in connection with original issuance, duplicate issuance, or transfer of a license plate, or with transfer or issuance of a registration certificate.²⁹

Current DHSMV Refund Practices

The DHSMV advises:

If a dealer is requesting that a Florida Certificate of Title be cancelled for a new vehicle/vessel because the customer (that the motor vehicle/vessel was titled to) did not take delivery or possession of the motor vehicle/vessel, the dealer and the customer must fill out and submit a “Dealer Non-Delivery” affidavit to cancel the title. After canceling the title for a new car, the dealer must contact the manufacturer and request a duplicate MCO to re-title the vehicle. The dealer must also contact the owner/lienholder to whom the incorrect MCO was assigned to request the title be submitted to them. However, if the title is electronic, the dealership should advise the lienholder to systematically satisfy its lien.

Currently, if the customer wants to cancel the sale or return a new vehicle/vessel for any reason other than non-delivery, the return is handled as a civil matter and the fees paid to the dealer are not refunded, including title and registration fees. The only exception is the initial registration fee for the license plate.³⁰

²³ Section 320.01(1), F.S.

²⁴ Section 320.02, F.S.

²⁵ Section 320.072, F.S.

²⁶ Section 320.08, F.S.

²⁷ See the DHSMV document provided to committee staff March 22, 2023, for a list of fees and service charges imposed on all license plates, including additional fees imposed for specialty or personalized plates (on file in the Senate Transportation Committee).

²⁸ Section 320.06(1)(b)1., F.S.

²⁹ Section 320.04(1)(a), F.S.

³⁰ See the DHSMV’s 2023 Draft Agency Legislative Bill Analysis, SB 1636, received March 22, 2023 (on file in the Senate Transportation Committee).

III. Effect of Proposed Changes:

The bill creates s. 319.255, F.S., authorizing a motor vehicle dealer, purchaser, and any lienholders to rescind or cancel the sale before an application for a COT is submitted. An agreement among the parties subject to the rescinded or canceled sale invalidates any subsequent requirements imposed upon the dealer to submit an application or remit any fees or taxes if all fees, taxes, and other moneys associated with the rescinded or canceled sale are returned to the rightful parties.

The DHSMV must rescind, cancel, or revoke an application for a COT or a title that has already been issued if, within 60 days after the sale of a motor vehicle, a notarized affidavit signed by the dealer, the purchaser, and any lienholder is executed on a form prescribed by the DHSMV, stating that the dealer, purchase, and any lienholder have rescinded or canceled the sale and that all moneys associated with the transfer of the vehicle have been or will be returned to the relevant parties. In such a case:

- Fees paid to the DHSMV, less the above-described titling fees paid in accordance with s. 319.32, F.S., must be returned to the dealer.
- If no such fees have been paid to the DHSMV, the dealer must pay the titling fees.
- Sales taxes refunded or credited to the dealer must be refunded or credited to the dealer in the manner prescribed by the FDOR.

If a COT has been issued, the dealer must obtain and surrender the COT to the DHSMV or certify that the COT has been lost or destroyed or will be obtained and destroyed upon receipt. A dealer may not offer a vehicle subject to the bill's provisions for retail sale until the dealer has received the title from the DHSMV.

Within seven days after the receipt of the form, the bill requires the DHSMV to process the affidavit and issue a COT to the dealer reflecting the dealer's name and the odometer reading reflected on the most recent assignment before the rescinded, canceled, or revoked sale.

The affidavit stating that the sale has been rescinded or canceled must be filed no later than 30 days after the date of the affidavit's execution by the dealer, the purchaser, and any lienholder, whichever date is the latest. Any rescission, cancellation, or revocation under the new section of law does not negate the fact that the vehicle has been the subject of a previous retail sale.

The bill also amends s. 212.17, F.S., relating to tax credits or refunds. The bill requires that a motor vehicle dealer who rescinds, cancels, or revokes a sale or an application for a COT pursuant to the provisions in new s. 319.255, F.S., discussed below, be reimbursed, in the manner prescribed by the FDOR, for the amount of tax collected or charged by the dealer for such sale or application. This provision appears to be consistent with current provisions for dealer reimbursement of sales taxes, as described above.

Refund of the sales tax on any agreed-upon rescinded or cancelled motor vehicle sale as provided in the bill will continue to occur as described above. The DHSMV would be required to refund the initial registration fee (a license tax) of \$225 under s. 320.072, F.S.; the "base" registration fees generally dependent on the class and weight of the vehicle under s. 320.08, F.S.;

and any of the applicable miscellaneous fees and service charges discussed above.³¹ The DHSMV would not be required to refund any fees paid in accordance with s. 319.32, F.S., relating to application for and issuance of a COT.

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:

None.

B. Private Sector Impact:

Motor vehicle purchasers who rescind or cancel a sale with the concurrence of all specified parties will be reimbursed for taxes, registration fees, and other ancillary fees and service charges relating to vehicles the purchasers do not wish to own, less the applicable fees or service charges described above in s. 319.32, F.S., relating to titling.

C. Government Sector Impact:

The DHSMV advises that registration fees and taxes that are not currently refunded will be returned to the dealers after remittance and distribution. Such refunds would not include the applicable fees or service charges in s. 319.32, F.S. However, because the class and weight of a vehicle subject to the specified rescission or cancellation agreement

³¹ *Supra* note 27. See also the DHSMV's Draft 2023 Legislative Bill Analysis, SB 1636, dated and received March 23, 2023 (on file in the Senate Transportation Committee).

is unknown, and because the exact amount applicable for registration fees and service charges is unknown, and further because the number of specified rescission or cancellation agreements that will occur is unknown, the fiscal impact to state revenues is indeterminate.

The DHSMV also advises that the bill will require approximately 81 hours of programming in support of its technology systems (the Florida Real-Time Vehicle Information System, Electronic Filing System, estimated to cost \$2,835 in full-time-equivalent and contracted resources.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

As noted by the DHSMV:³³ “A service charge of \$2.50 [is imposed] on each registration pursuant s. 320.04, F.S., which is retained by the tax collector or the private license plate agent that performs the transaction. The tax collector may also impose an additional service fee of \$0.50 if the transaction occurs in a branch office. In addition, pursuant to s. 320.04(3), F.S., the tax collector may authorize a private license plate agent to charge additional services fees per their authority to contract.”³⁴ The bill does not expressly authorize a dealer to request a refund of any fees and taxes retained by a county tax collector.

The DHSMV also recommends the following revisions:

- Revise the effective date of the bill from July 1, 2023, to April 1, 2024, to allow the DHSMV sufficient time to implement necessary programming and operational changes.
- Allow additional time to process refund requests and issue titles in the dealer’s name by providing the DHSMV 15 days, instead of 7, to rescind, cancel, or revoke any application for a COT or an already-issued title.
- Revise line 74 of the bill to acknowledge certain fees that are currently nonrefundable by inserting after the reference to s. 319.32:

and nonrefundable fees paid in accordance with ss. 320.08 and 320.03, must be returned to the motor vehicle

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 212.17.

This bill creates the following section of the Florida Statutes: 319.255.

³² *Infra* note 34.

³³ And *supra* note 22.

³⁴ See the DHSMV’s Draft 2023 Legislative Bill Analysis, SB 1636, dated and received March 23, 2023 (on file in the Senate Transportation Committee).

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 Transportation on March 27, 2023:

The committee substitute removes some ambiguity relating to the fees and taxes to be refunded and conforms to the House companion.

- B. **Amendments:**

None.