

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 Transportation

BILL: SB 1636

INTRODUCER: Senator Wright

SUBJECT: Sale of Motor Vehicles

DATE: March 24, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Price | Vickers | TR | Pre-meeting |
| 2. | | | CM | |
| 3. | | | FP | |

I. Summary:

SB 1636 authorizes a motor vehicle dealer, purchaser, and any lienholders to rescind or cancel the sale of a motor vehicle not later than the 30th day following the date of sale. All parties must agree to cancel or rescind the sale, acknowledged in a vehicle return agreement. Such a rescission or cancellation requires the motor vehicle dealer to return to the rightful parties all fees, taxes, and other moneys provided to the dealer as part of the sale. The agreement invalidates any subsequent requirements imposed upon the dealer to submit an application for a certificate of title or to remit any fees or taxes if the application, fees, and taxes have not been remitted.

If an application has been submitted, or taxes or fees remitted, or the dealer requires a certificate of title for resale purposes, the dealer must certify the rescinded or canceled sale and the return to the rightful parties of all fees, taxes, and other moneys on a form prescribed by the Department of Highway Safety and Motor Vehicles (DHSMV). If a certificate of title has been issued, the certificate of title must be attached or a certification made that the certificate has been lost or destroyed.

The bill prohibits a dealer from offering for retail sale a vehicle that is the subject of an application for a certificate of title, or of taxes or fees remitted, until the dealer has received the title from the DHSMV.

Within 30 days after the date on the DHSMV-acknowledged copy of the dealer certification form, the bill authorizes a dealer to request a refund of fees and taxes retained by the county tax collector, less any fees paid for the issuance, duplication, or transfer of any certificate of title, by submitting a copy of the DHSMV-acknowledged dealer certification form to the county tax collector.

Any 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

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 \(floridarevenue.com\)](http://gt800030.pdf(floridarevenue.com)) (last visited March 22, 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 \(floridarevenue.com\)](http://gt800030.pdf(floridarevenue.com)) (last visited March 22, 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.

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, 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

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 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, [Manufacturers Certification of Origin - American Association of Motor Vehicle Administrators - AAMVA](http://aamva.org/Manufacturers-Certification-of-Origin-American-Association-of-Motor-Vehicle-Administrators-AAMVA) (last visited March 23, 2023).

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 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

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 \(flhsmv.gov\)](http://flhsmv.gov/Buying-from-a-Licensed-Dealer-Florida-Department-of-Highway-Safety-and-Motor-Vehicles) for additional tax, tag, and title information (last visited March 23, 2023).

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

²¹ *Id.*

- For each application handled in connection with the issuance, duplication, or transfer of any COT, a service charge of \$4.25.²²

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.

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.

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.

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

III. Effect of Proposed Changes:

The bill creates s. 319.255, F.S., authorizing a motor vehicle dealer, purchaser, and any lienholders, by concurrence of all parties, to rescind or cancel the sale of a motor vehicle not later than the 30th day following the date of sale, which requires return by the motor vehicle dealer to the rightful parties of all fees, taxes, and other moneys provided to the motor vehicle dealer as part of the sale. The concurrence of all parties to cancel or rescind the sale must be acknowledged in an agreement for return of the vehicle, which must be retained by the dealer with the vehicle sales records and which invalidates any subsequent requirements imposed upon the dealer to submit an application or remit any fees or taxes if the application, fees, and taxes have not been remitted.

If an application for a COT has been submitted or tax or fees remitted, or the dealer requires a COT for resale purposes, the dealer must certify the rescinded or canceled sale and the return to the rightful parties of all fees, taxes, and other moneys on a form prescribed by the DHSMV. The form must be completed and submitted to the DHSMV within 15 days after the date the parties agree to cancel the sale and must have attached to it a copy of the dealer's return agreement. If a COT has been issued, the COT must be attached or a certification made on the form that the COT has been lost or destroyed. A motor vehicle dealer may not offer for retail sale a vehicle that is the subject of a submitted application for a COT or tax or fees remitted 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:

- Rescind, cancel, or revoke any application for title or an issued title;
- Refund to the dealer any fees and taxes paid or remitted to the DHSMV, less fees paid in accordance with s. 319.32, F.S., described above;
- Return a DHSMV-acknowledged³¹ and dated copy of the form; and
- Issue a COT to the dealer reflecting the name of the motor vehicle dealer and the odometer reading as recorded at the time of the sale that was rescinded or canceled.

Within 30 days after the date on the DHSMV-acknowledged copy of the form, a dealer may request a refund of fees and taxes retained by the county tax collector,³² less fees paid in accordance with s. 319.32, F.S., by submitting a copy of the DHSMV-acknowledged form to the county tax collector.

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

³¹ Although not clearly indicated, it appears that "department-acknowledged" may mean something as simple as a "received" stamp, along with entry of the required date.

³² *Supra* note 22.

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.

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, leaving in question only what the DHSMV (or a tax collector who retains any such amounts) is required to refund as intended in the phrase “refund to the motor vehicle dealer any fees and taxes paid or remitted to the [DHSMV].” Although not entirely clear, it appears the DHSMV (or a tax collector who retains any such amounts) 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 the miscellaneous fees and service charges discussed above.³³ The DHSMV or a tax collector 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³³ *Supra* note 27.

B. Private Sector Impact:

Motor vehicle purchasers who rescind or cancel a sale with the concurrence of all specified parties will be reimbursed for registration fees and taxes 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 “[r]egistration 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 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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.