

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 973 Rescission or Cancellation of a Motor Vehicle Sale  
**SPONSOR(S):** Ways & Means Committee, Transportation & Modals Subcommittee, Civil Justice Subcommittee, Botana  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Transportation & Modals Subcommittee	15 Y, 1 N, As CS	Johnson	Hinshelwood
3) Ways & Means Committee	20 Y, 0 N, As CS	Berg	Aldridge

### SUMMARY ANALYSIS

A “motor vehicle” includes an automobile, motorcycle, or truck used to transport persons or property, which is propelled by power other than muscular power. A motor vehicle dealer may sell motor vehicles in the state if the dealer first registers to collect and report specified taxes, including the state sales tax, with the Department of Revenue (DOR) and obtains a dealer’s license from the Department of Highway Safety and Motor Vehicles (DHSMV). Under ch. 212, F.S., sales taxes, plus any applicable discretionary sales surtax, are due on the sale of all new or used motor vehicles in Florida unless an exemption applies.

The bill:

- Authorizes an authorized representative of a motor vehicle dealer, a motor vehicle purchaser, and any person claiming a lien on a used motor vehicle, by written concurrence of all parties, to agree to rescind or cancel a motor vehicle sale under specified circumstances.
- Specifies that an agreement among the parties subject to the rescinded or canceled sale invalidates any subsequent requirements imposed upon the motor vehicle dealer to submit an application for a certificate of title or remit any fees or taxes if all fees, taxes, and other moneys associated with the rescinded or canceled sale are returned to the rightful parties.
- Specifies that a motor vehicle dealer may obtain a duplicate certificate of origin or title, or a new certificate of title, as specified in the bill.
- Requires the DHSMV to rescind, cancel, or revoke an application for a certificate of title or a title that has been issued if, within 60 days after the motor vehicle’s sale, a notarized affidavit signed by an authorized representative of the motor vehicle dealer, the motor vehicle purchaser, and any person claiming a lien on the motor vehicle, is executed on a form prescribed by the DHSMV. The form must state that the parties have rescinded or canceled the motor vehicle’s sale and all moneys associated with the vehicle’s transfer have been or will be returned to the relevant parties. Under such circumstances, the bill also:
  - Requires the DHSMV to process the application within a specified time period.
  - Prohibits a motor vehicle dealer from offering for retail sale a motor vehicle subject to the rescission or cancellation until a certificate of title has been received from the DHSMV.
  - Provides for the return of sales tax to the motor vehicle dealer in certain situations.
  - Requires a dealer to obtain and surrender any certificate of title issued or certify that such certificate has been lost or destroyed or will be obtained and destroyed upon receipt.
  - Specifies that these procedures only apply to used motor vehicles.
- Provides that if a motor vehicle sale is rescinded or canceled and the application for a certificate of title is rescinded, canceled, or revoked, the motor vehicle dealer must be reimbursed the amount of sales tax collected, so long as the motor vehicle dealer has returned the sales tax to the purchaser.

The Revenue Estimating Conference estimated that the bill would have a recurring insignificant negative impact on General Revenue, state trust funds, and local government revenues in FY 2023-24. The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Motor Vehicle Sales

A “motor vehicle” includes an automobile, motorcycle, or truck used to transport persons or property and which is propelled by power other than muscular power.<sup>1</sup> A “used motor vehicle” is any motor vehicle that is not a “new motor vehicle.”<sup>2</sup> A “new motor vehicle” is, generally, a motor vehicle the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.<sup>3</sup> Under Florida law, a motor vehicle dealer<sup>4</sup> may sell motor vehicles in the state if the dealer first registers to collect and report specified taxes with the Florida Department of Revenue (DOR) and obtains a dealer’s license from the Florida Department of Highway Safety and Motor Vehicles (DHSMV).<sup>5</sup>

Although Florida law provides rescission rights for many contracts for the sale of goods or services, no such rescission rights exists for the sale of a motor vehicle by a licensed dealer.<sup>6</sup> Thus, a motor vehicle purchaser has little recourse to cancel a motor vehicle sales contract and return the vehicle for a refund unless such right is specified in the contract itself or the dealer otherwise agrees to void the contract and accept the return.

##### Sales Tax

Chapter 212, F.S., contains the state’s statutory provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the requirements for dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida. In addition to the 6 percent sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.<sup>7</sup> Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale.<sup>8</sup>

##### Tax Credits or Refunds

Under ch. 212, F.S., if purchases are returned to a motor vehicle dealer by the purchaser or consumer after the sales tax has been collected from or charged to the consumer, the dealer is entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by DOR.<sup>9</sup> However, if the dealer has not remitted the tax to DOR, 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 be longer than 90 days.<sup>10</sup> DOR 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.<sup>11</sup> Such memorandum must be accepted by DOR at

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<sup>1</sup> S. 320.01(1), F.S.

<sup>2</sup> S. 319.001(12), F.S.

<sup>3</sup> S. 319.001(9), F.S.

<sup>4</sup> “Motor vehicle dealer” means any person engaged in the business of buying, selling, or dealing in motor vehicles; 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), F.S. Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period is presumed to be engaged in such business. S. 320.27(1)(c), F.S.

<sup>5</sup> *Id.*; Florida Department of Revenue, *Sales and Use Tax on Motor Vehicles*, [https://floridarevenue.com/Forms\\_library/current/gt800030.pdf](https://floridarevenue.com/Forms_library/current/gt800030.pdf) (last visited April 13 20, 2023).

<sup>6</sup> Florida Department of Highway Safety and Motor Vehicles, *Buying From a Licensed Dealer*, <https://www.flhsmv.gov/safety-center/consumer-education/buying-vehicle-florida/buying-licensed-dealer/> (last visited April 13, 2023).

<sup>7</sup> S. 212.055, F.S.

<sup>8</sup> S. 212.07(2), F.S.

<sup>9</sup> S. 212.17(1)(a), F.S.

<sup>10</sup> S. 212.17(1)(c), F.S.

<sup>11</sup> *Id.*

full face value from the dealer to whom it is issued upon the remittance of subsequent taxes accrued under this chapter, and if a dealer has retired from business and filed a final return, a tax refund may be made if it can be established to the satisfaction of the DOR that the tax was not due.<sup>12</sup>

## Statements of Origin and Certificates of Title

### *Statements of Origin*

A “manufacturer’s statements of origin,” sometimes referred to as a “certificate of origin,” is a vehicle’s original ownership document, which document is necessary for the original purchaser to obtain a certificate of title. No motor vehicle manufacturer, distributor, or dealer may sell or otherwise dispose of a new motor vehicle without delivering to the purchaser a manufacturer’s statements of origin duly executed and with such assignments that may be necessary to show title in the purchaser thereof, on forms approved by the DHSMV.<sup>13</sup> Such statements must contain a certification of the identification and description of the motor vehicle delivered and the name of the purchaser to whom it was originally sold, over the signature of the authorized manufacturer who made the original delivery.<sup>14</sup>

### *Certificates of Title*

A “certificate of title” is the record evidencing vehicle ownership, which record is transferred from seller to buyer upon completion of the vehicle’s sale.<sup>15</sup> Such a record may be a paper certificate authorized by the DHSMV or a certificate consisting of information that is stored in an electronic form in the DHSMV’s database.<sup>16</sup>

Application for a certificate of title must be made upon a form prescribed by and filed with the DHSMV.<sup>17</sup> However, if a certificate of title was previously issued for a motor vehicle in Florida, the application generally must also be accompanied by the certificate of title duly assigned.<sup>18</sup> Further, if the motor vehicle for which application for a certificate of title is made is a new motor vehicle for which a manufacturer’s statements of origin are required, the application must be accompanied by the statements of origin.<sup>19</sup>

Under s. 319.32, F.S., the DHSMV must charge specified fees in connection with issuing, duplicating, or otherwise handling certificates of title, including:

- \$70 for each original certificate of title, except for a certificate of title for a motor vehicle for hire registered under s. 320.08(6), F.S.,<sup>20</sup> for which the title fee is \$49;
- \$70 for a duplicate copy of a certificate of title, except for a certificate of title for a motor vehicle for hire registered under s. 320.08(6), F.S., for which the title fee is \$49;
- \$3 for each assignment by a lienholder;
- \$2 for noting a lien<sup>21</sup> on a title certificate;
- \$1 for the issuance of an original or duplicate certificate of title to cover the cost of materials used for security purposes;
- \$2.50 for shipping and handling each paper title mailed by the DHSMV, which fee must be deposited in the Highway Safety Operating Trust Fund; and

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<sup>12</sup> *Id.*

<sup>13</sup> S. 319.21, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 319.001(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> S. 319.23, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Under this section, motor vehicles for hire are levied specified license taxes for their operation, which taxes must be paid to and collected by the DHSMV.

<sup>21</sup> A lien is a claim against property that evidences a debt, obligation, or duty. When someone has a lien secured by another person’s motor vehicle, the lien is generally noted on the title certificate until the lien is satisfied and the lienholder files a satisfaction of lien with the DHSMV. Fla. Jur. 2d Liens s. 37:1.; Florida Department of Highway Safety and Motor Vehicles, *Liens and Titles*, <https://www.flhsmv.gov/motor-vehicles-tags-titles/liens-and-titles/> (last visited April 13, 2023).

- \$4.25 for each application that is handled in connection with the issuance, duplication, or transfer of any certificate of title.

## Effect of Proposed Changes

The bill authorizes a motor vehicle purchaser to return his or her used motor vehicle under specified conditions for a refund, including a refund for the sales price and any sales taxes paid. This gives used motor vehicle purchasers similar flexibility and financial safety to that of purchasers of other products under Florida law.

Specifically, the bill creates s. 319.255, F.S., to provide that an authorized representative of a motor vehicle dealer, a motor vehicle purchaser, and any person claiming a lien on a motor vehicle, by written concurrence of all parties signed by each person, may rescind or cancel a motor vehicle sale before an application for a certificate of title is submitted. Under the bill:

- The written concurrence among the parties to the rescind or cancel the sale invalidates any subsequent requirements imposed upon the motor vehicle dealer to submit an application for a certificate of title 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.
- A motor vehicle dealer may obtain a duplicate certificate of origin or of title, or obtain a new certificate of title, as specified in the bill.

The bill also requires the DHSMV to rescind, cancel, or revoke an application for a certificate of title or a title that has been issued if, within 60 days after the sale of a motor vehicle, a notarized affidavit signed by an authorized representative of the motor vehicle dealer, the motor vehicle purchaser, and any person claiming a lien on the motor vehicle is executed on a form prescribed by the DHSMV stating that such persons have rescinded or canceled the motor vehicle's sale and that all moneys associated with the motor vehicle's transfer have been or will be returned to the relevant parties. If a certificate of title has been issued, the motor vehicle dealer must obtain and surrender the certificate of title to the DHSMV or certify that the certificate of title has been lost or destroyed or will be obtained and destroyed upon receipt. Under this section:

- The affidavit must be filed no later than 30 days after the date of execution of the affidavit by the motor vehicle dealer, the motor vehicle purchaser, or any person claiming a lien on the motor vehicle, whichever date is latest.
- The DHSMV must process the affidavit within seven days after receipt and issue a certificate of title to the motor vehicle dealer reflecting the dealer's name and the odometer reading reflected on the most recent assignment before the rescinded, canceled, or revoked sale.
- A motor vehicle dealer may not offer a motor vehicle subject to this subsection for retail sale until the motor vehicle dealer has received a certificate of title from the DHSMV.
- Sales taxes refunded or credited to the motor vehicle purchaser must be refunded or credited to the motor vehicle dealer in the manner prescribed by DOR.

The bill specifies that all of the foregoing provisions apply only to the sale of used motor vehicles, as defined in s. 319.001, F.S.

The bill amends s. 212.17, F.S., to provide that if, pursuant to s. 319.255, F.S., a motor vehicle sale is rescinded or canceled and the application for a certificate of title is rescinded, canceled, or revoked, the motor vehicle dealer must be reimbursed, in a manner prescribed by DOR, the amount of tax collected or charged by the motor vehicle dealer for the sale or application, so long as the motor vehicle dealer has returned to the motor vehicle purchaser the amount of such tax collected or charged.

The bill provides an effective date of July 1, 2023.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 212.17, F.S., relating to tax credits or refunds.

**Section 2:** Creates s. 319.255, F.S., relating to rescission or cancellation of used motor vehicle sales.

**Section 3:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference estimated that the provisions of the bill would have a recurring insignificant negative impact on General Revenue and state trust funds in FY 2023-24.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference estimated that the provisions of the bill would have a recurring insignificant negative impact on local government revenues in FY 2023-24.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2023, the Civil Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the original bill in that it:

- Eliminates provisions relating to the discharge of liens on motor vehicles.
- Authorizes the return of sales taxes and specified fees paid for a motor vehicle's sale when the sale is canceled or rescinded within a specified timeframe and specified other conditions are met.

On March 29, 2023, the Transportation & Modals Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that a motor vehicle dealer will only get reimbursed for the amount of tax collected or charged by the motor vehicle dealer if the motor vehicle dealer has returned to the motor vehicle purchaser the amount of such tax collected or charged.
- Specifies that the agreement to rescind or cancel the motor vehicle sale must be in writing.
- Clarifies that the motor vehicle sale may be rescinded or canceled only by concurrence of all specified parties.
- Provides that an authorized representative may sign on behalf of specified persons.
- Removes a provision providing that the parties are not required to report rescinded or canceled motor vehicle sales to DHSMV.

On April 17, 2023, the Ways & Means Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specifies that the provisions of the bill apply only to used motor vehicles.
- Clarifies that an authorized representative of a motor vehicle dealer can sign the written concurrence or affidavit necessary to rescind or cancel a sale under the bill.
- Removes a provision requiring DHSMV to refund specified fees to the motor vehicle dealer under certain circumstances.
- Makes a conforming change to remove a provision related to the sale of new motor vehicles, as the cancellation or rescission of the purchase of new motor vehicles is no longer allowed under the bill.

This analysis is drafted to the committee substitute as passed by the Ways & Means Committee.