

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1526

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Motor Vehicles

DATE: March 4, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>HP</u>	_____
3.	_____	_____	<u>ATD</u>	<u>Withdrawn</u>
4.	_____	_____	<u>AP</u>	<u>Withdrawn</u>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS addresses a number of issues relating to off-highway vehicles, highway safety, license plates, motor vehicle titles and registration, driver's licenses and identification cards, and wreckers that primarily affect the duties of the Department of Highway Safety and Motor Vehicles (DHSMV) as follows:

This CS clarifies the procedures and requirements for the titling of off-highway vehicles, by mirroring the titling requirements for motor vehicles provided in chapter 319, F.S., and changes definitions of "off-highway" and "all-terrain" vehicles.

The CS provides a definition of "traffic signal preemption system," and provides the unauthorized use of a traffic signal preemption device is a moving violation punishable as provided in chapter 318, F.S. Also, the CS provides a driver of a vehicle turning left must also yield the right-of-way to vehicles lawfully passing on the left side of the turning vehicle.

The CS provides clearance specifications for railroad highway grade crossings. Specifically, a person may not drive any vehicle through a railroad-highway grade crossing that does not have sufficient space or sufficient undercarriage clearance to drive completely through the crossing without stopping. In addition, the CS increases the minimum speed limit on interstate highways from 40 to 50 miles per hour.

This CS removes the form restriction that the notice of statutory implied consent to sobriety testing appear over the signature line on a driver's license in lieu of anywhere on the license. Also, the CS authorizes a traffic accident investigation officer to provide for the removal of an attended, unattended or abandoned vehicle.

The CS provides owners of leased vehicles are exempt from parking tickets on those leased vehicles if the vehicle is registered in the name of the person who leased the vehicle. Also, the CS provides an exception to the existing law by allowing uniform traffic citations to be admissible evidence of falsification, forgery, uttering, fraud or perjury or when used as physical evidence resulting from a forensic examination of the citation.

The CS requires all dispositions returned to a county requiring a correction be resubmitted to the DHSMV within 10 days after notification of the error and authorizes the DHSMV to modify the effective date of any resulting suspension or revocation action resulting from citation dispositions reported to the DHSMV more than 180 days after the disposition of the citation as if the citation had been reported in a timely manner.

The CS continues the authority for deposit of \$10 of the nonrefundable service fee for reinstatement of a suspended license into the Highway Safety Operating Trust Fund if the transaction is processed by either the clerk of the court or the tax collector. Specifically, this change would allow tax collectors to remit the \$10 fee directly to the DHSMV to be deposited into the Highway Safety Operating Trust Fund.

This CS provides a dealer must file with DHSMV a notice of sale signed by the seller on motor vehicles or mobile homes taken in trade. The DHSMV will update its database for the respective title record to indicate a status of "sold." Also, the CS requires long-term leased motor vehicles to be registered in the name of the lessee, effective July 1, 2004.

The CS exempts fleet vehicle operators from the requirement to possess on their person or in their vehicle the registration certificate.

The CS revises identification card and driver's license application requirements to include a United States passport or a naturalization certificate issued by the United States Department of Justice as sufficient proof to entitle an applicant to an identification card. Section 322.08, F.S., is further amended to specify what constitutes proof of nonimmigrant classification to entitle an applicant to an original driver's license or temporary permit for a period not to exceed the expiration date of the document presented or 2 years, whichever occurs first.

The CS provides DHSMV must require proof of an installed interlock device before issuing a restricted license if the court fails to specify mandatory placement or the period for the mandatory placement of an ignition interlock device at the time of imposing sentence or within 30 days thereafter.

The CS authorizes the tax collectors serving as agents for DHSMV to retain the entire \$5.25 service fee. The CS further reduces the time period from 7 to 5 working days in which the county tax collector must transfer driver's license fees and charges are to the state treasury and requires such transfer to occur electronically.

The CS provides the requirement of a full-face photograph or digital image of the licensee or identification cardholder may not be waived, regardless of the provisions of ch. 761, F.S.

The CS amends ss. 322.17, 322.18, and 322.19, F.S., to conform to the CS. The CS amends s. 319.27, F.S., to correct an obsolete reference.

The CS provides a hazardous-materials endorsement fee, as required by s. 322.57 (1) (d), F.S., must be set by DHSMV by rule and must reflect the cost of the state and federal fingerprint check, and the cost to DHSMV of providing and issuing the license.

The CS expands DHSMV's ability to also cancel an identification card, vehicle or vessel registration, or fuel-use decal if the licensee fails to pay the correct fee or pays by a dishonored check, regardless of which one they are paying for.

The CS requires the DHSMV, in a DUI arrest, to review the information submitted by a law enforcement officer and to notify the officer of any deficiencies prior to the hearing.

This CS removes the requirement that a Class C driver's license is required to operate a motor vehicle combination having a gross vehicle weight rating, a declared weight, or an actual weight of 26,001 pounds or more.

The CS eliminates the Class D driver's license and deletes references thereto.

The CS adds a subsection specifically for drivers of school buses requiring them to test their knowledge and driving skills in a school bus and hold a corresponding CDL endorsement for that type of vehicle. In addition, the CS removes obsolete language in this section regarding the weight restriction of vehicles operated by Class C licensees.

The CS also provides for disqualification from operating a commercial motor vehicle if specific violations were committed in a noncommercial motor vehicle, but resulted in a suspension, revocation or cancellation of the license holder's driving privileges. Additional disqualifying offenses are added.

The CS clarifies urine tests need not be approved, and a urine test may be ordered upon a reasonable belief a suspect was operating a commercial motor vehicle under the influence of chemical substances or controlled substances. Also, the CS provides DHSMV is allowed the flexibility to place the notice of implied consent anywhere on the front or back of the commercial driver's license.

The CS further provides a registered owner may dispute a wrecker operator's lien, if DHSMV's records were marked sold prior to the issuance of a certificate of destruction. The section is further amended to provide the lien dispute resolution process in subsection (13), does not apply to a leased vehicle registered in the name of the lessor.

In addition, the CS allows tax collectors to process worthless checks of \$150 or less differently.

This CS substantially amends ss. 261.03, 261.05, 316.003, 316.0775, 316.122, 316.183, 316.1932, 316.194, 316.1967, 316.2074, 316.650, 317.0003, 317.0007, 318.14, 318.15, 319.23, 319.27, 320.0601, 320.0605, 320.131, 320.18, 320.27, 320.8249, 322.05, 322.051, 322.07, 322.08, 322.12, 322.135, 322.142, 322.161, 322.17, 322.18, 322.19, 322.21, 322.22, 322.251,

322.2615, 322.2616, 322.30, 322.53, 322.54, 322.57, 322.58, 322.61, 322.63, 322.64, 713.78 and 832.06; creates ss. 316.1576, 317.0014, 317.0015, 317.0016, 317.0017 and 317.0018; and repeals s. 317.0008 (2), of the Florida Statutes.

II. Present Situation:

Off-Highway Vehicles

Florida statutes define off-highway vehicles (OHVs) as any all-terrain vehicle (ATV) or off-highway motorcycle used off-road in this state for recreational purposes and is not licensed as a motor vehicle for use on the roads. This definition does not expressly include two-rider ATVs.

In 2002, the Legislature created chapter 261, F.S., or the “T. Mark Schmidt Off-Highway-Vehicle Safety and Recreation Act.” The Act recognizes the increased popularity of off-highway vehicles and the need for effective management in order to minimize the possible negative impacts of such vehicles on the environment. The Act also requires existing and new off-highway vehicle recreational areas must be managed to sustain long-term use and protect the environment.

The Act creates the Off-Highway-Vehicle Recreation Advisory Committee within the Division of Forestry. The Commissioner of Agriculture is charged with appointing nine members to the advisory committee and must ensure statewide representation. The Act provides for the duties and responsibilities of the advisory committee which include establishing policies to guide the Department of Agriculture and Consumer Services (DACS) regarding the off-highway vehicle recreational program and the system of off-highway vehicle recreation areas and trails. In addition, the advisory committee is required to make recommendations to the DACS regarding off-highway vehicle safety, training and education programs. The advisory committee makes budget recommendations and reviews grant applications. The DACS is required to coordinate the planning, development, maintenance and operations of lands in the off-highway vehicle recreation areas, and to manage all funds for the program.

The Act provides state off-highway-vehicle recreation areas and trails must be designated and maintained for recreational travel by off-highway vehicles, not generally suitable or maintained for normal travel by conventional two-wheel drive vehicles, and foot traffic. No off-highway vehicle may be operated on public roads, streets or highways, except as otherwise permitted by the managing state or federal agency. A violation of this section is a non-criminal traffic infraction punishable as provided in chapter 318, F.S., (\$30 fine).

Designated off-highway-vehicle funds within the Incidental Trust Fund of the Division of Forestry will consist of deposits from fees paid to DHSMV for the titling of off-highway vehicles. For calendar year 2003, \$979,801 from off-highway vehicle titling fees has been deposited into the trust fund. Funds may be used for:

1. Implementation of the Off-Highway Vehicle Recreation Program by the DACS;
2. Approved grants to governmental agencies or entities or nongovernmental entities that wish to provide or improve off-highway vehicle recreation areas or trails for public use

on public lands, provide environmental protection and restoration to affected natural areas in the system, or provide education in the operation of off-highway vehicles.

3. Matching grant funds available from other sources.

Chapter 317, F.S., or the “Florida Off-Highway Vehicle Titling Act” provides all off-highway vehicles purchased in the state after July 1, 2002, or which are used on public lands must be titled. The DHSMV is responsible for the administration of the titling of such vehicles, and is authorized to adopt rules to administer the provisions of the Act. Any such vehicle must have the title transferred within 30 days after the sale of the vehicle. The fee for a title is \$29. There is a \$10 fee for title transfer applications after the 30-day period. Five dollars of that fee is retained by the county tax collector.

Section 317.0006, F.S., provides a service charge of \$4.25 for the issuance, duplication, or transfer of any title, and a service charge of \$1.25 for each application which is handled in connection with the recordation or notation of a lien on an off-highway vehicle which is not in connection with the purchase of such vehicle. The service charge is retained by DHSMV for each transaction handled directly by DHSMV. Otherwise, the service charge is retained by the tax collector who handles the application. Tax collectors are authorized to impose an additional service charge of 50 cents when a transaction occurs in a tax collector branch office. All fees collected pursuant to this act, less administrative costs of \$2 per title transaction, must be deposited by DHSMV into the Incidental Trust Fund of the Division of Forestry.

An application for an initial title or a title transfer must include payment of the applicable state sales tax or proof of payment of such tax, except for off-highway vehicles purchased or transferred before July 1, 2002.

Section 317.0007, F.S., provides procedures for the application and issuance of certificates of title for off-highway vehicles.

Section 317.0008, F.S., provides DHSMV may issue a duplicate certificate of title upon application if DHSMV is satisfied the original certificate has been lost, destroyed, or mutilated. A fee of \$15 is charged for issuing a duplicate certificate. An additional fee of \$7 must be charged for expedited service in issuing a duplicate certificate of title. The DHSMV must issue each certificate of title applied for under this section within 5 working days after receipt of a proper application or must refund the additional \$7 fee upon written request by the applicant.

Traffic Control

Certain emergency response vehicles, primarily fire trucks and ambulances, carry a device known as a traffic signal preemption transmitter, which allows the user to alter the operation of traffic control signals. By activating the transmitter, the user alters the normal operation of the signal by causing it to release traffic traveling in the same direction as the vehicle carrying the transmitter. The transmitter works only at intersections equipped with a compatible receiver. The purpose of such devices is to allow emergency response personnel to expedite travel to the scene of an emergency.

Recently, such devices have become available for prices below \$500, making them affordable for purchase online by members of the general public. The use of such devices by the general public to alter the regular operation of traffic control signals poses an obvious danger to motorists, and may exacerbate gridlock and other problems caused by high-volume traffic.

Section 316.122, F.S., provides the driver of a vehicle intending to turn left within an intersection or into an alley, private road, or driveway must yield the right-of-way to any vehicle approaching from the opposite direction. According to DHSMV historically, law enforcement officers have cited drivers who fail to yield the right-of-way to vehicles lawfully passing to the left under s. 316.085 (2), F.S.

Section 316.183, F.S., establishes the maximum and minimum speeds allowed on all state streets and state highways. Currently, the minimum speed limit on all highways that comprise a part of the National System of Interstate and Defense Highways and have not fewer than four lanes is 40 miles per hour.

Section 316.1932, F.S., provides when a person accepts the privilege of operating a motor vehicle within this state, and by so operating such vehicle, is deemed to have given his or her consent to submit to an approved chemical test or physical test, including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath, and to a urine test for the purpose of detecting the presence of chemical or controlled substances. This section, further, provides (1) by applying for, accepting, and using a driver's license, the person holding the driver's license is deemed to have expressed his or her consent to these tests, (2) a nonresident or any other person driving in a status exempt from the requirements of the driver's license law, by his or her act of driving in such exempt status, is deemed to have expressed his or her consent to these tests, and (3) a consent warning to submit to these tests is printed above the signature line on each new or renewed driver's license.

Section 316.194, F.S., provides for the removal of certain vehicles upon authorization by a law enforcement officer.

Section 316.1967, F.S., provides the owner of a vehicle is responsible and liable for payment of any parking ticket violations unless evidence is furnished to prove the vehicle, at the time of the parking violation, was in the control of another person.

Section 316.650, F.S., prohibits using traffic citations as evidence in a trial.

Section 318.14 (7), F.S., provides an official having jurisdiction over an infraction must certify to DHSMV within ten days after payment of the civil penalty or final disposition if the charge resulted in a hearing.

Section 322.63, F.S., provides for alcohol or drug testing for commercial motor vehicle operators.

License Plates

Section 320.0601, F.S., provides it is optional for long-term leased motor vehicles to be registered in the name of the lessee.

Section 320.131, F.S., authorizes DHSMV to issue temporary tags for a \$2 fee. Temporary tags may be issued for the following reasons:

1. When a dealer license plate may not be lawfully used.
2. For a casual or private sale, including the sale of a marine boat trailer by a marine boat trailer dealer. A "casual or private sale" means any sale other than that by a licensed dealer.
3. For certified common carriers or driveway companies who transport motor vehicles, mobile homes, or recreational vehicles from one place to another for persons other than themselves.
4. For banks, credit unions, and other financial institutions which are not required to be licensed under the provisions of s. 320.27, s. 320.77, or s. 320.771, F.S., but need temporary tags for the purpose of demonstrating repossessions for sale.
5. When a motor vehicle is sold in this state to a resident of another state for registration in that state and the motor vehicle is not required to be registered as temporarily employed.
6. When a motor vehicle is required to be weighed or emission tested prior to registration or have a vehicle identification number verified. A temporary tag issued for any of these purposes shall be valid for 10 days.
7. When an out-of-state resident, subject to registration in this state, must secure ownership documentation from the home state.
8. For a rental car company which possesses a motor vehicle dealer license and which may use temporary tags on vehicles offered for lease in accordance with the provisions of rules established by DHSMV. However, the original issuance date of a temporary tag is the date which determines the applicable license plate fee.
9. In the resolution of a consumer complaint when there is a need to issue more than two temporary tags, DHSMV may do so.
10. While a personalized prestige or specialty license plate is being manufactured for use upon the motor vehicle. A temporary tag issued for this purpose is valid for 90 days.
11. In any case when a permanent license plate cannot legally be issued to an applicant and a temporary license plate is not specifically authorized under the provisions of this section, DHSMV may issue or authorize agents or Florida licensed dealers to issue temporary license plates to applicants demonstrating a need for such temporary use.

12. For use by licensed dealers to transport motor vehicles and recreational vehicles from the dealer's licensed location to an off-premise sales location and return. Temporary tags used for such purposes shall be issued to the licensed dealer who owns the vehicles.

The section does not provide for an electronic temporary license plate system, but depends on a paper system.

Section 320.27 (6), F.S., provides motor vehicle dealers must keep a record of the vehicle purchase, sale, exchange, receipt for the purpose of sale, temporary tag issuance, title transfer, vehicle description and the name and address of the buyer or seller. Currently, this section does not specify how long such records must be kept.

Section 320.27 (9), F.S., provides DHSMV may deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed any of the following activities:

1. Commission of fraud or willful misrepresentation in application for or in obtaining a license.
2. Conviction of a felony.
3. Failure to honor a bank draft or check given to a motor vehicle dealer for the purchase of a motor vehicle by another motor vehicle dealer within 10 days after notification the bank draft or check has been dishonored.

The section further provides DHSMV may deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed, with sufficient frequency so as to establish a pattern of wrongdoing on the part of a licensee, violations of one or more of the following activities:

1. Representation that a demonstrator is a new motor vehicle, or the attempt to sell or the sale of a demonstrator as a new motor vehicle without written notice to the purchaser that the vehicle is a demonstrator.
2. Unjustifiable refusal to comply with a licensee's responsibility under the terms of the new motor vehicle warranty issued by its respective manufacturer, distributor, or importer, unless such refusal is at the direction of the manufacturer, distributor, or importer.
3. Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles.
4. Failure by any motor vehicle dealer to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of the motor vehicle purchased by the customer or purchaser.

5. Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle.
6. Failure to apply for transfer of a title as prescribed in s. 319.23(6), F.S.
7. Use of the dealer license identification number by any person other than the licensed dealer or his or her designee.
8. Failure to continually meet the requirements of the licensure law.
9. Representation to a customer or any advertisement to the public representing or suggesting that a motor vehicle is a new motor vehicle if such vehicle lawfully cannot be titled in the name of the customer or other member of the public by the seller using a manufacturer's statement of origin as permitted in s. 319.23(1), F.S.
10. Requirement by any motor vehicle dealer that a customer or purchaser accept equipment on his or her motor vehicle which was not ordered by the customer or purchaser.
11. Requirement by any motor vehicle dealer that any customer or purchaser finance a motor vehicle with a specific financial institution or company.
12. Requirement by any motor vehicle dealer that the purchaser of a motor vehicle contract with the dealer for physical damage insurance.
13. Perpetration of a fraud upon any person as a result of dealing in motor vehicles, including, without limitation, the misrepresentation to any person by the licensee of the licensee's relationship to any manufacturer, importer, or distributor.
14. Violation of any of the provisions of s. 319.35, F.S., (odometer tampering) by any motor vehicle dealer.
15. Sale by a motor vehicle dealer of a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer, unless the customer provides written authorization for the sale of the trade-in vehicle prior to delivery of the newly acquired vehicle.
16. Willful failure to comply with any administrative rule adopted by DHSMV.
17. Violations of chapters 319 or 320, F.S., or ss. 559.901-559.9221, F.S., which have to do with dealing in or repairing motor vehicles or mobile homes. Additionally, in the case of used motor vehicles, the willful violation of the federal law and rule in 15 U.S.C. s. 2304, and 16 C.F.R. part 455, pertaining to the consumer sales window form.

When a motor vehicle dealer is convicted of a crime which results in his or her being prohibited from continuing in that capacity, the dealer may not continue in any capacity within the industry. The offender may have no financial interest, management, sales, or other role in the operation of

a dealership. Further, the offender may not derive income from the dealership beyond reasonable compensation for the sale of his or her ownership interest in the business.

Motor Vehicle Titles and Registration

Section 319.23, F.S., provides that when a motor vehicle or mobile home is sold by a licensed dealer, the dealer must file for the transfer of title with DHSMV within 30 days of the sale of the vehicle or motor home. However, the section does not require the dealer to file a notice of sale on vehicles taken in trade.

Section 319.27, F.S., currently, references s. 679.301 (3), F.S., which is an incorrect cross-reference.

Section 320.0605, F.S., requires the registration to be carried in the vehicle at all times, but fleet vehicles participating in the Fleet Registration Program pursuant to s. 320.0657, F.S., are exempt from this provision. However, it does not specifically state a registration certificate is not required for vehicles registered with the fleet program.

Section 320.18, F.S., provides DHSMV may only cancel a license plate or fuel-use tax decal and does not allow a stop against any other transaction if the owner presents a dishonored check.

Section 320.8249, F.S., provides prohibited actions relating to licensed mobile home installers and applicable penalties. Such offenses include:

1. Obtaining a mobile home installers license by fraud or misrepresentation.
2. Being convicted or found guilty of, or enter a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of mobile home installation or the ability to practice.
3. Violating any lawful order of DHSMV.
4. Committing fraud or deceit in the practice contracting.
5. Committing incompetence or misconduct in the practice of contracting.
6. Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.
7. Committing violations of the installation standards for mobile homes or manufactured homes contained in rules 15C-1.0102 – 15C-1.0104, Florida Administrative Code.

Violations of any specified offense is subject to the following disciplinary penalties: license revocation; license suspension; fine not to exceed \$1,000 per violation; requirement to take and pass, or retake and pass DHSMV-approved examination; probation; probation subject to such restriction of practice as DHSMV chooses to impose; notice of noncompliance; or refusal of licensure application.

Driver's Licenses and Identification Cards

Currently, s. 318.15, F.S., requires the clerk of the court or tax collector to remit \$10 of the \$35 (\$37.50 effective July 1, 2004) nonrefundable service fee for reinstatement of a suspended license to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund.

Sections 322.051 and 322.08, F.S., provide in order to apply for an identification card or driver's license the applicant must show the following proof of identity:

1. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required by DHSMV;
2. A certified copy of a United States birth certificate;
3. A valid United States passport;
4. An alien registration receipt card (green card);
5. An employment authorization card issued by the United States Department of Justice; or
6. Proof of nonimmigrant classification provided by the United States Department of Justice, for an original identification card. In order to prove such nonimmigrant classification, applicants may produce but are not limited to the following documents:
 - a) A notice of hearing from an immigration court scheduling a hearing on any proceeding.
 - b) A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
 - c) Notice of the approval of an application for adjustment of status issued by the United States Immigration and Naturalization Service.
 - d) Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Immigration and Naturalization Service.
 - e) Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Immigration and Naturalization Service.
 - f) Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to asylum.

Section 322.135, F.S., provides tax collectors who serve as driver's license agents may charge an additional \$5.25 fee for driver license services they provide. One dollar of this fee must be deposited into the highway Safety Operating Trust Fund. The section also provides for the transfer of driver license fees and charges from county collectors to DHSMV. Tax collectors currently transfer funds to DHSMV by check, wire transfer, and electronic funds. The DHMSV currently requires checks to be postmarked by the 7th working day after the week's transactions.

Section 322.142, F.S., authorizes DHSMV, upon receipt of the required fee, to issue to each qualified applicant for an original driver's license a color photographic or digital imaged driver's license bearing a full-face photograph or digital image of the licensee.

Chapter 761, F.S., provides the state may not substantially burden a person's exercise of religion unless the state demonstrates application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. The section further provides a person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

Section 322.17(3), F.S., provides that if a licensee establishes his or her identity for a driver's license using an employment authorization card or proof of nonimmigrant classification issued by the United States Department of Justice, the licensee may not obtain a duplicate or replacement instruction permit or driver's license except in person and upon submission of such documentation.

Section 322.18, F.S., provides each applicant who is entitled to the issuance of a driver's license will be issued a driver's license which expires six years after the date of issue. An applicant applying for a renewal issuance or renewal extension is issued a driver's license or renewal extension sticker every 4 years, except a driver whose driving record reflects no convictions for the preceding 3 years is issued a driver's license or renewal extension sticker every six years.

The section further provides that if an applicant establishes his or her identity for a driver's license using a green card, the driver's license will expire in 4 or 6 years as provided above. After an initial showing of such documentation, he or she is exempted from having to renew or obtain a duplicate in person. If the applicant establishes his or her identity for a driver's license using an employment authorization card or proof of nonimmigrant classification issued by the United States Department of Justice the driver's license will expire 4 years after the date of issuance or upon the expiration date cited on the United States Department of Justice documents, whichever date first occurs.

Section 322.19, F.S., provides for the issuance of a driver's license as a result of the applicant's change of address or name. If the licensee established his or her identity for a driver's license using certain identification documents outlined in s. 322.08, F.S., the licensee may not apply for a new driver's license reflecting the change except in person and submission of certain identification documents.

Section 322.21, F.S., provides the fee structure for driver's license fees and requires the fees to be deposited into the General Revenue Fund.

Section 322.22, F.S., provides DHSMV may cancel any driver's license if the correct fee is not paid or the licensee pays for the license, administrative, delinquency, or reinstatement fee by a dishonored check.

Section 322.53, F.S., exempts the driver of an emergency vehicle or drivers transporting farm equipment or supplies within 150 miles of their farms from having a commercial driver's license. The section does require such drivers to obtain a Class D driver's license endorsed to operate the types of vehicles being driven.

Section 322.54, F.S., provides a Class C driver's license is required to operate a motor vehicle combination having a gross vehicle weight rating, a declared weight, or an actual weight of 26,001 pounds or more, whichever is greater.

Section 322.57, F.S., establishes commercial driver's license (CDL) endorsement requirements for commercial vehicle operators. The section provides a licensee who drives a passenger vehicle must successfully complete a knowledge test concerning the safe operation of such a vehicle and a driving skill test in such a vehicle. However, the section contains no reference to a school bus endorsement. Currently, school bus drivers require only the "P" (passenger) endorsement applicable to any vehicle designed to carry 16 or more passengers, including the driver.

Section 322.61, F.S., establishes criteria for disqualifying a commercial driver licensee from operating a commercial motor vehicle if the violations were committed in a commercial motor vehicle.

Section 322.2615, F.S., specifies the documents a law enforcement officer must forward to the DHSMV in cases of a DUI arrest.

Section 322.2616, F.S., specifies the documents a law enforcement officer must forward to the DHSMV in cases of a DUI arrest of persons under 21 years of age.

Section 322.64, F.S., specifies the documents a law enforcement officer must forward to the DHSMV in cases of a DUI arrest of persons operating a commercial motor vehicle.

Class D Driver's Licenses

Currently, the law provides for three classes of commercial driver's licenses, Class A, Class B, and Class C, and for two classes of non-commercial driver's licenses, Class D and Class E. The class D driver's license is, in most respects the same as the class E driver's license, except it authorizes the licensee to operate a vehicle with a gross, declared, or actual weight of 8,000 pounds up to 26,000 pounds. According to DHSMV, this license class replaced the former chauffeur's license. The qualifications for the Class D driver's license are the same as for the standard non-commercial Class E license, except Class D licensees are subject to an additional 20 questions on the written examination. No driving examination is administered to applicants for a Class D license. Currently, drivers of emergency vehicles and farmers transporting machinery or agricultural products within 150 miles of their farms are exempt from a

commercial license; however, they must obtain a Class D driver's license. According to DHSMV, confusion persists among the public regarding which drivers are required to have a Class D driver's license.

Requirements and references of Class D driver's licenses are found in ss. 322.05, 322.07, 322.12, 322.161, 322.21, 322.251, 322.30, 322.53, 322.54, 322.58 and 322.61, F.S.

Wrecker Liens

Section 713.78, F.S., provides guidelines regarding liens for recovering, towing and storing vehicles and vessels. Section 713.78 (13) (c), F.S., provides the registered owner of a vehicle, vessel, or mobile home may dispute a wrecker operator's lien, by notifying DHSMV of the dispute in writing on forms provided by DHSMV, if at least one of the following applies:

1. The registered owner presents a notarized bill of sale proving that the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.
2. The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

If the registered owner's dispute of a wrecker operator's lien complies with one of these criteria, DHSMV must immediately remove the registered owner's name from the list of those persons who may not register a vehicle. (Section 320.03 (8), F.S., provides that when a wrecker puts a lien on a vehicle for unpaid towing or storage charges, and files the appropriate documentation with DHSMV, the person who owns such vehicle is barred from registering any vehicle.)

Alternatively, a person against whom a wrecker operator's lien has been imposed may obtain a discharge of the lien by: (a) filing a complaint challenging the validity of the lien or the amount of the lien, in the county court of the county in which the vehicle, vessel, or mobile home was ordered removed, and (b) posting with the court a cash or surety bond or other adequate security to ensure the payment of such lien in the event she or he does not prevail.

Tax Collectors

Section 832.06, F.S., provides for the prosecution for worthless checks given to tax collectors for licenses or taxes.

III. Effect of Proposed Changes:

This bill amends numerous sections of law relating to off-highway vehicles, traffic control, license plates, motor vehicle titles and registration, driver's licenses and identification cards, and wrecker operator's liens. The following discussion represents a section-by-section analysis of the CS.

Section 1 amends s. 261.03, F.S., to revise the definition of “off-highway” by deleting the requirement that vehicles be used “for recreational purposes,” and by including “two-rider” vehicles in the definition. It also provides a definition of “two-rider ATV” to mean any ATV specifically designed by the manufacture for a single operator and one passenger.

Section 2 amends s. 261.05, F.S., to provide the advisory committee must study and provide a report to the Governor and the Legislature by January 1, 2005.

Section 3 amends s. 316.003, F.S., to provide a definition of “traffic signal preemption system,” which is defined as “any system or device with the capability of activating a control mechanism mounted on or near traffic signals which alters a traffic signal’s timing cycle.”

Section 4 amends s. 316.0775, F.S., to provide the unauthorized use of a traffic signal preemption device is a moving violation punishable as provided in chapter 318, F.S., (\$60 fine/ 4 points).

Section 5 amends s. 316.122, F.S., to provide a driver of a vehicle turning left must also yield the right-of-way to vehicles lawfully passing on the left side of the turning vehicle. This provision is intended to provide law enforcement officers clarification as to the correct citation of this violation.

Section 6 creates s. 316.1576, F.S., to provide clearance specifications for railroad highway grade crossings. Specifically, a person may not drive any vehicle through a railroad-highway grade crossing that does not have sufficient space or sufficient undercarriage clearance to drive completely through the crossing without stopping.

Section 7 amends s. 316.183, F.S., to increase the minimum speed limit on interstate highways from 40 to 50 miles per hour. According to the DHSMV, this could potentially enhance traffic safety and the traffic flow on the National System of Interstate and Defense Highways.

Section 8 amends s. 316.1932(1), F.S., relating to the statutorily implied consent given by drivers to submit to breath, blood and urine tests for alcohol or other substances in return for the privilege of operating a motor vehicle in the state. It removes the form restriction which required the notice of implied consent to be printed solely above the signature line. As amended, DHSMV is allowed the flexibility to place such notice of implied consent anywhere on the front or back of the driver’s license. Currently, DHSMV prints the consent warning below the signature line, therefore, this amendment will codify the statute with current practice.

Section 9 amends s. 316.194, F.S., to authorize a traffic accident investigation officer to provide for the removal of an attended, unattended or abandoned vehicle. This provision is intended to give Community Service Officers (CSOs), Public Service Aides (PSAs), and other non-sworn traffic accident investigation officers the authority to remove vehicles that are creating a roadway hazard.

Section 10 amends s. 316.1967, F.S., to provide owners of leased vehicles are exempt from parking tickets on those leased vehicles if the vehicle is registered in the name of the person who leased the vehicle.

Section 11 amends s. 316.2074, F.S., to provide for the purposes of the section, ATV includes two-rider ATVs.

Section 12 amends s. 316.650, F.S., to provide an exception to the existing law by allowing uniform traffic citations to be admissible evidence of falsification, forgery, uttering, fraud or perjury or when used as physical evidence resulting from a forensic examination of the citation.

Section 13 amends s. 317.0003, F.S., to revise the definition of “off-highway” by deleting the requirement that vehicles be used “for recreational purposes,” and by including “two-rider” vehicles in the definition. It also provides a definition of “two-rider ATV” to mean any ATV specifically designed by the manufacture for a single operator and one passenger.

Section 14 amends s. 317.0007, F.S., to authorize the DHSMV to issue validation stickers to OHVs as proof of title. The DHSMV and county tax collectors are also authorized, upon application, to replace lost or stolen validation stickers and charge the fees established in ss. 320.03 (5), 320.031, and 320.04, F.S., for original and replacement stickers.

Section 15 - The CS repeals s. 317.0008 (2), F.S., relating to the expedited issuance of duplicate certificates of title for off-highway vehicles. These provisions are moved to s. 317.0016, F.S.

Section 16 creates s. 317.0014, F.S., to provide procedures for the issuance of titles for off-highway vehicles. In addition, it allows the DHSMV to assign a number to each certificate of title and allows the data base record to serve as the duplicate record. These procedures are consistent with those found in s. 319.24, F.S., which applies to titles for motor vehicles and vessels.

Section 17 creates s. 317.0015, F.S., to provide for the application of certain provisions of law currently applicable to the titling of motor vehicles and vessels to off-highway vehicles. They include: (1) Encumbrance of a co-owned off-highway vehicle; (2) Removal of liens from record; (3) Cancellation of certificates; (4) Notice of lien notation on certificate recording of lien; (5) Transfer of ownership by operation of law; and (6) Applications provided by electronic or telephonic means.

Section 18 creates s. 317.0016, F.S., to provide procedures for expedited service on title transfers, title issuances, duplicate titles, recordation of liens, and certificates of repossession for off-highway vehicles. The procedures are consistent with expedited services for motor vehicles and vessels as provided in s. 319.323, F.S., except this CS provides for \$3.50 of the fee to be retained by the processing agency and the remaining \$3.50 must be deposited in the Incidental Trust Fund of the Division of Forestry.

Section 19 creates s. 317.0017, F.S., to provide prohibited specified actions relating to the issuance of off-highway vehicle titles and applicable penalties. Such offenses include: altering or forging a title; dealing with titles of stolen off-highway vehicles; tampering with vehicle identification numbers; and selling counterfeit or forged titles. These provisions conform this section to prohibited actions concerning motor vehicles and vessels found in s. 319.33, F.S.

Violation of any specified offense is punishable as a third degree felony (imprisonment not to exceed 5 years, and fines not to exceed \$5,000).

Section 20 creates s. 317.0018, F.S., to provide prohibitions pertaining to titles for off-highway vehicles. A person may not: (1) sell or transfer an off-highway vehicle to the purchaser without the assigned title; (2) operate or use an off-highway vehicle without a proper title; or (3) operate or use an off-highway vehicle with a cancelled title. A person must surrender title to DHSMV upon cancellation of the certificate or upon the destruction, dismantling or change of the off-highway vehicle. Violations of these provisions is punishable by fines of not more than \$500 or imprisonment for not more than 6 months, or both, for each offense. These provisions are consistent with the motor vehicle and vessel titling provisions in s. 319.34, F.S.

Section 21 amends s. 318.14, F.S., to require all dispositions returned to a county requiring a correction be resubmitted to the DHSMV within 10 days after notification of the error. This section further authorizes the DHSMV to modify the effective date of any resulting suspension or revocation action resulting from citation dispositions reported to the DHSMV more than 180 days after the disposition of the citation as if the citation had been reported in a timely manner.

Section 22 amends s. 318.15, F.S., to continue authority for deposit of \$10 of the nonrefundable service fee for reinstatement of a suspended license into the Highway Safety Operating Trust Fund if the transaction is processed by either the clerk of the court or the tax collector. Specifically, this change would allow tax collectors to remit the \$10 fee directly to the DHSMV to be deposited into the Highway Safety Operating Trust Fund.

Section 23 amends s. 319.23, F.S., to provide a dealer must file with DHSMV a notice of sale signed by the seller on motor vehicles or mobile homes taken in trade. The DHSMV will update its database for the respective title record to indicate a status of "sold."

Section 24 amends s. 319.27, F.S., to correct an obsolete cross-reference.

Section 25 amends s. 320.0601, F.S., to require long-term leased motor vehicles to be registered in the name of the lessee, effective July 1, 2004. According to the DHSMV, this provision will assist law enforcement with the registration that corresponds with the driver license and insurance identification, just as required for non-leased vehicles.

Section 26 amends s. 320.0605, F.S., to clearly state the registration certificate for vehicles registered with the fleet program are not required to be in the possession of the operator or within the vehicle.

Section 27 amends s. 320.131, F.S., to provide for the creation of an electronic system for licensed motor vehicle dealers to use in issuing temporary plates. Dealers must enter into the system the appropriate vehicle information upon the issuance of a temporary tag or temporary license plate within DHSMV's specified timeframe. Failure to comply is punishable by denial, suspension, or revocation of the motor vehicle dealer's license. This system will assist law enforcement through immediate retrieval of temporary license plate information.

Section 28 amends s. 320.18, F.S., to allow DHSMV to cancel any vehicle or vessel registration, driver's license or identification card if the owner pays by a dishonored check, regardless of which one they are paying for.

Section 29 amends s. 320.27(6), F.S., to require motor vehicle dealers to maintain a record of the vehicle purchase, sale, exchange, receipt for the purpose of sale, temporary tag issuance, title transfer, vehicle description and the name and address of the buyer or seller for a period of 5 years. In addition, s. 320.27 (9), F.S., is amended to provide grounds for the denial, suspension, or revocation of a dealer's license for willful failure to comply with DHSMV's requirements for issuing temporary tags using the electronic system. To take action against a licensee, DHSMV must prove sufficient frequency of violations to establish a pattern of wrongdoing by the licensee.

Section 30 amends s. 320.8249, F.S., to expand the grounds for denial or suspension of a mobile home installer license and disciplinary actions, to include violations of any law, including Chapters 319 and 320, F.S., as well as Rules 15C-1 and 15C-2 of the Florida Administrative Code. (See technical deficiencies).

Section 31 amends s. 322.05, F.S., to eliminate the Class D driver's license and delete references thereto.

Section 32 amends s 322.051, F.S., to revise identification card application requirements to include a United States passport or a naturalization certificate issued by the United States Department of Justice as sufficient proof to entitle an applicant to an identification card. The CS further provides the requirement of a full-face photograph or digital image of the identification cardholder may not be waived, regardless of the provisions of ch. 761, F.S., which provides the state may not substantially burden a person's exercise of religion unless the state demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest.

Section 33 amends s. 322.07, F.S., to remove the requirements for a Class D driver's license.

Section 34 amends s. 322.08, F.S., to revise proof of identity for the purpose of obtaining a driver's license to include a United States passport or a naturalization certificate issued by the United States Department of Justice as sufficient proof to entitle an applicant to a driver's license or temporary permit. This section also specifies what constitutes proof of nonimmigrant classification to entitle an applicant to an original driver's license or temporary permit for a period not to exceed the expiration date of the document presented or 2 years, whichever occurs first. Such proof includes:

1. A notice of hearing from an immigration court scheduling a hearing on any proceeding.
2. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
3. A notice of the approval of an application for adjustment of status issued by the United States Immigration and Naturalization Service.
4. Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Immigration and Naturalization Service.

5. A notice of action transferring any pending matter from another jurisdiction to this state issued by the United States Immigration and Naturalization Service.
6. An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to, asylum.

Section 35 amends s. 322.12, F.S., to remove the requirements for a Class D driver's license.

Section 36 amends s. 322.135, F.S., to authorize the tax collectors serving as agents for DHSMV to retain the entire \$5.25 service fee. Also, subsection (9) is added to require the electronic transfer of driver's license fees and charges to the DHSMV from the county tax collector within 5 business days from the close of the business day in which the county officer received the funds. This provision is similar to provisions already found in ss. 319.32, 320.03, and 328.73, F.S., which mandate a 5-day transfer period for fees collected for motor vehicle titles, motor vehicle registration, and vessel registration certificates.

Section 37 amends s. 322.142, F.S., to authorize DHSMV to issue a color photographic or digital imaged driver's license to qualified applicants. The CS provides the requirement of a fullface photograph or digital image of the licensee may not be waived, regardless of the provisions of ch. 761, F.S., which provides the state may not substantially burden a person's exercise of religion unless the state demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest.

Section 38 amends s. 322.161, F.S., to remove the requirements for a Class D driver's license.

Section 39 amends s. 322.17, F.S., to correct a cross reference in s. 322.08, F.S., which will change as a result of the CS.

Section 40 amends s. 322.18, F.S., to correct a cross reference in s. 322.08, F.S., which will change as a result of the CS. Also, it provides a commercial driver's license with a hazardous-materials endorsement shall expire at midnight on the licensee's birthday that occurs four years after the month of expiration of the license being issued or renewed.

Section 41 is a conforming provision. It amends s. 322.19, F.S., to correct a cross reference in s. 322.08, F.S., which will change as a result of the CS.

Section 42 amends s. 322.21, F.S., to remove the requirements for a Class D driver's license. and to provide a hazardous-materials endorsement fee not to exceed \$100, as required by s. 322.57 (1) (d), F.S., must be set by DHSMV by rule and must reflect the cost of the state and federal fingerprint check, and the cost to DHSMV of providing and issuing the license. Also, the amended section specifies the fee must be deposited into the Highway Safety Operating Trust Fund.

Section 43 amends s. 322.22, F.S., to expand DHSMV's ability to also cancel an identification card, vehicle or vessel registration, or fuel-use decal if the licensee fails to pay the correct fee or pays by a dishonored check, regardless of which one he or she is paying for.

Section 44 amends s. 322.251, F.S., to remove the requirements for a Class D driver's license.

Section 45 amends s. 322.2615, F.S., to require the DHSMV, in a DUI arrest, to review the information submitted by a law enforcement officer and to notify the officer of any deficiencies prior to the hearing.

Section 46 amends s. 322.2616, F.S., to require the DHSMV, in a DUI arrest, to review the information submitted by a law enforcement officer and to notify the officer of any deficiencies prior to the hearing.

Section 47 amends s. 322.30, F.S., to remove the requirements for a Class D driver's license.

Section 48 amends s. 322.53, F.S., to remove the requirements for a Class D driver's license.

Section 49 amends s. 322.54 to remove the requirement that a Class C driver's license is required to operate a motor vehicle combination having a gross vehicle weight rating, a declared weight, or an actual weight of 26,001 pounds or more. Also, this section is amended to remove the requirements for a Class D driver's license.

Section 50 amends s. 322.57, F.S., to add a subsection specifically for drivers of school buses requiring them to test their knowledge and driving skills in a school bus and hold a corresponding CDL endorsement for that type of vehicle. In addition, the CS removes obsolete language in this section regarding the weight restriction of vehicles operated by Class C licensees.

Section 51 amends s. 322.58, F.S., to remove the requirements for a Class D driver's license and changes those requirements to a Class E driver's license.

Section 52 amends s. 322.61, F.S., by providing for disqualification from operating a commercial motor vehicle if specific violations were committed in a noncommercial motor vehicle, but resulted in a suspension, revocation or cancellation of the license holder's driving privileges. Additional disqualifying offenses are added to this section. Also, this section is amended to remove the requirements for a Class D driver's license.

Section 53 amends s. 322.63, F.S., to clarify urine tests need not be approved, and a urine test may be ordered upon a reasonable belief that a suspect was operating a commercial motor vehicle under the influence of chemical substances or controlled substances. Further as amended, DHSMV is allowed the flexibility to place the notice of implied consent anywhere on the front or back of the commercial driver's license.

Section 54 amends s. 322.64, F.S., to require the DHSMV, in a DUI arrest, to review the information submitted by a law enforcement officer and to notify the officer of any deficiencies prior to the hearing.

Section 55 amends s. 713.78, F.S., to provide a registered owner may dispute a wrecker operator's lien, if DHSMV's records were marked sold prior to the date of the tow. The section

is further amended to provide the lien dispute resolution process in subsection (13) does not apply to a leased vehicle registered in the name of the lessor.

Section 56 amends s. 832.06, F.S., to allow tax collectors to process worthless checks of \$150 or less differently.

Section 57 provides the act will take effect October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The CS creates s. 317.0016, F.S., to provide for a fee of \$7 for persons who choose expedited services of all title transactions for off-highway vehicles. The DHSMV estimates this would generate approximately \$22,162 annually, half of which would be deposited in the DACS Incidental Trust Fund and the remainder retained by the processing agency.

B. Private Sector Impact:

Persons requesting an expedited title for an off-highway vehicle would pay a \$7.00 service fee.

C. Government Sector Impact:

The DHSMV would incur a cost of \$164,720 for programming costs to modify the Motor Vehicle License Software Systems and the Florida Driver's License Information System.

According to the DHMSV, the estimated implementation of Section 14 of the CS will generate \$94, 968 annually for the county tax collectors, based on processing 31,656 transactions annually.

Section 18 of the CS provides for the tax collectors, or the issuing agency, to retain \$3.50 of the \$7.00 expedited title fee for off road vehicles. DHSMV estimates this will generate \$11,081 assuming 3,166 expedited title transactions being processed annually.

According to the DHSMV by implementing Section 36 of the CS, it is estimated tax collector revenues will increase by \$770,000 per year based on redirecting \$1 of the service fee authorized in s. 322.135, F.S., from the Highway Safety Operating Trust Fund. There will be a corresponding decrease to the Highway Safety Operating Trust Fund.

The CS streamlines the time period and manner in which county tax collectors are to transfer driver's license fees and charges to the DHSMV. Under the CS, applicable funds must be transferred electronically to DHSMV within 5 business days. This will enable DHSMV to distribute funds to various payees more quickly, as well as earn more interest income from the earlier investment of those funds. Tax collectors reportedly have the current capability to comply with this provision.

VI. Technical Deficiencies:

Section 30 of the CS provides mobile home installers may not violate the rules in 15C-1 and 15C-2 of the Florida Administrative Code. Many of the provisions in the referenced code do not apply to mobile home installers. The reference should be narrowed to the applicable code references and listed in statute.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
