

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 Appropriations

BILL: CS/CS/SB 974

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Infrastructure and Security Committee; and Senator Perry

SUBJECT: Motor Vehicles

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Wells</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Wells</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 974 authorizes the use of *red and white* lights on vehicles operated by the fire department, fire patrol, and volunteer firefighters. It also authorizes motor vehicles to be equipped with lamps or devices underneath the vehicle.

The bill amends laws related to the business of storing and selling or reselling damaged or dismantled motor vehicles. The bill requires that when an insurance company notifies an independent entity in possession of a motor vehicle to release a vehicle, the insurance company must provide the independent entity a release statement authorizing release of the vehicle to the owner or to the lienholder.

The bill allows the independent entity's notice to the owner to be provided by a commercial delivery service that provides proof of delivery, in addition to certified mail. When the Department of Highway Safety and Motor Vehicles (DHSMV) does not have the owner's address on record, the bill allows the notice to be sent to the vehicle owner's address on file with the insurance company and on file with the vehicle's most recent titling jurisdiction.

The bill allows an independent entity in possession of a vehicle to apply for a certificate of destruction or a certificate of title if a vehicle is not claimed within 30 days after the attempted

delivery of notice to the owner; at present, an application can be made only after delivery of the notice to the owner.

When applying for a certificate of destruction or salvage certificate of title, the bill requires the independent entity in possession of a vehicle to:

- Provide proof of all lien satisfactions or proof of a release on all liens on a vehicle;
- Provide an affidavit indicating a notice had been sent to all lienholders and 30 days has passed since the notice was delivered or delivery was attempted, in the event a lien satisfaction or a release of all liens on a vehicle cannot be obtained;
- Provide proof of notice delivery to the lienholder at the address on the certificate of title and, if the address is different than the one on file with the Department of State for the lienholder's registered agent, provide proof of notice delivery to that address.

Effective October 1, 2019, the bill allows a licensed salvage motor vehicle dealer or motor vehicle auction or insurance company that processes title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvaged vehicles to act as an electronic filing system agent of the DHSMV, if the entity does so in the normal course of business.

The bill does not have a significant fiscal impact to state and local government. See Section V.

The bill takes effect July 1, 2019, except as otherwise expressly provided.

II. Present Situation:

Additional Lighting Equipment

No vehicles are allowed to drive or be moved on state roads that have a lamp or other device on them that shows or displays red or blue lights visible directly from the front of the vehicle. Additionally, flashing lights are generally prohibited on vehicles.¹

Section 316.235, F.S., authorizes the following additional lighting on motor vehicles:

- Two side cowl or fender lamps with amber or white non-glare lights;
- No more than one running board courtesy lamp with amber or white lights on each side of the vehicle; and
- One or more backup lamps that will not be lighted when the vehicle is moving forward.

A violation of the above is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.² A nonmoving violation has a base fine of \$30; but with additional fees, the total fine is \$108.³

¹ Section 316.2397(1) and (7), F.S.

² Chapter 318, F.S., relates to the disposition of traffic infractions. Sections 316.235(6) and 316.2397(10), F.S.

³ Florida Clerk of Courts, *2018 Distribution Schedule of Court Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording*, July 1, 2019, p. 19, available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/_2018_distribution_schedule_1.pdf (April 13, 2019).

Firefighters – Red and White Warning Signals

Vehicles of the fire department and fire patrol, including privately owned vehicles of permitted volunteer firefighters, are authorized to show or display red warning signals.⁴ Specifically, active volunteer firefighters are authorized to display such red lights or warning signals if the volunteer firefighter has secured a written permit from the chief executive officers of the volunteer firefighting organization allowing the use of such signals. This permit is required to be carried at all times while the firefighter displays the red warning signals. The active firefighter may display red lights on his or her privately owned vehicle only while en route to a fire or other emergency in the line of duty or while en route to the fire station for the purpose of proceeding to a fire or other emergency.⁵

The warning signals must be visible from the front and rear of the vehicle and no more than two red warning signals may be displayed. Additionally, no inscription of any kind may appear across the face of the lens of the red warning signal.⁶

A violation of these requirements is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.⁷ A nonmoving violation has a base fine of \$30; but with additional fees, the total fine is \$108.⁸ Further, any volunteer firefighter who violates these requirements must be dismissed from membership in the firefighting organization.⁹

Notice of Possession

Pursuant to s. 319.30, F.S., an insurance company may notify an independent entity¹⁰ that obtains possession of a damaged or dismantled motor vehicle (vehicle) to release the vehicle to the owner. The notice must include a release statement on a form prescribed by the Department of Highway Safety and Motor Vehicles (DHSMV) authorizing the independent entity to release the vehicle to the owner. The form must contain:

- The policy and claim number;
- The name and address of the insured;
- The vehicle identification number; and
- The signature of an authorized representative of the insurance company.

The independent entity in possession of the vehicle must send a notice by certified mail to the owner that the vehicle is available for pick up when it receives a release statement from the insurance company. It must inform the owner that he or she has 30 days after receipt of the notice to pick up the vehicle from the independent entity. If the vehicle is not claimed within

⁴ See ss. 316.2397(3) and 316.2398, F.S.

⁵ Section 316.2398(1), F.S.

⁶ Section 316.2398(1), F.S.

⁷ Section 316.2398(5), F.S.

⁸ Florida Clerk of Courts, *2018 Distribution Schedule* at p. 19.

⁹ Section 316.2398(5), F.S.

¹⁰ See s. 319.30(1)(g), F.S. (“Independent entity” means a business or entity that may temporarily store damaged or dismantled motor vehicles pursuant to an agreement with an insurance company and is engaged in the sale or resale of damaged or dismantled motor vehicles. The term does not include a wrecker operator, a towing company, or a repair facility.)

30 days after the owner receives the notice, the independent entity may apply for a certificate of destruction or a certificate of title.

The independent entity must make a notification in the National Motor Vehicle Title Information System before releasing any damaged or dismantled motor vehicle to the owner or before applying for a certificate of destruction or salvage certificate of title.

Upon applying for a certificate of destruction or salvage certificate of title, the independent entity must provide a copy of the release statement from the insurance company, proof of providing the 30-day notice to the owner, proof of notification to the National Motor Vehicle Title Information System, and payment of any applicable fees.

Electronic Filing System (EFS)

In 2009, legislation was passed which established state jurisdiction over the EFS program,¹¹ which is a software application that interacts with the Florida Real-time Vehicle Information System (FRVIS) to securely process title and registration transactions, customer inquiries, and updates in real-time. Certified service providers build their own interface systems that link up with the EFS to provide transaction services to EFS agents (primarily motor vehicle dealers). The EFS agents provide title and registration processing services to customers when products are purchased. The EFS will also generate the appropriate DHSMV documents, including the vehicle registration, title application form, and in some cases the title certificate (printed from Tallahassee).¹² At the end of the EFS transaction, the customer's vehicle is titled and registered without having to visit a tax collector or a DHSMV office.

The tax collector is responsible for reviewing and approving EFS title and registration transactions processed by participating EFS agents in the county. Access to the EFS by dealers and other organizations is provided through a certified service provider (CSP). There are currently five certified service providers participating in the EFS:

- CVR.
- Title Technologies Auto Data Direct, Inc.
- Decision Dynamics, Inc.
- DLRdmv.¹³

These certified service providers have over 2,400 EFS agents providing title and registration services throughout the state.¹⁴ However, EFS is an optional service for EFS agents. All 67 counties have the capability to offer EFS connections to agents, however, all agents do not participate.

¹¹ Chapter 2009-206, s. 3, Laws of Fla., preempted to the state jurisdiction over the system.

¹² Department of Highway Safety and Motor Vehicles, Electronic Filing System (EFS), available at <https://www.flhsmv.gov/motor-vehicles-tags-titles/electronic-lien-titles/electronic-filing-system-efs/> (last visited April 13, 2019).

¹³ *Id.*

¹⁴ Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, EFS Background - 765 (March 7, 2019) (on file with the Senate Infrastructure and Security Committee).

Electronic Filing System Rule Requirements

Florida Administrative Code Chapter 15C-16 prescribes and defines the DHSMV EFS and the participation requirements, certification of service providers, system requirements, and enforcement authority for noncompliance.

A tax collector must:

- Appoint an EFS agent to the county after the DHSMV notifies the tax collector that the entity is authorized;
- Review supporting documentation from EFS transactions processed in the county; and
- Receive funds collected electronically from EFS transactions from the CSP and remit funds to the State.¹⁵

EFS agents must sell products that can be titled and registered, provide title and registration services on behalf of customers, enter into a contract with a CSP, apply to the DHSMV to become an authorized EFS agent, have a satisfactory background check with no felony convictions in the last 7 years, have no state-initiated disciplinary actions within the last 2 years, and may only operate in the county for which they are authorized.¹⁶

The DHSMV has enforcement over the EFS agents. Violations can result in revocation of an EFS agent's ability to use the electronic filing system. Violations include unauthorized access of data by users, failing to execute electronic funds transfers, charging title and registration fees in excess of those allowed by law, and failing to correct errors or clear pending transactions as required by the DHSMV.¹⁷

Salvage Dealers and Metal Recyclers

Secondary metals recyclers¹⁸ must be licensed by the Department of Revenue¹⁹ and salvage motor vehicle dealers²⁰ must be licensed by the DHSMV.²¹ Currently salvage dealers and metal recyclers initiating a certificate of destruction, salvage title, and derelict vehicle certificate transactions must, in person or by mail, process the request at the tax collector office or license plate agency as directed by the DHSMV and pay any applicable fees for the transaction.²² Application documents are reviewed by the tax collector or license plate agency and then processed or rejected. If the documents are approved, the tax collector or license plate agency processes the transaction, uploads the documents to FRVIS, and prints the certificate of destruction, salvage title, or derelict vehicle certificate. If the documents are rejected, the salvage

¹⁵ Rule 15C-16.009, F.A.C.

¹⁶ Rule 15C-16.010, F.A.C.

¹⁷ Rule 15C-16.013, F.A.C.

¹⁸ Secondary metals recycler is defined in s. 538.18(11) F.S.

¹⁹ Section 538.25, F.S.

²⁰ See s. 320.27(1)(c)5., F.S. ("Salvage motor vehicle dealer" means any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.)

²¹ *Id.*

²² Department of Highway Safety and Motor Vehicles, Division of Motorist Services, *Motor Vehicle Procedures Manual, Uninsured Motor Vehicles or Mobile Homes Declared Total Loss, Motor Vehicles Junked by Owners and Derelict Motor Vehicles* (December 18, 2014), available at <https://www3.flhsmv.gov/dmv/Proc/tl/tl-35.pdf> (last visited on April 11, 2019).

dealers and metal recyclers must correct any errors in the documentation or application and start the process again.

III. Effect of Proposed Changes:

Additional Lighting Equipment

Section 1 amends s. 316.235, F.S., to authorize the use of one or more lamps or devices underneath a vehicle provided the lamps or devices:

- Do not display blue, red, or *red and white* lights visible directly from the front of the vehicle;²³
- Do not flash;²⁴ or
- Are not of a high beam distribution.²⁵

Section 2 amends s. 316.2397(1), F.S., to prohibit vehicles driven or moved on state roads to have a lamp or other device on them that shows or displays red and white lights visible directly from the front of the vehicle.

Firefighters – Red and White Warning Signals

Sections 2 and 3 amend ss. 316.2397 and 316.2398, F.S., to authorize the use of red and white lights on vehicles operated by the fire department, fire patrol, and volunteer firefighters.

Active volunteer firefighters are authorized to display red and white lights or warning signals if the volunteer firefighter has secured a written permit from the chief executive officers of the volunteer firefighting organization allowing the use of such signals. This permit is required to be carried at all times while the firefighter displays the red and white signals. The active firefighter may display red and white lights on his or her privately owned vehicle only while en route to a fire or other emergency in the line of duty, or while en route to the fire station for the purpose of proceeding to a fire or other emergency.

The warning signals must be visible from the front and rear of the vehicle and no more than two red and white warning signals may be displayed. Additionally, no inscription of any kind may appear across the face of the lens of the red and white warning signal.

Notice of Possession

Section 4 amends s. 319.30(9), F.S., related to damaged or dismantled vehicles held by independent entities.

The insurance company is currently required to send the independent entity in possession of a vehicle a release statement that authorizes the independent entity to release the vehicle to the vehicle's owner. The bill requires the release statement to also authorize release to lienholders.

²³ Section 316.2397(1), F.S.

²⁴ Section 316.2397(7), F.S.

²⁵ Section 316.238, F.S.

The bill allows the independent entity to provide the notice of pickup to the owner by another commercially available delivery service that provides proof of delivery in addition to the current option of sending the notice by certified mail. Under the bill the owner has 30 days *from the date of delivery or attempted delivery* of the notice to claim the vehicle, instead of 30 days *from the date of receipt* of the notice in current law.

Currently, the independent entity must deliver the notice to the owner's address that is in DHSMV records. Under the bill, if the DHSMV records do not contain the owner's address, then the independent entity must deliver the notice to the address in the release statement from the insurance company, as well as any address provided by the latest titling jurisdiction identified through the National Motor Vehicle Title Information System or an equivalent commercially available system.

All records related to the 30-day notice sent to the owner, the results of any searches of the National Motor Vehicle Title Information System or an equivalent commercially available system, and any notifications to the National Motor Vehicle Title Information System must be maintained for a minimum of three years by the independent entity.

The bill also adds a requirement that independent entities must provide proof of all lien satisfactions or proof of a release on all liens on a vehicle when applying for a certificate of destruction or salvage certificate of title. If the independent entity is unable to obtain a lien satisfaction or a release of all liens on the motor vehicle, the independent entity must provide an affidavit stating that:

- Notice was sent to all lienholders that the motor vehicle was available for pickup,
- 30 days have passed since the notice was delivered or attempted to be delivered,
- Attempts have been made to obtain a release from all lienholders, and
- All such attempts have been to no avail.

The notice to lienholders and attempts to obtain a release from lienholders may be by written request delivered in person or by certified mail or another commercially available delivery service that provides proof of delivery to the lienholder at the lienholder's address as provided on the certificate of title. If the lienholder's address on the certificate of title is different than the one on file with the Department of State (DOS) for a financial institution's registered agent for service of process, notice, levy, or demand,²⁶ then the independent entity must deliver the notice to the address on file with the DOS.

ESF Agents

Effective October 1, 2019, **Section 5** amends s. 320.03, F.S., to authorize a licensed salvage motor vehicle dealer or motor vehicle auction²⁷ or insurance company that processes title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvaged vehicles physically located in Florida to be an ESF agent if the entity does so in the

²⁶ See s. 655.0201(2), F.S., which provides requirements for service of process, notice, levy, or demand on financial institutions.

²⁷ A "motor vehicle auction" is any person offering motor vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers. The person is prohibited from selling a vehicle to anyone other than a licensed motor vehicle dealer. Section 320.27(1)(c)4., F.S.

normal course of business. The DHSMV is granted rule making authority to administer these activities, including, but not limited to, rules establishing participation requirements, certification of service providers, electronic filing system requirements, disclosures, and enforcement authority for noncompliance.

Other

Section 6 amends s. 316.224, F.S., to correct a cross-reference.

The bill takes effect July 1, 2019, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Salvage dealers, metal recyclers, and motor vehicle auctions may see a decrease in both processing time and cost for a certificate of destruction, salvage title, and derelict vehicle certificate transactions.

A person who drives a vehicle with red and white lights in violation of the laws amended by the bill commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S. A nonmoving violation has a base fine of \$30; but with

additional fees, the total fine is \$108.²⁸ Further, any volunteer firefighter who violates the new requirements related to red and white lights must be dismissed from membership in the firefighting organization.²⁹

C. Government Sector Impact:

Any revenue impact for tickets written for the noncriminal traffic infraction created under the bill will be minimal.

Tax collectors and license plate agency offices may see an indeterminate decrease in workload for processing a certificate of destruction, salvage title, and derelict vehicle certificate transaction.

The bill is not expected to impact revenues of the tax collectors and license plate agency offices for fees collected for use of the ESF. Transactions conducted by ESF agents include the collection of all required fees, which are paid to the tax collectors and license plate agency offices; the tax collectors and license plate agency offices are ultimately responsible for the final review and submittal of any electronic documents processed by EFS agents.

The changes made by the bill to the EFS will require the DHSMV to update its systems. The department estimates that 276 hours will be required for programming and implementation. These hours are estimated to have a fiscal impact to the department of \$9,660 in state employee and contracted resources which can be absorbed within existing resources.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DHSMV to adopt rules to administer the EFS.

Section 322.01(4), F.S., defines an “authorized emergency vehicle” as a vehicle that is:

- On call to respond to emergencies;
- Equipped with extraordinary audible and visual warning devices; and
- Authorized by s. 316.2397, F.S., to display red or blue lights.

The definition includes fire trucks and other rescue vehicles, but does not include other vehicles used only incidentally for emergency purposes. The bill amends s. 316.2397, F.S., to authorize vehicles to also display red and white lights; however, it does not update the reference in s. 322.01(4), F.S. An amendment is recommended to update this cross-reference.

²⁸ Florida Clerk of Courts, *2018 Distribution Schedule* at p. 19.

²⁹ Section 316.2398(5), F.S.

³⁰ Email from DHSMV to Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee staff on March 15, 2019 (on file with the subcommittee).

The bill allows the independent entity to apply for a certificate of destruction or certificate of title 30 days after the delivery or *attempted delivery* of the required notice to a vehicle owner. The bill does not define *attempted delivery* and does not allow this event to begin the time period for other required notices.

On lines 102 to 104, the bill requires the independent entity to provide an affidavit that states that “30 days have passed since the notice was delivered or attempted to be delivered pursuant to this section.” By referencing “this section,” it is unclear if the notice referred to is the one that must be provided to the owner or the one provided to all lienholders.

Additionally, the affidavit statement required on lines 101 to 102 of the bill is the first instance that requires notice to be sent to all lienholders stating that the vehicle is available for pickup. If a 30-day notice must also be sent to all lienholders that a vehicle is available for pickup, then the requirement should be specifically stated prior to being required in the paragraph related to requirements for an application for certificate of destruction or salvage certificate of title.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.235, 316.2397, 316.2398, 316.224, 319.30, and 320.03.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 11, 2019:

The committee substitute:

- Changes the title of the bill from “an act relating to damaged, dismantled, derelict, or salvage motor vehicles” to “an act relating to motor vehicles.”
- Prohibits a motor vehicle from driving with red and white lights that are visible directly in front of the vehicle.
- Authorizes a motor vehicle to be equipped with one or more lamps underneath the vehicle.
- Authorizes the use of red and white lights on a vehicle for fire departments, fire patrol, volunteer firefighters, and privately owned vehicles used by firefighters and volunteer firefighters en route to the fire station, a fire, or other emergency.
- Authorizes an insurance company to notify an independent entity that has possession of a damaged or dismantled motor vehicle to release that vehicle to the lienholder as well as the owner.
- Allows a licensed salvage motor vehicle dealer, motor vehicle auction, or an insurance company to be an electronic filing system agent.

CS by Infrastructure and Security on March 12, 2019:

The CS allows for the use of a commercially available system, in addition to the National

Motor Vehicle Title Information System, by an independent entity to obtain a vehicle owner's address.

The CS adds a requirement that independent entities must provide proof of all lien satisfactions or proof of a release on all liens on a vehicle when applying for a certificate of destruction or salvage certificate of title.

The CS also requires that if the lienholder's address is different than the one on file with the DOS for a financial institution's registered agent or service, then the notice must also be provided to the address on file with the DOS.

B. Amendments:

None.