

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 973 Discharge of Lien on Motor Vehicle

**SPONSOR(S):** Civil Justice Subcommittee, Botana

**TIED BILLS:** **IDEN./SIM. BILLS:**

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			
3) Judiciary Committee			

### 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”). The Florida Revenue Act of 1949 (“FRA”) establishes taxes on sales, use, and other transactions in Florida, including motor vehicle sales. Under the FRA, 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.

CS/HB 973:

- Authorizes a motor vehicle dealer, a motor vehicle purchaser, and any person claiming a lien on a motor vehicle, 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- Specifies that an agreement among the parties subject to the rescinded or canceled sale invalidates any subsequent requirements imposed upon the motor vehicle dealer to submit an application for a certificate of title or remit any fees or taxes if all fees, taxes, and other moneys associated with the rescinded or canceled sale are returned to the rightful parties.
- Species that the parties to a rescinded or canceled sale are not required to report the rescission or cancellation to the DHSMV and that a motor vehicle dealer may obtain a duplicate certificate of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 the motor vehicle dealer, motor vehicle purchaser, and any person claiming a lien on the motor vehicle, is executed on a form prescribed by the DHSMV, which form states that the parties have rescinded or canceled the motor vehicle’s sale and all moneys associated with the vehicle’s transfer have been or will be returned to the relevant parties.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.
  - Provides for the return of fees and 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 a rescission, cancellation, or revocation does not negate the fact that the motor vehicle has been the subject of a previous retail sale.
- Provides that a motor vehicle dealer who rescinds, cancels, or revokes a sale or an application for a certificate of title must be reimbursed in the manner prescribed by DOR for the amount of tax collected or charged by the motor vehicle dealer for such sale or application.

The bill does not appear to have a fiscal impact on state or local governments and 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> Under Florida law, a motor vehicle dealer<sup>2</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>3</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>4</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.

##### Taxes Due on Motor Vehicle Sales

The Florida Revenue Act of 1949 (“FRA”), codified in chapter 212, F.S., establishes and regulates taxes on sales, use, and other transactions in Florida, including motor vehicle sales. Under the FRA, sales taxes,<sup>5</sup> plus any applicable discretionary sales surtax,<sup>6</sup> are due on the sale of all new or used motor vehicles in Florida unless an exemption applies.<sup>7</sup> Such sales taxes are due on the motor vehicle’s sales price, including any separately itemized charge or fee for items such as:

- Accessories sold with the vehicle;
- Preparation, settlement, or closing fees;
- Freight, handling, or delivery of the motor vehicle to the dealer;
- Commission; and
- Any other expense or costs of the dealer that the dealer requires the purchaser to pay.<sup>8</sup>

Further, any applicable discretionary sales surtax is due when the purchaser’s address on the motor vehicle registration or title is in a location within a county imposing such a surtax and applies to the first \$5,000 of the purchase price.<sup>9</sup> The dealer must remit such taxes along with a tax return to DOR by the first day of the month following each reporting period, and such taxes are late after the 20th day.<sup>10</sup>

##### Tax Credits or Refunds

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

<sup>2</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>3</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 March 20, 2023).

<sup>4</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 March 20, 2023).

<sup>5</sup> The general state sales tax under the FRA is currently set at 6% of the sales price.

<sup>6</sup> Florida law authorizes counties to levy a discretionary sales surtax under specified situations to be used for specified purposes. Such surcharge can be between 0.5 percent and 2 percent. S. 212.055, F.S.; Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2023*, [https://floridarevenue.com/Forms\\_library/current/dr15dss.pdf](https://floridarevenue.com/Forms_library/current/dr15dss.pdf) (last visited March 20, 2023).

<sup>7</sup> *Id.*; DOR, *supra* note 2.

<sup>8</sup> DOR, *supra* note 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Under the FRA, 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>11</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>12</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>13</sup> Such memorandum must be accepted by DOR at 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>14</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>15</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>16</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>17</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>18</sup>

Application for a certificate of title must be made upon a form prescribed by and filed with the DHSMV.<sup>19</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 duty assigned.<sup>20</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>21</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>22</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;

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<sup>11</sup> S. 212.17(1)(a), F.S.

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

<sup>13</sup> *Id.*

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

<sup>15</sup> S. 319.21, F.S.

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

<sup>17</sup> S. 319.001(1), F.S.

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

<sup>19</sup> S. 319.23, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</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.

- \$3 for each assignment by a lienholder;
- \$2 for noting a lien<sup>23</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
- \$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

CS/HB 973 authorizes a motor vehicle purchaser to return his or her vehicle under specified conditions for a refund, including a refund for the sales price and any sales taxes paid. This gives 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 a motor vehicle dealer, a motor vehicle purchaser, and any person claiming a lien on a motor vehicle may rescind or cancel a motor vehicle sale before an application for a certificate of title is submitted. Under the bill:

- An agreement among the parties subject to the rescinded or canceled sale cancels 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.
- The parties are not required to report the rescinded or canceled sale to the DHSMV.
- 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 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.
- A rescission, cancellation, or revocation of sale under this section does not negate the fact that the motor vehicle has been the subject of a previous retail sale.
- Fees paid to the DHSMV, less fees paid in accordance with s. 319.32, F.S., must be returned to the motor vehicle dealer, and if no fees have been paid to the DHSMV, the motor vehicle dealer must pay the fee required by s. 319.32, F.S.
- 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.

<sup>23</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 March 20, 2023).

Further, the bill amends s. 212.17, F.S., to provide that a motor vehicle dealer who rescinds, cancels, or revokes a sale or an application for a certificate of title must be reimbursed in the manner prescribed by DOR for the amount of tax collected or charged by the motor vehicle dealer for such sale or application.

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 motor vehicle sale.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

The bill may have a positive economic impact on the private sector by authorizing a motor vehicle purchaser to return his or her vehicle under specified conditions for a refund, including a refund for the sales price and any sales tax paid.

**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:

Chapter 319, F.S., vests the DHSMV with the authority to adopt rules to implement that chapter. Similarly, chapter 213, F.S., vests DOR with the authority to adopt rules to implement provisions of the revenue laws, including chapter 212, F.S.

#### 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 differed from the original bill in that it:

- Eliminated provisions relating to the discharge of liens on motor vehicles.
- Authorized 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.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.