

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 847w/CS Auto Fraud Prevention Act of 2004 -- Motor Vehicle Titles
SPONSOR(S): Johnson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation	21 Y, 0 N w/CS	Garner	Miller
2) Trans. & Econ. Dev. Apps. (Sub)	14 Y, 0 N	McAuliffe	Hawkins
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Some out-of-state used cars sold to Florida residents have been rebuilt after suffering substantial damage, although the title does not reflect the damage and the damage was undisclosed. Though the buyer intends to buy an undamaged car, he or she receives an unsafe, low-quality vehicle that may be unfit for a Florida title.

Widely differing state laws concerning the branding of "totaled" or "salvage" vehicle titles cause this problem. A vehicle involved in an accident in a state with lax titling laws can be rebuilt in that state without a title brand reflecting the rebuilt status. The vehicle can then be issued a clean title in Florida based on the out-of-state title despite the rebuilt status. The consumer pays for a vehicle that is worth substantially less than the purchase price.

Florida has no control over titling laws enacted by other states; however, Florida's titling laws can be strengthened to minimize the ability of fraudulent sellers to "wash" title in this state and sell to unsuspecting consumers.

The bill makes the following changes to current law to strengthen the titling laws. The bill:

- Requires the branding of titles for out-of-state vehicles that have an insurance company or salvage company in the chain of title, except in cases where the vehicle was stolen and recovered in substantially intact condition without the need for extensive repairs to the frame or engine, and except in cases where the vehicle was reassigned to a motor vehicle auction in another state pursuant to the laws of that state.
- Defines the terms "salvage recovery vehicle" and "salvage company" for the purposes of implementing the bill.
- Requires an out-of-state used vehicle owner, when applying for Florida title, to make a sworn affidavit that the motor vehicle has never been declared a total loss, and that the motor vehicle was not purchased from a salvage yard or insurance company. Willful and deliberate violation is a third-degree felony.
- Clarifies current law providing that vehicles worth less than \$1,500 are not automatically declared a total loss when damage is estimated at 80 percent of the value of the vehicle
- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) to promote consumer awareness about title washing, fraudulent vehicle sales, and the risks of acquiring ownership of a motor vehicle through various kinds of transactions, including via the internet, and about changes made in the law with respect to motor vehicle titling issues.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0847c.ap.doc
DATE: April 5, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Reduce government?

DHSMV is required to create a program promoting public awareness of certain risks associated with the purchase of used motor vehicles from out of state.

Expand individual Freedom?

Owners of used out of state vehicles are required submit a sworn affidavit with an application for title attesting that the vehicle was not purchased from an insurance or salvage company. A willful and deliberate violation is punishable as a third-degree felony.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Some used motor vehicles purchased by Florida residents, particularly from outside of Florida via the internet or other form of interstate transaction, are found to have been rebuilt after suffering substantial damage, although the out-of-state title does not reflect this damage and the damage was not disclosed by the seller. This circumstance can result in the consumer paying for what is believed to be an undamaged vehicle, but taking possession of a motor vehicle that is of low quality, of questionable safety, and/or that is unfit to be titled in Florida.

This problem is typically caused by the widely differing state laws concerning the branding of "totaled" or "salvage" vehicle titles. A vehicle that has been crashed in a state with less stringent titling laws can be rebuilt in that state without a title brand that reflects the rebuilt status of the vehicle. That vehicle can be sold in Florida, and a clean Florida title can be issued for it despite the rebuilt status based upon the clean title obtained in another state. This can occur whether the extent of the damage is so great that the vehicle would not otherwise be eligible for clean title in Florida.

Although there are limitations on what can be done at the state level to remedy this kind of problem created by another state's lax titling laws, it is possible to enact laws in Florida that minimize the ability of fraudulent sellers to "wash" title here and sell to unsuspecting consumers in other states.

Effect of Proposed Changes

HB 847 w/CS requires the Florida title of any vehicle that has been owned by an insurance company or a salvage business in another state to be branded to reflect such ownership. This would alert potential buyers the vehicle may have been rebuilt or had substantial damage of some kind, and would be an additional hurdle for those attempting to wash title in Florida. Because the change is intended to protect consumers from purchasing a vehicle with hidden, undisclosed damage, such title branding is

not required in cases where the vehicle was stolen and recovered in substantially intact condition, and it is readily resalable without the need for extensive repairs to, or replacement of, the engine or frame.

In addition, the bill excludes from its title branding provisions vehicle titles previously assigned to a motor vehicle auction in another state due to the titling laws of that state. In most states, title is not required to be re-assigned to a motor vehicle auction, because it is merely a facilitator of the sale of motor vehicles. However, some states require reassignment of title. Because many motor vehicles sold at motor vehicle auction, particularly those that are coming off long-term leases and rental cars, are in good condition and do not have damage caused by a wreck, not all such vehicles need to have a title brand reflecting the role of the auction. Those auctioned vehicles that have been wrecked are mainly sold or bought by insurance companies or salvage companies, and would therefore still require a branding of title in Florida under the provisions of the bill.

The bill also requires the owner of a motor vehicle not titled in Florida who applies for a Florida title to make a sworn affidavit that the motor vehicle has never been declared a total loss, and that the motor vehicle was not purchased from a motor vehicle salvage yard or insurance company. A person who willfully and deliberately violates the requirement or falsifies documents to avoid the requirement is guilty of a third-degree felony. This bill applies to local dealers, distributors and others who attempt to wash title in Florida and sell to out-of-state or Florida consumers, as well as casual sales.

A provision in law requires a motor vehicle to be declared a total loss and salvaged if repairing or rebuilding it would cost 80 percent of the vehicle's book value, unless the undamaged retail value of the vehicle is less than \$1,500. The bill amends this provision to make it more easily understood, and the substance of the law is unchanged.

The bill also requires DHSMV to promote consumer awareness about title washing, fraudulent vehicle sales, and the risks of acquiring ownership of a motor vehicle through various kinds of transactions, including via the internet, and about changes made in the law with respect to motor vehicle titling issues.

C. SECTION DIRECTORY:

Section 1. Provides a popular name for the bill as the "Auto Fraud Prevention Act of 2004."

Section 2. Amends s. 319.14, F.S., to provide for the branding of titles for out-of-state vehicles that have an insurance company or salvage company in the chain of title, with exceptions.

Section 3. Amends s. 319.23, F.S., to require an applicant for Florida title for an out-of-state used vehicle to submit a sworn affidavit that the motor vehicle has never been declared a total loss and that the motor vehicle was not purchased from a salvage yard or insurance company. Willful and deliberate violation is punishable as a third-degree felony.

Section 4. Amends s. 319.30, F.S., to clarify a provision requiring that all vehicles must be declared a total loss if the cost to repair the damage would be equal to 80 percent or more of the book value of the vehicle, unless the vehicle is worth less than \$1,500 undamaged condition.

Section 5. DHSMV is required to create a public awareness program regarding the risks associated with buying used motor vehicles from out of state, including those risks associated with internet purchases of used motor vehicles. The program must also educate the public about laws designed to protect used motor vehicle consumers.

Section 6. Provides the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DHSMV may incur some costs related to administration of additional title branding requirements and for implementing education and awareness programs required by this bill. Because the number of cars requiring additional title branding is unknown, these costs are indeterminate but would likely be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill is successful in preventing the fraudulent sale of rebuilt vehicles to consumers, those consumers will experience an indeterminate positive economic impact.

The bill requires the owner of a motor vehicle not titled in Florida who applies for a Florida title to make a sworn affidavit that the motor vehicle has never been declared a total loss, and that the motor vehicle was not purchased from a motor vehicle salvage yard or insurance company. This approach would place additional burdens on owners involved in casual sales, dealers, distributors and others who wish to apply for a vehicle title in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not require any grant or exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its April 2, meeting the Appropriations Subcommittee on Transportation and Economic Development recommended without objection one amendment exempting motor vehicle dealers, and persons selling used motor vehicles to dealers, from the requirement to sign an affidavit stating the vehicle has never been declared a total loss and the vehicle was not purchased from a salvage yard or insurance company.

The subcommittee voted 14-0 in favor of the bill as amended.