

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 847 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		Garner	Miller
2) Trans. & Econ. Dev. Apps. (Sub)			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Some out-of-state used motor vehicles 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 intended to buy an undamaged vehicle, 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 crashed 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.

Since Florida has no control over titling laws enacted by other states, there are limitations on what can be done at the state level to remedy this problem. However, Florida's titling laws can be strengthened to minimize the ability of fraudulent sellers to "wash" title here and sell to unsuspecting consumers in other states.

The bill makes several changes in an attempt to strengthen the titling laws. It:

- Provides for the branding of titles for out-of-state vehicles that have an insurance company or salvage company in the chain of title.
- Requires the owner of an out-of-state used vehicle 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 when applying for Florida title. Willful and deliberate violation is a third-degree felony.
- Requires that all vehicles, regardless of value, be declared a total loss if the cost to repair the damage would be equal to 80 percent or more of book value. Currently, vehicles worth less than \$1,500 are not automatically declared a total loss, and may be rebuilt and returned to the road. Also, an insurance company paying a total loss claim for a vehicle is authorized to obtain a certificate of destruction for the vehicle. Before a recovered, intact stolen vehicle may be sold or transferred, an insurance company that has paid a total loss claim is required to obtain a certificate of title in its own name.
- 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: h9999c.tr.doc
DATE: March 4, 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, turn out to be 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. The consumer ends up stuck with a vehicle that is worth substantially less than the purchase price.

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 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 in the chain of title. This measure would serve to alert potential subsequent buyers that 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.

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 approach would address local dealers, distributors and others who attempt to wash title in Florida and sell to out-of-state or Florida consumers. In casual sales, however, a burden of compliance and risk of punishment may also be placed on the person the law is designed to protect – the consumer.

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. This \$1,500 value was adopted in 1990. The bill eliminates the \$1,500 value threshold below which 80-percent-loss vehicles cannot be declared a total loss. This change may reduce the number of vehicles that can be rebuilt and placed back on the road in an unsafe condition.

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 2003.”

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.

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 require 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. Currently, vehicles worth less than \$1,500 are exempt. Also, an insurance company paying a total loss claim for a vehicle under \$4,000 is authorized to obtain a certificate of destruction for the vehicle. Before a recovered, intact stolen vehicle may be sold or transferred, an insurance company that has paid a total loss claim is required to obtain a certificate of title in its own name.

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 that 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