

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 Criminal Justice Committee

BILL: CS/SB 1076

INTRODUCER: Criminal Justice Committee, Senator King and others

SUBJECT: Motor Vehicles and Mobile Homes/Destruction

DATE: March 18, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	Favorable
2.	Pugh	Cooper	CM	Favorable
3.	Krol	Cannon	CJ	Fav/CS
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides definitions, enhanced penalties, and additional requirements related to the dismantling or destruction of motor vehicles and mobile homes by salvage motor vehicle dealers and secondary metals recyclers.

The bill is designed, in part, to close loopholes in current law whereby towed vehicles can be sold as scrap to salvage yards and metal recyclers without the actual owners' permission. It requires salvagers and recyclers to hold so-called "derelict" vehicles for 3 full business days, excluding weekends and holidays, before destroying them, and to notify the Department of Highway Safety and Motor Vehicles within 24 hours after receiving the derelict vehicle.

The bill also conforms requirements and penalties related to dismantling or destroying vehicles for salvage dealers and secondary metal recyclers.

The bill substantially amends sections 319.14 and 319.30, of the Florida Statutes.

II. Present Situation:

Current Vehicle Title Requirements

A certificate of title is the proof of ownership of a motor vehicle issued by the Florida Department of Highway Safety and Motor Vehicles (DHSMV) or another state's motor vehicle department. In Florida, most vehicles are required to be titled;¹ the exceptions are mopeds, motorized bicycles, and trailers weighing less than 2,000 pounds. When an insurance company has paid a Total Loss on a motor vehicle or mobile home, the insurer often makes application for a Salvage Certificate of Title or Certificate of Destruction in the name of the insurance company.² Likewise, when a towing company tows and stores a vehicle, the company may apply for a certificate of destruction under certain conditions.³

Subsection (2) of s. 319.30, F.S., requires that when a motor vehicle or mobile home is to be dismantled, destroyed, or altered so significantly as to no longer be the motor vehicle or mobile home described in the certificate of title, the owner(s) as listed on the title must surrender the title to DHSMV for cancellation. Violation of the requirement constitutes a second-degree misdemeanor.⁴

Salvage Motor Vehicle Dealers

By reference, s. 319.30, F.S., defines a salvage motor vehicle dealer as any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.⁵

All vehicles being sold, transported, or delivered to a salvage motor vehicle dealer must be accompanied by:

- a properly endorsed certificate of title⁶,
- salvage certificate of title⁷, or
- a vehicle certificate of destruction⁸ issued by the DHSMV.

¹ Section 320.02, F.S., generally.

² Section 319.30(3), F.S.

³ Section 713.78(11), F.S.

⁴ As punishable by s. 775.082 or s. 775.083, F.S.

⁵ Section 320.27(1)(c) 5., F.S.

⁶ A certificate of title is properly endorsed when the identified owner(s), i.e., the seller, has completed the form printed on the back of the certificate containing the name and address of the purchaser, odometer information, selling price, and the date sold in the "Transfer of Title by Seller" section. The seller must also sign and hand print their name.

⁷ Although "salvage" is defined to mean a motor vehicle or mobile home which is a total loss, "salvage certificate of title" is not currently defined.

⁸ Section 713.78(11)(a), F.S., states: "Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2) and who has complied with the provisions of subsections (3) and (6), when such vehicle or vessel is to be sold for purposes of being dismantled, destroyed, or changed in such manner that it is not the motor vehicle or vessel described in the certificate of title, shall apply to the county tax collector for a certificate of destruction. A certificate of destruction, which authorizes the dismantling or destruction of the vehicle or vessel described therein, shall be reassignable a maximum of two times before dismantling or destruction of the vehicle shall be required, and shall accompany the vehicle or vessel for which it is issued, when such vehicle or vessel is sold for such purposes, in lieu of a certificate of title. The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements of this section and, if the vehicle

Alternatively, if the title has been surrendered to the DHSMV, a notarized affidavit from the vehicle owner attesting to the surrender of the title must accompany the vehicle. Falsification of the required affidavit constitutes a third-degree felony.⁹

Subsection (6) of s. 319.30, F.S., also requires salvage motor vehicle dealers to record the name, address, and personal identification card number of any person delivering motor vehicles, derelicts and major parts. Violation of the subsection is a first-degree misdemeanor.¹⁰

Secondary Metals Recyclers

By reference, s. 319.30, F.S., defines a secondary metals recycler as any person who:

“(a) Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.”¹¹

Similar to the requirements of salvage motor vehicle dealers, when a motor vehicle, derelict, or major part is purchased by a secondary metals recycler, the recycler must record the name, address, and personal identification card number of any person delivering the vehicle, derelict or part, and must obtain from the seller:

- a valid certificate of title in the name of the seller or properly endorsed to the seller; or
- a valid certificate of destruction in the name of the seller or properly endorsed to the seller; or
- if neither of the above is available, an affidavit signed by the seller stating that the certificate of title was returned to DHSMV.

A violation of these requirements is a third-degree felony for the salvage motor vehicle dealer.¹²

or vessel is not registered in this state, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen, and shall be accompanied by such documentation as may be required by the department.”

⁹ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁰ As punishable by s. 775.082 or s. 775.083, F.S.

¹¹ Section 538.18(8), F.S.

¹² As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

Both salvage auto dealers and secondary metals recyclers are required to return all certificates of title to DHSMV each month. All certificates of destruction, affidavits, and all other required information must be retained by the dealer or recycler for 3 years.

The Florida Auto Theft Intelligence Unit, a nonprofit organization of state law enforcement officers, and the DHSMV have indicated to committee staff that there is a continuing problem with the use of fraudulent affidavits. These false affidavits, which are accepted in lieu of a valid title or valid certificate of destruction, allow stolen cars to be sold as derelict vehicles to salvage yard operators and secondary metal recyclers, without their owners' knowledge.

III. Effect of Proposed Changes:

Section 1 makes a number of changes to s. 319.30, F.S., to improve enforcement of laws related to the salvage and recycling of derelict vehicles. Section 319.30(1), F.S., is amended to define "certificate of title," "salvage certificate of title," and "derelict motor vehicle." The bill includes recreational vehicles and mobile homes in paragraph (2)(b), thereby requiring the same certification requirements as motor vehicles when those items are sold, transported, or delivered to a salvage motor vehicle dealer. The penalty for violation of the certification requirements is clarified.

The bill creates and defines "derelict motor vehicle certificate" to be used by owners, transporters, and dealers when a certificate of title, salvage certificate of title, or a certificate of destruction is not available.

A derelict motor vehicle certificate is to be completed by the vehicle owner, the owner's authorized transporter, and the licensed salvage motor vehicle dealer. Upon receiving a derelict vehicle, the salvage motor vehicle dealer is required to notify DHSMV, or deliver the derelict motor vehicle certificate to an agent of DHSMV, within 24 hours of receiving the vehicle. The salvage auto dealer also must secure the vehicle for 3 full business days, excluding weekends and holidays, before destroying or dismantling it.

The violation caused by falsification of the affidavit previously required, is revised to incorporate the requirement for a derelict motor vehicle certificate. Under the revisions, a salvage operator commits a third-degree felony¹³ if he or she:

- sells, transports, delivers, purchases, or receives a derelict motor vehicle without obtaining a certificate of title, salvage certificate of title, certificate of destruction, or derelict motor vehicle certificate;
- enters false or fictitious information on a derelict motor vehicle certificate;
- does not complete the derelict motor vehicle certificate as required or does not make the required notification; or
- destroys or dismantles a derelict motor vehicle without waiting the required 3 full business days, excluding weekends and holidays.

¹³ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

The paperwork requirements in s. 319.30(6), F.S., are revised to apply to persons “selling,” rather than “delivering,” salvaged motor vehicles and materials to a salvage motor vehicle dealer, and the penalty for violating this subsection is increased from a first-degree misdemeanor¹⁴ to a third-degree felony.¹⁵ Under this increase in penalty, the offender can be tried as a “habitual felony offender.”

The requirements of s. 319.30(7), F.S., related to recording the personal information of persons delivering salvage motor vehicles and materials to a secondary metals recycler are revised to apply to recreational vehicles and derelict motor vehicles as well as salvage motor vehicles and materials. The types of documents required to accompany the vehicle are expanded to include a valid derelict motor vehicle certificate completed by a licensed salvage motor vehicle dealer and which has been properly reassigned to the secondary metals recycler.

If a derelict vehicle is delivered to a secondary metals recycler and not accompanied by a valid certificate of title, salvage certificate of title, certificate of destruction, or derelict motor vehicle certificate, then a derelict motor vehicle certificate must be completed by the vehicle or mobile home owner, the transporter, and secondary metals recycler at the time of the sale. The recycler is required to notify DHSMV, or deliver the derelict motor vehicle certificate to an agent of DHSMV, within 24 hours of receiving the vehicle. The recycler also must secure the vehicle for 3 full business days, excluding weekends and holidays, before destroying or dismantling it.

The revisions further state that a recycler commits a third-degree felony¹⁶ if he or she:

- sells, transports, delivers, purchases, or receives a motor vehicle, recreational motor vehicle, mobile home, or derelict motor vehicle without obtaining a certificate of title, salvage certificate of title, certificate of destruction, or derelict motor vehicle certificate;
- enters false or fictitious information on a derelict motor vehicle certificate;
- does not complete the derelict motor vehicle certificate as required or does not make the required notification; or
- destroys or dismantles a derelict motor vehicle without waiting the required 3 full business days, excluding weekends and holidays.

The list of documents which salvage auto dealers and secondary metals recyclers are required to return to DHSMV each month, is expanded to include salvage certificates of title. Such certificates may be transmitted electronically. DHSMV may adopt rules and establish fees as necessary for electronic submission. Copies of all certificates of title, salvage certificates of title, certificates of destruction, derelict motor vehicle certificates, and all other required information are to be retained for 3 years.

The DHSMV, its agent, or any law enforcement officer may issue a hold notice to a salvage auto dealer or secondary metals recycler whenever there is reason to believe a stolen or fraudulently titled motor vehicle, mobile home, recreational vehicle, salvage motor vehicle, or derelict motor

¹⁴ As punishable by s. 775.082 or s. 775.083, F.S.

¹⁵ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁶ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

vehicle is in the possession of the dealer or recycler. The hold may not exceed 5 business days, excluding weekends and holidays, and the dealer or recycler may not dismantle or destroy the item until the hold is released or the 5 days has passed.

DHSMV is authorized to charge a \$3 fee for each derelict vehicle certificate. A \$2.50 service charge may be collected by county tax collectors under s. 320.04, F.S. DHSMV is further authorized to adopt rules to administer and enforce s. 319.30, F.S.

Section 2 amends s. 319.14, F.S., to correct a cross-reference.

Section 3 provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

DHSMV will charge a \$3 fee for each derelict motor vehicle certificate received from vehicle owners, salvage auto dealers, or secondary metals recyclers. Tax collectors may collect an additional \$2.50 service charge, pursuant to s. 320.04, F.S. The amount of revenue by these fees is indeterminate, at this time.

B. Private Sector Impact:

Vehicle owners, salvage auto dealers and secondary metals recyclers will pay \$3 for each derelict motor vehicle certificate delivered to DHSMV, and may pay an additional \$2.50 service charge to county tax collectors.

C. Government Sector Impact:

DHSMV estimates nominal fiscal and operational impact. Contracted reprogramming of motor vehicle software systems is estimated to cost \$35,000.

This bill may affect prison bed space. To determine the level of bed space impact, the bill has been referred to the Criminal Justice Impact Conference for further review.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Various state and local law enforcement agencies, the Professional Wrecker Association of Florida, the Florida Auto Dismantlers and Recyclers Association, and the DHSMV support the bill.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 18, 2008:**

- Changes the definition of “certificate of title” to include paper documents received by the Department of Revenue, in addition to certificates kept in electronic form by the department.
- Changes the effective date from July 1, 2008 to October 1, 2008.

B. Amendments:

None.