

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 Judiciary Committee

BILL: CS/SB 906

INTRODUCER: Judiciary Committee and Senator Smith

SUBJECT: Motor Vehicle Title Transfer

DATE: April 17, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Meyer	TR	Fav/1 amendment
2.	Maclure	Maclure	JU	Fav/CS
3.			TA	
4.				
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:

This bill places additional requirements on the notice of transfer of a motor vehicle. It requires the owner or coowner of a vehicle who has made a bona fide sale or transfer of a motor vehicle to notify the Department of Highway Safety and Motor Vehicles within 30 days after the sale or transfer. The notification must include: the vehicle identification number; the buyer's full first name, middle initial, and last name; the buyer's personal or business identification (e.g., driver's license number, identification card number, or federal employer identification number); and other information required by the department.

This bill requires the department, when issuing a certificate of title, to inform the owner or coowner of these requirements with the issuance of each certificate of title to a motor vehicle. This information may be printed on the certificate of title or on a separate form included with the certificate.

Additionally, the bill revises provisions related to disposition of derelict vehicles to prescribe a process for applying to the department for a derelict motor vehicle certificate when a vehicle is sold to a licensed salvage motor vehicle dealer or a secondary metals recycler. The bill also

prohibits certain towing operators from using the application process to dispose of a vehicle in this manner without first obtaining title to the vehicle or a certificate of destruction.

Lastly, the bill requires the display of a temporary tag if a retail sale by a licensed independent motor vehicle dealer results in the transfer of a license plate. Under the bill, the temporary tag must be displayed during the period when the application for a transfer of the registration license plate is pending.

This bill substantially amends the following sections of the Florida Statutes: 319.22, 319.30, 320.0609, and 320.131.

II. Present Situation:

Transfer of Title for Motor Vehicles and Mobile Homes

Section 319.22, F.S., establishes requirements governing the transfer of title for motor vehicles and mobile homes. A purchaser of a motor vehicle or mobile home cannot obtain marketable title unless he or she is issued a certificate of title. The law ceases to recognize the seller as owner or coowner when the title is properly endorsed and delivered to the purchaser or the Department of Highway Safety and Motor Vehicles (DHSMV or department). In the case of a private or casual sale (a sale between persons not licensed as dealers or insurers), the state will not transfer title unless the name of the seller is shown as the owner on the face of the title. In addition, the state will not transfer title unless the sales price is entered in the appropriate place on the face of the certificate.

When a motor vehicle is sold in a bona fide casual sale, the certificate of title is endorsed by the seller and the sales price is entered on the face of the certificate. The certificate or DHSMV-approved form is typically submitted *by the buyer* to the tax collector or DHSMV for transfer with an application for a new certificate of title and remittance of sales tax. A new certificate of title is then issued to the buyer. This process allows both for recording of ownership of the motor vehicle and provides an opportunity for sales tax to be assessed on the purchase.

A seller is entitled to submit a department-approved form notifying the DHSMV of a bona fide sale. The notification serves to sever liability for future liabilities related to the motor vehicle.¹

It is a first-degree misdemeanor for a buyer or a seller to knowingly attempt to transfer title without the purchaser's name also appearing on the title. This requirement was adopted in 2002.²

¹ Under the dangerous instrumentality doctrine, Florida law imposes vicarious liability on the owner of a motor vehicle for acts of negligence by a non-owner operator of the vehicle. (*See, e.g., Lewis v. Enterprise Leasing Co.*, 912 So. 2d 349, 351 (Fla. 3d DCA 2005).) Endorsement and delivery of the certificate to the buyer or, in the alternative, delivery of the endorsed certificate or submission a Notice of Sale form to the department protects the seller from civil liability related to the operation of the sold vehicle.

² See s. 9, 2002-235, Laws of Fla. (codified as s. 319.22(5), F.S.).

Dismantling and Destruction of Derelict Motor Vehicles

Section 319.30(2), F.S., provides that, when a motor vehicle or mobile home is dismantled, destroyed, or altered so significantly that it is no longer the motor vehicle or mobile home described in the certificate of title, the owners as listed on the title must surrender the title to DHSMV for cancellation. Willful and deliberate violation of this requirement constitutes a second-degree misdemeanor.

When a vehicle is sold to a salvage dealer, the vehicle must be accompanied by a:

- Valid certificate of title issued in the seller's name or endorsed over to the seller;
- Valid salvage certificate of title issued in the seller's name or endorsed over to the seller;
or
- Valid certificate of destruction issued in the seller's name or endorsed over to the seller.³

When a derelict vehicle is sold, transported, or delivered to a licensed salvage motor vehicle dealer, the purchaser shall record the date of purchase and the name, address, and personal identification card number of the person selling the derelict motor vehicle. It shall be accompanied by a:

- Valid certificate of title issued in the seller's name or endorsed over to the seller;
- Valid salvage certificate of title issued in the seller's name or endorsed over to the seller;
or
- Valid certificate of destruction issued in the seller's name or endorsed over to the seller.⁴

If the documentation is not available, a derelict motor vehicle certificate shall be completed by the owner, the owner's authorized transporter, and the licensed salvage motor vehicle dealer at the time of the sale, transport, or delivery to the licensed salvage motor vehicle dealer.⁵

Subsection (7) of s. 319.30, F.S., governs purchases of materials, prepared materials, parts, and other items by a secondary metals recycler. When a second metals recycler purchases vehicles or derelict vehicles from someone other than another recycler, for the purpose of processing the vehicle, the purchaser must obtain similar documentation from the seller, including a:

- Valid certificate of title issued in the seller's name or endorsed over to the seller;
- Valid certificate of destruction; or
- Valid derelict motor vehicle certificate.

During the 2008 Regular Session, the Legislature enacted a measure designed to close loopholes in law under which towed vehicles could be sold as scrap to salvage yards and metal recyclers without the actual owner's permission.⁶

³ Section 319.30(2)(b), F.S.

⁴ Section 319.30(2)(c), F.S.

⁵ *Id.*

⁶ See ch. 2008-170, Laws of Fla. (CS/CS/SB 1076, 2008 Reg. Sess.).

Transfer and Exchange of Registration License Plates

A registration license plate and a certificate of registration are issued to the owner of the vehicle registered and remain in the owner's name. The owner may transfer the registration license plate to any vehicle that the owner may acquire within the same classification. Alternatively, the owner may surrender the plate to the Department of Highway Safety and Motor Vehicles (DHSMV or department) for a new license plate of the appropriate class if the replacement vehicle is of a different class.⁷

Upon selling, transferring, trading, or otherwise disposing of a motor vehicle, the owner shall remove the registration license plate and either transfer it to the replacement vehicle or surrender it to the department. The plate may not be temporarily or permanently attached to a new or used replacement vehicle without filing an application for transfer with DHSMV and paying \$4.50 fee.⁸

Temporary tags are designed by the department but may be used solely for statutorily specified purposes. Examples of these purposes include:

- For casual or private sales;
- Where an out-of-state resident, subject to registration in Florida, must secure ownership documentation from the home state;
- For certain financial institutions that need temporary tags for the purpose of demonstrating repossessions for sale;
- Where a dealer license plate may not be lawfully used; and
- For certified common carriers or driveway companies who transport motor vehicles, mobile homes, or recreational vehicles from one place to another for other persons.⁹

The department may prohibit purchase of temporary tags by licensed dealers, common carriers, and financial institutions in cases where abuse has occurred.¹⁰

III. Effect of Proposed Changes:

Transfer of Title for Motor Vehicles and Mobile Homes (Section 1)

This bill places additional requirements on the notice of transfer of a motor vehicle. It requires the owner or coowner of a vehicle who has made a bona fide sale or transfer of a motor vehicle to notify the Department of Highway Safety and Motor Vehicles (DHSMV or department) within 30 days after the sale or transfer. This notification must be made in the form prescribed by the department. The notification must include:

- The vehicle identification number;
- The buyer's full first name, middle initial, and last name;

⁷ Section 320.0609(1), F.S.

⁸ Section 320.0609(2)(a), F.S.

⁹ Section 320.131(1), F.S.

¹⁰ *Id.*

- The buyer's personal or business identification (e.g., driver's license number, identification card number, or federal employer identification number); and
- Other information required by the department.

The notification requirements do not apply to any transfer or sale to or by a licensed motor vehicle dealer or to an insurer taking possession of a motor vehicle or title pursuant to an insurance policy.

The bill also provides that submission of the required notice has the effect of extinguishing future civil liability related to operation of the sold vehicle.

This bill requires the department, when issuing a certificate of title, to inform the motor vehicle owner or coowner of these requirements with the issuance of each certificate of title to a motor vehicle. This information may be printed on the certificate of title or on a separate form included with the certificate.

Dismantling and Destruction of Derelict Motor Vehicles (Section 2)

The bill revises requirements related to the dismantling and destruction of derelict motor vehicles, as well as the selling of derelict motor vehicles to licensed salvage motor vehicle dealers and secondary metals recyclers. The bill revises the definition of the term "derelict motor vehicle certificate" to provide that the certificate is issued by the department based upon an application and serves as evidence that a vehicle will be dismantled or converted to scrap metal.

The bill also adds a definition for the term "seller," meaning a person in physical possession of and with responsibility for a derelict motor vehicle and who attests that all attempts to locate the lawful titled owner have been exhausted. Excluded from the definition of "seller" are towing companies, repair shops, or landlords, unless they have obtained title, salvage title, or a certificate of destruction. The bill provides that sellers (in addition to owners) may dispose of derelict motor vehicles with licensed salvage motor vehicle dealers and secondary metals recyclers.

The bill also imposes additional requirements related to the sale of a derelict motor vehicle to a licensed salvage motor vehicle dealer. If a certificate of title, salvage certificate or title, or certificate of destruction is not available, the seller or owner, the authorized transporter, and the dealer must apply to the department for a derelict motor vehicle certificate. Current law provides for the certificate to be completed, but does not prescribe an application process. The application must include the identifying number on the personal identification card of the seller or owner. If the ID card is something other than a Florida driver's license or Florida ID card, the application must be accompanied by a photocopy of the personal identification card that is used. Falsifying application information or failing to obtain a copy of the seller's or owner's ID card when required constitutes a third-degree felony.

The bill imposes the same requirements when a valid certificate of title, salvage certificate, certificate of destruction, or derelict motor vehicle certificate is not available in the case of a sale of a motor vehicle to a secondary metals recycler. The parties must obtain a derelict motor vehicle certificate from the department, with similar information requirements and penalties.

Additionally, the bill specifies that certain towing operators may not use a derelict motor vehicle certificate application in order to transport or sell a vehicle at a salvage dealer or metal recycler without obtaining the title or a certificate of destruction.

Transfer and Exchange of Registration License Plates

The bill amends the statute governing transfer and exchange of registration license plates, s. 320.0609, F.S., to require the display of a temporary tag if a retail sale by a licensed independent motor vehicle dealer results in the transfer of a license plate. Under the bill, the temporary tag must be displayed during the period when the application for a transfer of the registration license plate is pending. The bill provides an exception to issuance of the temporary tag when the records of the department reflect that the transfer has occurred.

The bill makes a corresponding change to the temporary tag statute, s. 320.131, F.S., to add to the list of eligible uses of temporary tags the retail sale by a licensed independent motor vehicle dealer when an application for license plate transfer is being processed.

Effective Date

The bill provides an effective date of July 1, 2009.

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:

None.

B. Private Sector Impact:

Individuals who sell a motor vehicle will be required to provide notice to the Department of Highway Safety and Motor Vehicles within 30 days of the sale. The costs associated with completing and submitting the notice should be minimal. Submission of the notice will act to extinguish civil liability related to future operation of the sold vehicle.

C. Government Sector Impact:

The bill envisions the department prescribing the form for notification after the sale of a motor vehicle. The department currently has a form for notice of sale of a motor vehicle (HSMV Form 82050). However, that form does not capture all of the information required under the bill (e.g., personal or business identification number for the buyer). The department may incur costs related to developing a new form or modifying this existing form, although the costs are not expected to be significant.

The department will also be required to notify vehicle owners of the bill's notice-upon-sale provisions when it issues a motor vehicle certificate of title. The bill authorizes the department to print the information on the certificate of title or in a separate form included with the certificate. The department may incur costs related to providing this notice, although the costs are not expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Judiciary on April 15, 2009:

The committee substitute:

- Specifies that the derelict motor vehicle certificate required when a derelict motor vehicle is sold to a licensed salvage motor vehicle dealer or a secondary metals recycler, under certain circumstances, is obtained by submitting an application to the Department of Highway Safety and Motor Vehicles.
- Defines a “seller” as a person in physical possession of a derelict motor vehicle and includes sellers within the scope of the provisions governing the sale of a motor vehicle to a licensed salvage motor vehicle dealer or a secondary metals recycler.
- Prohibits certain towing operators from using the application process to dispose of a vehicle in this manner without first obtaining title to the vehicle or a certificate of destruction.
- Requires the display of a temporary tag if a retail sale by a licensed independent motor vehicle dealer results in the transfer of a license plate. The temporary tag must be displayed during the period when the application for a transfer of the registration license plate is pending.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
