

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 7063	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Transportation; Banking and Insurance; Bradley	112 Y's	1 N's
COMPANION BILLS:	CS/CS/SB 754	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 7063 passed the House on April 28, 2014 as CS/CS/SB 754. The bill revises the process for applying for a salvage certificate of title (salvage title) or a certificate of destruction (COD) for a total loss motor vehicle. Currently, before a total loss vehicle may be acquired by a salvage motor vehicle dealer, the vehicle owner (usually the insurance company) must apply for a salvage title or a COD. A salvage title indicates that the vehicle is repairable and a COD indicates that the vehicle is not repairable. When applying for a salvage title or COD, the Department of Highway Safety and Motor Vehicles (DHSMV) is provided with an estimate of repair costs. If the estimated costs of repairing the vehicle are equal to or more than 80 percent of the current retail cost of the vehicle, as established in an official used car guide, DHSMV is required to declare the vehicle unrebuildable and issue it a COD.

CS/CS/SB 754 revises the bright-line process for applying for a salvage certificate of title or certificate of destruction after a motor vehicle is declared a total loss. Specifically, the bill:

- Defines a "late model vehicle" as an automobile 7 years or newer;
- Raises the 80 percent COD threshold to 90 percent, and limits its application to late model vehicles with a value of at least \$7,500 just prior to sustaining the damage resulting in total loss;
- Applies a narrative description requiring a certificate of destruction for all other vehicles when the vehicle is damaged, wrecked, or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal, or when the vehicle comes into this state under a title or other ownership that indicates that the vehicle is non-repairable, junked, or for parts or dismantling only;
- Requires DHSMV to provide a summary report regarding certificates of title for rebuilt vehicles including legislative recommendations to the Governor, President of the Senate, and the Speaker of the House of Representatives; and
- Revises and strengthens current airbag regulations by defining airbag, counterfeit airbag, nonfunctional airbags; prohibiting knowingly importing, manufacturing, offering for sale, or reinstalling fake or junk-filled airbag compartments; and providing additional fake or junk-filled airbag violations.

The bill will allow a greater number of salvage vehicles to be repaired, inspected, and returned to the road. It is expected to have an insignificant positive fiscal impact to both the General Revenue Fund (GR) and the Highway Safety Operating Trust Fund (HSOTF).

The bill was approved by the Governor on June 20, 2014, ch. 2014-181, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Total Loss

Currently, Florida law defines a motor vehicle (vehicle or mobile home) as a 'total loss'¹ when:

- an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the vehicle owner upon the theft of the vehicle²; or
- an uninsured vehicle is wrecked or damaged and the cost, at the time of loss, of repairing or rebuilding the vehicle is 80 percent or more of the cost to the vehicle owner of replacing the wrecked or damaged vehicle with one of like kind and quality.³

However, the vehicle owner and the owner's insurance company may reach an agreement to repair, rather than replace, the vehicle. In this case, the vehicle is not considered a 'total loss,' unless the actual cost to repair the vehicle to the insurance company exceeds 100 percent of the cost of replacing the vehicle with one of like kind and quality. If the cost to repair does in fact exceed 100 percent of the replacement cost, the vehicle owner must request that DHSMV brand the vehicle's certificate of title with the words 'Total Loss Vehicle.'⁴

Salvage Titles

From a national perspective, the purpose of a salvage motor vehicle title is to indicate that a vehicle has been severely damaged or declared a total loss at some point in its history, and to provide a traceable record for such vehicles the titles to which have been surrendered. Before disposing of or selling a total loss vehicle, the owner or insurance company is usually required to apply for some type of a salvage motor vehicle title. In such cases, the certificate of title is submitted to the respective state's titling agency, and depending on the state and level of damages, the vehicle may be designated rebuildable or unrebuildable⁵ and, thereby receive the appropriate title designation. If the vehicle is deemed rebuildable, some states, including Florida, allow it to be repaired, inspected, and ultimately returned to the road. If the vehicle is deemed unrebuildable, the vehicle must be destroyed or dismantled.

Typically, the insurance company has its own procedure for the disposition of rebuildable or unrebuildable total loss vehicles. In Florida, many insurance companies have an agreement with a motor vehicle auction company⁶ to acquire, apply for title of, and sell, the vehicle. The auction

¹ s. 319.30(3)(a), F.S.

² s. 319.30(3)(a)1.a., F.S.

³ s. 319.30(3)(a)1.b., F.S.

⁴ s. 319.30(3)(a)(2), F.S.

⁵ The American Association of Motor Vehicle Administrators, Best Practices for Title and Registration of Rebuilt and Specially Constructed Vehicles, November 2012, at page 3, defines a "non-repairable vehicle" as a motor vehicle that is damaged, destroyed, wrecked, burned or submerged in water to the extent that the only residual value of the vehicle is as a source of parts or scrap metal or identified by a jurisdiction or insurer that it is not rebuildable. Vehicles designated as non-repairable cannot be rebuilt for operation on public roads. The AAMVA defines a "rebuilt vehicle" as a motor vehicle that has been previously titled or registered, or both, that was incapable of operation or use on highways due to damage and that has been rebuilt to the original design of the vehicle by replacing major component parts with like make and model parts. Prior to being rebuilt, the vehicle may have been declared a total loss by an insurance company and branded salvage but does not extend to include unrepairable branded vehicles. On file with the House Transportation & Highway Safety Subcommittee.

⁶ s. 320.27(1)(c)4., F.S., defines a "motor vehicle auction" as any person offering motor vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers. Such person shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

company, in turn, charges a fee to the insurance company, for their services. Buyers at an auto auction must be licensed motor vehicle dealers,⁷ and may include salvage motor vehicle dealers⁸ who are defined in Florida law as, “any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.” In Florida, most buyers of rebuildable vehicles are auto dealers, or exporters. Buyers of unrebuildable vehicles are primarily automobile dismantlers and recyclers.

In Florida, a rebuildable designation is called a salvage title,⁹ and an unrebuildable designation is called a COD.¹⁰ Before a total loss vehicle may be acquired by a salvage motor vehicle dealer, the vehicle owner or insurance company must apply for a salvage title or a COD. Since 1989, Florida has utilized a percentage-based threshold to determine whether a total loss vehicle receives a salvage title or a COD.¹¹ When applying for a salvage title or COD, the insurance company must provide DHSMV with an estimate of the costs of repairing the physical and mechanical damage.¹² If the estimated costs of repairing the vehicle are equal to 80 percent or more of the current retail cost of the vehicle, as established in any official used car or used mobile home guide, DHSMV is required to declare the vehicle unrebuildable and print a COD.¹³ The specific reason why that particular percentage threshold was originally established is unknown.

During the last five years, Florida has issued 171,742 salvage titles, compared to 822,778 CODs, or approximately 130,000 more CODs than salvage titles issued annually.¹⁴ There is a \$2 fee for each salvage title, and a \$3 fee for each COD, both of which are deposited into GR.¹⁵

Rebuilt Inspections

Before a salvage motor vehicle dealer resells a salvage motor vehicle, the salvage motor vehicle must go through a physical rebuilt inspection conducted by DHSMV.¹⁶ The purpose of the rebuilt inspection is to assure the identity of the vehicle and all major component parts which have been repaired or replaced.¹⁷ After the rebuilt inspection, DHSMV affixes a decal to the vehicle that identifies the vehicle as a rebuilt vehicle.¹⁸ Upon issuance of a certificate of title for the vehicle, DHSMV is required to stamp, in a conspicuous place on the title, words stating the nature of the proposed use of the vehicle or stating that the vehicle has been rebuilt.¹⁹

There is a \$40 fee for the initial rebuilt inspection, which is deposited into GR. If a subsequent inspection is required, a \$20 fee must be deposited into the HSOTF.²⁰

⁷ s. 320.27(1)(c), F.S., defines “motor vehicle dealer” as person engaged in the business of buying, selling, or dealing in motor vehicles or 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). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business.

⁸ s. 320.27(1)(c)5., F.S.

⁹ s. 319.30(1)(t), F.S.

¹⁰ s. 319.30(1)(a), F.S.

¹¹ s. 17, chapter 89-333, Laws of Florida.

¹² s. 319.30(3)(b), F.S.

¹³ Id.

¹⁴ Information received from the Department of Highway Safety & Motor Vehicles (9/19/2013), on file with the Transportation & Highway Safety Subcommittee.

¹⁵ ss. 319.32(1), 713.78(11)(b), and 713.785(7)(b), F.S.

¹⁶ s. 319.14(1)(b), F.S.

¹⁷ Id.

¹⁸ Id.

¹⁹ s. 319.23(2), F.S.

²⁰ Regarding the \$20 re-inspection fee, according to DHSMV, “[t]he owner can continue to pay the fee until the vehicle passes inspection. Multiple (3 or more) inspections are exceedingly rare.” Email on file with the Transportation & Highway Safety Subcommittee.

Other States

A federal law governing the salvage title process uniformly across the country does not exist. The result is considerable variation in state salvage title laws, processes, and nomenclature.²¹ The methods used to determine whether or not a vehicle is unrebuildable also vary, but similar to total loss methods, they tend to be damage or theft driven. Such methods tend to be based on “non-repairable” criteria and include a narrative definition, or a value-based criteria and include a specific damage-to-value threshold.

According to a review of other states’ motor vehicle titling regulations, approximately 27 states do not provide a specific level of damage that would prevent the most heavily damaged vehicles from being rebuilt and retitled, 19 states provide some form of a narrative definition describing a level of damage, and three states, including Florida, provide a specific percentage-based threshold that requires a vehicle to be declared unrebuildable if the estimate of damages is equal to or greater than the respective percentage threshold. Florida,²² Michigan,²³ and Virginia²⁴ each provide a specific percentage-based threshold to determine whether a salvage motor vehicle is designated as unrebuildable. Florida sets its damage threshold at 80 percent, Michigan is 91 percent, and Virginia is 90 percent. The one remaining state, Connecticut, provides a narrative definition, but provides that if a specific number of major component parts are damaged, the vehicle may not be driven.²⁵

Proposed Changes

Salvage

The bill defines a “late model vehicle” to mean an automobile which is 7 years old or newer. The bill raises the 80 percent repair-to-value COD threshold to 90 percent, and limits its application to late model vehicles with a value of at least \$7,500 just prior to sustaining the damage resulting in total loss.

The bill allows for the use of an official used motor vehicle guide or valuation service when determining the value of a total loss vehicle in salvage designations. The bill creates a new valuation standard where all other vehicles which are a total loss would be designated unrebuildable by DHSMV and issued a COD if the vehicle:

- Is damaged, wrecked or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal; or
- Comes into this state under a title or other ownership that indicates that the vehicle is non-repairable, junked, or for parts or dismantling only.

The bill requires DHSMV, upon issuance of a certificate of title for a rebuilt vehicle, to provide additional wording when it stamps a rebuilt certificate of title, indicating the vehicle may have been previously declared a total loss vehicle due to damage.

The bill also requires DHSMV to provide on or before October 31, 2015, a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding certificates of title for rebuilt vehicles. The summary report must include:

²¹ National Conference of Commissioners on Uniform State Laws website at <http://www.uniformlaws.org/ActSummary.aspx?title=Certificate%20of%20Title%20Act> (Last viewed 1/17/14).

²² s. 319.30(3)(b), F.S.

²³ s. 257.217C(2)(b)(i), M.V.C.

²⁴ s. 46.2-1600, V.S.C.

²⁵ s. 14-16C(2)(A), C.S., requires the insurer to stamp the word "SALVAGE" in one-inch-high letters not to exceed three inches in length on the certificate of title except that if the insurance company determines that such motor vehicle has ten or more major component parts which are damaged beyond repair and must be replaced, the insurer taking possession of such motor vehicle shall stamp the words "SALVAGE PARTS ONLY" in one-inch-high letters not to exceed three inches in length on the motor vehicle's certificate of title and shall return such certificate to such person, firm or corporation.

- DHSMV’s legislative recommendations to address any needed improvements to the process used to issue certificates of title for rebuilt motor vehicles;
- DHSMV’s legislative recommendations to correct any problems with the process used to issue certificates of title for rebuilt motor vehicles;
- DHSMV’s legislative recommendations as to the need for, and appropriate process for, inspecting the roadworthiness of rebuilt motor vehicles based on relevant data; and
- Data on crashes caused by vehicle defects involving rebuilt motor vehicles.

The changes in the bill will result in more salvage titles being issued than under current law, thus allowing for the potential of those vehicles to be rebuilt, sold and permitted back on the roads.

As a salvage motor vehicle that can ultimately be sold to repair and drive is generally valued higher than a salvage motor vehicle that must be destroyed and only used for parts, this could result in a reduction in the overall number of vehicles that are given a COD and required to be destroyed.

Airbags

The bill revises and strengthens current airbag regulations. Specifically, the bill defines an “airbag” as a motor vehicle inflatable occupant restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring, that is designed in accordance with federal safety regulations for a given make, model, and year of the vehicle.

The bill defines a “counterfeit airbag” as an airbag displaying a mark identical or similar to the genuine mark of a motor vehicle manufacturer without authorization from said manufacturer.

The bill expands the definition of “fake airbag” to include counterfeit or nonfunctioning airbags. A “nonfunctional airbag” is defined as a replacement airbag that:

- Was previously deployed or damaged;
- Has an electric fault that is detected by the vehicle airbag diagnostic system after the installation procedure is completed; or
- Includes any part or object, including, but not limited to a counterfeit or repaired airbag cover, installed in a motor vehicle to mislead the owner or operator of such motor vehicle into believing that a functional airbag has been installed.

The bill adds the acts of importing, manufacturing, offering for sale, and reinstalling to the current prohibitions of purchasing, selling, or installing fake airbags or junk-filled airbag compartments. Any person who violates this subsection commits a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because of a lack of data, the private sector impacts cannot be accurately quantified. Allowing a greater number of salvage motor vehicles to be issued a salvage title and repaired so that they may be resold as rebuilt vehicles and returned to the road, will likely have a positive fiscal impact on insurance companies, the insurance salvage automobile auction industry, auto dealers and exporters, and to individual motorists who may purchase such vehicles. Reducing the number of vehicles that are issued a COD and required to be destroyed will likely have a negative fiscal impact on the automotive recycling and parts industry.

D. FISCAL COMMENTS:

Salvage

The bill revises the process for applying for a salvage title or COD. A salvage title indicates that the vehicle is repairable and a COD indicates that the vehicle is not repairable. There is a \$2 fee for each salvage title and a \$3 fee for each COD, both of which are deposited into GR.

Before a salvage motor vehicle dealer resells a salvage motor vehicle or its parts, the salvage motor vehicle must go through a physical rebuilt inspection conducted by DHSMV. The purpose of the rebuilt inspection is to assure the identity of the vehicle and all major component parts which have been repaired or replaced. After the rebuilt inspection, DHSMV affixes a decal to the vehicle that identifies the vehicle as a rebuilt vehicle. There is a \$40 fee for the initial rebuilt inspection, which is deposited into GR. If a subsequent inspection is required, there is a \$20 fee, which is deposited into the HSOTF.

The effect of the proposed change is that a greater number of salvage vehicles will be able to be repaired to the extent that they may be resold as rebuilt vehicles and returned to the road. As a result, the amount of fees collected from the issuance of certificates of destruction may decrease, but the amount of fees collected from the issuance of salvage certificates of title may increase.

Additionally, because rebuilt vehicles must go through a rebuilt inspection process by DHSMV, the amount collected from rebuilt inspection fees may increase. As mentioned, the \$40 initial rebuilt inspection fee is deposited into GR and the \$20 re-inspection fee is deposited in the HSOTF. The Revenue Estimating Conference (REC) met on March 7, 2014, and projected an insignificant positive fiscal impact on both GR and on the HSOTF.

The 90 percent threshold for late model vehicles provision was added after the REC projected the fiscal impact of the bill. This provision appears, however, to simply lessen the projected increase in vehicles issued salvage titles. It is expected the bill will have an insignificant positive fiscal impact on both GR and on the HSOTF.

Requiring DHSMV to provide additional wording when it stamps a rebuilt certificate of title, may require programming, and thus, create a negative fiscal impact to the department. It is unknown how many rebuilt titles will be issued prospectively. The fiscal impact to DHSMV is unknown.

Requiring DHSMV to provide a summary report regarding certificates of title for rebuilt vehicles to the Governor, President of the Senate, and the Speaker of the House of Representatives, including relevant data on crashes caused by vehicle defects involving rebuilt motor vehicles, may have a negative impact to the department.

Airbags

Airbag violations are a second degree felony punishable by a fine of up to \$10,000²⁶ and prison sentence of up to 15 years.²⁷ Fines are deposited by the clerk of the court in the fine and forfeiture fund for use by the clerk in performing court-related functions. If adjudication is withheld, the clerk is required to remit the fines to the Department of Revenue for deposit into General Revenue.²⁸ Creating additional airbag prohibitions may increase the number of airbag violations, and thus, increase the number of fines that are remitted to the state and counties. Private sector entities found guilty of the newly prohibited activities such as importing, manufacturing, offering for sale, and reinstalling fake airbags or junk-filled airbag compartments, and the Department of Correction's prison beds, may be negatively impacted. However, this provision may improve airbag safety, and thus, provide a savings to the public by reducing litigation, medical, and insurance costs related to such airbags that are ineffective.

²⁶ s. 775.083, F.S.

²⁷ s. 775.082, F.S.

²⁸ s. 775.083(1)(g) flush left, F.S.