

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2698

SPONSOR: Banking and Insurance Committee, Transportation Committee and Senator Atwater

SUBJECT: Auto Fraud Prevention Fraud Act of 2004

DATE: April 13, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, 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 to the Florida purchaser. Even though the purchaser intends to buy an undamaged car, he or she receives an unsafe, low-quality vehicle that may be unfit to drive. Since Florida cannot control the titling laws in other states, what can be done at the state level to remedy this problem is limited. However, Florida's titling laws can be strengthened to minimize the ability of fraudulent sellers to "wash" their titles here and sell to unsuspecting consumers in other states.

The CS/CS makes several changes to Florida law in an attempt to strengthen our titling laws by providing for the following:

- Creates the "Auto Fraud Prevention Act of 2004;"
- 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 "insurance recovery vehicle," "salvage recovery vehicle," and "salvage company" for the purposes of the specified title provisions under ch. 319, F.S.;
- Requires if a certificate of title has not been issued for a used motor vehicle in this state, the owner of that used vehicle must provide a sworn affidavit the motor vehicle has never been declared a total loss, and the vehicle was not purchased from a motor vehicle salvage yard or insurance company. Provides an exemption. Provides for criminal sanctions;

- Clarifies current law by providing uninsured vehicles worth less than \$1,500, and in undamaged condition, are not automatically declared a total loss when damage is estimated at 80 percent of the value of the vehicle;
- Authorizes an insurer paying a total loss claim for a vehicle to obtain a certificate of destruction for the vehicle or, when a stolen vehicle is recovered in substantially intact condition, the insurer must obtain a certificate of title in its own name before the vehicle may be sold; and
- Requires the Department of Highway Safety and Motor Vehicles 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 CS/CS amends sections 319.14, 319.23 and 319.30 of the Florida Statutes.

This CS/CS creates an unspecified section of the Florida Statutes.

II. Present Situation:

Title Certificates

Chapter 319, F.S., provides procedures for the registration and licensing of motor vehicles and mobile homes in Florida. Under s. 319.14, F.S., a person shall not offer for sale or exchange a rebuilt vehicle until the Department of Highway Safety and Motor Vehicles (DHSMV) has stamped the title certificate stating the vehicle has been rebuilt, unless proper application for a certificate of title for such vehicle has been made to the DHSMV and the DHSMV has physically examined the car to assure the identity of the vehicle and all parts which have been repaired or rebuilt. Thereafter, the DHSMV must place a decal on the vehicle, showing the vehicle has been rebuilt. Also, no person shall knowingly offer for sale or exchange any vehicle that has been licensed or used as a taxicab, police vehicle, or short-term lease vehicle repurchased by a manufacturer pursuant to a settlement, until the DHSMV has stamped on the certificate of title of the vehicle, the words stating the nature of the previous use of the vehicle to reflect the vehicle is a nonconforming vehicle. A person who intends to sell any vehicle referred in these provisions and who advertises the vehicle, must state the vehicle has been previously titled or used as a taxicab, police vehicle, short term vehicle, or the vehicle (or mobile home) has been rebuilt. A person who violates this provision is guilty of a second degree misdemeanor.

When a certificate of title is branded to reflect a condition of prior use of the titled vehicle, the brand must be noted on the registration certificate of the vehicle and such brand must be carried forward on all subsequent certificates of title and registration certificates.¹ Section 319.314, F.S., also provides for prohibited activities and penalties.

Currently, there are no provisions in s. 319.314, F.S., pertaining to insurance recovery vehicles or salvage recovery vehicles. There is also no requirement that, if a certificate of title has not been issued for a used motor vehicle in this state, then the owner of that vehicle must provide a

¹ Section 319.314(4), F.S.

sworn affidavit the motor vehicle has never been declared a total loss, and the vehicle was not purchased from a motor vehicle salvage yard or insurance company.

According to representatives with the DHSMV, some used motor vehicles purchased by Florida residents, particularly from outside of Florida via the internet or another 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 acquiring a vehicle of low quality, of questionable safety, or unfit to be titled in Florida.

There are presently different laws in other states concerning the stamping or 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 subsequently sold in Florida, and a clean Florida title can be issued for the vehicle, despite its rebuilt status, based upon the clean title obtained in the other state. This situation can occur even though the extent of the damage to the vehicle is so great it would not otherwise be eligible for a clean title in Florida. Thus, the consumer ends up owning a vehicle 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, according to DHSMV officials.

III. Effect of Proposed Changes:

Section 1 provides the act be known by the popular name, the “Auto Fraud Prevention Act of 2004.”

Section 2 amends s. 319.14, F.S., pertaining to the sale of motor vehicles registered or used as taxicabs, police vehicles, or rebuilt vehicles, to provide for the stamping or “branding” of titles for out-of-state vehicles that have a insurance company or salvage company in the chain of title, with specified exceptions. 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. The CS/CS provides three definitions:

- an “insurance recovery vehicle” means a motor vehicle for which the out-of-state documentation used to obtain Florida title indicates the owner is an insurance company or contains a reassignment to or from an insurance company, except for a stolen motor vehicle recovered in substantially intact condition and is readily resalable without extensive repairs to or replacement of the frame or engine.

- a “salvage recovery vehicle” means a motor vehicle for which the out-of-state documentation used to obtain Florida title indicates the owner is a salvage company or contains a reassignment to or from a salvage auction.
- a “salvage company” means a person not licensed in Florida who would otherwise be required to be licensed as a salvage motor vehicle dealer if operating in Florida.

The CS/CS provides the requirements to brand the certificate of title under s. 319.314, F.S., do not apply to reassignment transactions on motor vehicles that have been reassigned to companies in other states which would otherwise be licensed as motor vehicle auctions in Florida, when such reassignment is required by laws or rules of other states. In other words, this provision allows transactions in which an auction house is in the chain of title to be exempt from the branding of the certificate of title because the auction house does not own the vehicle, but simply reassigns the vehicle as a part of its daily auctioning business.

Section 3 amends s. 319.23, F.S., applying to a certificate of title, to require an owner, if a certificate of title has not been issued for a used motor vehicle in Florida, to submit a sworn affidavit the motor vehicle has never been declared a total loss and the vehicle was not purchased from a salvage yard or insurance company. However, the CS/CS exempts motor vehicle dealers, and persons selling used motor vehicles to dealers, from the requirements 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. A willful and deliberate violation of this paragraph or falsification of any document to avoid the requirements of this paragraph is punishable as a third-degree felony.

Section 4 amends s. 319.30, F.S., to provide an exception to the definition of when a vehicle is a “total loss.”² The CS/CS provides a total loss occurs when an uninsured vehicle is wrecked and the cost to repair it would be equal to 80 percent or more of the cost to replace the vehicle with one of like kind, except when a vehicle is worth less than \$1,500 retail in undamaged condition. Also under this measure, an insurance company paying a total loss claim for a vehicle is authorized to obtain a certificate of destruction for the vehicle or, when a stolen vehicle is recovered substantially intact and is readily resalable, the insurance company must obtain a certificate of title in its own name before the vehicle may be sold or transferred.

Section 5 this provision creates an untitled section of law to provide DHSMV is required to create a public awareness program regarding the risks associated with buying used motor vehicles previously titled in other states, 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.

² A vehicle is defined as a “total loss” when an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of a like kind and quality or when the insurer pays the owner upon the theft of the vehicle or mobile home; or when an uninsured motor vehicle or mobile home is wrecked or damaged and the cost, at the time of the loss, of repairing the vehicle is 80 percent or more of the cost to the owner of replacing the wrecked or damaged motor vehicle or mobile home with one of like kind and quality. (See s. 319.30, F.S.)

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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

The CS/CS requires the owner of a motor vehicle not titled in Florida who applies for a Florida title to provide a sworn affidavit stating the motor vehicle has never been declared a total loss, and the vehicle was not purchased from a motor vehicle salvage yard or insurance company. However, the CS/CS exempts motor vehicle dealers, and persons selling used motor vehicles to dealers, from the requirements 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. This CS/CS would likely place additional burdens on owners involved in vehicle sales, distributors and others who wish to apply for a vehicle title in Florida, unless exempted as stated above.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
