

SUBJECT: State licensing of motor vehicle title service companies

COMMITTEE: Transportation — committee substitute recommended

VOTE: 7 ayes — Phillips, Darby, Y. Davis, Fletcher, Harper-Brown, McClendon, Pickett

0 nays

4 absent — Bonnen, Lavender, Martinez, Rodriguez

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: For — Nicole Czajkoski, Montgomery County District Attorney, Montgomery County Tax Office, Harris County Tax Office; Donald McClure, Texas Towing and Storage; (*Registered, but did not testify:* Jeff Huffman, Texas Credit Union League; Jeanette Rash, Texas Towing and Storage Association; Misty Stansel, Montgomery County Tax Office)

Against — None

BACKGROUND: Transportation Code, ch. 520, subch. E provides for the licensing of motor vehicle title services operating in counties with a population of more than 500,000 or in which the commissioners court adopted the authorized licensing provisions. The law establishes procedures for counties to license applicants and to deny, suspend, renew, and revoke licenses; sets forth requirements for maintaining records; and creates a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for an offense. The attorney general or a county district attorney also may take legal action against an offending party.

Franchised and independent motor vehicle dealers and licensed vehicle leasing services and facilitators are exempt from the licensing requirements.

DIGEST: CSSB 1035 would expand the permitting of motor vehicle title service companies by counties and would create a state licensing requirement to be administered by the Texas Department of Motor Vehicles (TxDMV).

State licensing requirement. CSSB 1035 would add Transportation Code, ch. 520, subch. F to prohibit a person from acting as a motor vehicle title service or service runner without a permit issued by a county, if applicable, and a license issued by TxDMV. Applicants for a motor vehicle service license would have to demonstrate that the subject location met specific criteria for an established and permanent place of business. Applicants also would have to demonstrate their intention to remain regularly and actively engaged in the permitted business at least for the duration of the license and that they would be available to the public and to TxDMV at the address of record during reasonable business hours. TxDMV would have to adopt rules to set the term of a license and to deny, suspend, revoke, or reinstate a license. The TxDMV board could issue a cease-and-desist order to a person in violation of laws or rules governing title services.

The bill also would establish requirements for license record content and retention practices for title services. Licensees would have to make required records available for inspection by certain entities. Applicants would have to prove that they possessed a surety bond of \$25,000. The bill would establish procedures for approving and administering surety bonds and would place liability limits on a surety.

TxDMV would have to adopt rules to establish fees for acquiring and renewing licenses for motor vehicle title services and runners. A fee for an original license could not be more than \$500, and a renewal license could not be more than \$200 each year. The department could charge additional fees for changes to licenses, duplicate licenses, and late renewals. Fees would be deposited into the State Highway Fund.

County permitting programs. The bill would allow any county to require a permit to operate as a motor vehicle title service or title service runner, and it would extend existing laws regulating title services to any county that required a permit for these activities. County-issued motor vehicle title licenses would be replaced by permits.

The bill would expand existing requirements for an application to include certain affirmations. Fees for applications could not exceed caps established in the bill and would have to be deposited into the county's general revenue fund for administering and enforcing laws on title services.

Implementation of licensing and permitting. The bill would add language to affirm the interest of the state in protecting the integrity of the submission of motor vehicle documents by permitting and regulation of titling services and runners and enforcing related laws to prevent crime, fraud, discrimination, and unfair practices. Laws upholding this interest would be liberally construed. The bill would preserve exemptions under current law and would add a state or federally chartered bank or credit union and a licensed auctioneer to the entities exempt from permitting and licensing requirements.

TxDMV and county tax assessor-collectors could obtain a person's photographic image for an official purpose. They would be granted all powers necessary or convenient to enforcing provisions on title services and runners, including conducting investigations and hearings, issuing subpoenas, assessing and collecting fees and costs, imposing civil penalties, and enforcing orders.

Penalties. The bill would expand penalties for violations of laws governing title services and runners. It would impose a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for operating as a title service without a license and a permit, if applicable, or for falsifying application materials used to obtain a license or permit. Otherwise, an offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). A person who violated a provision governing title services also would be subject to a civil penalty of up to \$10,000 for each violation. Funds from civil penalties would go to a county's general fund or the State Highway Fund, depending on the entity enforcing the violation.

Effective date. The bill would take effect September 1, 2011. TxDMV would have to adopt rules for the state licensing requirements by November 1, 2011. The bill would only apply to offenses committed after January 1, 2012.

SUPPORTERS
SAY:

CSSB 1035 would give Texas the necessary authority to stamp out illegal and fraudulent business activities in the motor vehicle titling services industry. By strengthening county regulation of title services and creating a statewide licensing framework, the bill would rein in increasingly widespread abuses that have resulted in lost motor vehicle sales tax revenue and financial injury to Texans.

Current law allows larger counties to regulate vehicle titling services, which are businesses that meet with customers, assemble information on a vehicle, and then process that paperwork with the appropriate county offices to release the title. Some bad actors, however, complete the paperwork from the customer, collect the estimated 6.25-percent motor vehicle sales tax, and then underpay taxes on the vehicle to the county assessor-collector. This practice illegally nets the title service the difference between the actual taxes owed and those paid to the county, and in so doing compromises the authenticity of the vehicle owner's title.

Some of these title service companies are fluid entities, changing addresses and shifting across county lines when their illicit business practices attract attention. Some of the larger counties that license title service companies under current law have found that many of the bad actors simply vacate the regulating jurisdiction and set up shop in a neighboring county. This patchwork regulation prevents successful regulation of bad actors among title service companies. Counties need expanded authority for regulating title service companies and, ultimately, a licensing program needs to be statewide.

CSSB 1035 would offer a firm but fair regulatory framework for auto title services. The bill would establish processes for application, licensing, and enforcement similar to other licensed activities in state law. It would set into law requirements for title service companies similar to those that currently govern motor vehicle dealers, who also process vehicle titles. The bill would not have a detrimental impact on good-faith actors, as these businesses would be in a good position to adhere to the additional requirements. In fact, the bill would benefit the many good-faith actors who currently compete with companies that bend and break the rules by creating a level playing field.

**OPPONENTS
SAY:**

CSSB 1035 could be detrimental for auto title service companies that operate in good faith in Texas. The maximum initial license fee of \$500 and renewal fee of \$200 would be an unfortunate expense for many smaller, reputable firms that are not part of the problem but who would have to adhere to the additional fees and paperwork all the same. Many title service businesses offer valuable services to customers who need assistance with title and other auto paperwork issues and are not equipped to work through their issues with counties directly.

The bill in some cases would create two layers of governmental requirements to navigate — businesses in counties that required permits would have to obtain a permit as well as a state license. This double layer of regulation could create a bureaucratic mess for smaller title service companies that conducted an honest business. Many honest title service companies could get caught up in the large net that the bill would cast to catch a few bad actors.

NOTES:

The fiscal note estimated that the bill would result in an indeterminate revenue gain to the State Highway Fund and cited an analysis by the Texas Association of Counties that the bill would have a neutral to slightly positive impact on most counties.

The House committee substitute to the Senate-passed version of the bill added state or federally chartered banks or credit unions and licensed auctioneers to the entities that were exempt from permitting requirements.