

SUBJECT: Criminalizing dealer sales of flood-damaged motor vehicles

COMMITTEE: Transportation — favorable, without amendment

VOTE: 8 ayes — Alexander, Y. Davis, Edwards, Hamric, Hill, Noriega, Pickett, Swinford

0 nays

1 absent — Hawley

WITNESSES: None

BACKGROUND: Business and Commerce Code, ch. 17, subchapter B prohibits deceptive advertising. Code of Criminal Procedure, ch. 59 provides for the forfeiture of contraband.

DIGEST: HB 115 would add sec. 17.13 to the Business and Commerce Code making it a crime for automobile dealers to knowingly sell without notice damaged motor vehicles that have been wholly or partially submerged in water.

Prior to closing sales, dealers would have to provide buyers with notices describing the damage and any repairs made. Notices could be separate documents or included within other documents, but would have to be conspicuous and printed in at least 10-point boldface type.

Failure to notify buyers, or providing false or misleading notices, would be a class A misdemeanor punishable by up to one year in jail and/or a maximum fine of \$4,000. Buyers could void sales that violated the statute. They would be entitled to recover from sellers all money and other property given in connection with the sale.

The bill also would make unlawfully sold flood-damaged vehicles subject to criminal forfeiture as contraband under art. 59.01(2) of the Code of Criminal Procedure. Vehicles forfeited in connection with the offense created by the bill could not be sold unless buyers were notified of the prior flood damage.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

HB 115 would put the responsibility for disclosing water damage squarely where it belongs – on automobile dealers who are most likely to possess and sell, or acquire and resell, such vehicles. They also would have to disclose any repairs so that customers could evaluate vehicles fully. Because water damage, especially from flooding or submersion, can be among the most extensive and insidious a vehicle sustains, even the most careful car buyers may have difficulty detecting it.

The notice requirements are reasonable, and the criminal penalties are justified. Intentionally putting people on public roads in vehicles that could endanger their lives and jeopardize public safety is unconscionable and should be a crime.

**OPPONENTS
SAY:**

Selling flood-damaged vehicles should not be a crime punishable by incarceration. Our jails already are too crowded. Violators should be punished with stiffer civil penalties and sanctions, such as dealer license suspension or revocation or closure of their businesses.

**OTHER
OPPONENTS
SAY:**

Flood-damaged vehicles are dangerous regardless of who sells them. Penalties for such sales should not be limited to automobile dealers but also should apply to private individuals, who might be more likely than dealers to conceal damage.

The bill also should broaden the types of covered damage to include mud, silt, sand and other fluids, and require more specifics about all damages and repairs.