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BILL ANALYSIS

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House Bill 5364 (Substitute H-5 as passed by the House)

Sponsor: Representative Ken Daniels

House Committee: Transportation

Senate Committee: Transportation

Date Completed: 10-5-04

CONTENT

The bill would amend the Michigan Vehicle Code to do the following:

- **Require a person who sold a vehicle either to accompany the purchaser to a Secretary of State (SOS) branch office to ensure transfer of the title, or maintain a record of sale for at least three years, in order to avoid liability for any subsequent damages or violation of law resulting from the vehicle's use by the purchaser; and prescribe a civil fine for failure to do so.**
- **Prohibit a person from abandoning a vehicle in this State, and prescribe a civil fine for a violation.**
- **Reduce the time an owner has to remove a vehicle before it is considered abandoned.**
- **Prohibit a vehicle owner from contesting the reasonableness of towing and storage fees for an abandoned or removed vehicle, if the fees were established by contract with the local governmental unit or local law enforcement agency.**
- **Revise procedures for removing a vehicle.**
- **Allow the owner of a vehicle that was to be removed to pay a service fee to disconnect the vehicle from the tow truck and take possession of it.**
- **Require the SOS to include information about the proposed civil fines and sanctions in driver license renewal and registration mailings.**

Exemption from Liability

Under the Code, a motor vehicle owner who has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the properly endorsed certificate of title to the purchaser or transferee, is not liable for any damage or a violation of law that results subsequently from another person's use or ownership of the vehicle. Under the bill, the owner would not be liable only if he or she either accompanied the purchaser to an SOS branch office to assure that the title of the vehicle was transferred, or maintained a record of sale for at least three years. (The bill would define "record of sale" as either a photocopy of the reassigned title or a form or document that included the name, address, driver license number, and signature of the person to whom the vehicle was sold and the purchase price and date of sale.)

A person who did not accompany the purchaser to an SOS branch office or maintain a record of sale for at least three years would be responsible for a civil infraction and would have to be ordered to pay a civil fine of \$100. He or she also would be presumed to be the last titled owner and to be liable for towing fees and daily storage fees for an abandoned motor vehicle.

Abandoned Vehicle

The bill would prohibit a person from abandoning a vehicle in Michigan. Under the

The bill would take effect June 1, 2005. It is described below in further detail.

bill, the last titled owner of the vehicle would be presumed to be responsible for abandoning the vehicle unless he or she provided a record of sale. A person who violated this prohibition and failed to redeem the vehicle before its disposition would be responsible for a civil infraction and would have to be ordered to pay a civil fine of \$100.

Under the Code, if a vehicle has remained on public or private property for a period of time so that it appears to the police agency to be abandoned, the police agency must determine if the vehicle has been reported stolen and affix to the vehicle a written notice containing the date and time it was affixed and the date and time it may be taken into custody and stored at the owner's expense or scrapped if it is not removed.

The Code defines "abandoned vehicle" as a vehicle that has remained on public or private property for a period of 48 hours after a police agency or other governmental agency designated by the police agency has affixed the written notice to the vehicle. The bill would reduce the time period to 24 hours.

Contesting Towing & Storage Fees

If a vehicle is an abandoned vehicle, a police agency may have it taken into custody. A police agency that has a vehicle taken into custody or is notified of a vehicle that has been removed from private property must recheck to determine if the vehicle has been reported stolen, enter the vehicle as abandoned into the Law Enforcement Information Network (LEIN) within 24 hours, and, within seven days, send to the last titled owner and secured party notice that the vehicle is considered abandoned. The notice must include information specified by the Code, including the procedure to contest the reasonableness of the towing fees and daily storage fees. Under the bill, the notice would not have to contain the procedure if the towing and daily storage fees were established by contract with the local governmental unit or local law enforcement agency. In that situation, the owner could not contest the reasonableness of the fees.

(The Code's definition of "secured party" includes a person in whose favor a security interest is created under a security agreement (e.g., an auto finance loan).)

Abandoned Scrap Vehicle

Under the Code, a vehicle is considered an "abandoned scrap vehicle" if it is on public or private property; is at least seven years old; is apparently inoperable or is damaged extensively, to the extent that the cost of making the vehicle operational and safe would exceed the vehicle's fair market value; and is not removed within 48 hours after the police agency has affixed the written notice to the vehicle. The bill would reduce the time period to 24 hours.

A police agency may have an unregistered scrap vehicle (i.e., a scrap vehicle that currently is not registered in Michigan and does not display current-year registration plates from another state) taken into custody. The bill specifies that the police agency could have the vehicle taken into custody immediately.

The Code allows a police agency to have a registered abandoned scrap vehicle taken into custody. Within seven days, the police agency must send to the last titled owner and secured party a notice that the vehicle has been deemed abandoned. The notice must include the procedure to contest the reasonableness of the towing and daily storage fees. Under the bill, the notice would not have to include the procedure if the towing and storage fees were established by contract with the local governmental unit or local law enforcement agency. In that situation, the last titled owner of a registered abandoned scrap vehicle could not request a hearing to contest the reasonableness of the fees.

Currently, if the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle. The bill specifies that the owner would have to pay the accrued towing fees and storage fees. Under the Code, if the owner does not redeem the vehicle or request a hearing within 20 days after receiving the notice that it is considered abandoned, the secured party may obtain the vehicle's release by paying the fees to the custodian. The bill specifies that the fees would have to be paid within seven days.

Vehicle Removal from Private Property

Currently, when a vehicle is removed from private property at the direction of a person other than the vehicle's registered owner or a police agency, the custodian of the vehicle immediately must notify the policy agency from whose jurisdiction the vehicle was towed and supply the necessary information for the police agency to enter the vehicle into the LEIN. Under the bill, a vehicle could be removed from private property only at the direction of the last titled owner or a police agency, or upon written instruction of the owner or person in charge of the private property upon which the vehicle was located. The custodian would have to notify the police agency within 60 minutes after completing the towing or removal of the vehicle, rather than immediately.

Under the bill, if the owner or other person who was legally entitled to possess the vehicle arrived at the location of the vehicle before the actual towing or removal, and paid a reasonable service fee, the vehicle would have to be disconnected from the tow truck, and the owner or other person could take possession of the vehicle and remove it without interference. A receipt would have to be provided for payment of the service fee.

Upon receiving notification from the custodian as described above, a police agency immediately must determine if the vehicle has been reported stolen and enter the vehicle into the LEIN. Under the bill, the police agency would have to enter the vehicle into the LEIN within 24 hours after receiving the notification.

Vehicle Removal in the Public Interest

The Code authorizes a police agency or governmental agency designated by the police agency to provide for the immediate removal of a vehicle from public or private property to a place of safekeeping at the expense of the last titled owner, under any of the following circumstances:

- The vehicle is in such a condition that its continued operation upon the highway would constitute an immediate hazard to the public.
- The vehicle is parked or standing upon the highway in such a manner as to

create an immediate public hazard or an obstruction of traffic.

- The vehicle must be seized to preserve evidence of a crime, or there is reasonable cause to believe that the vehicle was used in the commission of a crime.
- Removal is necessary in the interest of public safety because of fire, flood, storm, snow, natural or man-made disaster, or other emergency.
- The vehicle is hampering the use of private property by the owner or person in charge of that property, or is parked in a manner that impedes the movement of another vehicle.
- The vehicle is illegally stopped, standing, or parked in a space designated as parking for persons with disabilities.
- The vehicle is located in a clearly identified access aisle or lane immediately adjacent to a disabled parking space.
- The vehicle is interfering with the use of a ramp or a curb-cut by persons with disabilities.

Under the bill, the vehicle owner or other legally entitled person could take possession of the vehicle before the actual towing or removal upon payment of a reasonable service fee.

Under the Code, a police agency that authorizes a vehicle's removal must send a notice that the vehicle has been removed to the last titled owner and secured party, if the vehicle has not been redeemed within 10 days. If the police agency notifies the vehicle's owner or operator of the removal and the vehicle's location within 24 hours after the removal, and if the vehicle has not been redeemed within 30 days and upon complaint from the towing service, the police agency must send the notice within 30 days after the vehicle's removal. The notice must contain the procedure to contest the reasonableness of the towing and daily storage fees. Under the bill, the notice would not have to include the procedure if the fees were established by contract with the local governmental unit or local law enforcement agency. In that situation, the owner could not request a hearing to contest the reasonableness of the fees.

Under the Code, the notice also must include a warning that the failure to redeem the vehicle or to request a hearing within 20

days after the date of the notice may result in the sale of the vehicle and the termination of all of the owner's and the secured party's rights to the vehicle or the proceeds of the sale. If the owner does not redeem the vehicle or request a hearing within 20 days, the secured party may obtain the vehicle's release by paying the accrued charges to the custodian of the vehicle before the date of the sale. The bill specifies that the accrued charges would have to be paid within seven days.

Petition for Hearing

Under the Code, upon the filing of a petition to contest the fact that a vehicle is considered abandoned or the reasonableness of fees, the court must schedule a hearing within 30 days for the purpose of determining whether the police agency acted properly, and notify the owner and the police agency of the time and place of the hearing. Under the bill, the court also would have to notify the towing service and the custodian of the vehicle. The court could not make a finding that the towing and daily storage fees were unreasonable if the fees were established by contract with the local governmental unit or local law enforcement agency.

Public Sale

A public sale for a vehicle that has been deemed abandoned or removed must be under the control of the police agency or its agent. It must be open to the public and consist of open auction bidding or bidding by sealed bids. If sealed bids are received, the person submitting the bid must receive a receipt from the police agency or its agent. Under the bill, the sale would have to be under the control of the police agency or its agent, or the custodian of the vehicle or the custodian's designee.

The Code requires the money received from the sale to be applied in a specified order of priority. The money first must be applied to towing and storage fees. Under the bill, the actual costs of providing public notice of the sale would be included in the first priority.

If there are no bidders on the vehicle, the police agency may either turn the vehicle over to the towing firm to satisfy charges against the vehicle, or obtain title to the vehicle for the police agency or the unit of

government governing the location from which the vehicle was towed. Under the bill, if the police agency turned the vehicle over to the towing firm and the value of the vehicle did not satisfy the towing fees and accrued daily storage fees, the custodian of the vehicle could collect the balance of the unpaid fees from the last titled owner. In an action to collect unpaid charges remaining after the vehicle's disposition, the towing service or custodian, or both, could recover its actual costs, including collection costs, from the last titled owner. In no event could a contract between a police agency or its local unit of government and a towing company include any language in contravention of this provision.

Upon disposition of a vehicle, the police agency could issue a citation for abandoning a vehicle to the vehicle's last titled owner.

Exemptions

Under the bill, sections of the Code related to abandoning a vehicle, taking a registered abandoned scrap vehicle into custody, and removing a vehicle from private property, would not apply to a vehicle that was owned by the same person who owned the private real property on which the vehicle was located, and would not prohibit or preempt a local unit of government from regulating the number and placement of vehicles on private property.

Required Notice

Under the bill, before authorizing the towing or removal of a vehicle from private real property without the consent of the owner or other person who legally was entitled to possess the vehicle, an owner or lessor of the property would have to post a notice that met all of the following conditions:

- The notice was prominently displayed at a point of entry for vehicular access to the real property. If the property lacked curbs or access barriers, at least one notice would have to be posted for each 100 feet of road frontage.
- The notice clearly indicated in letters at least two inches high on a contrasting background that unauthorized vehicles would be towed away at the owner's expense.
- The notice provided the name and telephone number of the towing service

responsible for towing or removing vehicles from that property.

- The notice was permanently installed with the bottom of the notice located at least four feet from the ground and was continuously maintained on the property for at least 24 hours before a vehicle was towed or removed.

The notice requirements would not apply to real property that was appurtenant to and obviously part of a single- or dual-family residence; or in an instance when notice personally was given to the owner or other legally entitled person in control of a vehicle that the area where the vehicle was parked was reserved or otherwise unavailable to unauthorized vehicles and that the vehicle was subject to towing or removal from the property without the consent of the owner or other legally entitled person in control of the vehicle.

Secretary of State Mailings

For a period of one year, beginning on the bill's effective date, the SOS would have to insert into all mailings concerning driver license renewal and registration documents, notification of the civil fines and sanctions that could be imposed for violating the requirement to accompany the purchaser of a vehicle to an SOS branch office to ensure transfer of the title, or maintain a record of sale for at least three years; or for abandoning a vehicle.

MCL 257.240 et al.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Though the bill would amend procedures required for law enforcement agencies' handling of abandoned vehicles, these proposed changes would have a minimal fiscal impact on local and State law enforcement agencies. As of September 25, 2004, 12,936 abandoned vehicles were entered in the State's Law Enforcement Information Network.

The bill would result in additional costs to the Department of State by requiring the SOS to insert information in driver license and registration mailings. In FY 2002-03, there were 6,480,569 passenger vehicle registration transactions (not including

commercial, trailer, and motorcycle registrations), and 1,710,479 operator license transactions.

Fiscal Analyst: Bruce Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.