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BILL ANALYSIS



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House Bill 5181 (Substitute H-3 as passed by the House)
Sponsor: Representative Diana Farrington
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-4-18

CONTENT

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

- **Require a police agency that had received in custody an abandoned vehicle to include in its notification to the Secretary of State (SOS) the date the vehicle was entered into the Law Enforcement Information Network (LEIN), and that the information was entered within 24 hours after the vehicle was taken into custody.**
- **Permit a secured party to contest the reasonableness of towing fees and daily storage fees by requesting a hearing with a court and posting a bond of \$40 plus the amount of the accrued fees.**
- **Specify that a secured party could obtain the release of a vehicle by paying the custodian a \$40 fee plus the accrued fees charged, if the owner does not redeem a vehicle or request a hearing within 10 days, instead of 20.**
- **Require a court to, upon the filing of a petition for a hearing signed by a secured party, schedule a hearing and notify the owner of the abandoned vehicle, secured party, as applicable, towing agency or custodian, and police agency of the date and time of the hearing.**
- **Modify certain provisions pertaining to a court's findings after a hearing.**
- **Require the custodian of an abandoned vehicle to allow the owner or a secured party to inspect the vehicle, and allow the owner to retrieve personal property from the vehicle without paying a fee.**

The bill would take effect 90 days after its enactment.

LEIN Notification

The Code prohibits a person from abandoning a vehicle in Michigan, and specifies that a person who violates this prohibition and fails to redeem the vehicle before its disposition at a public sale is responsible for a civil infraction and must be ordered to pay a \$50 civil fine. If a vehicle is abandoned, the Code allows a police agency, or its designee to have a towing agency take the vehicle into custody. ("Abandoned vehicle" means vehicle that has remained on private property without the consent of the owner; or a vehicle that has remained on public property for at least 48 hours, or on a State trunk line highway under either of the following circumstances:

- If a valid registration plate is affixed to the vehicle, for a period of at least 18 hours.
- If a valid registration plate is not affixed to the vehicle.

The term also includes a vehicle, other than a late-model vehicle, to which all of the following apply: 1) an insurance company has not acquired ownership of the vehicle through payment of a claim; 2) the vehicle cannot be disposed of by a vehicle salvage pool operator, auction, or broker; and 3) the vehicle has remained in the custody of a vehicle salvage pool or broker site without the consent of the salvage pool operator or broker for at least 60 days.)

Before removing a vehicle from private property, a towing agency must provide reasonable notice to a police agency having jurisdiction over the vehicle that it was being removed. The bill would refer to notice, instead of *reasonable* notice.

Under the Code, a police agency that has received in custody an abandoned vehicle must, among other things, notify the SOS through LEIN that the vehicle has been taken into custody as abandoned. Each notification must contain certain information specified in the Code. In addition to the information a notification currently must contain, the bill would require each notification to contain the date the vehicle was being entered into LEIN, and whether the information was being entered within 24 hours after the vehicle was taken into custody.

Request For Hearing

Within seven days after receiving a notice that an abandoned vehicle had been taken into custody, the SOS must send to the last titled owner and secured party notice that the vehicle is considered abandoned, and containing certain information specified in the Code.

"Secured party" as used in the Vehicle Code that term as defined in the Uniform Commercial Code (UCC): one or more of the following: a) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding; b) a person that holds an agricultural lien; c) a consignor; d) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold; e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or f) a person that holds a security interest arising under various provisions of the UCC.

An owner may contest the fact that a vehicle is considered abandoned or the reasonableness of towing fees and daily storage fees by requesting a hearing and posting a bond of \$40 plus the amount of the accrued towing and storage fees. A request for a hearing must be made with the court that has jurisdiction over the case within 20 days after the date of the notice. If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying a fee of \$40 and the accrued towing and storage fees to the custodian of the vehicle.

If the owner does not redeem a vehicle or request a hearing within 20 days after the date of after the SOS sent a notice, a secured party may obtain the release of the vehicle by paying to the custodian of the vehicle a \$40 fee plus the accrued fees charged. Under the bill, an owner would have 10 days, instead of 20, to redeem a vehicle or request a hearing.

The bill also would allow a secured party to contest the reasonableness of the towing fees and daily storage fees, and request a hearing in the same manner and subject to the same requirements as the owner. If the owner and the secured party requested a hearing to contest the reasonableness of the towing fees and daily storage fees within 20 days after the date of a notice, the court would have to dismiss the secured party's petition and proceed with the owner's petition, unless the owner was in default on a contract or agreement with the secured party regarding the vehicle. If the owner were in default, the court would have to dismiss the owner's petition and proceed with the secured party's petition in the same manner. If a court found, after a hearing on the reasonableness of the towing and daily storage fees, that the

owner's or the secured party's challenge was frivolous, the court would have to award to the custodian costs, including reasonable attorney fees, against the owner or secured party.

Hearing

The Code requires a court, upon the filing a petition for a hearing, signed by the owner of the vehicle that has been taken into custody, to schedule a hearing within 30 days for the purpose of determining whether a police agency, towing agency or custodian, or private property owner acted properly. Under the bill, this also would apply upon the filing of a petition signed by a secured party regarding a vehicle that had been taken into custody.

The Code also requires a court to notify the owner, towing agency or custodian, and police agency, or if the vehicle was removed from private property, notify the private property owner, of the time and place of the hearing. Under the bill, if the petition were signed by a secured party, the court would have to notify the secured party, as applicable, of the time and place of the hearing.

A hearing would have to be conducted by a district court magistrate, if the court had appointed one. An appeal of the magistrate's decision would have to be heard by a district court judge.

Decision of the Court

The Code specifies that, after a hearing, a court must make a decision that includes one or more findings, including the following:

- A finding that a police agency complied with the procedures established for processing an abandoned vehicle or a vehicle is removed as abandoned, and an order providing a period of 20 days after the decision for the owner to redeem the vehicle, and if the owner does not redeem the vehicle within the 20-day period, the police agency may dispose of the vehicle.
- A finding that the towing fees and daily storage fees were unreasonable and issue an order directing the towing agency or custodian of the vehicle to provide the vehicle's last titled owner with an appropriate reduction or refund.
- A finding that the owner of real property did not comply with the Code's applicable towing notice provisions, and issue an order requiring the owner of the property to reimburse the vehicle's last titled owner for the accrued towing and storage charges.
- A finding that a towing agency did comply with the procedures established for the proper removal and reporting of an abandoned vehicle.
- A finding that a towing agency did not comply with the procedures established for the proper removal and reporting of a removed abandoned vehicle removed.

After making a finding that a towing agency did not comply with the proper removal and reporting procedures, a court must issue an order directing that the vehicle immediately be released to the owner, and that the towing agency is responsible for the accrued towing and storage charges. The court also must order any fee or bond posted by the owner to be returned him or her.

The bill would refer to an owner *or secured party*, as applicable. Also, it would delete the requirements that the court issue an order directing that the towing agency is responsible for the accrued towing and storage charges, and that the court order any fee or bond posted by the owner to be returned to the owner. Instead, the court would have to direct one of the following:

- If the owner or the secured party paid the accrued storage charges, that the towing agency reimburse the owner or the secured party, if applicable, for the charges accrued before a police agency entered the vehicle into LIEN.
- If the owner or the secured party, if applicable, had not paid the accrued towing and storage charges but had posted a fee or bond with the court, that the bond and storage charges accrued before a police agency entered the vehicle into LIEN be returned to the owner or the secured party, and that the remained of any fee posted with the court be paid to the custodian.

Under the Code, a court also could make a decision finding that a police agency did not comply with the procedure established for processing an abandoned vehicle or a vehicle removed as abandoned. After making the finding, the court must issue an order directing that the vehicle immediately be released to the owner, and that the police agency is responsible for the accrued towing and storage charges. The court also must order any fee or bond posted by the owner to be returned to him or her.

The bill, instead, would allow the court to make a finding that a police agency did not enter the vehicle as abandoned into LIEN within 24 hours after the vehicle was taken into custody. After making the finding, the court would have to issue an order directing that the vehicle immediately be released to the owner or secured party, if applicable, and directing one of the following:

- If the owner or the secured party paid the accrued storage charges, that the police agency reimburse the owner or the secured party, if applicable, for the storage charges accrued before the police agency entered the vehicle into LIEN.
- If the owner or the secured party had not paid the accrued storage charges but had posted a fee or bond with the court, that the police agency would have to pay directly to the owner or secured party the amount of the storage charges accrued before the police agency entered the vehicle into LIEN plus interest no later than 10 days after the date of the order.

The court would have to release in full the bond posted by the owner or secured party to the custodian after the court had received notice from the police agency that it had issued the required payment to the owner or secured party.

The bill also would allow a court to make a decision finding that the police agency improperly determined that the vehicle was abandoned. After making the finding, the court would have to issue an order directing that the vehicle immediately be released to the owner and directing the custodian to reimburse the owner for the accrued towing and storage charges, if the owner paid them. The court would have to order the police agency to reimburse the custodian for the charges paid to the owner. If the owner had not paid the charges, the court would have to order the police agency to pay them. The court would have to order the police agency to pay any other fees associated with recovering the vehicle, or to reimburse the owner for any other fees associated with recovering it paid by the owner. The court also would have to order any fee or bond posted by the owner to be returned to him or her.

MCL 257.252a et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill could cause minimal additional costs for a local police agency should the bill's provisions result in additional incidences of an agency being required to reimburse or assume the costs of abandoned vehicle storage charges, bonds, or court fees to the owner or secured party of that vehicle.

The bill would have no fiscal impact on State government.

Fiscal Analyst: Bruce Baker
Joe Carrasco

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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.