



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

RESTRICT VEHICLE SUBLEASING

**House Bill 5170 (Substitute H-2)
First Analysis (11-9-93)**

**Sponsor: Rep. Vincent J. Porreca
Committee: Business & Finance**

THE APPARENT PROBLEM:

There evidently have been several firms acting as sub-leasing agents for motor vehicles in this state, and whose practices have given rise to a number of complaints. In a typical scenario, such a firm locates cars or vans either by scanning classified ads for late-model vehicles for sale, or by advertising that it can help to ease problems for people falling behind in installment or lease payments on their vehicles. It also advertises vehicles to prospective clients who may have poor credit, suggesting that vehicles can be obtained regardless of credit rating. When a prospective sub-lessee has adequate cash to pay the agent's fee, which reportedly can be anywhere from \$800 to \$5,000, the agent, having first obtained his or her fee, brings together a vehicle owner or lessee who is in danger of having his or her vehicle repossessed and a person who wants an a late-model vehicle but has credit problems. The agent provides a contract for the two parties to sign, which typically requires the sub-lessee to make each monthly payment payable to the lienholder or lessor, but mail it to the sub-lessor for forwarding to the original lender or lessor. When all payments are made, the sub-lessee is to be able to own the vehicle, if the original owner had an installment agreement; if the original "owner" had been leasing the vehicle, the sub-lessee is to be able to purchase the vehicle on the same terms as the owner's option to purchase. The sub-lessor continues to hold title to the vehicle; neither insurance companies nor law enforcement authorities are necessarily informed of the change in possession.

The practice, while lucrative for sub-leasing agents, holds many dangers for the others involved. For one thing, leases and sales contracts generally prohibit the sorts of transfers being consummated, with the result that should the matter come to light, the sub-lessee forfeits both the vehicle and any payments that he or she has already made. The dangers are, if anything, even greater for the sub-lessors, who sign away their vehicles with no real guarantees that matters will go according to plan.

Often, sub-lessees simply disappear with the vehicles, or, if a vehicle can be located, it is in poor condition. Regardless of what happens to the vehicle, the original "owner" remains liable to the original lender or lessor for the required payments, which often are not forthcoming from the sub-lessee.

Owners who have sub-leased their vehicles and then lost them have brought their predicaments to police, who can do little to help them. The vehicle evidently cannot be treated as stolen, as the owner signed a contract transferring possession. And, as the sub-leasing agents are not themselves parties to sub-leasing contracts, lawsuits against them are not practical.

The attorney general has charged a number of sub-leasing companies with violations of the Michigan Vehicle Code's requirements on titling and registration of vehicles and licensing of vehicle brokers, and with violations of the Consumer Protection Act's proscriptions against fraudulent business practices. Action has evidently been successful with several companies that consented to a permanent injunction against further activity; however, at least one company has continued to contest the action, and the matter has yet to be resolved in court.

In the meantime, many have proposed that statute be amended to specifically prohibit a person from acting as an agent in the unauthorized sub-leasing of vehicles.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to restrict the subleasing of vehicles, aircraft, and watercraft. A person who was not a party to a lease, conditional sale contract, or security agreement on the vehicle could not arrange its sale, transfer, or lease to another person, unless the

person had first received written authorization from the lessor, lienholder, or secured creditor. This prohibition also would apply to people who would obtain an interest in such a vehicle.

Violation of the bill would be a felony punishable by imprisonment for up to two years, a fine of up to \$20,000, or both.

Someone who suffered a loss as a result of a violation of the bill could bring a civil action to recover three times the amount of actual damages or \$1,500, whichever was greater, plus reasonable attorney fees and costs. Someone who had suffered a loss also could seek other equitable relief in the form of an injunction or restraining order or any other equitable relief.

The bill could not be construed to limit the rights or duties a person might have under any other law.

MCL 750.417a

FISCAL IMPLICATIONS:

There is no fiscal information at present. (11-8-93)

ARGUMENTS:

For:

Subleasing scams prey on people with money problems, attracting people with promises of help with car payments or the acquisition of an almost-new car despite a poor credit rating. In the typical subleasing scam, an agent takes a large cash fee from someone who cannot obtain a car loan or lease through conventional means, and arranges for that person to sign a contract with a vehicle owner or lessee who is having problems keeping up with his or her payments; those payments are then to be assumed by the sub-lessee.

However, many sub-lessees fail to make the required payments, leaving owners still liable for the payments, only now without the vehicle. When sub-leased vehicles can be found, they often are in poor condition, sometimes abandoned after being used for illegal activities. (Sub-lessees are rumored to often include drug dealers, who fit the sub-lessee profile of someone with a substantial amount of cash but a poor credit rating.) Sub-leasing arrangements are risky for sub-lessees as well: since the vehicle transfers are generally prohibited by the terms of vehicle loans or leases, the sub-

lessee may make payments to the owner, only to find that he or she has no legal right to the vehicle.

The bill would remedy the situation by providing clear authority and encouragement for police and prosecutors to act to stop sub-leasing scam artists. Stiff felony penalties would help to deter potential violators (who until now have had some success at evading accountability), give police a specific statute to enforce, and ensure that prosecutors and others realize the offense is to be considered a serious one. Equitable relief in the form of treble damages will help to make injured parties whole, plus deter those who might view the scam as attractive money-making venture.

Against:

The bill could prevent legitimate agents and dealers from acting as go-betweens in getting an original lease paid off so that a new car can be purchased, or from brokering original leases between vehicle owners and prospective lessees.

Response:

It is unclear how the bill could affect legitimate operations. A dealer or broker merely would have to obtain permission from any existing lessor or lienholder before sub-leasing a vehicle.

POSITIONS:

The Department of State supports the bill. (11-4-93)

The Michigan Bankers Association supports the bill. (11-3-93)

The Michigan Automobile Dealers Association opposes the bill. (11-4-93)