



**House
Legislative
Analysis
Section**

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**VEHICLE DEALERS: NEW
DEFINITION AND PENALTIES**

**House Bill 5364 (Substitute H-2)
First Analysis (4-10-02)**

**Sponsor: Rep. Judson Gilbert II
Committee: Commerce**

THE APPARENT PROBLEM:

The Michigan Vehicle Code (MCL 500.248) requires that any person, partnership, or corporation engaged in the business of buying, selling, brokering, or dealing a vehicle (required to be titled under the act) be licensed to do so by the Department of State.

There is a common misconception among Michigan citizens that a person is allowed to buy and sell up to five motor vehicles per year without being required to obtain a dealer license. Indeed, the Federal Trade Commission's used motor vehicle trade regulations define a dealer to mean, with certain exceptions, "any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months" (16 C.F.R Part 455).

While there are certainly many individuals who unwittingly engage in the business of a motor vehicle dealer, there are also a great number of individuals who purposely purchase vehicles with the intent of selling those vehicles without a dealer license (a practice commonly known as 'curbstoning'). According to the Department of State, the Bureau of Automotive Regulation has identified approximately 80 individuals who are believed to be dealing vehicles without a license. Legislation has been introduced that would clarify the definition of a "dealer" and provide the secretary of state with the authority to assess certain administrative penalties for operating as a dealer without a license.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code to 1) provide a procedure by which the secretary of state could assess an administrative fine on a person acting as a vehicle dealer without a dealer license; and 2) rewrite the definition of the term "dealer" in the code to, among other things, make the term apply to a person engaged in the business of leasing vehicles. The bill would take effect on October 1, 2002.

Definition of "Dealer". The code currently defines a "dealer" as a person engaged in the business of buying, selling, brokering, or dealing in vehicles of a type required to be titled under the code. The bill would also apply the requirement to "leasing" vehicles. However, the term "dealer" would not apply to a person who negotiated the lease of a vehicle for a lease term of less than 120 days.

The bill would also specify that the term "dealer" would not include a bank, credit union, or savings and loan association; a person whose primary business was the financing of the purchase, sale, or lease of vehicles; an employee or agent of a dealer acting in the scope of his or her employment or agency; an entity wholly owned by one or more banks, credit unions, savings banks, or savings and loan associations; or an insurer, as defined in the Insurance Code of 1956 (MCL 500.106).

Under current law, a "dealer" includes a person engaged in the business of buying vehicles to sell vehicle parts or in the business of buying vehicles to process into scrap metal. The bill would include such a business only if it was engaged in buying five or more vehicles in a 12-month period, and would also include as a "dealer" a person engaged in the business of purchasing, selling, exchanging, brokering, or dealing in salvageable parts of five or more vehicles.

Under the bill, there would be a rebuttable presumption that a person who in a 12-month period buys, sells, exchanges, brokers, leases, or deals in five or more vehicles, or buys, sells, exchanges, brokers, or deals in salvageable parts for five or more vehicles, or who buys five or more vehicles to sell vehicle parts to process into scrap metal, is engaged in business as a dealer.

Administrative Fines. Under the bill, when the secretary of state determined that a person had acted as a dealer without a dealer license, he or she could issue a verbal or written warning or could assess an

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administrative fine of not more than \$5,000 for a first violation and of not more than \$7,500 for each subsequent violation occurring within seven years of a prior violation. Along with the fine assessment, the secretary of state would have to provide a notice describing the alleged violation and the date it occurred; the fine established for the violation; a notification that the fine, if not paid, could be referred to the Department of Treasury; and a statement that the person could request an informal conference, accompanied by simple instructions on how to request or waive the informal conference. The fines collected would go into a separate fund to be used first to defray the related administrative expenses of the secretary of state.

If the person being assessed submitted a properly completed application and appropriate fee for a dealer license within 20 days after the fine was assessed, and if the secretary of state awarded the person a dealer license within 45 days of receiving the application and fee, the fine would be reduced by 50 percent. Payment of an administrative fine would not constitute an admission of responsibility or guilt. Payment of a fine would not prevent the secretary of state from charging a violation described in the assessment of the fine in a subsequent or concurrent contested case proceeding conducted by the secretary of state under the Administrative Procedures Act.

The person being assessed could request an informal conference or waive it and instead request an administrative hearing. Either request would have to be in writing and would have to be made within 20 days after receipt of the written notice of assessment and would have to contain the reasons for the request. If a request failed to meet the conditions, it would be denied and the person would have 14 days to submit a valid request. An informal conference would have to be conducted within 45 days after receipt of a valid request. The secretary of state would have to provide the alleged violator written notice by first-class mail at least five days before the conference. The notice would have to state that the alleged violator could be represented by an attorney at the informal conference. After the conference, the secretary of state could affirm, modify, or dismiss the assessment based on whether there was reason to believe the alleged violation in fact occurred; the severity of the violation and its impact on the public; the number of prior or related violations by the person; the likelihood of future compliance; and any other consideration the secretary of state considered appropriate. The alleged violator would have to be notified of the decision by first-class mail within 20 days after the conference. If the fine was affirmed or

modified, the person being assessed would be notified that an administrative hearing on the assessment would be scheduled unless he or she paid the fine immediately. (An informal conference under the bill would not be considered a compliance conference for purposes of the Administrative Procedures Act.)

The notice of the administrative hearing, if necessary, would have to be served on the person by first-class mail at least five days before the date scheduled for the hearing. The notice would advise the person being assessed of: the time, place, and date of the hearing; that an impartial hearing officer would conduct the hearing and allow the person an opportunity to examine the evidence of the secretary of state and to present evidence in person or in writing; that the person had the right to be represented by an attorney; the common reasons why the secretary of state could dismiss an assessment of an administrative fine; that the hearing officer could affirm, modify, or dismiss the assessment, could correct errors in the department's records, and could refer or not refer the fine to the Department of Treasury, along with other action or resolution considered appropriate; and that if the Department of Treasury took enforcement action, the person could seek a review in the Court of Claims. The administrative hearing would have to be conducted under the contested case provisions of the Administrative Procedures Act. If a fine was affirmed, the hearing officer could assess costs of up to \$500 to reimburse the secretary of state for proving the validity of the alleged violation, in addition to other penalties, sanctions, and costs imposed as provided by law.

If an administrative fine was not paid within 60 days after it became final, the secretary of state could refer the matter to the Department of Treasury for collection as a state debt through the offset of state tax refunds and could use the services of the department to levy the salary, wages, or other income or assets of the person owing the fine.

MCL 257.11 and 257.248j

BACKGROUND INFORMATION:

Licensure Requirements. The secretary of state issues several types of dealer licenses depending on the business activities of the dealer. These license classifications include:

- New vehicle dealer (Class A).

- Used or secondhand vehicle dealer (Class B).
- Used or secondhand vehicle parts dealer (Class C).
- Broker (Class D).
- Distressed vehicle transporter (Class E).
- Vehicle scrap metal processor (Class F).
- Vehicle salvage pool operator (Class G)
- Foreign salvage vehicle dealer (Class H).
- Automotive recycler (Class R).

A person is prohibited from engaging in any of the activities of a particular classification without a license to do so. In addition, a person may hold more than one license. Each dealer license expires on December 31 of the year it is issued, and must be renewed annually. The secretary of state will not accept transactions from dealers whose licenses have expired.

Established Place of Business. To be issued a license, a dealer must establish a place of business. An established place of business must: be approved by the secretary of state; be occupied by the dealer either continuously or on a regular basis; be the location of the books and other records of the business; have a large portion of the business transacted there; and be the location where the vehicle inventory is maintained. Additional locations within the same county may be licensed as supplemental locations, with no additional fee, if the business activities conducted are the same. If the activities differed or additional locations were located in another county, a separate dealer license would be required.

Worker's Compensation Insurance. Class C and Class R licensees are required to maintain worker's compensation insurance for employees classified as automobile dismantlers, unless exempted by the Department of Consumer and Industry Services. Class H licensees are required to maintain worker's compensation insurance as required by their home state. Other dealers may be required to maintain worker's compensation insurance, though proof of insurance is not required at the time of the application.

Business Hours. A dealer must maintain and post regular business hours, and advise of Department of

State of those hours, including any changes in those hours.

Surety Bond. Class A, B, and D dealers are required to maintain a surety bond of \$10,000. These bonds are used to reimburse purchasers, sellers, financing agencies, and government agencies for a monetary loss as a result of a tax deficiency, fraud, or misrepresentation in the conduct of the business, if no other money is available to reimburse the injured party. If the dealer does not obtain a bond, or the bond is cancelled, he or she must cease operations.

Michigan No-Fault Insurance. Class A and B dealers are required to maintain a minimum of 20/40/10 fleet-type Michigan no-fault vehicle insurance.

FISCAL IMPLICATIONS:

The Department of State estimates that it would need two full-time regulatory agents, two full-time word processing assistants, and one departmental analyst at a cost of \$141,557 to pursue those persons identified as dealing without a license, and to identify and investigate others.

The bill establishes a \$5,000 fine for the first offense (operating without a dealer license) and a \$7,500 fine for each subsequent offense within the next seven years. If the department issued notices of assessment to the 80 persons the department has identified as dealing without a license, the amount of the fine would be \$400,000. However, the bill provides that the assessment could be reduced by 50 percent if the person applied for a license, and were approved within 45 days. In addition, the department says that the bill has the potential to increase revenue generated through an increase in sales tax and income tax collections. (Undated departmental analysis)

ARGUMENTS:

For:

The bill would clarify the definition of a "dealer" in the Michigan Vehicle Code and establish an objective, quantifiable threshold to differentiate between a person required to obtain a dealer license and a hobbyist who occasionally purchases vehicles to repair and restore.

In addition, the bill would strengthen the penalties levied against those who engage in the practice of dealing motor vehicles without a license, which is already a misdemeanor. Often, individuals who illegally purchase and sell motor vehicles without a

license do not report the true purchase price of the vehicle. As a result, the state loses a substantial amount of sale tax revenue on the sale of vehicles through unlicensed dealers. In addition, the federal government and the state also lose a substantial amount of income tax revenue when the income on the sale of vehicles is not properly reported.

Furthermore, the existence of unlicensed dealers in this state greatly undermines the legitimate business practices of licensed automobile dealers. In many instances, licensed dealers and unlicensed dealers compete for the same pool of customers. However, an unlicensed dealer can sell a vehicle for a significantly lower price than a legitimately licensed dealer, because the unlicensed dealer does not have to account for traditional business costs such as insurance, employee salaries and wages, office expenses, and building expenses.

POSITIONS:

The Department of State supports the bill. (4-9-02)

The Michigan Insurance Federation supports the bill. (4-9-02)

The Auto Dealers of Michigan, LLC, supports the bill. (4-9-02)

The Michigan Independent Automobile Dealers Association supports the bill. (4-10-02)

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.