House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

VEHICLE DEALERS: NEW DEFINITION AND PENALTIES

House Bill 5364 as enrolled
Public Act 652 of 2002
Second Analysis (1-13-02)

Sponsor: Rep. Judson Gilbert II
House Committee: Commerce
Senate Committee: Transportation and Tourism

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 January 1, 2003.

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, among others specified in the act, a financial institution, as defined in Public Act 99 of 1909 (MCL 129.40), or an entity entirely owned by one or more financial institutions; a bank holding company; a person whose business is 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 insurer, as defined in the Insurance Code of 1956 (MCL 500.106), or a person engaged in leasing vehicles solely for commercial or other nonhousehold use.

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.

Other Definitions. The bill would also add definitions of 'buy back vehicle' and 'off lease vehicle'. A buy back vehicle would be defined to mean a motor vehicle reacquired by a manufacturer as the result of an arbitration proceeding held pursuant to a customer satisfaction policy adopted by the manufacturer under the auto lemon law (Public Act 87 of 1986) or a similar law of another state. An off lease vehicle would be defined to mean a motor vehicle that is leased for a term of more than 30 days that the lessee elects to purchase.

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 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.

Leases. With regard to an application for registration or certificate of title and the duties of a dealer or other person selling a vehicle, the bill would replace references to the "purchaser" of a vehicle" to "purchaser or lessee" of a vehicle.

Off Lease and Buy Back Vehicles. A dealer selling or exchanging an "off lease vehicle" or "buy back vehicle" would apply to the secretary of state for a new title for the vehicle within 15 days after it receives the certificate of title from the lessor or manufacturer and transfer or secure registration plates and secure a certificate or registration for the vehicle in the name of the purchaser. The dealer's license could be suspended or revoked in accordance with section 249 (which pertains to the denial, suspension, or revocation of a dealer's license) for failure to apply for a title when required or for failure to transfer or secure registration plates and certificate of registration within the 15-day period. If the dealer or person fails to apply for a title when required to do so and fails to transfer or secure registration plates and secure a certificate of registration and pay the required fees within the 15-day period, a title or registration could be acquired only upon the payment of a transfer fee of $15 in addition to the fees accompanying each application for a certificate of title or duplicate certificate (MCL 257.806). The purchaser of the vehicle would sign the application and, whenever applicable, the declaration that specifies the maximum elected gross weight, in addition to other papers necessary to enable the dealer or person to secure the title, registration plates, and transfers from the secretary of state. If the secretary of state mails or delivers a purchasers certificate of title to a dealer, the dealer would be required to mail or deliver the certificate of title to the purchasers not more than five days after receiving the certificate of title from the secretary of state.

In addition, the bill specifies that its provisions (MCL 257.217) would not prohibit a dealer from selling a "buy back" vehicle while the certificate of title is in the possession of a manufacturer that obtained the title under the manufacturer's buy back vehicle program. The manufacturer would mail the title to the dealer within five business days after the manufacturer receives a signed statement of the purchaser acknowledging that he or she was informed by the dealer that the manufacturer acquired title to the vehicle as a result of an arbitration proceeding pursuant to the auto lemon law or similar law of another state.

Similarly, the bill also specifies that it would not prohibit a dealer from selling an "off lease" vehicle while the certificate of title is in the possession of a lessor. The lessor would be required to mail the title to the dealer within 21 days after the lessor receives the purchase price of the vehicle and any other fees and charges due under the lessor

Penalties for Fraudulent Licenses. The act sets forth penalties for a person who sells or possesses with the intent to deliver a reproduced, altered, counterfeited, forged, or duplicated license photograph, negative of the photograph, image, license, or electronic data contained on a license of part of a license. Under the bill, the penalties would not apply to a person who is in possession of one or more photocopies, reproductions, or duplications of a license to document the identity of the licensee for a legitimate business purpose.

Commercial Driver's Licenses. Under current law, before a person may operate a single vehicle having a gross vehicle weight rating of 26,001 pounds or more, or a combination of vehicles having a gross combination weight rating under 26,001 pounds (if the vehicle being towed does not have a gross vehicle weight rating over 10,000 pounds) and carrying hazardous materials or designed to transport 16 or more passengers (including the driver), he or she must obtain a group C vehicle designation and a hazardous material or passenger vehicle endorsement on his or her chauffeur's or operator's license. The bill would amend this provision so as require a person to obtain the Group C designation prior to operating a single vehicle having a gross vehicle weight rating under 26,001 pounds or a vehicle having a gross vehicle weight rating under 26,001 pounds towing a trailer or other vehicle and carrying hazardous materials or designed to transport 16 or more passengers.

Civil Actions. Under the act, a person engaged in the business of leasing motor vehicles who is the lessor of a vehicle under a lease providing for the use of the vehicle by the lessee for a period of time greater than 30 days is not liable at common law for damages for injuries to either person or property resulting from the operation of the leased vehicle. The bill would add that a dealer acting as agent for that lessor would not be liable for damages. The bill would also add

that neither the lessor nor the dealer acting as his or her agent would be liable for any damages occurring after the expiration of the lease if the vehicle is in the possession of the lessee.

In addition, a lessee in possession of an "off lease" vehicle, and not the dealer of the vehicle, would be liable as the owner of the vehicle for any damages awarded for an injury to a person or property resulting from the operation of the vehicle. The dealer of an "off lease" vehicle could be liable at common law for damages awarded for an injury to a person or property resulting from the operation of the vehicle only if the dealer is in possession of the vehicle and the certificate of title, and has acknowledged possession of the certificate of title to the lessor.

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.

FISCAL IMPLICATIONS:

According to the Department of State, a small fiscal impact may occur due to the possible increase in the number of dealer applications and enforcement cases. However, any additional resources needed to address this new volume would be offset by additional funds collected for the dealer licensing fees required under the current law. (Departmental Analysis dated 12-16-02)

According to the House Fiscal Agency, the bill would increase enforcement and investigation-related costs by roughly $141,000 annually (based on Department of State estimates). The department has identified 80 persons that are acting as dealers without a license to do so. If the department assessed the full $5,000 first-offense penalty allowed under the bill on these individuals, the bill could generate up to $400,000 in fine revenue. However, the bill allows for a 50 percent reduction in fines if the relevant persons apply for, and are approved for, licenses within specific time frames. The changes to the definition of 'dealer' within the bill would have an indeterminate impact on revenue derived from dealer license fees. (1-13-02).

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.

For:

In addition, the bill would also make several corrections to the Michigan Vehicle Code to address some of the problems that have arisen due to recent amendments to the act.

Recently, Public Act 126 of 2002 (House Bill 4037) amended the vehicle code to increase and establish graduated penalties for forging, counterfeiting, or altering a driver's license, the license photo, or electronic data contained on a license. However, under current language it is a felony to photocopy a driver's license even for legitimate business purposes. Many businesses are required under federal law to use photocopies as a means of verifying a person's identity. As such, the bill would amend the act to exempt legitimate business practices from the new penalties set forth by Public Act 126.

Public Act 534 of 2002 (Senate Bill 1232) recently amended the vehicle code to address conflicts between federal and state classifications of various commercial driver's licenses classes. Specifically, the Public Act 534 adopted federal regulations requiring all commercial regulations to follow distinct safety procedures at railroad crossings; required the secretary of state to immediately suspend or revoke all vehicle group designations on an operator's or chauffeur's license upon receiving notice of the licensee's failure to follow the railroad safety precautions; and required the secretary of state to check the National Driver Register before issuing an original, renewal or upgrade of a commercial driver's license to an out-of-state applicant. Reportedly, the Department of State Police, Secretary of State, and the Michigan Truck Safety commission felt that additional clarification is needed to distinguish Class B and Class C licenses.

Finally, current law prohibits a dealer from selling a vehicle in which they do not hold title. There are, however, two distinct situations whereby dealers are not in a position to hold title to meet the statutory requirement. The two situations include instances of "off lease vehicles" and "buy back vehicles". As such, the bill would permit a dealer to offer a vehicle for sale without holding title for these two situations. For "off lease" vehicles, the current lessee seeks to purchase the car that they are leasing. However, in order to purchase the vehicle, the lessee must leave the vehicle with the dealer and wait for the title to arrive. In many instances, this process takes several days, thereby leaving the lessee without a vehicle. For "buy back" vehicles, the vehicle manufacturer takes the vehicle back, often to address a problem with the vehicle. Once the problem is resolved, the manufacturer will supply the vehicle to a dealer, who resells the vehicle. However, under this situation, the vehicle manufacturer still holds title of the vehicle so as to ensure that the next purchaser of the vehicle is aware that the vehicle was taken back by the manufacturer. Such a policy permits the manufacturer to resell the vehicle and, at the same time, provide a purchaser with the vehicle's history.

Analyst: M. Wolf

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