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VEHICLE DEALERS: NEW DEF'N AND PENALTIES

House Bill 5364

Sponsor: Rep. Judson Gilbert II

Committee: Commerce

Complete to 3-18-02

A SUMMARY OF HOUSE BILL 5364 AS INTRODUCED 10-29-02

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 180 days after being enacted.

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

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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.

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; or an employee or agent of a dealer acting in the scope of his or her employment or agency.

Currently, the code includes as a "dealer" 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.

MCL 257.11 and 257.248j

Analyst: C. Couch

■ 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.