

**Senate Fiscal Agency**  
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**SFA****BILL ANALYSIS**

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House Bill 5363 (Substitute S-2 as reported)  
House Bill 5364 (Substitute S-2 as reported)  
Sponsor: Representative Chris Kolb (House Bill 5363)  
Representative Judson Gilbert II (House Bill 5364)  
House Committee: Commerce  
Senate Committee: Transportation and Tourism

Date Completed: 10-17-02

### **RATIONALE**

Several issues have been raised in regard to motor vehicle transactions and related authority of the Secretary of State. The first issue concerns the requirement, under the Michigan Vehicle Code, that a person obtain a license from the Secretary of State in order to operate as a dealer. The Code defines "dealer", in part, as a person engaged in the business of purchasing, selling, exchanging, brokering, or dealing in vehicles that must be titled under the Code. The definition also includes someone who is in the business of buying vehicles to sell for parts or to process into scrap metal. Apparently, there is a common misconception that a dealer license is required only if a person buys and sells more than five vehicles in a year. As the Secretary of State's office has pointed out, the source of this misunderstanding might be a Federal Trade Commission regulation that governs used vehicle dealers. This regulation defines "dealer" as "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 CFR 455.1).

Under the Code, unlicensed dealers are guilty of a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$100. According to the Secretary of State's office, most prosecuting attorneys do not pursue offenders unless they commit other, more serious violations of the law, such as vehicle misrepresentation or odometer tampering. Since criminal prosecution appears to be rare, and not always called for, it has been suggested that the Department of State should have the authority to impose administrative penalties on unlicensed dealers,

and that people should be allowed to deal in a minimum number of vehicles a year without a license.

Another issue concerns the Secretary of State's authority to regulate people engaged in the business of motor vehicle leasing. Although leasing has become a popular alternative to purchasing a vehicle, many provisions of the Michigan Vehicle Code that govern vehicle dealers and purchases do not specifically apply to lease transactions. For example, dealers are required to give certain documents and disclosures to people who purchase vehicles, but not to those who lease. Apparently, the Department has received a number of complaints that involve alleged misrepresentations of lease terms by licensed dealers and their subsidiary leasing companies. The Code, however, does not give the Department clear authority to take action in regard to lease transactions.

### **CONTENT**

**The bills would amend the Michigan Vehicle Code to do the following:**

- Require a person to have a dealer license in order to carry on the business of buying, selling, or leasing five or more vehicles in a year.**
- Include lease transactions in provisions governing dealers, registration, certificates of title, and delivery.**
- Authorize the Secretary of State to penalize someone for acting as a dealer without a license, and allow the person to contest the penalty.**

- **Expand the Secretary of State's authority to make inspections.**
- **Allow police agencies to charge up to \$100 (instead of \$50) for inspecting a salvage vehicle for certification, and require the vehicle title to say "rebuilt salvage".**

The bills would take effect January 1, 2003.

### **House Bill 5363 (S-2)**

#### Dealer License

The Code prohibits a person from carrying on or conducting the business of buying, selling, brokering, or dealing in vehicles of a type required to be titled under the Act, unless the person obtains a dealer license from the Secretary of State. Under the bill, a person would have to obtain a dealer license in order to carry on or conduct the business of buying, selling, brokering, *leasing, negotiating a lease,* or dealing in *five or more* vehicles of a type required to be titled *in a 12-month period*.

The bill would make the same changes in provisions that require a person (other than an insurance company) to obtain a license in order to deal in distressed late model vehicles or salvageable parts. The Code also requires a person to obtain a license in order to engage in the business of buying vehicles to process into scrap metal or store or display vehicles as an insurance company agent. Under the bill, this would apply to buying, storing, or displaying five or more vehicles in a 12-month period.

#### Leased Vehicles

The bill would include vehicle leasing, leases, or leased vehicles in provisions that do the following:

- Require a dealer to give a vehicle buyer a copy of each document signed by the person.
- Require a new motor vehicle dealer, before entering into a sales contract, to disclose in writing that a vehicle was damaged or repaired after it completed the manufacturing process.
- Require a dealer to maintain a record of each vehicle bought, sold, exchanged, or received by the dealer.
- Authorize the Secretary of State to suspend, revoke, or deny a dealer license if

the licensee or applicant has sold or offered a new vehicle without having a contract with its manufacturer or distributor, has been guilty of a fraudulent act in connection with dealing in vehicles, or has no established place of business for the purpose of selling vehicles, or if other grounds for suspension, denial, or revocation exist.

- Allow the Secretary of State to conduct periodic reviews of a dealer's records to determine whether adequate notice is given to a transferee of a rebuilt salvage vehicle of its prior designation as a salvage vehicle.
- Allow an unregistered vehicle to be driven to a place of storage for three days following the date of a properly assigned title from anyone other than a vehicle dealer.
- Provide for the temporary registration of a vehicle that is delivered to a purchaser who has registration plates that are to be transferred to the vehicle.
- Provide for an automatic, 30-day suspension of a dealer's license for removing a scrap vehicle from the State for the purpose of rebuilding the vehicle or selling it to a person other than a vehicle scrap metal processor.
- Allow the Secretary of State to issue a special registration plate for a vehicle purchased in or outside of Michigan and delivered in the State for removal to a place outside the State.
- Allow a vendee to operate a vehicle for up to 72 hours after taking possession if the vehicle has a dealer plate attached.

In addition, the Code requires a dealer selling or exchanging vehicles required to be titled, within 15 days after delivering a vehicle to the purchaser, and a person engaged in the sale of vessels required to be numbered, within 15 days after delivering a boat trailer weighing under 2,500 pounds to the purchaser, to apply to the Secretary of State for a new title, if required, and to transfer or secure registration plates and secure a certificate of registration for the vehicle or boat trailer, in the purchaser's name. Under the bill, these requirements also would apply when a vehicle or boat trailer was leased.

#### Secretary of State Inspections

The Code authorizes the Secretary of State, and designated officers and investigators of the Department, to examine the books and

records of all persons licensed under the Code pertaining to the selling, buying, or wrecking of vehicles of a type required to be registered, and the payment and collection of tax provided for in the Code. The bill also would allow the investigation of licensees' books and records pertaining to vehicle leasing, dismantling, or brokering.

stolen vehicles, stolen vehicle parts, and salvage vehicle inspections.

In addition, the Code authorizes the Secretary of State and designated officers and investigators to inspect any vehicle of a type required to be registered under the Code in any public garage or repair shop or in any place where vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating vehicles' title and registration. Under the bill, the Secretary of State and designated officers and investigators also could inspect the salvageable parts of vehicles, could perform investigations in a place where vehicles were held for lease or dismantling, and could investigate for the purpose of locating stolen vehicle parts.

#### Salvage Vehicles

The Code provides that a salvage certificate of title authorizes the holder to possess, transport, and transfer ownership in a vehicle, but not to drive it upon a highway. The Secretary of State may not issue a certificate of title or registration plates for a vehicle for which a salvage certificate of title was issued unless a specially trained officer certifies that the vehicle identification numbers and parts identification numbers are accurate, the applicant has proof of ownership of repair parts used, and the vehicle complies with the Code's equipment standards.

When the inspection and other requirements have been satisfied, the Secretary of State must issue a certificate of title bearing an indicator of its previous status. Under the bill, the certificate of title would have to bear the legend "rebuilt salvage".

The Code provides that a police agency is to receive a \$50 fee for inspecting a salvage vehicle. The bill would delete the \$50 amount and require each local authority with a police agency to determine the amount of the inspection fee, which could not exceed \$100. As presently required, the fee would have to be credited to the police agency's budget and used for law enforcement purposes that affect

Under the Code, the Secretary of State must issue a flood, rebuilt, salvage, or scrap certificate of title for a vehicle brought into Michigan from another state or jurisdiction that has such a title issued by the other state or jurisdiction. The bill also would require the Secretary of State to issue a "rebuilt salvage" certificate of title under these circumstances.

In addition, the Code provides that a certificate of title may not be issued for a vehicle that has had a salvage certificate of title unless the certificate of title contains a legend that discloses the vehicle's former condition to consumers and potential purchasers. Under the bill, the certificate of title instead would have to contain the legend "rebuilt salvage".

### **House Bill 5364 (S-2)**

#### **Definition**

Currently, the Code defines "dealer", in part, as a person engaged in the business of purchasing, selling, exchanging, brokering, or dealing in vehicles, or parts of those vehicles, of a type required to be titled under the Code. The bill would add "leasing" to the list of activities that define a dealer, would refer to a person engaged in these activities in a 12-month period. In addition, the bill would include in the definition a person engaged in the business of purchasing, selling, exchanging, brokering, or dealing in salvageable parts of five or more vehicles in a 12-month period. Currently, the definition also includes a person engaged in the business of buying vehicles to sell the parts or process into scrap metal. The bill would refer to someone who bought five or more vehicles for this purpose in a 12-month period.

The bill would create a rebuttable presumption that a person who in a 12-month period bought and sold, exchanged, brokered, leased, or dealt in five or more vehicles, or salvageable parts for five or more vehicles, or bought five or more vehicles to sell vehicle parts or to process into scrap metal, was engaged in business as a dealer.

Currently, the Code states that "dealer" does not include a person who buys or sells remanufactured vehicle engine and transmission salvageable vehicle parts, or who receives in exchange used engines or transmissions if the person's primary business

is selling new vehicle parts and the person is not engaged in any other activity that requires a dealer license under the Code. The bill would retain this provision, and would add the following as entities and people who would *not* be dealers:

- A financial institution, as defined by Public Act 99 of 1909 (which designates depositories of public money received by county treasurers) or an entity wholly owned by one or more financial institutions.
- A bank holding company.
- For purposes of dealer licensing, a person who negotiated the lease of a vehicle of a type required to be titled under the Code for a lease term of less than 120 days.
- A person whose business was the financing of the purchase, sale, or lease of vehicles of a type required to be titled under the Code and that was not otherwise engaged in activities defining that person as a dealer.
- An employee or agent of a dealer acting in the scope of his or her employment or agency.
- An insurer, as defined by the Insurance Code.
- A person engaged in leasing vehicles solely for commercial or other nonhousehold use.

#### **Penalties and Fines**

Under the bill, if the Secretary of State determined that a person had acted as a dealer without a dealer license, he or she could issue the person a verbal or written warning, or assess an administrative fine of up to \$5,000 for a first violation, and up to \$7,500 for each subsequent violation occurring within seven years of a prior violation, in addition to any other remedies provided by law.

If the Secretary of State assessed an administrative fine, he or she would have to provide notice of the assessment in writing under Section 212 of the Code (which requires notice to be given by personal delivery or first class mail). The notice would have to contain at least all of the following:

- A unique identification number.
- A description of the alleged violation that was the basis for the assessment, including the date the alleged violation occurred and a reference to the specific section or rule allegedly violated.

- The administrative fine established for the violation.
- A statement indicating that if the fine were not paid, the Secretary of State could refer it to the Department of Treasury for collection.
- A statement indicating that if the alleged violation were contested, the person had a right to request an informal conference before an administrative hearing, accompanied by simple instructions informing the person how to request or waive the informal conference.

#### Response to Assessment

Within 20 days after receiving a written notice of assessment, the alleged violator would have to do one of the following:

- Pay the administrative fine to the Secretary of State. (A payment would waive the person's right to an informal conference and an administrative hearing.)
- Request the Secretary of State to conduct an informal conference.
- Waive the right to an informal conference and request the Secretary of State to conduct an administrative hearing.
- If the person were not a licensed dealer, pay the administrative fine and submit a properly completed dealer license application to the Secretary of State.

A person's request for an informal conference or an administrative hearing would have to be in writing; be postmarked or received by the Secretary of State within 20 days after the person had received the notice of assessment; state the person's name, address, and telephone number; state the notice's unique identification number; state the reason for the request; and, if the request were for an administrative hearing without an informal conference, state that the person was waiving his or her right to an informal conference.

If the Secretary of State received a request for an informal conference or an administrative hearing that met all of the above conditions, the Secretary of State would have to schedule an informal conference or an administrative hearing, as applicable. If the request failed to meet all of the required conditions, the Secretary of State could deny the request in writing. A denial would have to be served on the person by first-class mail, state the reason for the denial, and grant the person 14 days

to submit a valid request to the Secretary of State.

#### Informal Conference

The Secretary of State would have to conduct an informal conference within 45 days after receiving a valid request for the conference. The Secretary of State would have to serve upon the alleged violator, by first-class mail at least five days beforehand, a written notice that included the time, place, and date of the conference. The notice would have to state that the alleged violator could be represented by an attorney at the informal conference.

After the informal conference, the Secretary of State would have to evaluate the validity of the assessment of the administrative fine and affirm, modify, or dismiss the assessment. In making the evaluation, the Secretary of State could consider one or more of the following: whether there was reason to believe the alleged violation actually occurred; the severity of the alleged violation and its impact on the public; the number of prior or related violations by the person; the likelihood of future compliance by the person; and any other considerations the Secretary of State considered appropriate.

Within 20 days after conducting the conference, the Secretary of State would have to serve upon the person, by first-class mail, a written statement describing whether the assessment of the administrative fine was affirmed, modified, or dismissed, and the basis of the action. If the assessment were affirmed or modified, the statement also would have to advise the person that he or she would receive a notice of hearing in which the validity of the assessment could be contested, or she or she could immediately pay the fine to the Secretary of State, and that payment would prevent the scheduling of an administrative hearing.

Further, the bill states that an informal conference would not be a compliance conference under Section 92 of the Administrative Procedures Act (which permits licensees who face revocation or suspension of a license an opportunity to show compliance with all lawful requirements for retention of the license).

#### Administrative Hearing

Under the bill, a notice of hearing would have to be served on a person by first-class mail at least five days before the date of the hearing, and, at a minimum, advise the person of all of the following:

- 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 Secretary of State's evidence and present evidence in person or in writing.
- That the person had a right to be represented by an attorney at the hearing.
- The common reasons why the Secretary of State could dismiss an assessment of an administrative fine.
- That the hearing officer would be authorized to affirm, modify, or dismiss the assessment of an administrative fine; correct any errors in the Department of State's records that related directly to the assessment; refer or not refer the fine to the Department of Treasury for collection; and take or order any other action or resolution considered appropriate by the hearing officer.
- That, if the Department of Treasury took enforcement action against the person, he or she could seek a review in the Court of Claims.

#### Payment of Fine

An administrative fine assessed under the bill would become final when the first of the following occurred: The Secretary of State did not receive a valid request for an informal conference or an administrative hearing within 20 days after the person received the notice of assessment; 20 days after a person waived his or her right to a hearing; or an administrative hearing decision was served upon the person.

After a person paid the fine imposed, the Secretary of State would have to forward the money to the Department of Treasury for deposit in a separate fund within the General Fund. Upon appropriation, this money would have to be used to defray the expense of the Secretary of State in administering Chapter 2 of the Code (which governs certificates of title, dealer licensing, anti-theft, and registration).

If an administrative fine were 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 as provided by law.

The bill specifies that payment of an administrative fine would not constitute an admission of responsibility or guilt by the person, nor would it prevent the Secretary of State from charging a violation described in the assessment in a subsequent or concurrent contested case proceeding conducted by the Secretary of State under the Administrative Procedures Act.

If a person submitted a properly completed application and appropriate fee for a dealer license within 20 days after an administrative fine was assessed, and if the Secretary of State issued the person a dealer license within 45 days of receiving the application and fee, the Secretary of State would have to reduce the amount of the administrative fine by 50%.

#### Notice

The bill would require the Secretary of State to serve a notice, denial, decision, or statement in compliance with Section 212 of the Code, which specifies in part that notices must be served by personal delivery or first-class mail.

#### Other Provision

The Michigan Vehicle Code requires that truck drivers be certified to drive certain categories, or groups, of vehicles, based on weight and construction. There are three commercial driver license group designations: A, B, and C. Currently, one condition under which a driver must procure a group C designation is that he or she operates a combination of vehicles having a gross combination weight under 26,001 pounds, if the vehicle being towed does not weigh more than 10,000 pounds and is carrying hazardous materials. Instead, the bill would require that the vehicle have a gross vehicle weight rating under 26,001 pounds, be towing a trailer or other vehicle, and be carrying hazardous materials.

MCL 257.213 et al. (H.B. 5363)  
257.11 et al. (H.B. 5364)

#### ARGUMENTS

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

By allowing people to buy and sell up to four vehicles a year without a license, the bills would legalize those who occasionally buy vehicles for repair or restoration, and then resell them. This would separate hobbyists from people who actually compete with licensed dealers, in a practice known as "curbstoning". These unlicensed dealers avoid the costs of operating a legitimate business, including insurance, employee salaries, and record-keeping. This means that an unlicensed dealer can sell a vehicle for a price significantly lower than what a licensed dealer would charge. Unlicensed dealers also avoid requirements that protect the public, such as undergoing an investigation by the Secretary of State, filing a surety bond, and maintaining an established place of business.

In addition, when dealers operate without a license, the State is denied fees that dealers must pay. The State also loses sales tax revenue, since many unlicensed people who buy and sell vehicles apparently do not report the true purchase price of a vehicle. In addition, illegitimate dealers evade State and Federal tax on their income.

These proposals would safeguard the business of legitimate dealers, protect the consuming public, and increase revenue collections by the State.

### **Supporting Argument**

The State already has recognized lessees' rights by including defective leased vehicles in the auto lemon law, with the enactment of Public Act 486 of 1998. House Bill 5363 (S-2) would advance the principle that customers should have the same rights and protections regardless of whether they are buyers or lessees. Under the bill, dealers would have to give lessees copies of each document they signed. The bill also would make it clear that the Secretary of State could investigate places where vehicles are leased, as well as dealers' books and records pertaining to vehicle leasing. In addition, the bill clearly would require someone to have a dealer license in order to carry on the business of leasing vehicles, which would further extend consumer protections to lessees.

Apparently, since the Secretary of State began to receive complaints about lease transactions, there have been questions about the Department's authority in these cases. The bill should remove any doubt about the Department's jurisdiction in this respect.

### **Supporting Argument**

Currently, the State has little recourse against unlicensed dealers, since they apparently are not prosecuted unless more serious crimes are committed. House Bill 5364 (S-2) would expand the State's options by authorizing the Secretary of State to issue warnings and impose administrative fines. The bill also would encourage licensure by requiring an administrative fine to be reduced by half if the offender acquired a license within 45 days. According to the Secretary of State, the Department is interested in licensing people who are dealing without a license, unless they are engaged in fraudulent activity.

### **Supporting Argument**

House Bill 5363 (S-2) would allow police agencies to increase the fee for inspecting salvage vehicles for the purpose of recertification. Rather than charging a set fee of \$50, police agencies could charge up to \$100. This would be appropriate since a properly done inspection, including the review of ownership documents, can be time-consuming. The increased fee could encourage more law enforcement agencies to participate in the program.

**Response:** The Secretary of State's office would prefer to see the fee raised to a standard \$100 for all police agencies, rather than a \$100 maximum.

### **Supporting Argument**

In a provision unrelated to motor vehicle dealers, House Bill 5364 (S-2) would revise a condition under which someone must obtain a commercial driver license group C designation. The Code now refers to 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...". Not surprisingly, this language is considered confusing. Revising the language, as proposed by the bill, would follow up on changes made by Public Act 534 of 2002. Among other things, that Act amended references to a vehicle's gross combination weight rating, in the Code's definition of

“commercial motor vehicle”.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **House Bill 5363 (S-2)**

The bill would have a minimal fiscal impact on State government.

The bill could increase revenue to local police agencies. Local police agencies inspect vehicles for which a salvage certificate of title was previously issued to determine whether a certificate of title and registration plate may be issued. Currently, the police agencies charge a fee of \$50 for this service. The bill would allow the police agencies to determine the fee charged for the inspection, up to \$100. Revenue received from this fee is credited to the budget of the local police agency performing the inspection.

### **House Bill 5364 (S-2)**

The bill would establish a maximum administrative fine of \$5,000 for the first violation of the dealer license requirement and of \$7,500 for a violation within seven years of a prior violation. The Bureau of Automotive Regulation has identified 80 individuals who could be fined under this bill. A first violation fine on all of these individuals could result in the collection of \$400,000. The bill would require the Secretary of State to reduce the fine by 50% if the individual assessed the fine submitted a properly completed application for a dealer license within 20 days after the fine was assessed and if the license were granted within 45 days.

This bill would significantly expand the duties of the investigators in the Bureau of Automotive Regulation, requiring additional research and evidence gathering on potential violators. The annual cost of hiring a full-time regulatory agent is approximately \$55,000.

Fiscal Analyst: Jessica Runnels

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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.