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SFA**BILL ANALYSIS**

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

Date Completed: 9-17-02

CONTENT

The bill would amend the Michigan Vehicle Code to revise the definition of "dealer"; and to provide processes for the Secretary of State to penalize an individual for acting as a dealer without a license, and for the individual to contest the penalty. The bill would take effect January 1, 2003.

Definition

Currently, the Code in part defines "dealer" 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 require that the person be engaged in these activities in a 12-month period, and would strike a requirement that the person have an established place of business in this State. 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, or in the business of buying five or more vehicles to sell the parts or process into scrap metal, in a 12-month period. Currently, the Code does not specify a minimum number of vehicles that must be purchased, sold, exchanged, brokered, or sold for parts in order for a person to qualify as a dealer.

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 bill would require the notice of assessment 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 alleged to have been violated.
- The administrative fine established for the violation.
- A statement indicating that if the fine were not paid, the Secretary of State could refer the fine 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 to the Secretary of State 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 name, address, and telephone number of the person requesting the informal conference or administrative hearing; state the written notice of assessment'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 person by first-class mail and would have to 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 where 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 scheduling 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.

Administrative Fines

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, as required by the bill; 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 Secretary of State the required fine, 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 of Treasury 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.

Reduction of Fine

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%.

Serving 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 257.11 et al.

Legislative Analyst: Claire Layman

FISCAL IMPACT

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