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Senate Bill 915 (as passed by the Senate)
Senate Bill 916 (Substitute S-1 as passed by Senate)
Senate Bills 917 and 918 (as passed by the Senate)
Sponsor: Senator Tom Casperson (S.B. 915)
 Senator Mike Nofs (S.B. 916)
 Senator Steven Bieda (S.B. 917)
 Senator Jack Brandenburg (S.B. 918)
Committee: Transportation

Date Completed: 8-5-14

RATIONALE

The Michigan Vehicle Code specifies the manner in which vehicles are titled in this State. Michigan currently uses a paper-based titling system. In this system, the owner of a vehicle undergoing refinancing completes a paper application for a Michigan vehicle title and presents the secured party with the paper title to the vehicle. The application lists the secured party, usually a financial institution. The secured party requests a termination of an outstanding lien from the current lienholder to be sent once that party's lien has been satisfied by payment. When the termination statement has been received, the secured party takes the title application, the old title, and the termination statement to the Secretary of State for processing. Once processed, a new title that indicates the secured party's interest is sent to the vehicle owner.

Concerns have been raised about the amount of time that it takes to process transactions under the paper-based titling system and the susceptibility of the system to fraud. To address these concerns, it has been suggested that Michigan implement an electronic titling system in which vehicle titles are created and held in a central database, or hub, operated by Secretary of State.

CONTENT

Senate Bill 918 would amend the Michigan Vehicle Code to do the following:

- **Authorize the Secretary of State (SOS) to enter into contracts to establish, implement, and operate an electronic lien title system to process the notification and release of security interests through electronic file transfers, instead of the issuance and maintenance of paper documents.**
- **Require the electronic system to be established, implemented, and operational by July 1, 2015.**
- **Allow the Department of State to require a person to enter evidence of security interests and any related information into the electronic system instead of paper documents beginning October 1, 2015.**
- **Require all secured parties to participate in the electronic system.**
- **Provide that any requirement of the Code that a security interest or other information appear on a certificate of title would be satisfied by the inclusion of that information in an electronic file maintained in the electronic system.**
- **Provide that a secured party would be liable to a vehicle owner for all damages the owner sustained as a result of the secured party's failure to release a security interest as the bill would require.**

- Provide that a certified copy of the SOS's electronic record of a security interest or certificate of title would be admissible in any civil, criminal, or administrative proceeding in Michigan.

Senate Bill 916 (S-1) would amend the Vehicle Code to do the following:

- Provide that the SOS would not have to issue a title to the owner of a vehicle or lienholder if the title were subject to a security interest.
- Require a certificate of title to include information about the electronic lien title system (proposed by Senate Bill 918) in its description of the procedure for transferring the title.
- Extend penalties that apply to offenses involving the intentional reproduction, alteration, counterfeiting, forging, or duplication of a certificate of title to the same activities involving a document releasing a security interest.
- Eliminate a requirement that an application for a certificate of title requested by a security interest holder include a copy of the security agreement.
- Provide that a secured receipt could be submitted to the Department of State instead of the title for purposes of transferring ownership in a vehicle.
- Eliminate a requirement that the SOS publish an annual list of vehicle manufacturers' suggested base list prices.

Senate Bill 917 would amend the Vehicle Code to do the following:

- Provide that the SOS would not have to issue a title to the owner of a vehicle if the title were subject to a security interest.
- Revise the time frame for a secured party to execute a termination statement.
- Allow the Department of State to require that all transactions concerning vehicle title liens and security interests be conducted by electronic means.
- Allow a secured receipt to be submitted to the Department instead of the title for purposes of transferring ownership in a vehicle.

Senate Bill 915 would amend the Vehicle Code to do the following:

- Prohibit fraudulently indicating on a certificate of title that there was not a security interest in a vehicle or forging a letter from a security interest holder stating that the security interest had been released.
- Require a person convicted of either offense to pay restitution to the holder of a security interest in the vehicle in the amount of the outstanding lien.

Senate Bills 916, 917, and 918 are tie-barred to each other.

Senate Bill 918

The bill would add Section 241 to the Vehicle Code to authorize the SOS to enter into one or more contracts to establish, implement, and operate an electronic lien title system to process the notification and release of security interests through electronic file transfers, or as otherwise determined by the SOS, instead of the issuance and maintenance of paper documents otherwise required by law. The contract would have to contain language that required the protection of proprietary information contained in the electronic lien title system, and would have to provide for the protection of a competitive free market. Except for people not normally engaged in the business or practice of financing vehicles, all secured parties would have to participate in the electronic system.

For the Code's purposes, any requirement that a security interest or other information appear on a certificate of title would be satisfied by the inclusion of that information in an electronic file maintained in an electronic lien title system. The satisfaction of a security interest could be electronically transmitted to the SOS. A secured party would have to execute a release of its security interest in a motor vehicle in a manner prescribed by the Department of State within 14 days after the secured party received the payment in satisfaction of the security interest. If the

certificate of title were in the possession of the motor vehicle owner, the secured party would have to deliver the release to the owner or as otherwise directed by the owner. However, if the certificate of title were held electronically as provided under Section 238 (which Senate Bill 917 would amend), the secured party would have to deliver the release of security interest to the Department, which would have to cancel the security interest. If the secured party failed to comply with these requirements for the release of a secured interest, the secured party would be liable to the vehicle owner for all damages the owner sustained as a result. The electronic lien title system would have to provide a mechanism by which a vehicle dealer could assign ownership of a motor vehicle without proof that the prior security interest was satisfied existing on the electronic system. However, the dealer would warrant that the title was free and clear of all liens and would assume responsibility for the satisfaction of the security interest.

A certified copy of the SOS's electronic record of a security interest would be admissible in any civil, criminal, or administrative proceeding in Michigan as evidence of the existence of the security interest. If a certificate of title were maintained electronically in the electronic lien title system, a certified copy of the record would be admissible in any civil, criminal, or administrative proceeding in Michigan as evidence of the existence and contents of the certificate of title.

The SOS could determine any requirements necessary to carry out the provisions of proposed Section 241, including the following:

- Monitoring the reasonable fees charged by service providers or a contractor for the establishment and maintenance of the electronic lien title system.
- The qualifications of service providers for participation in the electronic system.
- The qualifications for a contractor to enter into a contract with the SOS to establish, implement, and operate the electronic system.
- Program specifications that a contractor would have to adhere to.

The electronic lien title system would have to be established, implemented, and operational by July 1, 2015. The Department could require a person to enter evidence of security interests and any related information into the electronic system instead of paper documents beginning October 1, 2015.

Senate Bill 916 (S-1)

Certificate of Title

Under the Code, except as otherwise provided, a dealer selling, leasing, or exchanging vehicles required to be titled, within 15 days after delivering a vehicle to the purchaser or lessee, and a person engaged in the sale of vessels required to be numbered by Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act, within 15 days after delivering a boat trailer weighing less than 2,500 pounds to the purchaser or lessee, must apply to the Secretary of State for a new title, if required, and transfer or secure registration plates and secure a certificate of registration for the vehicle or boat trailer, in the name of the purchaser or lessee. If the SOS mails or delivers a purchaser's certificate of title to a dealer, the dealer must mail or deliver it to the purchaser within five days after receiving it from the SOS. Similar provisions apply in the case of a dealer selling or exchanging an off-lease or buy-back vehicle.

Under the bill, as provided in Section 238, the SOS would not have to issue a title to the owner of a vehicle or to a lienholder if the title were subject to a security interest.

Currently, an application for a certificate of title that indicates the existence of a security interest in the vehicle or in an accessory to the vehicle, if requested by the security interest holder, must be accompanied by a copy of the security agreement. The request may be made of the seller on an annual basis. The SOS must indicate on the copy the date and place of filing of the application and return it to the person submitting the application, who must forward it to the named holder of the security interest. The bill would delete these provisions.

The Code also requires the SOS to issue a registration certificate and a certificate of title when registering a vehicle upon receiving the required fees. Under the bill, SOS would be required to issue a registration certificate, and, unless otherwise provided, would have to issue a certificate

of title, unless a security interest were entered electronically under Section 238. Issuance of the registration certificate and the certificate of title would be conditioned upon receipt of the required fees.

A certificate of title must include a description of the proper procedure for transferring the title of a motor vehicle and for maintaining records of the transfer as provided under the Code. Under the bill, the description of the procedure would have to include the electronic lien title system established under Section 241.

The SOS must mail or deliver the certificate of title to the owner or other person as the owner may direct in a separate instrument. Under the bill, however, as provided in Section 238, the SOS would not have to issue a title to the owner of a vehicle if the title were subject to a security interest.

The Code prescribes misdemeanor penalties for a person who intentionally reproduces, alters, counterfeits, forges, or duplicates a certificate of title or who uses a reproduced, altered, counterfeited, forged, or duplicated certificate of title. If the intent was to commit or aid in the commission of an offense punishable by imprisonment for at least one year, the penalty is imprisonment for a period equal to that which could be imposed for the commission of the offense the person intended to aid or commit. The court also may assess a maximum fine of \$10,000. If the intent was to commit or aid in an offense punishable by imprisonment for a maximum of one year, the penalty is imprisonment for up to one year and/or a maximum fine of \$1,000. Under the bill, these penalties also would apply in the case of an intentionally reproduced, altered, counterfeited, forged, or duplicated document releasing a security interest.

If a registration certificate, registration plate, certificate of title, or duplicate certificate of title is lost, mutilated, or becomes illegible, the person entitled to possession of the document or the legal representative or successor in interest of that person must apply for and may obtain a duplicate or new registration under a new registration number upon furnishing satisfactory information to the Department of State and paying the required fee. If a certificate of title is lost at the time that ownership of the vehicle is to be transferred to another person, the SOS does not have to issue a duplicate certificate of title if certain conditions are met. In that case, the SOS's records must indicate the transfer without a surrender of the certificate of title. Under the bill, as provided in Section 238, the SOS also would not have to issue a duplicate title to the owner of a vehicle if the duplicate title were subject to a security interest.

The Code contains provisions regarding the transfer or assignment of the title or interest in a registered vehicle by the vehicle's owner. The owner must indorse on the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle, and deliver or mail the certificate to the purchaser or transferee at the time of the delivery of the vehicle. The certificate must show the payment or satisfaction of any security interest as shown on the original title. The bill specifies that, as provided under Section 238, the SOS also would not have to issue a title to the owner of a vehicle if the title were subject to a security interest.

Under the bill, a secured receipt that was in a form approved by the Department of State and produced at the time the secured interest was presented with payment in satisfaction of the security interest could be submitted to the Department instead of the title for purposes of transferring ownership in the vehicle.

Suggested Base List Price

The owner of a vehicle that is subject to the Code's registration requirements must apply to the SOS for the registration and issuance of a certificate of title for the vehicle. The application must be accompanied by the fee prescribed in the Code. If the application is for a certificate of title of a vehicle registered according to the list price, it must include the manufacturer's suggested base list price of the model year of the vehicle.

Annually, the SOS must publish a list of the manufacturer's suggested base list price for each vehicle being manufactured. Once the SOS publishes a base list price for a model year for a

vehicle, that price cannot be affected by subsequent increases in the manufacturer's suggested base list price. If the SOS's list has not been published for a vehicle by the time of the application for registration, the base list price must be the manufacturer's suggested retail price as shown on the label required to be affixed to the vehicle under Federal law.

The bill would eliminate the provisions regarding publication of an annual list. The base list price would have to be the manufacturer's suggested retail price shown on the required label.

Senate Bill 917

Under Section 238 of the Code, when an owner named in a certificate of title creates a security interest in the vehicle, the owner immediately must apply to name the holder of the security interest on the certificate of title, and deliver the certificate of title, application, and required fee together with a copy of the application to the holder of the security interest, who must cause the certificate, application, and fee to be delivered to the Department of State. The Department must issue a new certificate setting forth the name and address of each holder of a security interest in the vehicle or in any accessory on the vehicle for which a termination statement has not been filed and the date on which the application first stating the security interest was filed, and mail the certificate to the owner. Under the bill, however, the SOS would not have to issue a title to the owner of a vehicle if the title were subject to a security interest.

If there is no outstanding obligation and no commitment to make advances, incur obligations, or otherwise give value secured or to be secured by a security interest in a vehicle or an accessory on it, for which the certificate of title is in possession of a secured party, the secured party must execute a termination statement in the form prescribed by the Department and mail or deliver it to the owner or another person as the owner directs. The secured party must execute the termination statement within 10 days after satisfaction of the obligation and, in any event within 30 days. The bill, instead, would permit the secured party to execute a termination statement within 14 days after satisfaction of the obligation.

Currently, the owner, other than a dealer holding the vehicle for resale, promptly must cause the certificate, all termination agreements, and an application for certificate of title accompanied by the proper fee to be mailed or delivered to the Department, which must issue a new certificate. The bill would delete this provision.

If there is no outstanding obligation and no commitment to make advances, incur obligations, or otherwise give value secured or to be secured by a security interest in a vehicle or an accessory on it, for which the certificate of title is in the possession of another person, the secured party must execute a termination statement and mail or deliver it to the owner or to another person as the owner may direct. The statement must be executed within 10 days after demand and in any event within 30 days. The bill would revise this time frame to within 14 days after demand and not more than 30 days after demand.

The bill would authorize the Department to require that all transactions concerning vehicle title liens and security interests be conducted by electronic means, as determined by the Department. After all liens had been terminated, or for purposes of retitling a vehicle in another state or any other purpose deemed appropriate by the Department, it could issue a paper copy of the vehicle title to the vehicle's owner.

A vehicle sale transaction in which a security interest was entered by electronic means would have to include a document recording entry of the electronic security interest and information regarding the financial institution that held the security interest. At the time a security interest was presented with payment in satisfaction of that interest, a secured receipt in a form approved by the Department and produced at the time the security interest was presented with payment in satisfaction of the interest could be submitted to the Department instead of the title for purposes of transferring ownership in the vehicle.

Senate Bill 915

Section 257 of the Code provides that a person who commits any of the following acts is guilty of a felony:

- Altering a certificate of title, registration certificate, or registration plate with fraudulent intent.
- Forging or counterfeiting any of those documents purporting to have been issued by the Department of State.
- Altering or falsifying with fraudulent intent, or forging, an assignment upon a certificate of title.
- Holding or using a certificate of title, registration certificate, or registration plate knowing that it has been altered, forged or falsified.
- Knowingly possessing, selling, or offering for sale a stolen, false, or counterfeit certificate of title, or a registration certificate, plate, decal, or tab.

The bill also would make it a felony to fraudulently indicate on a certificate of title that there was not a security interest on record for a vehicle, or to forge or counterfeit a letter from the holder of a security interest in a vehicle stating that the security interest had been released.

Unless another penalty is specified, a person who commits a violation of the Code that is designated a felony is subject to imprisonment for not less than one year or more than five years, a fine of not less than \$500 or more than \$5,000, or both.

A person who is convicted of a second violation of Section 257 must be punished by imprisonment for at least two years and not more than seven years, or a fine of not less than \$1,500 and not more than \$7,000, or both. For a third or subsequent offense, the sentence is imprisonment for not less than five years or more than 15 years, or a fine of not less than \$5,000 or more than \$15,000, or both.

Under the bill, in addition to these penalties, a person who violated either of the proposed prohibitions would have to be required to pay restitution to the holder of the security interest in the vehicle in the amount of the outstanding lien on the vehicle.

MCL 257.257 (S.B. 915)
257.217 et al. (S.B. 916)
257.238 (S.B. 917)
Proposed MCL 257.241 (S.B. 918)

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

The current paper-based titling system is outdated, inefficient, and burdensome. The process of refinancing a vehicle in Michigan typically takes from as few as seven days to nearly 30 days.¹ This is dependent on how quickly a secured party receives and processes payment, and sends a termination statement. If there is an error in any of the documents, there can be further delays. An electronic titling system would reduce this time frame by allowing lenders to check the status of liens on vehicles before granting loans. An electronic system also would allow the release of a lien in a timely fashion because there would be no need to send requests for termination statements or wait for their return, and no need to take the paper title to the SOS for processing. This would, in turn, allow financial institutions to reduce costs, and increase vehicle loan closing options for their customers.

¹ Stephen Dedene-Credit Union ONE, Written Testimony at Senate Transportation Committee, 5-13-2014.

An electronic titling system also would reduce the possibility of fraud because the secured party would be in contact with the SOS, and could inform the Department that a lien had been satisfied. In the paper titling system, individuals can create a fake termination letter (often using a forged financial institution letterhead), get a vehicle identification number, and take the letter and the number to the SOS office (or another state's equivalent office), obtain a title without a lien, and sell the car free of the lien.² Another method of fraud used by criminals is to take the fake termination letter to a title loan establishment and obtain a loan against the vehicle. In March 2013, three men from Grand Rapids were arrested for allegedly eliminating lienholder information on automobile titles to take out multiple loans on the same vehicle.³ In three months, these individuals allegedly received fraud-induced loans of approximately \$200,000 from nine different financial institutions. The Consumer Federation of America estimates that car fraud costs consumers nearly \$11.3 billion each year.⁴

Finally, the bills include prohibitions against forging or counterfeiting a termination letter and other forms of vehicle title fraud. The penalties for violating these new offenses would act as a deterrent and would require violators to pay restitution.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 915

The bill could bring about more felony convictions for the proposed offenses. The cost to State government is approximately \$35,000 per prisoner per year. The fiscal cost to local government would be in any additional resources required by the court and jail systems. Additional fine revenue would benefit public libraries.

Senate Bills 916, 917, & 918

The Department of State reports that the bills would have a minimal implementation cost to the Department. The Department expects long-term savings related to the elimination of paper titles where liens are involved. Cost savings would result from human resources efficiencies, reduction in postage costs, and improved fraud control.

Fiscal Analyst: Bill Bowerman
John Maxwell

² Dedene, at n.1.

³ Id. Also see Michelle A. Samaad, "Digital Title Fraud Fight Makes Case for ELT", *Credit Union Times Magazine*, 4-17-2013.

⁴ Id. See Samaad, at n.3.

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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.