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BILL



ANALYSIS

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House Bill 5577 (Substitute H-1 as passed by the House)
Sponsor: Representative Eric Leutheuser
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 9-21-16

CONTENT

The bill would amend the Michigan Vehicle Code to do the following:

- **Allow the Secretary of State (SOS) to create a mobility dealer endorsement; and establish regulations relating to mobility dealers.**
- **Allow a used or secondhand vehicle dealer to obtain a mobility dealer endorsement.**
- **Permit the SOS, by written agreement with a person that held a license after he or she violated certain provisions, to place that license on probation and include conditions of probation in the agreement; and issue an order requiring the person to cease and desist from the violation or to take other actions.**
- **Allow the SOS to issue a temporary cease and desist order if the public interest would be irreparably harmed by a delay in issuing an order.**
- **Require a surety to make indemnification or reimbursement for a monetary loss if the SOS issued a final order that the licensee had engaged in fraud, cheating, or misrepresentation.**
- **Require a surety to indemnify or reimburse the State for a sales or use tax deficiency after the SOS issued a final order.**
- **Revise and add provisions regarding dealer license issuance, renewal, and expiration, including specific renewal dates and related late fees.**
- **Revise the information required on a dealer application.**
- **Delete the penalties of conditional probation and a requirement to take affirmative action for a person who engages in certain prohibited activities.**
- **Revise the service fee for temporary plates or markers.**
- **Extend the maximum length of time a special registration is valid from 14 days to 30.**

The bill would take effect 90 days after it was enacted.

Mobility Dealer

The bill would define "mobility dealer" as a used or secondhand vehicle dealer that holds an endorsement as a mobility dealer from the Department of State under Section 248k of the Code (which the bill would add).

Under the bill, the SOS could create a mobility dealer endorsement for the purposes of the Code. All of the following would apply if the SOS created a mobility dealer endorsement:

- Only a licensed used or secondhand vehicle dealer would be eligible for a mobility dealer endorsement.
- The SOS would have to prescribe the form and content of an application for a mobility dealer endorsement and the application would require the signature of the applicant.
- A mobility dealer would not be prohibited from also obtaining a broker license, if that license were issued for the sole purpose of brokering new vehicles that were modified by the addition of permanently affixed ambulatory assistance devices.

Notwithstanding any other law of the State, a mobility dealer could do any of the following:

- Display, hold in inventory, demonstrate, solicit the sale of, or offer for sale a mobility vehicle, regardless of the chassis make of the vehicle.
- If the transaction occurred through or by a franchised dealer of the vehicle's chassis line make, arrange for the sale and delivery of a new mobility motor vehicle to a purchaser at the mobility dealer's place of business.
- Sell and install mobility equipment and accessories and other goods and services to meet the particular needs of disabled drivers and passengers.

Additionally, a mobility dealer could provide mobility vehicle maintenance and repair services, subject to the following:

- Except as provided below, a mobility dealer could not perform repairs on mobility vehicles or other motor vehicles without a license as a repair facility under the Motor Vehicle Service and Repair Act.
- A mobility dealer could perform repairs on parts that were unique to a mobility vehicle, did not alter the operating condition of a mobility vehicle, and were not part of the original manufactured motor vehicle without a license as a repair facility under the Motor Vehicle Service and Repair Act.

A mobility dealer could not do any of the following:

- Represent that it was engaged in the sale of new motor vehicles.
- Sell or transfer, or offer to sell or transfer, a new motor vehicle by assigning its certificate of origin.
- Sell or offer to sell an adapted vehicle that did not have proof that it had been adapted or modified in compliance with 49 CFR Part 568 and 49 CFR Part 595.

The bill would define "mobility vehicle" as a motor vehicle that is specially designed and equipped to transport an individual with a disability, in compliance with 49 CFR Part 568 and 49 CFR Part 595, and that meets all of the following:

- Is designed and built or modified to allow vehicle ingress and egress for an individual who is in a wheelchair or scooter.
- Is equipped with at least one of the following: an electronic or mechanical wheelchair, scooter, or platform lift that enables an individual to enter or exit the vehicle while occupying a wheelchair or scooter; an electronic or mechanical wheelchair ramp; or a system to secure a wheelchair or scooter that allows for safe transportation of an individual while he or she is occupying the wheelchair or scooter and that is installed as an integral part or permanent attachment to the vehicle's chassis.

(49 CFR Part 568 prescribes the method by which manufacturers of vehicles manufactured in two or more stages must ensure conformity of those vehicles with Federal motor vehicle safety standards, and other regulations. 49 CFR Part 595 establishes conditions under which the compliance of motor vehicles and motor vehicle equipment with the Federal motor vehicle safety standards may be made inoperative.)

"Mobility equipment" would mean mechanical or electronic devices, parts, or accessories that are specifically designed to facilitate the use of a motor vehicle by an aging or disabled individual, in compliance with 49 CFR Part 571, and that are permanently attached to or incorporated in the vehicle.

Probation, Cease & Desist

Under the bill, as an alternative or in addition to administrative action under the Code for a violation or alleged violation of Section 248h, 249, or 249a, the SOS could, by written agreement with a person that held the license described in the applicable section, place that license on probation and include conditions of probation in the agreement. (The sections listed under the bill generally prohibit certain conduct and prescribe penalties or list activities for which the SOS may deny the application of a person for a license as a dealer or an automotive recycler, a used or secondhand vehicle parts dealer, a vehicle scrap metal processor, or a foreign salvage vehicle dealer, or may suspend or revoke a license already issued.)

If the SOS determined after notice and opportunity for a hearing that a person had violated Chapter 2 the Code, the SOS could issue an order requiring the person to cease and desist from the violation or to take an affirmative action that in the judgment of the SOS would carry out the purposes of the Code, including payment of restitution to a customer. (Chapter 2 contains provisions concerning administration, registration, certificate of title, and anti-theft.)

If the SOS made a written finding of fact that the public interest would be irreparably harmed by a delay issuing an order, the SOS could issue a temporary cease and desist order. Before doing so, the SOS, when possible, by telephone or otherwise, would have to notify the person that violated Chapter 2 of the SOS's intention to issue a temporary cease and desist order. A temporary cease and desist order would have to include a statement that the SOS would be required, on request, to hold a hearing within 30 days to determine whether the order would become permanent.

The bill provides that the remedies and sanctions under Chapter 2 would be independent and cumulative. The use of a remedy or sanction, including administrative action by the SOS, an agreement for probation, or a cease and desist order, would not bar other lawful remedies and sanctions against a person and would not limit a person's criminal or civil liability under law.

Surety Reimbursement

Under the Code, the SOS may grant a dealer license if certain criteria are met. ("Dealer" means a person who in a 12-month period did one or more of the following: engaged in the business of purchasing, selling, exchanging, brokering, leasing, or dealing in vehicles of a type required to be titled under the Code; engaged in the business of purchasing, selling, exchanging, brokering, or dealing in salvageable parts of five or more vehicles; or engaged in the business of buying five or more vehicles to sell vehicle parts or process into scrap metal. The term also includes a person engaged in the actual remanufacturing of engines or transmissions.)

An applicant for a new vehicle dealer or a used or secondhand vehicle dealer or broker license must include a properly executed bond or a bond renewal certificate with the license application.

The surety must make indemnification or reimbursement for a monetary loss only after a court judgment based on fraud, cheating, or misrepresentation is entered against the licensee. The bill states that the surety would have to make indemnification or reimbursement for a monetary loss only after a court judgment based on fraud, cheating, or misrepresentation was entered against the licensee or a final order that the licensee had

engaged in fraud, cheating, or misrepresentation was issued by the SOS after an administrative hearing.

The Code also requires the bond to indemnify or reimburse the State for any sales tax deficiency as provided in the General Sales Tax Act or use tax deficiency as provided in the Use Tax Act for the year in which the bond is in force. The surety must make indemnification or reimbursement only after a final court judgment is entered against the licensee. The bill also would require the surety to make indemnification or reimbursement after the SOS issued a final order following an administrative hearing.

Dealer License Issuance, Renewal, & Expiration

The Code states that a dealer license expires on December 31 of the last year for which the license is issued. The SOS may renew a dealer license for a period of not more than four years upon application and payment of the fee required under the Code. The bill would amend and add to these provisions.

Under the bill, all of the following would apply to the issuance, renewal, and expiration of a dealer license:

- A dealer license that was issued before the bill's effective date would expire on December 31 of the last year for which the license was issued.
- A dealer would have to renew its license annually, and the SOS could renew a dealer license for a period of up to four years if the SOS received a renewal application and payment of the fee required under the Code.
- An initial dealer license issued on or after the bill's effective date would expire one year after the date the license was issued.
- To renew a dealer license, the dealer would have to file an application for renewal with the SOS at least 30 days before its current license expired.
- If a dealer had not renewed its dealer license by the expiration date of its current license, the SOS within 10 business days after that date would have to notify the dealer that the SOS had not received its renewal application, and indicate the amount of the late renewal fee.
- A dealer could continue to operate its dealer business after its dealer license expired, pending approval of the renewal application, if the renewal application were delivered in person or mailed to the SOS by the expiration date of the license.
- If an application to renew a dealer license were filed with the SOS after the license expired, the dealer could operate its dealer business beginning on the date on which the application was delivered or mailed to the SOS, pending approval of the renewal application, and would have to pay a renewal fee equal to 150% of the normal renewal fee.
- If a dealer filed an application to renew a dealer license more than 30 days after the license expired, the dealer would be considered a new applicant for a dealer license.
- The SOS would have to deposit the late renewal fees in the Transportation Administration Collection Fund.
- If requested by the Department of State, a dealer that mailed an application would have to provide proof of mailing of the renewal application that was satisfactory to the Department.

Dealer License Application

The Code requires the application for a dealer license to be in the form prescribed the SOS and to be signed by the applicant. In addition to other information that the SOS may require, the application must contain information outlined in the Code. That information includes the name, address, date of birth, and Social Security number of each owner or partner and, if a corporation, of each principal officers; and, if new vehicles are to be sold, the make to be handled. Each new vehicle dealer must send with the application a certification that the dealer

holds a bona fide contract to act as factory representative, factory distributor, or distributor representative to sell at retail the make of vehicle to be sold.

Under the bill, if the business were a sole proprietorship or partnership, the application would have to include the name, address, and date of birth of each owner or partner; if the business were a corporation, the application would have to include the name, address, and date of birth of each of the principal officers. Also, if the dealer's business were the sale of new vehicles, the application would have to include the make or makes of those vehicles.

Each new vehicle dealer would have to send with the application a certification that the dealer held a bona fide contract to act as factory representative, factory distributor, or distributor representative to sell at retail the make of vehicle to be sold and that the contract met the requirements for a dealer agreement under Public Act 118 of 1981.

(Public Act 118 of 1981 regulates motor vehicle manufacturers, distributors, wholesalers, dealers, and their representatives. "Dealer agreement" means a written agreement or contract between a distributor and a new motor vehicle dealer, between a manufacturer and a distributor or a new motor vehicle dealer, or between an importer and a distributor or a new motor vehicle dealer, that purports to establish the legal rights and obligations of the parties to the agreement or contract and under which the dealer purchases and resells new motor vehicles and conducts service operations.)

Additionally, the bill would require the application for a dealer license to include a certification that one of the following had reviewed and understood the requirements of the Code, the rules promulgated under it, the dealer manual published by the SOS, and any other applicable material provided by the Department of State: the applicant, if the applicant were an individual or sole proprietorship; the partners of the applicant, if the applicant were a partnership; the principal officers of the applicant, if the applicant were a corporation; or any other individual who was responsible for the daily operations of the dealership

Prohibited Conduct Penalties

Under the Code, the SOS may impose one or more of the following penalties if a person engages in certain prohibited conduct (described below):

- Placement of a limitation on the person's license.
- Suspension or revocation of a license.
- Denial of an original or renewal application.
- A maximum civil fine of \$25,000 paid to the Department.
- A letter of censure.
- Conditional probation.
- A requirement to take affirmative action.

The bill would delete the last two penalties.

The SOS may deny the application of a dealer after a hearing for the licensing of an individual as a salvage vehicle agent, or may suspend or revoke an agent's license, if the SOS finds that the dealer, applicant agent, or licensed agent has made a false statement of material fact in the agent's application; violated Chapter 2 or a rule promulgated under it; committed a fraudulent act in connection with purchasing or acquiring vehicles; engaged in an unfair or deceptive method, act, or practice; or committed another violation listed in the Code.

Temporary Registration Plates

Under the Code, for temporary registration plates or markers, the SOS must collect a service fee of \$5 for each group of five of those temporary registration plates or markers. The bill,

instead, would require the SOS to collect a service fee in an amount determined by the SOS to reflect the actual cost of administering the temporary registration plates and markers program, or in the amount of \$4 per plate or marker, whichever was less.

Special Registration

The SOS may issue a special registration for each of the following:

- A new vehicle purchased or leased outside of the State and delivered in the State to the purchaser or lessee by the manufacturer of that vehicle for removal to a place outside of the State, if a certification is made that the vehicle will be primarily used, stored, and registered outside of the State and will not be returned to the State by the purchaser or lessee for use or storage.
- A vehicle purchased or leased in the State and delivered to the purchaser or lessee by a dealer or by the owner of the vehicle for removal to a place outside of the State, if a certification is made that the vehicle will be primarily used, stored, and registered outside of the State and will not be returned to the State by the purchaser or lessee for use or storage.

A special registration is valid for not more than 14 days after the date of issuance, and a fee must be collected for each special registration provided. The bill would increase the length of time a special registration is valid for from 14 days to 30 days.

MCL 257.226 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

State: The bill would have a negligible fiscal impact on the resources of the Department of State. Any potential costs related to additional administrative hearings or hearings for mobility dealers regarding cease and desist orders would be absorbable within current annual appropriations. The proposed change in the license renewal process also would be revenue neutral, according to the Department. Finally, any costs associated with the creation of mobility dealers and the proposed changes in the fee structure for temporary registrations would be revenue neutral, as well, and thus result in no additional costs for the Department.

Local: The bill would have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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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.