

Legislative Analysis



ELECTRONIC LIEN TITLE SYSTEMS FOR WATERCRAFT AND ORVs

Phone: (517) 373-8080
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House Bill 6486 (H-1) as reported from committee
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Sponsor: Rep. Curtis VanderWall
Committee: Natural Resources
Complete to 12-5-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 678 and 519 of 2018)

SUMMARY:

House Bill 6486 would amend Part 803 (Watercraft Transfer and Certificate of Title) of the Natural Resources and Environmental Protection Act (NREPA) to allow electronic recordkeeping as a substitute for provision of a certificate of title if the Department of State (DOS) provides as much. (MCL 324.80304 et al. and proposed 324.80315f)

House Bill 6487 would make parallel amendments to Part 811 (Off-Road Recreation Vehicles) of NREPA. (MCL 324.81103 et al. and proposed 324.81114f)

Public Acts 289 to 292 of 2014 (SBs 915 to 918)¹ established an electronic lien title system for motor vehicles in an effort to move away from a paper-based titling system. The bills would mirror the provisions of PAs 289 to 292 for watercraft and ORVs.

The bills would take effect 90 days after enactment.

DOS could require electronic transactions of liens and security interests

The bills would allow DOS to require that all transactions concerning watercraft title liens and security interests—or ORV security interests—be conducted by electronic means. If DOS did require electronic transactions of liens and security interests, it could maintain a record of title electronically in lieu of issuing a certificate of title. Once all liens or security interests had been terminated (or for purposes of retitling the watercraft or ORV in another state or any other purposes deemed appropriate by DOS), DOS could issue a paper copy of the watercraft or ORV title to the owner.

Under the bills, a watercraft or ORV 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 the financial institution that held the interest. When a security interest had been paid off, an approved secured receipt could be submitted to DOS in lieu of the certificate of title for purposes of transferring ownership.

The authority for DOS to require electronic transactions of liens and security interests (and to allow them to act as a substitute for a certificate of title) would be incorporated throughout NREPA in sections that currently require presentation of a certificate of title.

¹ <http://legislature.mi.gov/doc.aspx?2014-SB-0916>

Electronic lien title systems

The bills would allow the Secretary of State (SOS) to enter into contracts to establish and operate *electronic lien title systems* to process the notification and release of security interests in watercraft and ORVs through electronic file transfers (or as otherwise determined by SOS) in lieu of paper documents otherwise required by law. The contract would have to require the protection of proprietary information in the systems and provide for the protection of a competitive free market.

By February 16, 2021, the systems would have to be operational and DOS would have to require a person to enter evidence of security interests and related information into the systems. All secured parties would have to participate in the systems, except for those not normally engaged in the business or practice of financing watercraft or ORVs, respectively.

For the purposes of Parts 803 and 811 of the Act, an electronic file maintained in the systems would fulfill any requirement that a certificate of title display a security interest or other information. A secured party would have to execute a release of its interest—to the owner if the owner held the certificate of title or to the DOS—within 14 days of the final payment. If the secured party failed to comply with these requirements, it would be liable to the owner for all damages caused by the failure to comply.

The systems would have to provide a way for a watercraft or ORV dealer to assign ownership of a watercraft or ORV even if proof that the prior interest was satisfied did not exist on the systems. However, in that case, the dealer would have to warrant that the title was free and clear of all liens and 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 interest. The same would apply for a certificate of title maintained in the systems, as evidence of the certificate of title's existence and contents.

SOS could institute any requirements necessary to implement the systems, including any of the following:

- Monitoring the reasonable fees charged by service providers or a contractor for the establishment and maintenance of the systems.
- Qualifications of service providers and contractors.
- Program specifications that a contractor must adhere to for the systems.

Offenses and penalties

The bills would prohibit a person from fraudulently indicating on a certificate of title that there was no security interest on record and from forging or counterfeiting a document from the holder of a security interest indicating that the interest had been released. Conviction of either offense would be punishable by the payment of restitution to the holder of the security interest in the amount of the outstanding lien, in addition to any other penalty.

BACKGROUND INFORMATION:

Recent legislation in Michigan has provided for electronic copies of required documents to be used as an alternative to paper copies. As mentioned above, PAs 289 to 292 of 2014 established an electronic lien title system for vehicles. Public Act 135 of 2015 (HB 4193)² allowed drivers to produce a certificate of insurance in electronic form. Public Act 59 of 2017 (HB 4013)³ allowed drivers to produce an electronic copy or digital photograph of a vehicle registration certificate. House Bills 5386, 5988, and 5989,⁴ reported from the House Natural Resources committee on June 6, 2018 and passed by the House on September 25, 2018, would allow electronic copies of boating safety certificates to be produced in lieu of paper copies.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the Department of State (DOS) and no fiscal impact on local units of government. DOS is currently seeking to contract with a vendor to provide an electronic lien title system for vehicles, as provided under 2014 PA 292, and would be able to utilize this system for the systems required under HBs 6486 and 6487. DOS would incur marginal costs due to computer programming the electronic system to accommodate watercraft and ORV titling purposes. The House's H-1 substitutes would amend the effective dates to align with the completion of phase 2 of DOS's new Customer and Automotive Records system (CARS), which would allow for savings through lower programming costs. The bills may also provide marginal long-term cost savings to DOS through the elimination of paper titles and greater personnel efficiencies at Secretary of State branch offices.

POSITIONS:

The Michigan Credit Union League indicated support for the bills. (11-28-18)

The Secretary of State's office indicated a neutral position on the bills as amended. (11-28-18)

Legislative Analyst: Jenny McInerney
Fiscal Analysts: Michael Cossen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

² House Fiscal Agency analysis of PA 135 of 2015/HB 4193: <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4193-E98C708B.pdf>

³ House Fiscal Agency analysis of PA 59 of 2017/HB 4013: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4013-84F29DFF.pdf>

⁴ House Fiscal Agency analysis of HBs 5836, 5988, and 5989: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5836-18A4F26A.pdf>