



**House
Legislative
Analysis
Section**

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MAKE ODOMETER TAMPERING A FELONY

House Bill 4390 as enrolled
Third Analysis (1-30-89)

RECEIVED

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Sponsor: Rep. Nick Ciaramitaro
House Committee: Consumers
First Senate Committee: State Affairs, Tourism, and
Transportation
Second Senate Committee: Commerce and Technology
Mich. State Law Library

THE APPARENT PROBLEM:

According to the secretary of state, Michigan consumers lose as much as \$100 million each year when they purchase automobiles whose odometers have been illegally adjusted to register far fewer miles than the vehicles have actually been driven. This staggering loss takes two forms: purchase prices grossly in excess of what the autos ought to bring, and unexpected, major repair costs that should not, at the mileage indicated, have been necessary for years. Authorities in Pennsylvania say that odometers in 60 percent of the vehicles at auctions for dealers have been set back. A survey conducted by the National Highway Traffic Safety Administration found that 93 percent of leased vehicles entering the retail market in one year had falsified odometers. The Bureau of Automotive Regulation in the secretary of state's office has estimated that odometers in 40 percent of the used vehicles sold in Michigan have altered mileage readings. The bureau routinely examines used vehicle transactions in Michigan, and investigates further when titles or other documents (particularly from Kentucky and Indiana) appear to have been tampered with. According to the secretary of state, the bureau is now notifying about 500 consumers a month that they have purchased vehicles with altered odometers.

Although tampering with an odometer is a crime under federal and state laws, the profits (thousands of dollars on a late-model car) are well worth the risk of such modest penalties as that imposed in Michigan: a fine of \$100 or imprisonment for no more than 90 days. In the belief that stiffer penalties would reduce tampering, and that the states should coordinate their reporting requirements with those of the federal government to make detection of such crimes easier, the secretary of state has proposed several amendments to the Michigan Vehicle Code.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code to make odometer tampering a felony and to require odometer mileage statements on certificates of title for motor vehicles. It also would allow the use of special window treatments, if prescribed by an optometrist, and would specify special windshield wiper and defroster requirements for certain commercial vehicles.

ODOMETER TAMPERING

Felony provisions. Under present law, tampering with an odometer is punishable by a fine of up to \$100 and jail for up to 90 days. The bill would specify that anyone who altered or disconnected an odometer or who advertised, sold, installed, or used a device that caused an odometer to register a false reading would be guilty of a felony. If an odometer required service that made it incapable of registering actual mileage, it would have to be set at zero

and a note would have to be attached to the left door frame of the vehicle by the owner stating the mileage prior to the repair and the date of the repair. Anyone who removed, defaced, or altered such a notice also would be guilty of a felony.

Certificates of title. In addition to the information currently required on a certificate of title, the bill would require that the number of miles on the odometer at the time of transfer be included on the title. In addition, the certificate of title would have to state both (a) whether the vehicle had been used as a taxi, police vehicle, or state or local government vehicle (currently, this information is required only on the certificate of registration); and (b) whether the vehicle had been issued a certificate of title for a salvage or rebuilt vehicle. Certificates of title for police vehicles, state or local government vehicles, salvage vehicles, and rebuilt vehicles would have to be of a different color from the certificates of title for all other vehicles.

Odometer information. Under the vehicle code, when someone sells a vehicle, he or she must provide the buyer with a statement containing certain information, including the odometer reading at the time the vehicle is transferred and a statement that the actual mileage is unknown if the odometer reading differs from actual mileage. The bill would require that the owner, before delivering the vehicle, give the buyer written information on odometer mileage, either (a) by means of the written odometer information on the certificate of title or (b) in the form of a written statement, signed by the owner, which basically would say whether or not, to the best of the owner's knowledge, the odometer reading accurately reflected the actual mileage on the vehicle. (The written statement also would have to include a reference to this bill and comparable federal law, along with a statement that failure to complete the title or form or providing false information could result in civil liability and civil or criminal penalties for the seller.)

Certificates of title and dealer reassignment forms would be required to have a place for this odometer information, though if a vehicle were not titled or the title did not contain a space for the required information, a written statement would have to be provided as a separate document.

Dealers selling (or exchanging) vehicles would be required to present the certificates of title or written statements and any reassigned titles to the buyer, who then would be required to inspect, sign, and date the certificate and return it to the dealer to be submitted to the secretary of state. If neither the seller nor buyer were a dealer, then completion of the odometer information on the title would satisfy the requirements of the bill. Someone could not sign an odometer disclosure statement both as "transferor" (seller) and "transferee" (buyer) in the same transaction.

OVER

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New or used vehicle dealers would be required to get completed odometer mileage statements with each vehicle they acquired, and they could not accept or provide odometer mileage statements or titles with incomplete odometer information.

Odometer information would not be required for:

- vehicles with gross vehicle weights over 16,000 pounds,
- vehicles 10 years or older,
- new vehicles transferred from a manufacturer to a dealer,
- vehicles sold directly to federal agencies in conformity with contractual specifications, or
- vehicles that were not self-propelled.

Leased vehicles. Before the owner of a leased vehicle could transfer the title to the vehicle, he or she would be required to notify the person leasing the vehicle that ownership was being transferred and that the lessee was required, under threat of penalty, to provide a written statement to the owner regarding the vehicle's mileage. The statement would have to be signed by the person leasing the vehicle and would be required to give information similar to that required by the bill when title to other licensed vehicles was transferred (including a statement attesting to the lessee's knowledge of the accuracy of the odometer reading). If the owner of a leased vehicle transferred it without actually taking possession of the vehicle, he or she could indicate on the certificate of title the mileage reported by the person leasing the vehicle (unless the owner had reason to believe that the lessee were lying).

Record keeping. Each dealer record of a vehicle transaction would be required to include the dealer license numbers of both dealers involved (that is, the license number of the dealer from whom the vehicle was obtained and the license number of the dealer to whom the vehicle was sold or delivered).

Dealers and lessors would be required to keep for five years copies of the odometer mileage statements they issued or received. Auction dealers or vehicle salvage pool operators would be required to keep for five years following the date of sale of each motor vehicle (a) the odometer reading on the date the dealer or operator took possession of the vehicle, (b) the vehicle identification number, (c) the name of the buyer, and (d) the name and most recent owner (other than the dealer or operator). Copies of this information would have to be kept at the businessperson's primary place of business "in an order . . . appropriate to business requirements" and in a way that allowed systematic retrieval.

Currently, dealers licensed as vehicle salvage pool operators are required to maintain records containing descriptions of each vehicle they store, the insurance company storing the vehicle, the amount of time the vehicle was stored, and the person acquiring the vehicle. The bill would require dealers licensed as brokers to maintain the same records as salvage pool operators. Brokers also would be required to keep a record (for five years) of the odometer mileage reading of each vehicle sold under an agreement with the broker.

Dealers licensed as used vehicle parts dealers, vehicle scrap metal processors, or "foreign" (that is, out of state) salvage vehicle dealers also are required to keep certain records. (House Bill 5497, which became Public Act 220 of 1988, required that salvage dealers from out of state be licensed, increased recordkeeping requirements for people in the salvage business, and added provisions to

regulate salvage pools.) The bill would increase the recordkeeping requirements for used parts dealers, requiring them to include the color of the vehicle in the vehicle description and to include records of purchases (as well as the existing provisions for sales) of parts from late model vehicles. The bill also would require that records of purchases or sales of parts be kept accessible at the dealer's location in (or attached to) the dealer's "police book" or "hard copy" (that is, printed version) of computerized data entries.

House Bill 5497 (Public Act 220 of 1988) added provisions to the vehicle code that required out of state ("foreign") salvage vehicle dealers to maintain certain records, required the secretary of state to make periodic unannounced inspections of vehicle parts dealers, required dealers to keep records for five years, and allowed the secretary of state to summarily suspend the license of a dealer who did not keep the required records. The bill would specify that these provisions would take effect on October 1, 1989, and would apply only until January 1, 1993.

Dealer Penalties. Under the vehicle code, a person who tries to defraud another by violating the requirements for providing odometer information or by altering an odometer so as to provide an inaccurate mileage reading is liable for three times the amount of actual damages or \$1,500 (whichever is greater) and for the costs of the lawsuit plus reasonable lawyer's fees. The bill would impose the same liability on dealers who failed to keep for five years each odometer mileage statement he or she received or furnished.

In addition, the bill would specify that a violation by any licensed dealer of the requirements for the provision of odometer information or of the prohibitions on tampering with odometers would be considered prima facie evidence of a fraudulent act under the code.

Dealer transfers. New or used vehicle dealers who acquire vehicles for resale are not required to obtain a new registration or to forward the title to the secretary of state, but must have in their immediate possession the assigned certificate of title. The bill would require that the assigned certificates of title have the odometer information properly completed, and would add new requirements for transfers of vehicles from one dealer to another.

When one dealer transferred a vehicle title to another dealer, the transferring dealer would be required to complete an assignment and warranty of title on the certificate of title, salvage certificate of title or dealer reassignment form and give this assignment and warranty to the other dealer. Dealer reassignment of title forms (which would be prescribed by the secretary of state) would be required to contain the following information:

- the title number of the accompanying title;
- the name, address, and, if applicable, the dealer license number of the dealer to whom the vehicle was being transferred;
- the year, make, model, body type, and vehicle identification number of the vehicle;
- the name, address, dealer number, and signature of the transferring dealer;
- the required odometer mileage statement; and
- any other information required by the secretary of state.

WINDSHIELDS

Special window treatments. One of the current exceptions to the motor vehicle code's general prohibition on special window treatments is for people who are photosensitive

and who have had special window treatments prescribed for their protection by their physicians. The bill would allow such special window treatments on the prescription of an optometrist as well.

Commercial vehicles. Presently, licensed commercial vehicles are not allowed on the highways between December 15 and March 15 unless their windshields are heated (either electrically, by a hot air defroster, "or other scientific method") and maintained in operable condition at all times. The bill would repeal this section and replace it with two new sections, both of which apply to trucks with gross vehicle weights over 10,000 pounds, truck tractors, buses, and trucks carrying hazardous materials (regardless of the truck's weight). One section would specify requirements for windshield wiper blades for such vehicles, the other section basically would reinstate the existing windshield heating requirements for these vehicles (the new section does not include any reference to times of year).

MCL 257.217 et al.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, reporting on an earlier version of the bill, the Department of State estimated that it would cost approximately \$200,000 to administer the bill's odometer provisions. (12-8-88)

ARGUMENTS:

For:

The bill would better protect consumers from fraudulent mileage claims for vehicles. By making the altering of an odometer a felony, the bill would make such crimes extremely risky, and encourage prosecution by the attorney general and local prosecutors. In addition, the bill would make Michigan's reporting requirements conform with the 1986 federal odometer reforms (PL99-579), a step toward uniformity of enforcement which could reduce the flow of autos with altered odometers and make it easier for dealers to complete registration of out-of-state vehicles. These reporting requirements, under which dealers must obtain completed odometer statements before a title can be transferred, would also give the secretary of state's Bureau of Automotive Regulation important information to pass on to consumers.

For:

Consumers often blame manufacturers or dealers when their seemingly new autos require extensive repairs at relatively few miles. The bill's reporting and recordkeeping requirements would expose odometer fraud as the real culprit in many such cases.