

RECOVERY PROCEDURES FOR ABANDONED VEHICLES

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House Bill 5181 (substitute H-3 as reported from committee)

Sponsor: Rep. Diana Farrington

Committee: Financial Services

Complete to 4-24-18

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

SUMMARY:

House Bill 5181 would amend the Michigan Vehicle Code to revise the procedures under which an owner or a secured party may recover an abandoned vehicle.

Under current law, when a vehicle is determined to be abandoned, a police agency, after due process and notification procedures, can have the vehicle towed and stored at the owner's expense. The owner can redeem the vehicle from custody by paying a \$40 fee and all of the accrued towing and storage charges. (Twenty-five dollars of this \$40 fee is remitted to the Secretary of State for deposit into the Abandoned Vehicle Fund.)

The owner can also request a hearing to contest either the determination that the vehicle was abandoned or the reasonableness of the towing and storage charges. To request such a hearing, the owner must post a bond equal to the \$40 fee plus the accrued charges. If within 20 days after the date of notice that the car is in custody the owner neither redeems the vehicle nor requests a hearing, the secured party to the vehicle can redeem the vehicle by paying the \$40 fee and the accrued charges.

Request for hearing

House Bill 5181 would change (from 20 to 10) the number of days after which, if the owner has not redeemed the vehicle or requested a hearing, the secured party can redeem the vehicle.

The bill would also allow the secured party to request a hearing to contest the reasonableness of towing and storage fees in the same manner as the owner. If both the secured party and the owner were to request such a hearing within 20 days after the notice, the court would dismiss the secured party's petition and proceed with the owner's petition—unless the owner is in default on a contract or agreement with the secured party regarding that vehicle. In that case, the court would dismiss the owner's petition and proceed with the petition of the secured party. If the court finds, after the hearing, that the owner's or secured party's challenge was frivolous, it would award to the custodian costs, including reasonable attorney fees, against the owner or secured party.

Inspection of vehicle in custody

Under the bill, the custodian of the vehicle would have to allow the vehicle's owner or a secured party to inspect the vehicle and allow the owner to retrieve personal property from the vehicle.

LEIN requirements

Current law requires that, within 24 hours after a vehicle is taken into custody as abandoned, the police agency that had the vehicle taken into custody must enter it as abandoned in the Law Enforcement Information Network (LEIN). If a vehicle is removed as abandoned from private property by a local towing agency, the towing agency must provide notice to the police agency having jurisdiction that the vehicle is being removed. The police agency then determines whether the vehicle has been reported stolen and enters the vehicle into LEIN as an abandoned vehicle. The bill would require the police agency to make this determination and enter the information into LEIN within 24 hours after receiving the notice from the towing agency.

After entering the vehicle as abandoned in LEIN, current law requires the police agency to send a notification to the Secretary of State, through LEIN, that contains information about the vehicle, states where and when it was taken into custody, and identifies the police agency, the vehicle custodian, and the court with jurisdiction over the case. The bill would require this notification to also include the date on which the vehicle was entered into LEIN and whether it was entered within 24 hours after it was taken into custody.

Hearings and determinations by the court

In addition to a hearing regarding the reasonableness of towing and storage fees (described above), current law allows a vehicle owner to request a hearing on the question of whether the vehicle is in fact abandoned or whether the police, towing agency, or private property owner (if the vehicle was removed as abandoned from private property) complied with the procedures for processing an abandoned vehicle.

Generally speaking, the court schedules a hearing and notifies the owner and other parties of its time and place. If the court finds that a police or towing agency or private property owner did not comply with the applicable procedures, that party is responsible for paying, or reimbursing to the owner, the accrued towing and storage charges. In the case of a police or towing agency, it is also responsible for returning to the owner any fee or bond the owner posted. If the court finds that procedures were followed, the owner has 20 days to redeem the vehicle by paying the towing and storage costs and applicable fees.

Under the bill, a hearing described above would have to be conducted by a district court magistrate, if one has been appointed. An appeal of the district court magistrate's decision would be heard by a judge of the district court.

The bill would allow a secured party to request a hearing regarding the reasonableness of towing and storage fees. The bill would require the court to provide hearing notification to the owner or secured party, as applicable, and would provide that any refund or reduction of towing and storage fees found to be unreasonable must be reimbursed to the owner or secured party, as applicable. If the court found that a private property owner did not comply with applicable procedures, the bill would require that party to reimburse towing and storage fees to the owner or the secured party, if applicable. If the court found that procedures were properly followed by the police, the bill would give the owner or the secured party, if applicable, 20 days to redeem the vehicle.

Findings by the court

Under the bill, if the court found that the police agency did not enter the vehicle as abandoned into LEIN within 24 hours after the vehicle was taken into custody, the court would have to issue an order directing the vehicle to be released immediately to the owner or the secured party, if applicable, and further directing one of the following:

- That the police agency reimburse the owner or the secured party for the storage charges accrued before the police agency entered the vehicle into LEIN if the owner or the secured party paid those storage charges.
- If the owner or the secured party has not paid the accrued storage charges but has posted a fee or bond with the court, that the police agency pay directly to the owner or secured party the amount of the storage charges accrued before the agency entered the vehicle into LEIN plus interest, no later than 10 days after the date of the order. The court would release the bond posted by the owner or secured party in full to the custodian receiving notice from the police agency that it has issued this required payment to the owner or secured party.

If the court found that the police agency improperly determined that the vehicle was abandoned, the court would have to issue an order directing the vehicle to be released immediately to the owner and further directing the custodian to reimburse the owner for any accrued towing and storage charges paid by the owner. The police agency would then be required to reimburse the custodian for the charges paid to the owner. If the owner has not paid the accrued towing and storage charges, the police agency would have to pay those charges. The police agency would also have to pay any other fees associated with recovering the vehicle or reimburse the owner for any such fees the owner paid. The court would also order any fee or bond posted by the owner to be returned to the owner.

If the court found that the towing agency did not comply with procedures for removing and reporting an abandoned vehicle, the court would have to issue an order directing the vehicle to be released immediately to the owner or the secured party, if applicable, and further directing one of the following:

- That the towing agency reimburse the owner or the secured party for the storage charges accrued before the police agency entered the vehicle into LEIN if the owner or the secured party paid those storage charges.
- If the owner or the secured party has not paid the accrued storage charges but has posted a fee or bond with the court, that the bond and storage charges accrued before the police agency entered the vehicle into LEIN be returned to the owner or secured party, and that the remainder of any fee posted with the court be paid to the custodian.

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

MCL 257.252a, 257.252f, and 257.252g

FISCAL IMPACT:

Local units of government would incur additional costs if a local police agency is required to reimburse storage charges, bonds, or court fees to the owner or secured party of an abandoned vehicle or if the agency takes custody and pays the storage charges of an abandoned vehicle. To the extent that towing and storage fees are contested and revised as the bill provides, the bill would result in savings in towing and storage costs to some owners and secured parties of vehicles and a decrease in collected fees from vehicle towers and custodians. There would be no fiscal impact on the Department of State, as the bill does not affect the \$25 fee amount remitted to the Secretary of State. There may be a minimal impact on local governments if a local police agency takes custody and stores the abandoned vehicle.

POSITIONS:

Representatives from the following organizations testified in support of the bill (4-11-18):

- Michigan Credit Union League
- Christian Financial Credit Union
- LAFCU

The following organizations indicated support for the bill (4-11-18):

- Astera Credit Union
- Public Service Credit Union
- Safe Harbor Credit Union

Representatives from the Michigan Towing Association testified in opposition to the bill. (4-11-18)

The National Federation of Independent Business indicated opposition to the bill. (4-11-18)

Legislative Analyst: E. Best
Fiscal Analyst: Michael Cnossen

■ 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.