

## RECOVERY PROCEDURES FOR ABANDONED VEHICLES

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**House Bill 5181 as enacted**  
**Public Act 347 of 2018**  
**Sponsor: Rep. Diana Farrington**  
**House Committee: Financial Services**  
**Senate Committee: Judiciary**  
**Complete to 11-7-18**

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

### SUMMARY:

House Bill 5181 amends the Michigan Vehicle Code to revise the procedures under which an owner or a secured party may recover an abandoned vehicle. In general, the bill allows a secured party to redeem an abandoned vehicle before the owner's time in which to do so has expired, allows a secured party to challenge the reasonableness of certain fees, provides time-sensitive procedures for police agencies in dealing with abandoned vehicles, and makes the police agencies responsible for paying certain fees when those procedures are not followed.

Under the Vehicle Code, when a vehicle is determined to be abandoned, a police agency, after due process and notification procedures, may 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.

House Bill 5181 revises this procedure as described below.

#### Request for Hearing

First, the bill changes (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 also allows the secured party to request a hearing to contest the reasonableness of towing and storage fees in the same manner as the vehicle's owner. If both the secured party and the owner request such a hearing within 20 days after the notice, the court must 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 which case the court must dismiss the owner's petition and proceed with the secured party's petition. (If the secured party redeems the vehicle, the owner may only seek damages related to the reasonableness of the towing and daily storage fees from the secured party.) If the court finds, after the hearing, that the owner's or secured party's challenge was frivolous, it may award reasonable attorney fees to the custodian.

### Inspection of Vehicle in Custody

Under the bill, the custodian of the vehicle must allow the vehicle's owner or a secured party to inspect the vehicle during reasonable business hours at the place where the vehicle is being held. The custodian must allow the owner to inspect the vehicle and retrieve personal property from it without paying a fee for the first visit. The custodian may charge the owner a fee of up to \$25 for each visit after the first. The custodian may charge the secured party a fee of up to \$75 to inspect the vehicle or, if the actual cost of inspection is greater than \$75, the cost necessary to allow the inspection. If the custodian charges the secured party more than \$75, he or she must provide the secured party with an itemized invoice for the actual costs assessed.

### LEIN Requirements

The Vehicle Code 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 requires the police agency to make this determination and enter the information into LEIN within 24 hours after receiving the notice from the towing agency.

The Vehicle Code also 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, vehicle custodian, and court with jurisdiction over the case.

The bill requires that this notification also include the date on which the vehicle was entered into LEIN and whether it was entered within 24 hours after being taken into custody.

### Other Hearings and Determinations by the Court

In addition to a hearing regarding the reasonableness of towing and storage fees, the Vehicle Code allows a vehicle owner to request a hearing on 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, 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 applicable procedures were followed, the owner may redeem the vehicle by paying the towing and storage costs and applicable fees.

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

The bill also allows a secured party to request a hearing regarding the reasonableness of towing and storage fees. The bill requires 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 finds that a private property owner did not comply with applicable procedures, the bill requires that party to reimburse towing and storage fees to the owner or the secured party, if applicable. If the court finds that procedures were properly followed by the police, the bill gives the owner or the secured party, if applicable, 20 days to redeem the vehicle.

#### Findings by the Court

Under the bill, if the court finds 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 must 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 finds that the police agency improperly determined that the vehicle was abandoned, the court must 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 is 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 must pay those charges. The police agency must also pay any other fees associated with recovering the vehicle or reimburse the owner for any such fees he or she paid. The court would also order any fee or bond posted by the owner to be returned to the owner.

If the court finds that the towing agency did not comply with procedures for removing and reporting an abandoned vehicle, the court must 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.

Public Notice of the Sale

The Vehicle Code specifies that public notice is to be published at least once in a newspaper having a general circulation within the county in which the vehicle was abandoned, giving a description of the vehicle for sale, including the time, date and location of the sale.

Under the bill, except as otherwise provided, the notice of publication requirement may be satisfied by publishing a notice of the public auction once in a newspaper having a general circulation within the county where the auction is to occur, if it states the auction is an abandoned vehicle auction listing the date, time and location. The notice must also provide a website address where a complete description of each vehicle to be auctioned appears for at least five consecutive days before the date of the auction.

The term “complete description” is defined to mean a description of the vehicle’s year, manufacturer name, model name, and vehicle identification number.

The bill takes effect January 14, 2019.

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 for 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. These costs may be marginally offset by the provision allowing the vehicle custodian to charge \$75 to inspect a vehicle or an amount that would reimburse the actual cost of inspecting a vehicle.

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