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BILL ANALYSIS



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House Bill 6486 (Substitute H-1 as passed by the House)
Sponsor: Representative Curtis Vanderwall
House Committee: Natural Resources
Senate Committee: Outdoor Recreation and Tourism

Date Completed: 12-12-18

CONTENT

The bill would amend the Natural Resources and Environmental Protections Act to do the following:

- **Allow the Secretary of State (SOS) to enter into one or more contracts to establish an electronic lien title system to process the notification and release of security interests in watercraft through electronic file transfers.**
- **Allow the SOS to require all transactions concerning watercraft title liens and security interests to be conducted by electronic means.**
- **By February 16, 2021, require the electronic lien title system to be established, implemented, and operational.**
- **By February 16, 2021, require a person to enter evidence of security interests and any related information into the system in lieu of paper documents.**
- **Specify that a certified copy of the SOS's electronic record of a security interest would be admissible in any civil, criminal, or administrative proceeding in the State as evidence of the existence of the security interest.**
- **Allow the SOS to determine any requirements necessary to carry out the contents of the bill.**
- **Prohibit certain actions related to the forging or counterfeiting of documents.**

The bill would take effect 90 days after its enactments.

Under the Act, a person may not sell or otherwise dispose of a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title, and a person may not purchase or acquire a watercraft without obtaining a certificate of title. Additionally, a certificate of title also must contain space for the notation and cancellation of a lien, mortgage, or encumbrance.

Electronic Lien Title System

The bill would allow the Secretary of State (SOS) to enter into one or more contracts to establish, implement, and operate an electronic lien title system to process the notification and release of security interests in watercraft through electronic file transfers, or as otherwise determined by the SOS, instead of the issuance and maintenance of paper documents otherwise required by law. Contract would have to require the protection of proprietary information in the electronic lien title system and provide for the protection of a competitive free market.

"Electronic lien title system" would mean a system to process the notification and release of security interests through electronic file transfers that be established and implemented by the bill.

Under the bill, any requirement that a security interest or other information appear on a certificate of title would be satisfied by the inclusion of that information in an electronic file maintained in the electronic lien title system. The satisfaction of a security interest could be electronically transmitted to the SOS. A secured party would have to execute a release of its security interest in a watercraft in a manner prescribed by the Department of Natural Resources not more than 14 days after the secured party received the payment in satisfaction of the security interest.

If the certificate of title were in the possession of the watercraft owner, the secured party would have to deliver the release to the watercraft owner or as otherwise directed by the owner. However, if the certificate of title were held electronically as provided by the bill, the secured party would have to deliver the release of security interest to the Department of State, and the Department would have to cancel the security interest. If the secured party failed to comply with these requirements for the release of a secured interest, the secured party would be liable to the watercraft owner for all damages sustained by the owner because of the failure to comply.

The bill provides that the SOS could require all transactions concerning watercraft title liens and security interests to be conducted by electronic means, as determined by the Department of State. In that case, if a watercraft were subject to a security interest, the Department of State would not have to issue a certificate of title to the owner of the watercraft or a lienholder if it maintained a record of title electronically. After all liens had been terminated, or for purposes of retitling the watercraft in another state or any other purpose considered appropriate by the Department of State, the Department could issue a paper copy of the watercraft title to the watercraft owner.

A watercraft 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 information regarding the financial institution that held the security interest. When a secured party was presented with payment in satisfaction of the security interest, a secured receipt in a form approved by the Department of State could be produced and submitted to the Department instead of the certificate of title for purposes of transferring ownership in the watercraft.

The electronic lien title system would have to provide a mechanism by which a watercraft dealer could assign ownership of a watercraft without proof that the prior security interest was satisfied existing on the electronic lien title system. However, in the event of such an assignment, the dealer would warrant that the title be free and clear of all liens and would assume responsibility for the satisfaction of the security interest.

Additionally, a certified copy of the Secretary of State's electronic record of a security interest would be admissible in any civil, criminal, or administrative proceeding in the State as evidence of the existence of the security interest. If a certificate of title were maintained in the electronic lien title system, a certified copy of the SOS's electronic record of the certificate of title would be admissible in any civil, criminal, or administrative proceeding in the State as evidence of the existence and contents of the certificate of title.

The bill would require all secured parties to participate in the electronic lien title system, except for parties not normally engaged in the business or practice of financing watercraft.

The bill would require the electronic lien title system to be established, implemented, and operational by February 16, 2021. Also, by February 16, 2021, the Department would have to require a person to enter evidence of security interests and any related information into the system in lieu of paper documents.

SOS Determinations

Under the bill, the SOS could determine any requirements necessary to carry out the contents of the bill, including, one or more of the following:

- Monitoring the reasonable fees charged by service providers or a contractor for the establishment and maintenance of the electronic lien title system.
- The qualifications of service providers for participation in the electronic lien title system.
- The qualifications for a contractor to enter into a contract with the SOS to establish, implement, and operate the electronic lien system.
- Program specifications that a contractor would have to adhere to in establishing, implementing, and operating the electronic lien system.

"Contractor" would mean a person who entered into a contract with the SOS to establish, implement, and operate an electronic lien system.

"Service provider" would mean a person who provided secured parties with software to manage electronic lien and title data as provided by the bill.

Forgery, Fraudulence, & Alterations

The Act prohibits a person from altering or forging a certificate of a title, or a manufacturer's or importer's certificate, or an assignment of either, or a cancellation of a lien, to a watercraft. The bill would prohibit a person from reproducing, counterfeiting, or duplicating those documents.

Additionally, the bill would prohibit a person from fraudulently indicating on a certificate of title that there was no security interest or record for a watercraft. The bill also would prohibit a person from forging or counterfeiting a letter, receipt, or other document from the holder of a security interest in a watercraft indicating that the security interest had been cancelled.

The bill would provide that a person who was convicted of a violation of these provisions, in addition to any other penalty, would have to pay restitution to the holder of a security interest in the watercraft in the amount of the outstanding lien on the watercraft.

MCL 324.80304 et al.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bills would create an indeterminate cost for the Department of State due to programming costs in addition to the costs to contract with a vendor to provide the required electronic lien title system. Due to passage of previous similar legislation for motor vehicles (Public Act 292 of 2014), the Department is currently in negotiations for a vendor for that system. Thus, costs for the contract are indeterminate and would depend on the final cost of the contract. In addition, the Department is in the process of completing an upgrade for a new computer software system, the Customer and Automotive Records System (CARS), which should allow for a cost savings to the programming costs that will be necessary to include watercraft into the electronic lien title system as in the bill.

Fiscal Analyst: Joe Carrasco

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