

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 499

(Delegates Niemann and Frush)

Environmental Matters

Judicial Proceedings

**Vehicle Laws - Disposition of Vehicle to Automotive Dismantler and Recycler or
Scrap Processor**

This bill generally alters requirements pertaining to the transfer and disposal of abandoned vehicles and vehicles with defective title by towers and automotive dismantlers and recyclers or scrap processors (ADR/SPs).

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's penalty provisions. Revenues are not materially affected.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential meaningful impact on small business ADR/SPs due to the interruption in the supply of abandoned vehicles being delivered, the additional notice procedures that must be followed prior to the processing of vehicles, and the bill's documentation and recordkeeping requirements.

Analysis

Bill Summary:

Prohibition on Transfer of Hulks and the Use of Indemnity Agreements

The bill repeals the authorization for a person to transfer vehicles that are abandoned or without acceptable title, which are more than eight years old and have no engine or are

otherwise totally inoperable (vehicle “hulks”), to an ADR/SP without complying with specified notice procedures. The bill also repeals the authorization for an ADR/SP to execute an indemnity agreement with a person that transfers one of these hulks, as well as any reference to separate provisions for the disposal of hulks by an ADR/SP.

Notice Procedures for Transfer of Vehicles with Defective Title

The bill repeals specified notice provisions required of ADR/SPs for vehicles without a title or other documentary evidence of ownership, or a certificate of authority issued by the police. Instead, on taking possession of such a vehicle from a person other than the owner of the vehicle, an ADR/SP is required to follow new notice procedures specified by the bill; exempt are cases involving the towing of vehicles from residential or commercial property under a continuing contract to tow unauthorized vehicles for which a certificate of authority is required.

As soon as reasonably possible and within seven days after it takes a vehicle into possession from a person other than the owner of the vehicle, an ADR/SP must send notice, by U.S. Postal Service certified mail, return receipt requested, to the last known registered owner of the vehicle and each secured party in Motor Vehicle Administration (MVA) records. The notice must (1) state that the vehicle has been taken into custody; (2) describe the year, make, model, and vehicle identification number of the vehicle; (3) give the location of the facility where the vehicle is held; (4) inform the owner and secured party of their right to reclaim the vehicle within 11 working days after the date of the notice, on payment of all towing, recovery, and storage charges owed to the ADR/SP; and (5) state that the failure of the owner or secured party to exercise the right to reclaim the vehicle constitutes a waiver of the right, title, and interest in the vehicle, as well as a consent to the dismantling, destroying, or scrapping of the vehicle.

If the ADR/SP receives the vehicle with documentary proof that these notification procedures have already been completed by another person before taking possession of the vehicle, or proof that the vehicle is being received from the owner or agent, the ADR/SP may accept the documentation as proof of compliance and is not required to repeat the required notice procedures.

After complying with the notice procedures and the required 11 working-day reclamation period, an ADR/SP takes unencumbered title to a vehicle for purposes of dismantling, recycling, or scrap processing only.

Required Documentation on Transfer of Vehicle

An ADR/SP must obtain from a person who provides a vehicle the following: (1) a copy of the driver’s license; (2) any proof of ownership documents acceptable by MVA if

available; (3) a copy of the tow vehicle registration if the vehicle was towed; and (4) an MVA affidavit signed under penalty of perjury.

The affidavit must include specified information, including a statement of the basis of the right that the person providing the vehicle has in possession of the vehicle and an acknowledgement that the form is being signed under penalty of perjury. The ADR/SP must keep and make available for inspection for three years all documentation required under the bill. MVA must adopt regulations regarding notice, reporting, and recordkeeping.

The bill also prohibits an ADR/SP from accepting a vehicle that is transported by a tow truck vehicle that is not registered by MVA as a tow truck.

Disposal of Abandoned Vehicles

The bill specifies those who may apply for the transfer of a vehicle (with defective title to an ADR/SP) to include a person who owns a vehicle, a person on whose property an abandoned vehicle is found, or a person who has lawful, documented possession of a vehicle. The bill alters the application for a transfer of such vehicles to require that the application be made under penalty of perjury. A law enforcement agency is authorized to approve the application if the applicant appears to be the rightful owner after verification of the information in the application. Otherwise, if the application is made by a person other than the rightful owner, the law enforcement agency must follow current notification procedures for abandoned vehicles.

If an applicant submits with an application documentary proof that the currently required notice procedures were followed, a law enforcement agency is required to accept the document as proof of compliance.

Finally, the bill requires a law enforcement agency to give the applicant a certificate of authority to transfer a vehicle to an ADR/SP if notice has been provided to the owner of the vehicle and any secured party.

Enhanced Penalties

The bill increases the misdemeanor penalty for most violations of the law related to ADR/SPs to generally be a fine up to \$500, imprisonment for up to six months, or both; violations that already carry a greater maximum penalty remain unchanged (those relating to conducting business without a license). The bill also makes it a felony to knowingly make a false statement on an affidavit of lawful possession established under the bill or on an application for a certificate of authority. On conviction, the offender is

subject to a fine of up to \$1,000 or imprisonment for up to 10 years, or both, which is consistent with the criminal penalty for counterfeiting of a motor vehicle title.

Current Law/Background:

Requirements for ADR/SPs on Acquiring Vehicles without Evidence of Ownership

MVA issues licenses to conduct the business of an ADR/SP. If a licensed ADR/SP takes possession of a vehicle and does not receive a certificate of title or other documentary evidence of ownership acceptable to MVA, the ADR/SP must comply with specified notice requirements. Specifically, after the vehicle has been in the possession of the ADR/SP for more than 30 days, the ADR/SP has to give at least 10 days notice of intent to dispose of the vehicle. The notice must be sent by certified mail, return receipt requested, to the owner of the vehicle and any secured party, as shown on MVA records, or to any other person who is entitled to possession of the vehicle and whose address is known or reasonably can be obtained.

The ADR/SP takes unencumbered title to the vehicle, without having to obtain a certificate of title, if these notice procedures are followed and the vehicle has not been recovered or reclaimed within the 10-day period. The ADR/SP may also take unencumbered title to the vehicle if the address of the owner, secured party, or other person entitled to possession of the vehicle cannot be obtained from MVA records and the vehicle remains in possession for 30 days. If an ADR/SP takes title to a vehicle, it must provide certification of the title to MVA within 5 days in the form that MVA requires and generally must also provide electronic notice to MVA within 30 days of acquiring title. Once notice is provided to MVA, the ADR/SP may dispose of the vehicle.

Any person who possesses or on whose property is found an abandoned vehicle may apply to the police department of the jurisdiction in which the vehicle is located for authority to transfer the vehicle to an ADR/SP.

Police Custody of Abandoned Vehicles

Generally, the police may take an abandoned vehicle into custody and impound the vehicle. If an abandoned vehicle is not reclaimed after following specified notice procedures, the police may sell the vehicle at public auction and use the proceeds for reimbursement of the costs of towing, preserving, and storing the vehicle and the expenses of the auction, including all notice and publication costs. Any remaining proceeds must be held for 90 days for the owner of the vehicle and any entitled secured party, after which the remaining proceeds revert to the treasury of the county or

municipality in which the sale was made. The police may also retain and use a vehicle or transfer the vehicle for dismantling or scrapping.

An abandoned vehicle means a motor vehicle, trailer, or semitrailer that:

- is inoperable and left unattended 48 hours on public property;
- remains illegally on public property for 48 hours;
- is on private property without consent for 48 hours;
- has remained in a garage for more than 10 days after the garage keeper has given the vehicle owner notice to remove the vehicle, or beyond the time when, by contract, the vehicle was to remain in the garage;
- is left for more than 10 days in a garage by someone other than the registered owner or left by a person only authorized to have possession of the vehicle under a contract;
- has remained on public property for 48 hours and has invalid or incorrect registration plates;
- has been left unattended for 24 hours on a controlled access highway;
- has been left unattended on a highway and does not display appropriate warning devices; or
- is not reclaimed from impoundment under specific court order.

Regulating the Disposal of Vehicle Hulks

The process governing the disposition of abandoned vehicles is different for the transfer of vehicle hulks. A person can transfer a hulk to an ADR/SP without following the same notice procedures and without possessing a certificate of title. The ADR/SP may, however, require the transferor of the hulk to execute an indemnity agreement.

This separate process originated through legislation in the late 1960s and thereafter as the result of an effort to rid the State of abandoned hulks. The current indemnity agreement and expedited procedure for the scrapping of hulks are the only remnants of a host of former incentives. In fact, Chapter 556 of 1969 provided for the payment of a fee (dubbed a “bounty” by the U.S. Supreme Court) for the scrapping of a vehicle and also established a fine for maintaining abandoned vehicles in scrap yards. Although aspects of this initiative survived a challenge before the U.S. Supreme Court in 1976, most of the original incentives have since been repealed. However, in 1998 the Federal District Court for the District of Maryland declared the transfer of hulks without a certificate of title or notification an unconstitutional violation of the Due Process Clause and is, therefore, unenforceable.

The Department of State Police (DSP) and other law enforcement agencies in the State are heavily involved in the process of disposing of abandoned vehicles. In addition to HB 499/ Page 5

environmental and aesthetic issues, a lack of control over the process of vehicle disposal may also lead to theft and other crimes. Because of this, DSP maintains a unit actively engaged in overseeing the lawful transfer of abandoned vehicles and proper disposal by ADR/SPs. The capabilities of this unit have been significantly enhanced due to a new statewide computer system established pursuant to Chapter 383 of 2008 to account for transactions in the secondary precious metals market, which includes sale of vehicles for salvage or scrap. The scrap value of a vehicle varies greatly, from several hundred to several thousand dollars, based on prevailing market conditions, demand for a particular vehicle make and model, whether the vehicle is a late model year or an older vehicle, vehicle weight, and other factors.

A violation of provisions pertaining to the disposal of abandoned vehicles is currently treated as a general violation of the Maryland Vehicle Law subjecting the offender to a fine of up to \$500 on conviction. However, the specific penalties for conducting the business of an ADR/SP without a license, or engaging in the business of acquiring, or offering to purchase or remove vehicles for dismantling without a license, is currently a fine of up to \$1,000, imprisonment for up to six months, or both. For any subsequent offense, the penalty is a fine of up to \$2,000, imprisonment for up to one year, or both. Also the penalty for storage of a vehicle by an unlicensed person is a fine of up to \$500, imprisonment for up to two months, or both.

State Expenditures: General fund expenditures may increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months

that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provision from felony cases heard in the circuit courts.

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention, Maryland Department of Transportation, Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2012
ncs/ljm Revised - House Third Reader - April 2, 2012

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