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SALE OF STOLEN VEHICLES AND PARTS

House Bill 5445

Sponsor: Rep. Derrick Hale

Committee: Judiciary

Complete to 5-26-98

A SUMMARY OF HOUSE BILL 5445 AS INTRODUCED 1-14-98

The bill is part of a package that would increase penalties and invoke licensure sanctions for people who are convicted of theft and fraud concerning vehicles and vehicle parts. The organized theft and resale of stolen vehicles and vehicle parts are sometimes referred to as "chop shop" organizations. The bill is tie-barred to House Bills 5447 and 5468. House Bill 5445 would amend the Penal Code to increase penalties for some existing crimes, change what constitutes certain crimes by expanding and clarifying the descriptions of the actions prohibited, and provide for additional crimes and penalties as well.

Crimes. Stealing or attempting to steal a motor vehicle or a major component from a motor vehicle would be punishable by imprisonment for no more than 5 years and/or a fine of no more than \$10,000. A third or subsequent conviction for stealing or attempting to steal a motor vehicle or major component part would be punishable by imprisonment for no more than 10 years and/or a fine of no more than \$20,000. The bill would also make it a felony to purchase, receive, possess, conceal or aid in the concealment of a motor vehicle that the person knew was stolen or had one or more stolen or converted major component parts. A first conviction for this felony would be punishable by imprisonment for no more than 5 years and/or a fine of no more than \$5,000 and, for a second conviction, the fine would increase to no more than \$10,000.

For either crime, a second or subsequent conviction for stealing or attempting to steal a motor vehicle or a major component part would result in the revocation of the individual's driver's or chauffeur's license. The secretary of state could not issue another license until at least two years had passed since the revocation.

In addition, if a person who was convicted of either crime had one or more prior convictions for the other crime, joy riding, concealing or misrepresenting the identity of a motor vehicle, a mechanical device or a major component part, possessing or concealing stolen property, or owning a chop shop, all of the following would apply: Neither the person convicted nor an entity owned in whole or in part by that person could hold a dealer license, a motor vehicle repair facility registration, or a mechanic's certificate. Any such license, registration, or certificate would be revoked and could not be issued to the person or any entity owned in whole or in part by that person until no less than five years had passed. If the person had two or more prior convictions the secretary of state could not issue a dealer license or a motor vehicle repair facility registration to that person or an entity that he or she owned in whole or in part.

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The crime of concealing or misrepresenting the identity of a motor vehicle, a mechanical device or a major component part would be clarified to specify that it would be a crime to do either of the following:

a) Remove or deface the manufacturer's serial number, the engine or motor number, or any other number placed on a motor vehicle, major component part, or mechanical device by the manufacturer to identify the motor vehicle, part, or device.

b) Replace a part of the motor vehicle, major component part, or mechanical device that has a serial number or any other identification number with a new or replacement part that does not have the appropriate serial number or other identification number.

A person who committed either of these acts without intending to mislead another person would be guilty of a misdemeanor punishable by imprisonment for no more than 90 days and/or a fine of not more than \$100. On the other hand, if the actions were done with the intent to mislead another person, the crime would be a felony punishable by imprisonment for no more than five years and/or a fine of no more than \$10,000. In addition, if a person who had intentionally concealed or misrepresented such information was a licensed dealer, his or her dealer license would be revoked and he or she would be ineligible for a dealer license until at least five years had passed after the date of the conviction.

In trying these cases, possession of a motor vehicle, major component part, or a mechanical device with an altered or removed identification number or with a replacement part that did not have a number (where the original had an identification number) would be considered prima facie evidence of a violation (sufficient evidence, without rebuttal or explanation, to support a finding). A vehicle, major component part, or mechanical device that cannot be identified because of a violation could be destroyed or sold at public auction.

Intentionally starting a motor vehicle without the owner's permission, maliciously shifting or changing the starting device or gears, or releasing the brake of a standing motor vehicle would be a misdemeanor punishable by not more than 90 days imprisonment and or a fine of not more than \$100. Intentionally damaging a motor vehicle or any major component part, equipment, accessory, or other part of a motor vehicle would be a misdemeanor punishable by no more than one year and/or a fine of no more than \$1,000.

The following crimes would be also be felonies, punishable by imprisonment for no more than 5 years and/or a fine of no more than \$10,000: breaking into a motor vehicle to steal any property from the vehicle; and stealing any part, equipment, accessory, or attachment from a motor vehicle.

Chop shops. The bill would add wheels to the list of parts of a motor vehicle that are considered major component parts and would add definitions for a converted major component part (a major component part that has been the subject of a false or fraudulent claim to an insurance company), and a converted motor vehicle (a vehicle that has been the subject of a false

of fraudulent claim to an insurance company). The penalty for the felony of owning or operating a chop shop would be increased to not more than 10 years imprisonment and/or a fine of no more than \$10,000. A second conviction would be punishable by no more than 15 years imprisonment and/or a fine of no more than \$10,000. If the person convicted of owning or operating a chop shop had two or more prior convictions for stealing a motor vehicle, joy riding, concealing or misrepresenting the identity of a motor vehicle, or buying, receiving, possessing or concealing stolen property, the person could be punished by not more than 20 years imprisonment and/or a fine of not more than \$20,000.

A person convicted of owning or operating a chop shop would have his or her driver's or chauffeur's license revoked and be barred from being issued a new license until at least two years had passed after the revocation. In addition, neither the person convicted nor an entity owned in whole or in part by that person could hold a dealer license, a motor vehicle repair facility registration, or a mechanic's certificate. Any such license, registration, or certificate would be revoked and a new license, registration, or certificate could not be issued to the person or any entity owned in whole or in part by that person until at least five years had passed after the date of the conviction. The secretary of state would be prohibited from issuing a dealer license or a motor vehicle repair facility registration to a person who had three or more convictions of owning or operating a chop shop.

Forfeiture. Property seized in a chop shop would be subject to forfeiture. Proceedings for forfeiture would be required to be promptly instituted. If the seizure was made without process and the total value of the property seized did not exceed \$100,000, the state or local unit of government (depending upon which had seized the property) would have to notify the property's owner of the seizure and the intent to forfeit and dispose of the property. Notice would have to be delivered to the owner or sent by certified mail. If the owner's name and address were not reasonably ascertainable or delivery of the notice could not reasonably be accomplished, notice could be published for ten consecutive days in a newspaper of general circulation in the county where the property had been seized.

Within 20 days after receiving notice or after the date of the first publication of the notice, a person could claim an interest in the seized property by filing a claim with the local unit or the state. After the person had filed such a claim and had posted a bond for \$250, the state or local unit would be required to transmit the claim and bond with a list and description of the property to the attorney general, the prosecuting attorney for the county, or the attorney for the local unit of government where the property was seized. The attorney general, prosecuting attorney, or the attorney for the local unit of government would be required to promptly institute forfeiture proceedings after the 20-day period concluded.

The bond required for a person claiming an interest in the property would have to be made with sureties approved by the state or local unit and conditioned that, if the court ordered the property forfeited, the obligor would be required to pay all costs and expenses of the forfeiture proceedings.

If no claim was filed or no bond given, the state or local unit would be required to declare the property forfeited and would have to either return the property to its rightful owner or sell it as allowed by law.

Equitable relief. A prosecuting attorney could petition the circuit court for an injunction or abatement against a chop shop. If the petition were granted, the injunction or other relief would be binding upon the defendant throughout the state.

The person who owned the building or place where the chop shop was being run would be the grantee or vendee of the last recorded deed or contract that describes the building or place in question. If that person was named as a party defendant in the action, the court could abate the nuisance by closing the building and the defendant would be subject to the court's order and judgment.

Proof that the defendant knew that the chop shop existed would not be necessary and evidence of general reputation could be used to prove the chop shop's existence. The court would not need to find that the chop shop had been operating on the property at the time of the hearing. As long as the petitioner filed the petition within 60 days of his or her awareness of the chop shop's existence, the petitioner would not have to show that the chop shop was operating when the petition was filed.

If the court found that the existence of the chop shop had been established, the court would be required to enter an order of abatement or injunction as part of its judgment. The order would have to direct the removal of all furniture, fixtures and contents and direct the sale of those items. The proceeds from the sale would be used to cover the expenses of removing and selling the contents and for the costs of maintaining the property. In addition, all liens would be paid and any remaining proceeds would be distributed amongst the law enforcement agencies involved in effecting the removal and sale of the items in question, with 25 percent of the money to be used to enhance enforcement of the law against owning or operating a chop shop. The order would also require the closing of the building or place for one year, unless it were released sooner under the provisions allowing for a bond against further violations. Violation of the injunction or abatement order or knowing violation of the order closing the property would be criminal contempt punishable by imprisonment for no more than 6 months and/or a fine of no more than \$5,000.

An owner of a building or place that has been the subject of a petition for an abatement or injunction could avoid injunction or other consequences if he or she paid all costs of the proceeding and filed a bond with sureties approved by the circuit judge in the penal sum of no less than \$5,000 or more than \$100,000, on the condition that he or she would immediately abate the chop shop and prevent it from being established or operated within one year after the date of the judgment. If the bond were given and the costs paid before the order of abatement was issued, the action would be abated as to that building or place only. If the court determined that the bond was violated, the principal and sureties on the bond would be liable for the full penalty of the bond

in an action brought in the name of the state or upon a motion in the action where the bond was given.

If a defendant appealed an order or judgment, the injunction or order of abatement would not be stayed pending the appeal. However, the court of appeals could grant a stay or modify the order of abatement.

MCL 750.356a et al.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.