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SCRAP TIRES

House Bill 5380

Sponsor: Rep. David Mead

House Bill 5381

Sponsor: Rep. Jason Allen

House Bill 5382

Sponsor: Rep. Susan Tabor

Committee: Conservation and Outdoor
Recreation

Complete to 5-23-00

A SUMMARY OF HOUSE BILLS 5380, 5381, AND 5382 AS INTRODUCED 2-16-00

House Bill 5380, which is described in more detail below, would amend Part 169, Scrap Tires, of the Natural Resources and Environmental Protection Act (NREPA) to make a number of changes to the current regulation of scrap tires. House Bill 5381 would amend the Revised Judicature Act (MCL 600.4701) to add scrap tire violations under the NREPA to the definition of “crime,” which means that such violations would be subject to the act’s forfeiture provisions. House Bill 5382 would amend the Michigan Vehicle Code (MCL 257.806) to eliminate the January 1, 2001, sunset on the title transfer fee for the Scrap Tire Regulatory Fund and to increase the 50 cent tire disposal surcharge for each certificate of title (or duplicate) to \$1.50.

House Bill 5380

Definitions. The act currently defines “scrap tire” to mean “a tire that is no longer being used for its original intended purpose,” and specifically excludes a vehicle support stand from the definition. The bill would include “a used tire, a reusable tire casing, or portions of tires” in the definition, and would specifically exclude “crumb rubber” from the definition in addition to vehicle support stands.

The bill also would revise the definitions of “end user” and “scrap tire processor,” and would add a new definition, that of “scrap tire recycler.”

Currently, “end user” means (1) a person who possesses a permit to burn tires under Part 55 (air pollution) of the NREPA; (2) a person who possesses a permit to construct a landfill under Part 115 (solid waste management) of NREPA; or (3) a person who only engineers scrap tires into crumb rubber (rubber material from tires that is less than one-eighth inch by one-eighth inch in size and free of all steel and fiber) that is used to manufacture products that are sold in the market. The bill would redefine “end user” to mean (1) a person who possessed a permit to burn tires under the air pollution part of the NREPA; (2) the owner or operator of a landfill that was authorized under the landfill’s operating license to use scrap tires; or (3) a person who converted scrap tires into crumb rubber that

was used to manufacture products that were sold in the market but who did not manufacture the products that were sold in the market.

Currently, “scrap tire processor” means “a person engaged in the business of storing, buying, or otherwise acquiring scrap tires, and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.” The definition specifically includes “a person who, in addition to processing the scrap tires, incinerates the tires or converts the tires into a product or another end use.” The bill would redefine “scrap tire processor” to eliminate the incineration or conversion of scrap tires, instead adding a definition of “scrap tire recycler” that dealt with scrap tire conversion. “Scrap tire processor” would mean “a person who [was] authorized by this part [of the NREPA] to accumulate scrap tires and [was] engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.” A “scrap tire recycler” would mean “a person who [was] authorized by this part [of the NREPA] to accumulate scrap tires, who acquire[d] scrap tires, and who convert[ed] scrap tires into a product that [was] sold or reused in a manner authorized by this part [of the NREPA].”

Discarding scrap tires. Currently, the NREPA prohibits a person from discarding a tire on any property that is not in compliance with Sections 16903 (which regulates the owners or operators of collection sites) and 16904 (which requires owners of collection sites to register every year with the Department of Environmental Quality). The bill would delete the current language and instead affirmatively allow a person to deliver (“or by contract, agreement, or otherwise cause the delivery of”) scrap tires to registered collection sites, landfills, end-users, scrap tire processors, tire retailers, or scrap tire recyclers that were in compliance with the NREPA.

The NREPA also prohibits a person from disposing of scrap tires in any manner other than that authorized by the scrap tire, air pollution, or solid waste management parts of the NREPA. The bill would delete this language also and would say instead that a person who (“by contract, agreement, or otherwise”) arranged for the removal of scrap tires would be required to do so with (1) a *solid waste* hauler (as defined in the solid waste management part, Part 115, of the NREPA) who transported seven or fewer scrap tires along with other solid waste in any truckload or (2) a *scrap tire* hauler who was registered under the scrap tire part of the NREPA and who (“by contract, agreement, or otherwise”) was obligated to deliver the scrap tires to a destination as required by the bill (that is, to a registered collection site, a landfill, an end-user, a scrap tire processor, a tire retailer, or a scrap tire recycler).

Rebuttable presumptions. The bill would add new provisions establishing rebuttable presumptions regarding the drivers of vehicles from which scrap tires were discarded or disposed of in violation of the provisions regarding the discarding of scrap tires. More specifically, the driver of a vehicle would be presumed to be responsible for scrap tires discarded or disposed of from that vehicle in violation of this section (Section 16902) subject to the following rebuttable presumptions:

- In a proceeding for a violation of this section (Section 16902) regarding the discarding of scrap tires, (1) proof that the particular vehicle described in the citation, complaint, or warrant was used in the violation, together with (2) proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle at the time of the violation, would constitute a

rebuttable presumption that the registered owner of the vehicle was driving at the time of the violation.

- In a proceeding for a violation of this section that involved a leased motor vehicle, (1) proof that the particular vehicle described was used in the violation, together with (2) proof that the defendant named in the citation, complaint, or warrant was the lessee of the vehicle at the time of the violation, would constitute a rebuttable presumption that the lessee of the vehicle was driving at the time of the violation.

Scrap tire collection sites. The NREPA gave scrap tire collection sites that were in operation at the time the 1997 amendments to this subdivision were enacted two years to comply with the requirement that there be a minimum separation of 30 feet between tire piles. The bill would delete this language.

Currently, the NREPA subjects scrap tire collection sites to annual inspection by local fire departments. The bill would, in addition, subject scrap tire collection sites to annual inspection by the Department of Environmental Quality and to peace officers.

Finally, the NREPA currently requires that collection sites with at least 2,500 scrap tires but fewer than 100,000 scrap tires, among other things, have an earthen berm not less than five feet high positioned outside of the required fence enclosing the tires. The bill would amend this to require that an earthen berm at least five feet high “completely enclose the tire storage area except to allow for necessary ingress and egress.”

Scrap tire haulers. Currently, scrap tire haulers are required to keep, for five years, a record of each load of scrap tires they transport. The records, which must be kept on forms approved by the DEQ, must contain the names, addresses, telephone numbers, and authorized signatures of both the scrap tire hauler and the person who contracted for the scrap tires’ removal; the scrap tire hauler’s registration number; the date the scrap tires were removed, the number of scrap tires, and their intended final destination. The bill would amend this to require, in addition, that scrap tire haulers keep in their required records the name, address, telephone number, and, upon delivery, the authorized signature, of the owner or operator of the location where the tires are to be delivered (that is, the collection site, landfill, end-user, scrap tire processor, tire retailer, or scrap tire recycler). In addition, the bill would eliminate the requirement that the scrap tires’ intended final destination be recorded.

The NREPA currently requires that a person who contracts for the removal of scrap tires do so with a registered scrap tire hauler. The bill would allow, in addition, for a person to contract, agree, or otherwise arrange for the removal of scrap tires to do so with a solid waste hauler (as defined in the solid waste management part of the NREPA) who transported seven or fewer scrap tires along with other solid waste in any truckload.

List of tire piles. Currently, the Department of Environmental Quality (DEQ) is required to contact each local health department and request that the local health department provide a list (including the location and owner, if known) of all known significant tire piles within its jurisdiction. The bill would delete this language and instead require that certain records be kept by persons who

generated or transported scrap tires and that copies of records be signed and forwarded to the former by owners or operators of locations receiving the scrap tires. Records would have to be kept for five years and made available, upon request, to the DEQ or a peace officer at reasonable times, and would have to include all of the information required of a scrap hauler under Section 16905 (see “scrap tire haulers,” above).

More specifically, the bill would require a person who generated scrap tires (by causing the removal of scrap tires from a property, “including an end-user”) to keep, at the site where the tires were generated, records of all scrap tires delivered to a collection site, a landfill, an end-user, a scrap tire processor, a tire retailer, or a scrap tire recycler. The generator of the scrap tires also would be required to reconcile any discrepancy between the record he or she maintained on site and the signed copy of the record forwarded to him or her by the owner or operator of the location to which the scrap tires were delivered.

A person other than a solid waste hauler (as defined in the solid waste management part of the NREPA) who transported seven or fewer scrap tires along with other solid waste in any truckload or a scrap tire hauler who received scrap tires (including an end-user) also would have to maintain records of all scrap tires received.

The owner or operator (or authorized agent) of a location authorized to accept scrap tires would be required to indicate acceptance of scrap tires when they were delivered by signing the record, and would have to provide a copy of the signed record to the person delivering the scrap tires. Within 10 days, the owner or operator of the location receiving the scrap tires also would have to forward a copy of the signed record to the person indicated on the record as having generated the scrap tires.

Violations, penalties. Currently, a person who violates the NREPA’s scrap tire part is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$10 for each tire disposed of or accumulated in violation of this part, or both. The bill would create separate misdemeanors, based on the number of tires involved and the number of violations by each violator, as well as a new felony for falsifying certain registration information or required records.

- A person who committed a scrap tire violation involving fewer than 50 tires would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of at least \$200 but not more than \$500, or both.

- A person who committed a scrap tire violation involving more than 50 tires would be guilty of a misdemeanor punishable by imprisonment for up to 180 days or a fine of at least \$500 but not more than \$10,000, or both.

- A person convicted of a second or subsequent scrap tire violation would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of at least \$1,000 but not more than \$25,000, or both, for each violation.

- A person who knowingly made (or caused to be made) a false statement or entry on an application for a registration or certification or in a required record would be guilty of a felony

punishable by imprisonment for up to two years or a fine of at least \$2,500 but not more than \$25,000, or both.

In addition, the bill would specify that each day of any violation would constitute (instead of, as currently, “may constitute”) a separate violation, would delete the current provision allowing as an alternative to the current misdemeanor penalty the court to order community service and instead allow the court to order community service in addition to any other penalty, and would allow a “peace officer” (instead of, as currently, a law enforcement officer or a conservation officer) to issue an appearance ticket to a person who was in violation of this part of the NREPA (and would add, as described and authorized in the Code of Criminal Procedure).

Warrantless searches, seizure and forfeiture, court costs, inspections. The bill would add a new section to the scrap tire part of the NREPA to allow the DEQ or peace officers, if they had probable cause to believe that a person were violating the NREPA’s scrap tire provisions, to search without a warrant a vehicle or any transportation-related equipment used or operated so as to violate the act’s scrap tire provisions. A vehicle, equipment, or other property used in scrap tire violations would be subject to seizure and forfeiture under the Revised Judicature Act.

The bill also would allow the court to award court costs and other litigation expenses (including attorney fees) to a party who successfully brought an action under this proposed section.

Finally, the bill would allow the DEQ or a peace officer to enter and inspect any scrap tire (or “other”) location (“any tire retail establishment, vehicle owned or operated by a scrap tire hauler for the transport of scrap tires, or collection site or other place where scrap tires [were] or [had] been received, stored, accumulated, discarded, disposed of, or from which scrap tires [had] been transported”) for the purposes of enforcing or administering the scrap tire part of the NREPA.

Repealer. The bill would repeal the current section of the NREPA regulating the disposal of scrap tires by retailers at registered sites (Section 16902a).

Tie-bar. The bill, if enacted, could not take effect unless House Bill 5381, which would amend the Revised Judicature Act to add scrap tire violations to the RJA’s forfeiture provisions, were enacted.

Analyst: S. Ekstrom

■ 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.