Joseph G. Aninao *Legislative Service Commission*

Sub. H.B. 208

126th General Assembly
(As Reported by H. Transportation, Public Safety, and Homeland Security)

Reps. Raga, Gibbs, D. Evans, Wolpert, Kearns, White, Raussen

BILL SUMMARY

- Allows salvage motor vehicle auctions and salvage motor vehicle pools to sell salvage motor vehicles to certain specified authorized purchasers instead of only to motor vehicle salvage dealers.
- Eliminates the restriction that provides that an insurer, repair facility, or installer may use a salvage motor vehicle part in the repair of a motor vehicle only if the part is removed from a salvage motor vehicle by a motor vehicle salvage dealer.
- Increases from five to nine the membership of the Motor Vehicle Salvage Dealer's Licensing Board.
- Changes the name of the current Board of Motor Vehicle Collision Repair Registration to the Board of Motor Vehicle Repair Registration.
- Changes the composition of the Board effective January 1, 2006, and designates the new Board as the successor to the current Board.
- Requires the registration of motor vehicle mechanical repair facilities.

CONTENT AND OPERATION

Motor vehicle salvage dealers, salvage motor vehicle auctions, and salvage motor vehicle pools

Current definitions; sales of salvage motor vehicles by salvage motor vehicle auctions and pools

The Registrar of Motor Vehicles is the licensing authority for salvage motor vehicle auctions and salvage motor vehicle pools, and the Motor Vehicle

Salvage Dealer's Licensing Board is the regulatory body for motor vehicle salvage dealers. Current law defines these three businesses as follows:

(1) A "motor vehicle salvage dealer" is any person who engages in business primarily for the purpose of selling salvage motor vehicle parts and secondarily for the purpose of selling at retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal (sec. 4738.01(A)).[1]

(2) A "salvage motor vehicle auction" is any person who on his own behalf or as an agent for a third party engages in business for the purpose of auctioning salvage motor vehicles *to motor vehicle salvage dealers* (sec. 4738.01(C)). (Emphasis added.)

(3) A "salvage motor vehicle pool" means any person who as an agent for a third party engages in business for the purpose of storing, displaying, and offering for sale salvage motor vehicles *to motor vehicle salvage dealers* (sec. 4738.01(D)). (Emphasis added.)

Consistent with these latter two definitions, current law prohibits salvage motor vehicle auctions and salvage motor vehicle pools from selling a salvage motor vehicle to any person other than a licensed motor vehicle salvage dealer (sec. 4738.03(B)(3) and (C)(3)).

Changes made by the bill

The bill does not change the definition of motor vehicle salvage dealer, but it does expand the persons with whom salvage motor vehicle auctions and salvage motor vehicle pools can do business to include *authorized purchasers* (sec. 4738.01(C) and (D)). The bill defines an "authorized purchaser" to mean any of the following:

(1) A person licensed by this state as a motor vehicle salvage dealer;

(2) A person registered as a motor vehicle repair operator under the laws of this state;

(3) A scrap metal processor exempt from the Motor Vehicle Salvage Law;

(4) A person who holds a valid license or registration from another "state" as a motor vehicle salvage dealer or motor vehicle repair operator, or a person

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[1] *A "salvage motor vehicle" is defined as any motor vehicle which is in a wrecked, dismantled, or worn out condition, or unfit for operation as a motor vehicle (sec. 4738.01(B)).*

from another "state" authorized by that state to purchase a salvage motor vehicle, provided that when any such person purchases such a vehicle it is for immediate removal from Ohio;[2]

(5) Not more than two employees of one of the persons listed in items (1) to (4) above who are designated by that person to purchase salvage motor vehicles on behalf of that person. (Sec. 4738.01(J).)

The bill requires each salvage motor vehicle auction or pool to verify the eligibility of each authorized purchaser to purchase salvage motor vehicles at that auction or pool (sec. 4738.18(G)).

Prohibited acts

Current law prohibits salvage motor vehicle auctions and pools from selling a salvage motor vehicle to any person except a person licensed by this state as a motor vehicle salvage dealer (sec. 4738.03(B)(3) and (C)(3)).

The bill replaces this prohibition with the following three new prohibitions relating to such auctions and pools:

(1) Selling a salvage motor vehicle to any person who is not an authorized purchaser;[3]

(2) During normal business hours, failing to allow a peace officer, while acting within the scope of the peace officer's official duties and whose purpose is to locate stolen motor vehicles or motor vehicle parts, to inspect any motor vehicle or motor vehicle part stored on their premises (sec. 4738.03(B)(3) and (6) and (C)(3) and (6));[4]

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[2] *As used in item (4), "state" means the United States; any state, territory, insular possession, or other political subdivision of the United States, including the District of Columbia; any foreign country whose political sovereignty is recognized by the United States; and any political subdivision of such foreign country.*

[3] *Violation of this prohibition is a second-degree misdemeanor on a first offense (punishable by a jail term of not more than 90 days, a fine of not more than $750, or both) and a first-degree misdemeanor on each subsequent offense (punishable by a jail term of not more than 180 days, a fine of not more than $1,000, or both). (Sec. 4738.99(A).)*

[4] *Id.*

(3) Violating existing Revised Code section 4505.19, which establishes a number of offenses relating to motor vehicle certificates of title (sec. 4738.03(B)(7) and (C)(7)).[5]

The bill also prohibits any person who is an authorized purchaser or an employee of such a purchaser from (1) violating Revised Code section 4505.19 or (2) during normal business hours, failing to allow a peace officer whose purpose is to locate stolen motor vehicles or motor vehicle parts to inspect any motor vehicle or motor vehicle part stored on the premises (sec. 4738.03(D)).

Motor vehicle salvage dealers and the authority of the Director of Environmental Protection

Current law provides that the state, through the Registrar of Motor Vehicles, is the sole regulator for the registration, licensing, and regulation of motor vehicle salvage dealers. The bill states that this provision does not affect the authority of the Director of Environmental Protection to enforce the laws governing that agency and those relating to air pollution control, water pollution control, and solid and hazardous waste. (Sec. 4738.19(B).)

Use of salvage motor vehicle parts in repairs

Under current law, an insurer, repair facility, or installer may use a salvage motor vehicle part in the repair of a motor vehicle only if the part is of a like kind and quality to the part in need of repair *and* is removed from a salvage motor vehicle by a licensed motor vehicle salvage dealer. The bill removes the restriction that only a licensed motor vehicle salvage dealer can remove such a part from a salvage vehicle. (Sec. 1345.81.)

The Motor Vehicle Salvage Dealer's Licensing Board

The Motor Vehicle Salvage Dealer's Licensing Board currently consists of five members: the Registrar of Motor Vehicles or the Registrar's designee and four members appointed by the Governor with the advice and consent of the Senate. Of the four appointees, two must have operated as a motor vehicle salvage dealer, salvage motor vehicle auction, or salvage motor vehicle pool in this state for at least five years and have been engaged in the business within two years of the member's appointment date. The other two appointed members represent the public and cannot have engaged in business as or operated as a motor vehicle salvage dealer, salvage motor vehicle auction, or salvage motor vehicle pool.

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[5] *At present, anyone who commits any of these offenses is subject to a fine of not more than $200 or imprisonment in the county jail or workhouse, or both. Under the bill, the penalty is that of a first-degree misdemeanor. (Sec. 4738.99(D).)*

The bill increases the Board's membership from five to nine persons. The new Board composition is as follows:

(1) The Registrar or the Registrar's designee;

(2) The Superintendent of the State Highway Patrol or the Superintendent's designee;

(3) One person who has operated as a motor vehicle salvage dealer in this state for at least five years and has been engaged in the business within two years previous to the date of the person's appointment;

(4) One person who has operated as a salvage motor vehicle auction in this state for at least five years, has been engaged in the business within two years previous to the date of the person's appointment, and has no affiliation with any motor vehicle salvage dealer;

(5) One person who has operated as a salvage motor vehicle pool in this state for at least five years, has been engaged in the business within two years previous to the date of the person's appointment, and has no affiliation with any motor vehicle salvage dealer;

(6) One person who has operated a motor vehicle repair business in this state for at least five years, has been engaged in the business within two years previous to the date of the person's appointment, and has no affiliation with any motor vehicle salvage dealer;

(7) One person who represents the property and casualty insurance industry of this state;

(8) Two persons who represent the public and cannot have engaged in business as, operated as, or represented, a motor vehicle salvage dealer, salvage motor vehicle auction, salvage motor vehicle pool, motor vehicle repair business, or the property and casualty insurance industry of this state. (Sec. 4538.09.)

The bill requires the Governor to make the three additional appointments to the Board not later than 60 days after the bill's effective date. Of the three additional appointments, one must be for a term ending July 31, 2006, one must be for a term ending July 31, 2007, and one must be for a term ending July 31, 2008. Thereafter, terms of office are for three years as provided in current law.

In making appointments to the Board, including successors to those who are members of the Board on the bill's effective date, the Governor is required to take into consideration the then-existing composition of the Board and the degree to which that composition meets the new Board composition prescribed by the

bill. The Governor is required to make appointments to the Board in a manner so that as new appointments are made, the composition meets the new Board composition requirements at the earliest possible date. Nothing in the bill is intended to affect the term of any member of the Board serving on the bill's effective date. (Section 7.)

The Board of Motor Vehicle Collision Repair Registration

Current Board composition

The provisions that govern the Board of Motor Vehicle Collision Repair Registration are located in Revised Code Chapter 4775. All motor vehicle collision repair operators must register with the Board, which consists of seven members, all of whom are appointed by the governor. Five members are motor vehicle collision repair operators, one member has expertise in motor vehicle mechanical repair, and the remaining member represents the public (this member cannot have any financial interest in the motor vehicle repair industry). (Secs. 4775.02(A) and 4775.03(A).)

Changes made by the bill

The bill dissolves the current Board of Motor Vehicle Collision Repair Registration effective January 1, 2006, and replaces it with a new Board of Motor Vehicle Repair Registration. The new Board still consists of seven members, all of whom are appointed by the governor. In contrast with the current Board, however, the new Board consists of three members who are motor vehicle body repair operators, three members who are motor vehicle mechanical repair operators, and a public member. Of the initial appointments, two are for terms ending on January 1, 2007, two are for terms ending on January 1, 2008, two are for terms ending on January 1, 2009, and one is for a term ending on January 1, 2010. All terms of office thereafter are for three years. (Sections 3 and 6.)

The Automotive Service Association of Ohio, Inc., must submit a list of prospective Board members (except for the member representing the public) to the governor not later than October 1, 2005, and the governor may make his appointments from that list. All initial appointments to the new Board must be made no later than January 1, 2006. (Sections 3 and 6.)

Except as otherwise noted in this analysis, the remaining current Revised Code provisions governing the old Board apply unchanged to the new Board.

Registration with the new Board by persons who perform motor vehicle mechanical repairs

As under current law, the bill requires persons who perform five or more motor vehicle body repairs in a calendar year to register, but the bill requires those persons who perform five or more motor vehicle *mechanical* repairs to register as well. Collectively, these persons are defined as "motor vehicle repair operators." Certain exceptions to the registration requirement apply (sec. 4775.01(F)). The bill retains most of the exceptions of current law (for example, new car dealers who operate body shops), but adds salvage motor vehicle auction owners and salvage motor vehicle pool owners to the list of persons who are not motor vehicle repair operators. (Sec. 4775.01(F)(6).) The bill also exempts licensed motor vehicle auction owners from the registration requirement, but only if they do not perform motor vehicle repairs (sec. 4775.01(F)(4)).

Motor vehicle collision repair and motor vehicle mechanical repair are covered by the new term "motor vehicle repair," which the bill defines as "either a motor vehicle body repair or a motor vehicle mechanical repair" (sec. 4775.01(E)).

The bill changes all references to the "Board of Motor Vehicle Collision Repair Registration," "motor vehicle collision repair operator," and "motor vehicle collision repair" in R.C. Chapter 4775. to read "Board of Motor Vehicle Repair Registration," "motor vehicle repair operator," and "motor vehicle repair," respectively. In some sections, these changes are the only substantive changes the bill makes. (Secs. 4775.04, 4775.05, 4775.06, 4775.11, 4775.99, and 5703.21.)

Motor vehicle repair facilities

The bill defines a "motor vehicle repair facility" to be any mobile or stationary location from which five or more separate motor vehicle repairs are performed on motor vehicles in a calendar year (sec. 4775.01(G)). Each motor vehicle repair facility must be registered separately with the new Board of Motor Vehicle Repair Registration. A facility that conducts both body repairs and mechanical repairs at the same location is required to register as only one location. (Sec. 4775.02(B).)

General prohibition

The bill prohibits any person from acting as a motor vehicle repair operator (formerly motor vehicle collision repair operator) unless the person is registered under R.C. Chapter 4775. Whoever violates this prohibition must be fined not more than $1,000 on a first offense and not less than $1,000 but not more than $5,000 on each subsequent offense. (Secs. 4775.02(A) and 4775.99(A).) The Board of Motor Vehicle Repair Registration also may impose an administrative

fine in the same amount upon the offender (sec. 4775.99(B)). These are existing penalties, applicable to motor vehicle collision repair operators.

The bill provides that in addition to these fines, the Board must notify the Tax Commissioner of the violation. The commissioner, upon receiving the notification, is required to suspend the motor vehicle repair operator's vendor's license. The suspension is effective ten days after service of written notice to the repair operator of the Commissioner's intention to do so. The notice must be served upon the repair operator personally or by certified mail.

On the first day of the suspension, the Commissioner must cause to be posted at every public entrance of the repair operator's premises a notice identifying the repair operator and the location and informing the public that the repair operator's vendor's license is under suspension and that no retail sales may be transacted at that location. No vendor's license that has been so suspended may be reinstated, and no posted notice may be removed, until the repair operator has complied with the requirements of R.C. Chapter 4775. and has paid the full amount of the registration, penalties, and any other charges due.

All penalties applied and collected pursuant to these provisions and enforced in cooperation with the Tax Commissioner are required to be deposited into the state treasury to the credit of the Motor Vehicle Repair Operator Vendor's License Suspension Fund, which the bill creates. The Department of Taxation must use the money in the fund to pay the expenses it incurs in performing the duties imposed on the Tax Commissioner by these provisions. (Sec. 4775.02(D).) No person, other than the Tax Commissioner or the Commissioner's agent or employee, may remove, cover, or deface a notice posted under these provisions (sec. 4775.02(E)).

New duty of the Board

The bill requires the Board, for consumer protection purposes, to establish minimum criteria to ensure that motor vehicle repair operators have the proper facilities, equipment, and training necessary to perform body or mechanical repairs (sec. 4775.04(B)).

Investigators appointed by the Board

Current law permits the Board to appoint enforcement officers as needed to assist the Executive Director (who is appointed by the Board) in carrying out the provisions of R.C. Chapter 4775. These officers serve at the pleasure of the Executive Director. (Sec. 4775.05(B)(5).) The bill renames these enforcement officers "investigators." (Secs. 4775.05(B)(5) and 4775.06.)

The duties of an investigator are to report to the Executive Director and the Board the name and address of any motor vehicle repair operator that the investigator has reasonable grounds to believe is operating in violation of R.C. Chapter 4775. and to notify the operator of the suspected violation. The bill retains these duties, but permits the investigator's report to be based on overt or undercover investigation practices and procedures approved by the Board (sec. 4775.06).

Registration application filing with the Board

Current law requires all applications for registration to include specified information, such as the applicant's name, address, state tax identification number, and proof of general liability insurance. The bill retains all current registration application provisions, but also requires all applications to include proof of possession of all permits required under the state Air Pollution Control Law. (Sec. 4775.07(A).)

Fee for late registration fee; use by the Board of registration fees

Under current law, if the Board has notified or attempted to notify a motor vehicle collision repair operator that the operator is required to register with the Board and the operator fails to do so, the initial registration fee for each business location at which the operator conducts business is the normal initial registration fee (currently $100) plus an additional amount equal to the initial fee then in effect for each calendar year that the operator is not registered after the Board has notified or attempted to notify the operator. The bill retains this provision with respect to motor vehicle repair operators, but permits the Board to impose a late fee for a registration that is overdue from such an operator. (Sec. 4775.08(B).)

Current law also requires the Board to deposit all registration fees into a fund that is solely used to administer and enforce its provisions. The bill adds informing the public about issues involving motor vehicle repair to the purposes for which the new Board may use the fund. (Sec. 4775.08(C).)

Venue for cases involving the Board

Current law provides that the court of common pleas for the county in which any person conducts, or attempts to conduct, business as a motor vehicle repair operator in violation of R.C. Chapter 4775. or any applicable rule, on application of the Board, may issue an injunction, a cease and desist order, or other appropriate order restraining the person from continuing the violation. Under the bill, the court of common pleas of Franklin county is the court of competent jurisdiction for any person who conducts, or attempts to conduct,

business as a motor vehicle repair operator in violation of R.C. Chapter 4775. or any applicable rule. (Sec. 4775.09(B).)

Temporary motor vehicle collision repair registration certificates

Current law permits the Board to direct the Board's Executive Director to issue a temporary motor vehicle collision repair registration certificate to a motor vehicle collision repair operator who substantially complies with the registration requirements and is making a good faith effort toward achieving compliance with all applicable requirements. A temporary registration certificate is effective for one year from the date of issuance or until the date the motor vehicle collision repair operator obtains a regular motor vehicle collision repair registration certificate, whichever date occurs first. (Sec. 4775.10(A).)

A temporary registration certificate may be renewed up to four consecutive times, and a motor vehicle collision repair operator may apply for renewal prior to its expiration. The bill provides that a temporary motor vehicle repair registration certificate is valid for one year and cannot be renewed. (Sec. 4775.10(A) and (C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-20-05	p. 678
Reported, H. Transportation, Public Safety & Homeland Security	05-31-05	p. 885

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