

Act No. 420
Public Acts of 2018
Approved by the Governor
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STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Senators MacGregor and Schmidt

ENROLLED SENATE BILL No. 1023

AN ACT to amend 1949 PA 300, entitled "An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of manufacturers, the manufacturers of certain devices, the manufacturers of automated technology, upfitters, owners, and operators of vehicles and service of process on residents and nonresidents; to regulate the introduction and use of certain evidence; to regulate and certify the manufacturers of certain devices; to provide for approval and certification of installers and servicers of certain devices; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," by amending section 248 (MCL 257.248), as amended by 2016 PA 425, and by adding section 248l.

The People of the State of Michigan enact:

Sec. 248. (1) The secretary of state shall not grant a dealer license under this section until the secretary conducts an investigation of the applicant's qualifications under this act, except that this subsection does not apply to a license renewal. The secretary of state shall conduct the investigation within 15 days after receiving the application and prepare a report on the investigation.

(2) An applicant for a new vehicle dealer or a used or secondhand vehicle dealer or broker license shall include a properly executed bond or a bond renewal certificate, approved by the secretary of state, with the license application. If a renewal certificate is used, the bond is considered renewed for each succeeding year in the same amount and with the same effect as an original bond. The bond shall be in the amount of \$10,000.00. The bond shall indemnify or reimburse a purchaser, seller, lessee, financing agency, or governmental agency for monetary loss caused through fraud, cheating, or misrepresentation in the conduct of the vehicle business whether the fraud, cheating, or misrepresentation was made by the dealer or by an employee, agent, or salesperson of the dealer. The surety shall make indemnification or reimbursement for a monetary loss only after a judgment based on fraud, cheating, or misrepresentation is entered in a court of record against the licensee or a final order that the licensee has engaged in fraud, cheating, or misrepresentation is issued by the secretary of state after an administrative hearing. The bond shall also indemnify or reimburse the state for any sales tax deficiency as provided in the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or use tax deficiency as provided in the use tax act, 1937 PA 94, MCL 205.91 to 205.111, for the year in which the bond is in force. The surety shall make indemnification or reimbursement only after a final judgment is entered in a court of record against the licensee or a final order is issued by the secretary of state after an administrative hearing.

A dealer or applicant that provides proof that is satisfactory to the secretary of state that a bond similar to the bond required by this subsection is executed and in force is exempt from the bond requirements of this subsection. The aggregate liability of the surety shall not exceed the sum of the bond. The surety on the bond may cancel the bond by giving notice in writing to the secretary of state of the cancellation at least 30 days before the effective date of the cancellation and is not liable for a breach of condition occurring after the effective date of the cancellation.

(3) An applicant for a new vehicle dealer or a used or secondhand vehicle dealer license shall apply for not less than 2 dealer plates under section 245 and shall include with the application the proper fee for those plates under section 803.

(4) As a condition precedent to the granting of a license, a dealer shall file with the secretary of state an irrevocable written stipulation, authenticated by the applicant, stipulating and agreeing that legal process affecting the dealer, served on the secretary of state or a deputy of the secretary of state, has the same effect as if personally served on the dealer. This appointment remains in force as long as the dealer has any outstanding liability within this state.

(5) A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more vehicles of a type required to be titled under this act in a 12-month period unless the person obtains a dealer license from the secretary of state authorizing the carrying on or conducting of that business. A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more distressed, late model vehicles or salvageable parts to 5 or more of those vehicles in a 12-month period unless the person obtains a used or secondhand vehicle parts dealer, an automotive recycler, or a salvage pool license from the secretary of state or is an insurance company admitted to conduct business in this state. A person shall not carry on or conduct the business of buying 5 or more vehicles in a 12-month period to process into scrap metal or store or display 5 or more vehicles in a 12-month period as an agent or escrow agent of an insurance company unless the person obtains a dealer license from the secretary of state. A vehicle scrap metal processor that does not purchase vehicles or salvageable parts from unlicensed persons is not required to obtain a dealer license. A person from another state shall not purchase, sell, or otherwise deal in distressed, late model vehicles or salvageable parts unless the person obtains a foreign salvage vehicle dealer license from the secretary of state under section 248b. A person, including a dealer, shall not purchase or acquire a distressed, late model vehicle or a salvageable part through a salvage pool, auction, or broker without a license as a salvage vehicle agent. The secretary of state shall investigate and seek prosecution, if necessary, of persons allegedly conducting a business without a license.

(6) The application for a dealer license shall be in the form prescribed by the secretary of state and shall be signed by the applicant. In addition to other information as may be required by the secretary of state, the application shall include all of the following:

(a) The name of the applicant.

(b) The location of the applicant's established place of business in this state, together with written verification from the appropriate governing or zoning authority that the established place of business meets all applicable municipal and zoning requirements.

(c) The name under which the dealer will conduct business.

(d) If the business is a corporation, the state of incorporation.

(e) If the business is a sole proprietorship or partnership, the name, address, and date of birth of each owner or partner; if the business is a corporation, the name, address, and date of birth of each of the principal officers.

(f) The county in which the applicant will conduct business and the address of each place of business in that county.

(g) If the dealer's business is the sale of new vehicles, the make or makes of those vehicles. Each new vehicle dealer shall send with the application for license a certification that the dealer holds a bona fide contract to act as factory representative, factory distributor, or distributor representative to sell at retail (the make of vehicle to be sold) and that the contract meets the requirements for a dealer agreement under 1981 PA 118, MCL 445.1561 to 445.1583.

(h) A statement of the previous history, record, and associations of the applicant and of each owner, partner, officer, or director of the applicant. The statement shall be sufficient to establish to the satisfaction of the secretary of state the business reputation and character of the applicant.

(i) A statement showing whether the applicant has previously applied for a license, the result of the application, and whether the applicant has ever been the holder of a dealer license that was revoked or suspended.

(j) If the applicant is a corporation or partnership, a statement showing whether a partner, employee, officer, or director has been refused a license or has been the holder of a license that was revoked or suspended.

(k) If the application is for a used or secondhand vehicle parts dealer or an automotive recycler, all of the following:

(i) Evidence that the applicant maintains or will maintain an established place of business.

(ii) Evidence that the applicant maintains or will maintain a police book and vehicle parts purchase and sales and lease records as required under this act.

(iii) Evidence of worker's compensation insurance coverage for employees classified under the North American industry classification system number 42114, entitled "motor vehicle parts (used) merchant wholesalers" or under the National Council on Compensation Insurance classification code number 3821, entitled "automobile dismantling", if applicable.

(l) A certification that neither the applicant nor another person named on the application is acting as the alter ego of any other person or persons in seeking the license. For the purpose of this subdivision, “alter ego” means a person that acts for and on behalf of, or in the place of, another person for purposes of obtaining a vehicle dealer license.

(m) A certification that the applicant if the applicant is an individual or sole proprietorship, the partners of the applicant if the applicant is a partnership, the principal officers of the applicant if the applicant is a corporation, or any other individual who is responsible for the daily operations of the dealership, as applicable, has reviewed and understands the requirements of this act, the rules promulgated under this act, the dealer manual published by the secretary of state, and any other applicable material provided by the department.

(n) For an application submitted by or on behalf of an eligible used vehicle dealer for an original license, a certification that within the 6-month period preceding the date of the application, the applicant, the partners of the applicant, or the principal officers of the applicant, as applicable, completed the dealer training program described in section 248l(2). This subdivision does not apply to an application to renew the license of an eligible used vehicle dealer and does not apply to any original license that was granted to an eligible used vehicle dealer before, and that is valid on, the effective date of section 248l. As used in this subdivision and subdivision (o), “eligible used vehicle dealer” means that term as defined in section 248l.

(o) For an application submitted by or on behalf of an eligible used vehicle dealer for an original or renewal license, a certification that each retail sales location of that dealer has an employee that has completed the dealer training program required under section 248l(3) or (5), as applicable.

(7) A person shall apply separately for a dealer license for each county in which business is to be conducted. Before moving 1 or more places of business or opening an additional place of business, a dealer shall apply to the secretary of state for and obtain a supplemental dealer license. The secretary of state shall not charge a fee for a supplemental dealer license and shall issue a supplemental dealer license only for a location, including a tent, temporary stand, or any temporary quarters, that does not meet the definition of an established place of business, within the county in which the dealer’s established place of business is located. A dealer license entitles the dealer to conduct the business of buying, selling, leasing, and dealing in vehicles or salvageable parts in the county covered by the license. The dealer license shall also entitle the dealer to conduct at any other licensed dealer’s established place of business in this state only the business of buying, selling, leasing, or dealing in vehicles at wholesale.

(8) The secretary of state shall classify and differentiate vehicle dealers according to the type of activity they perform. A dealer shall not engage in activities of a particular classification as provided in this act unless the dealer is licensed in that classification. An applicant may apply for a dealer license in 1 or more of the following classifications:

(a) New vehicle dealer.

(b) Used or secondhand vehicle dealer. A used or secondhand vehicle dealer may be eligible for a mobility dealer endorsement under section 248k.

(c) Used or secondhand vehicle parts dealer.

(d) Vehicle scrap metal processor.

(e) Vehicle salvage pool operator.

(f) Distressed vehicle transporter.

(g) Broker.

(h) Foreign salvage vehicle dealer.

(i) Automotive recycler.

(j) Beginning April 1, 2005, wholesaler.

(9) All of the following apply to the issuance, renewal, and expiration of a dealer license under this section:

(a) A dealer license expires on December 31 of the last year for which the license is valid.

(b) A dealer shall renew its dealer license annually. The secretary of state may renew a dealer license for a period of not more than 4 years if the secretary receives a renewal application and payment of the fee required under section 807.

(c) To renew a dealer license, the dealer shall file an application for renewal with the secretary of state at least 30 days before the expiration of its current license.

(d) If a dealer has not renewed its dealer license on or before the expiration date of its current license, the secretary of state within 10 business days after that expiration date must notify the dealer that the secretary of state has not received its renewal application. The notice shall include the amount of the late renewal fee.

(e) A dealer may continue to operate its dealer business after the expiration of its dealer license, pending approval of the renewal application, if the renewal application is delivered in person or mailed to the secretary of state on or before the expiration date of the license. If requested by the department, a dealer that mails an application under this subdivision must provide proof of mailing of the renewal application that is satisfactory to the department.

(f) If an application to renew a dealer license is filed with the secretary of state after the expiration of that license, the dealer may operate its dealer business beginning on the date on which the application is delivered or mailed to the secretary of state, pending approval of the renewal application. If requested by the department, a dealer that mails an application under this subdivision must provide proof of mailing of the renewal application that is satisfactory to the department. A dealer shall pay a renewal fee equal to 150% of the normal renewal fee for a renewal described in this subdivision.

(g) If a dealer files an application to renew a dealer license more than 30 days after the expiration of that license, the dealer is considered a new applicant for a dealer license under this section.

(h) The secretary of state shall deposit the late renewal fees collected under subdivisions (d) and (f) in the transportation administration collection fund created in section 810b.

(10) A dealer may conduct the business of buying, selling, or dealing in motor homes, trailer coaches, trailers, or pickup campers at a recreational vehicle show conducted at a location in this state without obtaining a separate or supplemental license under subsection (7) if all of the following apply:

(a) The dealer is licensed as a new vehicle dealer or used or secondhand vehicle dealer.

(b) The duration of the recreational vehicle show is not more than 14 days.

(c) Not less than 14 days before the beginning date of the recreational vehicle show, the show producer notifies the secretary of state, in a manner and form prescribed by the secretary of state, that the recreational vehicle show is scheduled, the location, dates, and times of the recreational vehicle show, and the name, address, and dealer license number of each dealer participating in the recreational vehicle show.

Sec. 248l. (1) The secretary of state shall establish each of the following dealer training programs for eligible used vehicle dealers:

(a) A prelicensure dealer training program that meets all of the following:

(i) Is conducted by the department, or a qualified trade organization approved by the department, and is offered at least 2 times each calendar quarter. If approved by the department, the training program may be conducted online or by other electronic means.

(ii) Is available to any individual who is an eligible used vehicle dealer who is applying for an original dealer license or is a partner or officer of an eligible used vehicle dealer that is applying for an original dealer license.

(iii) Includes training related to this act and any other subject matter approved by the secretary of state, such as consumer protection and sales and use tax collection. The department may consult with any other departments to evaluate and approve course content it considers appropriate.

(b) A training program for designated individuals that meets all of the following:

(i) Is conducted by the department or another person designated by the secretary of state and is offered at least 2 times each calendar quarter. If approved by the department, the training program may be conducted online or by other electronic means.

(ii) Is available to any designated individual.

(iii) Includes training in transferring vehicle titles, documentation of title transfers, record keeping, and any other subject matter approved by the secretary of state, such as consumer protection and sales and use tax collection.

(c) A continuing education training program that meets all of the following:

(i) Is conducted at least 2 times in each calendar quarter.

(ii) Includes at least 2 hours of training.

(iii) Includes subject matter approved by the secretary of state such as transferring vehicle titles, documentation of title transfers, record keeping, consumer protection, and sales and use tax collection. The department may consult with any other departments it considers appropriate to evaluate and approve course content.

(iv) Is conducted by 1 of the following:

(A) The department.

(B) A qualified trade organization that is approved by the department. The department may evaluate a qualified trade organization approved under this sub-subparagraph to determine whether it meets the requirements of this subdivision. The department may, after a hearing, suspend or revoke a qualified trade organization's approval to offer the training described in this subdivision for failure to comply with those requirements.

(2) In the 6-month period preceding the date of the application for an original eligible used vehicle dealer license, each individual who is the applicant, each partner of the applicant, or each officer of the applicant, as applicable, for the original eligible used vehicle dealer license must complete the dealer training program described in subsection (1)(a). This subsection does not apply to either of the following:

(a) An applicant or application for the renewal of an eligible used vehicle dealer license.

(b) The holder of an original eligible used vehicle dealer license that was granted before, and is valid on, the effective date of this section.

(3) In the 90-day period following the issuance of an original dealer license to an eligible used vehicle dealer, the licensed dealer shall select a designated individual and ensure that he or she completes the dealer training program described in subsection (1)(b). However, this subsection does not apply if the designated individual has completed the training program described in subsection (1)(c). An eligible used vehicle dealer must select a designated individual for each of its retail sales locations. An eligible used vehicle dealer must not select the same individual as the designated individual for more than 3 retail sales locations.

(4) Subsection (3) does not apply to the holder of an original or renewal eligible used vehicle dealer license that was granted before, and is valid on, the effective date of this section until that license is next renewed.

(5) In addition to the training program described in subsection (1)(b), an eligible used vehicle dealer shall ensure that a designated individual completes the training program described in subsection (1)(c) 1 time in each 24-month period after the date of issuance of its original license.

(6) The department shall not renew the license of an eligible used vehicle dealer unless the application for renewal includes a certification from the dealer that it is in compliance with the training requirements applicable under this section.

(7) As used in this section:

(a) "Designated individual" means any of the following individuals, if he or she is selected by an eligible used vehicle dealer to complete a training program described in this section:

(i) An individual who is a licensed eligible used vehicle dealer or a partner or officer of a licensed eligible used vehicle dealer.

(ii) Is an employee of a licensed eligible used vehicle dealer, such as a general manager, a sales manager, or an employee who is responsible for preparing title documents for the dealer.

(b) "Eligible used vehicle dealer" means a person that is licensed as a used or secondhand vehicle dealer, or is applying for licensure as a used or secondhand vehicle dealer, and is not licensed or seeking licensure as a new vehicle dealer.

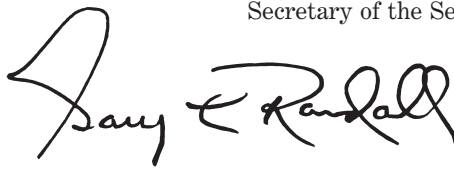
(c) "Qualified trade organization" means a bona fide nonprofit membership organization that is based in this state, that has been in existence for at least 5 years, and whose members are primarily eligible used vehicle dealers.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor