

SENATE BILL No. 1017

February 25, 2004, Introduced by Senator EMERSON and referred to the Committee on Appropriations.

A bill to amend 1974 PA 369, entitled

"An act to regulate the business of conducting a driver training school; to require licenses in relation thereto; to prescribe certain fees; to prescribe the powers and duties of certain persons and state departments; and to prescribe remedies and penalties,"

by amending the title and sections 1, 2, 4, 4a, 5, 5c, 6, 6a, 6c, and 9 (MCL 256.601, 256.602, 256.604, 256.604a, 256.605, 256.605c, 256.606, 256.606a, 256.606c, and 256.609), the title and section 1 as amended and sections 4a and 6c as added by 1992 PA 169, sections 2, 4, and 6 as amended and section 5c as added by 1998 PA 11, section 5 as amended by 2000 PA 285, and section 6a as added by 1984 PA 391, and by adding sections 1a, 1b, and 1c and part 3 and by adding headings for parts 1, 2, and 3; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

1 An act to regulate the business of conducting a driver
2 training school; to require **certain** licenses in relation thereto;
3 **to provide for performance objectives for certain driver**
4 **education courses**; to prescribe certain fees; to prescribe the
5 powers and duties of certain persons and state departments; ~~and~~
6 to prescribe remedies and penalties; **and to repeal acts and parts**
7 **of acts.**

8 **PART 1 GENERAL PROVISIONS**

9 Sec. 1. As used in this act:

10 (a) "Commercial motor vehicle" means that term as defined in
11 section 7a of the Michigan vehicle code, ~~Act No. 300 of the~~
12 ~~Public Acts of 1949, being section 257.7a of the Michigan~~
13 ~~Compiled Laws~~ **1949 PA 300, MCL 257.7a.**

14 (b) "Department" means the department of state.

15 (c) "**Driver education course**" means a course offered by a
16 school that includes classroom instruction, behind-the-wheel
17 instruction, and observation in an automobile under the
18 supervision of an instructor who either holds a license
19 certificate issued under part 2 or is certified under the revised
20 school code, 1976 PA 451, MCL 380.1 to 380.1852, and that
21 includes the segment 1 or segment 2 performance objectives
22 approved by the department under part 3.

23 (d) ~~(e)~~ "Driver training school" means a person that offers
24 to engage in or engages in the business of giving instruction to
25 the public, for hire or for a fee or tuition, whether by means of
26 a live presentation, videotape, printed material, or otherwise,
27 in the driving of motor vehicles or in the preparation of an

1 applicant for an examination given by the department for a
 2 license to operate a motor vehicle. Driver training school
 3 includes a ~~school~~ **person** that prepares an applicant for an
 4 examination given by the department for a license indorsement
 5 issued under section 312e of the Michigan vehicle code, ~~Act~~
 6 ~~No. 300 of the Public Acts of 1949, being section 257.312e of the~~
 7 ~~Michigan Compiled Laws- 1949 PA 300, MCL 257.312e,~~ or for a
 8 commercial driver's license that meets the requirements of ~~the~~
 9 ~~commercial motor vehicle safety act of 1986, title XII of Public~~
 10 ~~Law 99-570, 49 U.S.C. 2701 to 2716- USC 31301 to 31317.~~ Driver
 11 training school does not include a community college, a program
 12 owned and operated by an employer for the benefit of its
 13 employees ~~which~~ **that** is not open to the public, or a public or
 14 parochial school or ~~an~~ **other** educational institution in which
 15 driving instruction either is part of the curriculum and provided
 16 by the institution only for regularly enrolled, full-time
 17 students under the age of 19 or is a part of an adult education
 18 program sponsored by a school district. ~~An instructor employed~~
 19 ~~by such a school or institution is exempt from this act only to~~
 20 ~~the extent that his or her activities are as an agent of the~~
 21 ~~school, school district, or institution.~~

22 **(e) "Driver training school licensee" means a driver training**
 23 **school that is licensed under part 2.**

24 **(f) ~~(d)~~ "Noncommercial motor vehicle" means a motor vehicle**
 25 **that is not a commercial vehicle.**

26 **(g) ~~(e)~~ "Nonresident" means a person who is not a resident**
 27 **of this state. In the case of a person other than an individual,**

1 a partnership, corporation, association, or other legal entity is
2 considered a nonresident if its principal place of business is
3 located in a state other than this state.

4 (h) ~~(f)~~ "Person" means an individual, partnership,
5 corporation, association, or other legal entity.

6 (i) "School" means any of the following:

7 (i) A driver training school licensed under part 2.

8 (ii) A community college, or a program owned and operated by
9 an employer for the benefit of its employees that is not open to
10 the public, or a public or parochial school or other educational
11 institution in which driving instruction either is part of the
12 curriculum and provided by the institution only for regularly
13 enrolled, full-time students under the age of 19 or is a part of
14 an adult education program sponsored by a school district.

15 Sec. 1a. This act shall be known and may be cited as the
16 "driver education and training schools act".

17 Sec. 1b. After deducting the actual administrative costs of
18 the department, the balance of the revenue from the fees
19 collected under this act shall be deposited in the traffic law
20 enforcement and safety fund created in section 819a of the
21 Michigan vehicle code, 1949 PA 300, MCL 257.819a.

22 Sec. 1c. (1) A driver education course shall be made
23 available for an individual under 18 years of age within a time
24 that will enable that individual to qualify for a graduated
25 license under section 310e of the Michigan vehicle code, 1949 PA
26 300, MCL 257.310e, before the time that the individual is
27 permitted by law to have an operator's license.

1 (2) A school may enroll a resident who is not less than 14
2 years, 8 months of age in a driver education course.

3 (3) A school may use videotapes, computers, telecourses, or
4 other similar technology as part of the classroom instruction
5 portion of its driver education course. A student may receive
6 and use any of those materials at home.

7 **PART 2 DRIVER TRAINING SCHOOLS**

8 Sec. 2. (1) The department shall license a driver training
9 school in 1 or both of the following classifications, as
10 appropriate:

11 (a) Noncommercial motor vehicle.

12 (b) Commercial motor vehicle.

13 (2) A person shall not engage or offer to engage in the
14 business of conducting a driver training school without first
15 obtaining a license in 1 or both of the applicable
16 classifications specified in subsection (1). A driver training
17 school shall not engage in activities of a particular
18 classification unless the school is licensed in that
19 classification.

20 ~~(3) After deduction of the actual administrative costs of~~
21 ~~the department, the balance of the revenue from the fees~~
22 ~~collected under this act shall be deposited in the driver~~
23 ~~education fund created in section 811 of the Michigan vehicle~~
24 ~~code, 1949 PA 300, MCL 257.811.~~

25 Sec. 4. (1) An application for a license to engage in the
26 business of conducting a driver training school shall be filed
27 with the department on a form prescribed by the department. The

1 application shall include an agreement signed by the licensee to
2 provide not less than 3 individuals in a vehicle during a driver
3 training exercise or test administered by the licensee of a
4 driver training school customer who is less than 18 years of age
5 unless they have obtained a written waiver signed by a parent or
6 guardian and an authorization to be signed by the prospective
7 licensee permitting the department to request a criminal history
8 check from the department of state police and the federal bureau
9 of investigation. The department shall require the prospective
10 licensee to submit his or her fingerprints and the fingerprints
11 of a prospective driving instructor to the department of state
12 police for criminal history checks on both state and federal
13 fingerprint cards. The department of state police may charge a
14 fee that does not exceed the actual cost of conducting the
15 criminal history checks. A person shall apply for each
16 classification of a driver training school license on a separate
17 application provided by the department.

18 (2) The application shall be accompanied by a fee as
19 follows:

20 (a) \$125.00 for a noncommercial motor vehicle driver training
21 school.

22 (b) \$200.00 for a commercial motor vehicle driver training
23 school.

24 (3) The department shall issue a license certificate to each
25 applicant to conduct a driver training school ~~when~~ **if** the
26 department is satisfied that the person has met the
27 qualifications required under this ~~act~~ **part**.

1 (4) A license issued to a driver training school shall expire
2 on December 31 of the calendar year for which the license was
3 issued. The fee for the renewal of a noncommercial motor vehicle
4 driver training school license is \$125.00, and the fee for the
5 renewal of a commercial motor vehicle driver training school
6 license is \$200.00, which shall accompany the application for
7 license renewal.

8 Sec. 4a. (1) A driver training school conducting a training
9 program for commercial motor vehicle drivers shall submit to the
10 department a report on April 15 and October 15 of each year
11 ~~which~~ **that** includes, but is not limited to, the following:

12 (a) The names, addresses, and driver license numbers of each
13 student enrolled.

14 (b) The names of students completing a training program.

15 (c) If available, the average starting salary of graduates
16 employed as commercial motor vehicle drivers.

17 (d) The names of students employed within 90 days after
18 completion of the program.

19 (e) Whether the student's tuition was paid by an employer,
20 the student, or through government subsidized financial aid.

21 (2) A copy of the report described in subsection (1) shall be
22 provided to each student enrolling in a training program for
23 commercial motor vehicles.

24 (3) Upon the closing of a driver training school that offers
25 a training program for commercial motor vehicles, the driver
26 training school shall return the license issued under this ~~act~~
27 **part** and notify the department, on a form provided by the

1 department, as to a specific location where the records of
2 students will be maintained. The records of students shall be
3 maintained at that location for ~~at least~~ **not less than** 3 years
4 after the date of closing of the driver training school.

5 Sec. 5. (1) A driver training school licensee shall not
6 employ a person as an instructor unless the person is licensed as
7 an instructor.

8 (2) A driver training school licensee shall annually file an
9 application with the department for licensing of its employees as
10 instructors. For each employee for which licensure as an
11 instructor is sought, the application shall include all of the
12 following:

13 (a) The name and address of the employee.

14 (b) The driver's license number of the employee. An
15 application for a nonresident employee shall also include a
16 certified copy of his or her driving record from his or her state
17 of residence.

18 (c) A dated medical examination report that is not more than
19 2 years old and is completed by a physician licensed to practice
20 in this state. An application for a nonresident employee
21 fulfills the requirement of this subdivision if the application
22 includes a report completed by a physician licensed to practice
23 in the employee's state of residence.

24 (d) A fee of \$25.00 for each employee seeking licensure as an
25 instructor.

26 (e) Except as otherwise provided in section 5b, an
27 authorization to be signed by a prospective employee to be hired

1 as a driving instructor permitting the licensee to request a
2 criminal history check from the department of state police and
3 the federal bureau of investigation.

4 (3) The department shall issue a license certificate to the
5 driver training school licensee for each of its employees who
6 meet the requirements of this act for licensure as an
7 instructor. A license certificate expires on December 31 of the
8 year for which it is issued.

9 (4) The department may issue a license certificate to an
10 applicant for a driving instructor's license after the favorable
11 criminal history check from the department of state police, but
12 on the condition that the license shall be canceled or revoked if
13 the criminal history check from the federal bureau of
14 investigation reveals that the applicant does not satisfy the
15 qualifications for a license **certificate**. The department shall
16 immediately notify the driver training school licensee, which
17 shall require the applicant to surrender the license
18 certificate.

19 (5) In order to qualify as an instructor, a person shall meet
20 all of the following requirements:

21 (a) Be physically able to operate a motor vehicle and to
22 train others in the operation of motor vehicles.

23 (b) Have a driving record that indicates competence to
24 operate a motor vehicle consistent with standards set forth in
25 rules promulgated by the secretary of state.

26 (c) Be 21 years of age or older on the date the person's
27 license application is submitted to the secretary of state.

1 (d) Have a driving record, within the 5 years immediately
2 preceding submission of an instructor license application to the
3 secretary of state, that does not contain a conviction for any
4 violation for which 4 or 6 points are assessed, other than points
5 assessed for a violation of a speeding law or ordinance, pursuant
6 to section 320a of the Michigan vehicle code, 1949 PA 300,
7 MCL 257.320a. This subdivision only applies to an applicant who
8 was not licensed as a driver training school instructor on
9 October 1, 1992.

10 (e) Not have a prior felony or misdemeanor conviction for
11 criminal sexual conduct pursuant to sections 520b to 520g of the
12 Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, or a
13 felony conviction for a crime in which an element of the crime is
14 the use or threat of use of physical force.

15 **(6) The department shall not require that a driver training**
16 **school instructor be certified under the revised school code,**
17 **1976 PA 451, MCL 380.1 to 380.1852.**

18 Sec. 5c. (1) The department shall not license a person to
19 operate a driver training school or, after ~~the effective date of~~
20 ~~this section~~ **June 1, 1998**, renew the license of a person to
21 operate a driver training school before requesting and receiving
22 not less than once every 2 years from the department of state
23 police and the federal bureau of investigation a criminal history
24 check on the person.

25 (2) Within 45 days after receiving a request from the
26 department for a criminal history check on a person under this
27 section, the criminal records division of the department of state

1 police shall conduct the criminal history check and, after
2 conducting the criminal history check and within that time
3 period, provide a report of the results of the criminal history
4 check to the department. The report shall contain any criminal
5 history record information on the person maintained by the
6 criminal records division of the department of state police.

7 (3) Criminal history record information received from the
8 criminal records division of the department of state police under
9 subsection (2) shall be used by the department only for the
10 purpose of evaluating a person's qualifications for licensure as
11 a driver training school. The department shall only disclose the
12 report or its contents to a person who is directly involved in
13 evaluating the applicant's qualifications for employment, and
14 shall only disclose to that person those crimes described in
15 section ~~5(4)(e)~~ 5(5)(e). A person who violates this subsection
16 is guilty of a misdemeanor punishable by a fine of not more than
17 \$10,000.00.

18 (4) The department shall not license a person to operate a
19 driver training school if the person has a prior felony or
20 misdemeanor conviction for criminal sexual conduct pursuant to
21 sections 520b to 520g of the Michigan penal code, 1931 PA 328,
22 MCL 750.520b to 750.520g, or a felony conviction for a crime in
23 which an element of the crime is the use or threat of use of
24 physical force.

25 Sec. 6. (1) The department may do 1 or more of the
26 following:

27 (a) On its own initiative or in response to a complaint, make

1 reasonable and necessary investigations within or outside of this
2 state and gather evidence against a person that is believed to
3 have violated or is about to violate this ~~act~~ **part** or a rule
4 promulgated under this ~~act~~ **part**.

5 (b) Require or permit a person to file a statement in writing
6 or otherwise as the department determines as to all of the facts
7 and circumstances concerning a matter that may or will be
8 investigated.

9 (c) Mediate disputes between parties when those disputes
10 arise from a violation of this ~~act~~ **part** or a rule promulgated
11 under this ~~act~~ **part**.

12 (d) Develop conditions of probation or operation for a driver
13 training school or instructor. These conditions shall be
14 mutually agreed upon by the driver training school or instructor
15 and the department and shall be set forth in a written letter of
16 understanding. Conditions of probation may be agreed to instead
17 of further disciplinary proceedings.

18 (e) On its own initiative, conduct a spot check investigation
19 of a driver training school that is licensed or required to be
20 licensed in this state to determine whether the driver training
21 school is in compliance with this ~~act~~ **part** or a rule
22 promulgated under this ~~act~~ **part**.

23 (2) The department may deny, suspend, or revoke, or place
24 probationary conditions on, a driver training school license or a
25 driver training instructor license after notice and opportunity
26 for a hearing upon a finding that the applicant or the licensee
27 or an employee of the applicant or the licensee has done 1 or

1 more of the following:

2 (a) Failed to meet the requirements to receive or maintain a
3 license under this ~~act~~ **part**.

4 (b) Failed to receive or maintain a license if the applicant
5 or licensee is licensed as a driver training school in a state
6 other than this state and the person's license in the other state
7 has expired or been denied, canceled, suspended, or revoked.

8 (c) Violated this ~~act~~ **part** or a rule promulgated under this
9 ~~act~~ **part**.

10 (d) Made an untrue or misleading statement of a material fact
11 to the department or concealed a material fact in connection with
12 an application to the department.

13 (e) Permitted fraud or engaged in a fraudulent practice with
14 reference to a driver's license or permit application to the
15 department, or induced or countenanced fraud or a fraudulent
16 practice on the part of an applicant for a driver's license or
17 permit.

18 (f) Represented himself or herself as an agent or employee of
19 the state or used advertising designed to lead, or that would
20 reasonably have the effect of leading, a person to believe that
21 the licensee or employee is an employee or representative of the
22 state.

23 (g) Advertised or implied to a customer that a driver's
24 license is guaranteed upon completion of the course of
25 instruction.

26 (h) Engaged in a fraudulent, deceptive, or unconscionable
27 practice relative to the operation of a driver training school or

1 the provision of driver training instruction.

2 (i) Operated a driver training school or provided driver
3 training instruction without being licensed under this ~~act~~
4 **part**.

5 (j) Failed to comply with the terms of a probation or
6 suspension agreement or the terms of a final cease and desist
7 order issued under this ~~act~~ **part**.

8 (k) Failed to establish or maintain good moral character in
9 connection with business operations.

10 (3) The department may deny an application for a license for
11 a driver training school or a driver training instructor if upon
12 investigation and upon review of the criminal history record
13 information received under section 5b or 5c the department
14 determines that the applicant has a prior conviction for a
15 fraudulent or deceptive practice in another business or in a
16 private transaction with another person.

17 (4) A suspended or revoked license shall be returned
18 immediately to the department by the licensee.

19 Sec. 6a. (1) If the department determines after notice and
20 opportunity for a hearing that a person has violated this ~~act~~
21 **part** or a rule promulgated under this ~~act~~ **part**, or has engaged
22 in a fraudulent, deceptive, or unconscionable practice, the
23 department may issue an order requiring the person to cease and
24 desist from the unlawful act or practice or to take affirmative
25 action, including but not limited to, payments of restitution to
26 customers, to correct the condition resulting from the practice
27 or violation.

1 (2) If the department makes a finding of fact in writing
2 that the public interest will be irreparably harmed by a delay in
3 issuing an order, the department may issue a temporary cease and
4 desist order. Prior to issuing a temporary cease and desist
5 order, the department, when possible by telephone or otherwise,
6 shall notify the driver training school or instructor of the
7 department's intention to issue a temporary cease and desist
8 order. A temporary cease and desist order shall include in its
9 terms a provision stating that upon request a hearing shall be
10 held within 30 days to determine whether or not the order shall
11 become permanent.

12 Sec. 6c. (1) A nonresident person applying for a license
13 under this ~~act~~ **part** shall file with the department, on a form
14 prescribed by the department, an irrevocable consent appointing
15 the secretary of state to be the person's attorney to receive
16 service of process in any noncriminal proceeding against that
17 person or that person's successor in interest for a violation of
18 this ~~act~~ **part**, a rule promulgated under this ~~act~~ **part**, or an
19 order issued under this ~~act~~ **part** after the consent is filed.
20 The consent has the same force and validity as personal service.

21 (2) If a person engages in conduct prohibited by this ~~act~~
22 **part**, a rule promulgated under this ~~act~~ **part**, or an order
23 issued under this ~~act~~ **part**, and personal jurisdiction cannot be
24 obtained and a consent pursuant to subsection (1) has not been
25 filed, that conduct is the equivalent of appointing the secretary
26 of state to be that person's attorney to receive service of
27 process in a noncriminal proceeding against that person or that

1 person's successor in interest involving that conduct.

2 (3) Service under subsection (1) or (2) shall be made by
3 leaving a copy of the process with the secretary of state or his
4 or her deputy. The service ~~shall not be~~ **is not** effective
5 unless the party initiating the proceeding immediately sends a
6 copy of the process by registered or certified mail to the
7 person's last known address and takes other steps that are
8 reasonably calculated to give actual notice of the proceedings.
9 The party initiating the proceeding shall file an affidavit of
10 compliance with the agency or court hearing the proceeding.

11 Sec. 9. The secretary of state shall promulgate rules
12 pursuant to ~~Act No. 306 of the Public Acts of 1969, as amended,~~
13 ~~being sections 24.201 to 24.315 of the Michigan Compiled Laws~~
14 **the administrative procedures act of 1969, 1969 PA 306, MCL**
15 **24.201 to 24.328, to carry out this ~~act~~ part.**

16 **PART 3 DRIVER EDUCATION PROGRAMS**

17 Sec. 10. A school other than a driver training school
18 licensed under part 2 that offers a driver education course may
19 impose a charge or enrollment fee upon a student desiring to take
20 the driver education course as a duly enrolled student for the
21 driver education course in a school of the public school system.
22 If a charge or enrollment fee is imposed, it shall be the same
23 for all students who reside within the territory of the public
24 school system.

25 Sec. 11. The department shall approve the segment 1 and
26 segment 2 driver education course performance objectives required
27 to be met for an otherwise qualified individual to obtain a level

1 1 graduated license or a level 2 graduated license under section
2 310e of the Michigan vehicle code, 1949 PA 300, MCL 257.310e.

3 Sec. 12. The department shall apply the rules promulgated
4 under section 811 of the Michigan vehicle code, 1949 PA 300, MCL
5 257.811, prior to the effective date of the amendatory act that
6 added this part to carry out the operation and administration of
7 this part.

8 Enacting section 1. The driver education and training
9 schools act, 1974 PA 369, MCL 256.601 to 256.611, is repealed
10 October 1, 2006.

11 Enacting section 2. This amendatory act does not take
12 effect unless Senate Bill No. 1018
13 of the 92nd Legislature is enacted
14 into law.