

Act No. 70
Public Acts of 2004
Approved by the Governor
April 20, 2004
Filed with the Secretary of State
April 20, 2004
EFFECTIVE DATE: April 20, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Emerson

ENROLLED SENATE BILL No. 1017

AN ACT 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

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

PART 1 GENERAL PROVISIONS

Sec. 1. As used in this act:

(a) "Commercial motor vehicle" means that term as defined in section 7a of the Michigan vehicle code, 1949 PA 300, MCL 257.7a.

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

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

(d) "Driver training school" means a person that offers to engage in or engages in the business of giving instruction to the public, for hire or for a fee or tuition, whether by means of a live presentation, videotape, printed material, or otherwise, in the driving of motor vehicles or in the preparation of an applicant for an examination given by the department for a license to operate a motor vehicle. Driver training school includes a person that prepares an applicant for an examination given by the department for a license indorsement issued under section 312e of the Michigan vehicle code, 1949 PA 300, MCL 257.312e, or for a commercial driver's license that meets the requirements of 49 USC 31301 to 31317. Driver training school does not include a community college, a program owned and operated by an employer for

the benefit of its employees that is not open to the public, or a public or parochial school or other educational institution in which driving instruction either is part of the curriculum and provided by the institution only for regularly enrolled, full-time students under the age of 19 or is a part of an adult education program sponsored by a school district.

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

(f) "Noncommercial motor vehicle" means a motor vehicle that is not a commercial vehicle.

(g) "Nonresident" means a person who is not a resident of this state. In the case of a person other than an individual, a partnership, corporation, association, or other legal entity is considered a nonresident if its principal place of business is located in a state other than this state.

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

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

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

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

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

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

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

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

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

PART 2 DRIVER TRAINING SCHOOLS

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

(a) Noncommercial motor vehicle.

(b) Commercial motor vehicle.

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

Sec. 4. (1) An application for a license to engage in the business of conducting a driver training school shall be filed with the department on a form prescribed by the department. The application shall include an agreement signed by the licensee to provide not less than 3 individuals in a vehicle during a driver training exercise or test administered by the licensee of a driver training school customer who is less than 18 years of age unless they have obtained a written waiver signed by a parent or guardian and an authorization to be signed by the prospective licensee permitting the department to request a criminal history check from the department of state police and the federal bureau of investigation. The department shall require the prospective licensee to submit his or her fingerprints and the fingerprints of a prospective driving instructor to the department of state police for criminal history checks on both state and federal fingerprint cards. The department of state police may charge a fee that does not exceed the actual cost of conducting the criminal history checks. A person shall apply for each classification of a driver training school license on a separate application provided by the department.

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

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

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

(3) The department shall issue a license certificate to each applicant to conduct a driver training school if the department is satisfied that the person has met the qualifications required under this part.

(4) A license issued to a driver training school shall expire on December 31 of the calendar year for which the license was issued. The fee for the renewal of a noncommercial motor vehicle driver training school license is \$125.00, and the

fee for the renewal of a commercial motor vehicle driver training school license is \$200.00, which shall accompany the application for license renewal.

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

- (a) The names, addresses, and driver license numbers of each student enrolled.
- (b) The names of students completing a training program.
- (c) If available, the average starting salary of graduates employed as commercial motor vehicle drivers.
- (d) The names of students employed within 90 days after completion of the program.
- (e) Whether the student's tuition was paid by an employer, the student, or through government subsidized financial aid.

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

(3) Upon the closing of a driver training school that offers a training program for commercial motor vehicles, the driver training school shall return the license issued under this part and notify the department, on a form provided by the department, as to a specific location where the records of students will be maintained. The records of students shall be maintained at that location for not less than 3 years after the date of closing of the driver training school.

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

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

- (a) The name and address of the employee.
- (b) The driver's license number of the employee. An application for a nonresident employee shall also include a certified copy of his or her driving record from his or her state of residence.
- (c) A dated medical examination report that is not more than 2 years old and is completed by a physician licensed to practice in this state. An application for a nonresident employee fulfills the requirement of this subdivision if the application includes a report completed by a physician licensed to practice in the employee's state of residence.
- (d) A fee of \$25.00 for each employee seeking licensure as an instructor.
- (e) Except as otherwise provided in section 5b, an authorization to be signed by a prospective employee to be hired as a driving instructor permitting the licensee to request a criminal history check from the department of state police and the federal bureau of investigation.

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

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

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

- (a) Be physically able to operate a motor vehicle and to train others in the operation of motor vehicles.
- (b) Have a driving record that indicates competence to operate a motor vehicle consistent with standards set forth in rules promulgated by the secretary of state.
- (c) Be 21 years of age or older on the date the person's license application is submitted to the secretary of state.
- (d) Have a driving record, within the 5 years immediately preceding submission of an instructor license application to the secretary of state, that does not contain a conviction for any violation for which 4 or 6 points are assessed, other than points assessed for a violation of a speeding law or ordinance, pursuant to section 320a of the Michigan vehicle code, 1949 PA 300, MCL 257.320a. This subdivision only applies to an applicant who was not licensed as a driver training school instructor on October 1, 1992.

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

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

Sec. 5c. (1) The department shall not license a person to operate a driver training school or, after June 1, 1998, renew the license of a person to operate a driver training school before requesting and receiving not less than once every 2 years from the department of state police and the federal bureau of investigation a criminal history check on the person.

(2) Within 45 days after receiving a request from the department for a criminal history check on a person under this section, the criminal records division of the department of state police shall conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the department. The report shall contain any criminal history record information on the person maintained by the criminal records division of the department of state police.

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

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

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

(a) On its own initiative or in response to a complaint, make reasonable and necessary investigations within or outside of this state and gather evidence against a person that is believed to have violated or is about to violate this part or a rule promulgated under this part.

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

(c) Mediate disputes between parties when those disputes arise from a violation of this part or a rule promulgated under this part.

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

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

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

(a) Failed to meet the requirements to receive or maintain a license under this part.

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

(c) Violated this part or a rule promulgated under this part.

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

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

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

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

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

(i) Operated a driver training school or provided driver training instruction without being licensed under this part.

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

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

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

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

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

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

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

(2) If a person engages in conduct prohibited by this part, a rule promulgated under this part, or an order issued under this part, and personal jurisdiction cannot be obtained and a consent pursuant to subsection (1) has not been filed, that conduct is the equivalent of appointing the secretary of state to be that person's attorney to receive service of process in a noncriminal proceeding against that person or that person's successor in interest involving that conduct.

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

Sec. 9. The secretary of state shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to carry out this part.

PART 3 DRIVER EDUCATION PROGRAMS

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

Sec. 11. The department shall approve the segment 1 and segment 2 driver education course performance objectives required to be met for an otherwise qualified individual to obtain a level 1 graduated license or a level 2 graduated license under section 310e of the Michigan vehicle code, 1949 PA 300, MCL 257.310e.

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

Enacting section 1. The driver education and training schools act, 1974 PA 369, MCL 256.601 to 256.612, is repealed October 1, 2006.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

.....
Governor