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BILL ANALYSIS



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Senate Bill 1290 (as enrolled)  
Sponsor: Senator Jud Gilbert, II  
Senate Committee: Transportation  
House Committee: Transportation

**PUBLIC ACT 384 of 2006**

Date Completed: 1-23-07

**RATIONALE**

Driver training programs previously were regulated under the Driver Education and Training Schools Act, as well as rules promulgated by the Department of State and the Michigan Department of Education (MDE). Before that, all driver training programs were subject to oversight by the MDE. The MDE promulgated different rules for public programs, such as those offered by school districts, and for privately owned and operated driver training schools. Public Act 70 of 2004 transferred oversight of driver training programs to the Secretary of State (SOS), and established an expiration date of October 1, 2006, on the Act. Secretary of State Terri Lynn Land appointed a Driver Education Advisory Committee to make recommendations for further changes to the driver education program before that date. In April 2006, the SOS announced the recommendations, which included uniform certification and regulation of public and private driver training schools. Thus, it was suggested that the administrative rules be rescinded, and that a new statute, under which all driver training programs would be subject to the same requirements, be created.

**CONTENT**

The bill created the "Driver Education Provider and Instructor Act" to do the following:

- Provide for the certification of driver education providers and instructors.
- Create the "Driver Education Provider and Instructor Fund" to cover the SOS's costs of

administering the Act; and require fees and administrative fines collected under it to be deposited into the Fund.

- Require up to \$15,000 of the revenue from the fees to be deposited into the Traffic Law Enforcement and Safety Fund each year.
- Allow a licensed driver training school or instructor who applies for a certificate before June 1, 2007, to continue to provide instruction while the SOS processes the application.
- Require an applicant for an instructor certificate to complete driver education instructor preparation courses, beginning December 31, 2007.
- Require a certified instructor and the designated representative or coordinator of a certified driver education provider to complete a criminal history check every four years.
- Allow a college or university, or other SOS-approved person, to present a driver education instructor preparation program.
- Allow a person to apply to the SOS for a conditional driver education instructor certificate, and prohibit a person without such a certificate from participating in a practicum course.
- Require the SOS to establish professional development requirements for a certified instructor, beginning January 1, 2008.

- Require a provider to file with the SOS a projected driver education course schedule report, a course completion report, and a year-end report.
- Require a certified provider or instructor, or a provider's designated representative or coordinator, to notify the SOS immediately if convicted of specific crimes, and require an instructor or representative or coordinator also to notify his or her employer.
- Require the Department of Information Technology to work with the SOS and the Michigan Department of State Police (MSP) to develop and implement an automated program that annually compares the conviction information received by the MSP with an SOS list of certified providers and instructors, as well as designated representatives or coordinators of providers.
- Require the SOS to deny an application for a provider or instructor certificate and revoke a certificate for at least 10 years if a criminal history check reveals a conviction of any of the specified crimes.
- Require the SOS to suspend or revoke the certificate of an instructor whose driver license is denied, suspended, revoked, or canceled.
- Specify that certain methods, acts, or practices by a provider or instructor are deceptive or unconscionable.
- Allow the SOS to impose sanctions on a provider, instructor, or applicant for certain actions, in addition to any other criminal penalties that may be imposed by law.
- Prescribe a misdemeanor penalty for a person who engages in activity as a provider or instructor without certification.
- Require the SOS to prescribe a model curriculum for teen driver training.
- Allow a court to order a person who violates the Act to reimburse the SOS for the costs of investigation, and require any costs collected to be deposited into the Driver Education Provider and Instructor Fund.
- Allow the SOS to promulgate rules to carry out the Act.

**The bill also rescinded administrative rules regarding the regulation of driver training schools and instructors. The Act codifies certain provisions of those rules, and reenacted some provisions of the previous statute, subject to modifications.**

The bill took effect on October 1, 2006. It is described below in further detail.

#### Provider Certificate Application

Under the Act, a person may apply to the SOS for a driver education provider certificate in one or more of the following classifications: adult driver training, teen driver training, or truck driver training. (Under the previous law, the Department of State could license a driver training school in either the noncommercial motor vehicle or the commercial motor vehicle (CMV) classification, or both.)

(The Act defines "driver education provider" as a person who maintains or obtains the facilities and certified instructors to give instruction in the driving of a motor vehicle or prepare an applicant for an exam given by the SOS for a license or a vehicle indorsement. The term does not include a person who provides instruction only for the benefit of its employees if that instruction is not open to the public, or in the driving or operation of a motorcycle or the preparation of an applicant for an exam given for a motorcycle indorsement.)

Except as otherwise provided in the Act, an applicant must submit evidence that he or she has done or will do, as applicable, all of the following to be eligible to receive a certificate:

- Submit a properly completed application signed by the applicant.
- Maintain an established office location.
- Maintain classroom facilities in a public or commercial setting, and obtain verification from the State Fire Marshal or his or her representative that the facilities have been inspected and approved by the Fire Marshal or representative.
- Maintain the surety bond required by the Act.
- Provide the name, address, date of birth, and Social Security number of each owner or partner and, if a corporation, of each principal officer.

- Provide the name and address of each designated representative or coordinator (i.e., a person a provider employs, enlists, or appoints, or contracts with to supervise, manage, and administer the day-to-day responsibilities of the provider's operation).
- Require each of its designated representatives or coordinators to complete a criminal history check as required under the Act.
- Provide a statement of the previous history, record, and associations of the applicant and of each owner, partner, officer, director, and designated representative or coordinator, sufficient to establish to the SOS's satisfaction the applicant's business reputation and character.
- Provide a statement indicating whether the applicant or its designated representative or coordinator has ever applied for a certificate in Michigan or any other state, and the result of that application.
- Provide a statement indicating whether the applicant or its designated representative or coordinator ever has been denied a certificate or been the holder of a certificate that was suspended or revoked.
- If the applicant is a corporation or partnership, provide a statement indicating whether a partner, employee, officer, or director, or its designated representative or coordinator ever has been denied a certificate or been the holder of a certificate that was suspended or revoked.
- Certify that the applicant or another person named on the application is not acting as the alter ego of any other person or people in seeking the certificate.
- Affirm that the established office location meets all applicable zoning and municipal requirements.
- Obtain written or electronic verification from an insurer that the applicant maintains or will maintain bodily injury and property damage liability insurance on each motor vehicle used in a driver education course.
- Except as otherwise provided, submit with each application for a separate established place of business where records will be maintained a nonrefundable application processing fee of \$225 for a provider who offers adult or

teen driver training, or \$360 for a provider who offers truck driver training (unless the provider is an educational institution or a governmental agency).

- Provide a statement indicating whether the applicant will use a multiple vehicle driving facility in a driver education course, and, if so, include a detailed description of the facility and a facility review and approval fee of \$125.
- Provide other information and documents as prescribed by the SOS.

("Multiple vehicle driving facility" means that part of a driver education course that enables the instructor, from a position outside the vehicle, and using electronic or oral communication, to teach and supervise several students simultaneously, each of whom is operating a vehicle at an off-street facility specifically designed for that type of instruction.)

(The previous statute prescribed application fees of \$125 for a driver training school that offered noncommercial motor vehicle training and \$200 for a driver training school that offered CMV training.)

The application and review and approval fees must be deposited into the Driver Education Provider and Instructor Fund.

#### Surety Bond & Insurance

An application for an original provider certificate must include a properly executed surety bond or renewal certificate. The amount of the bond or certificate depends on the classification of the provider and the number of students. The bond must indemnify or reimburse a student, financing agency, or governmental agency for a monetary loss caused through fraud, cheating, or misrepresentation by the provider or an employee, agent, instructor, or salesperson of the provider. The surety must make indemnification or reimbursement only after a court judgment has been entered against the provider. These requirements do not apply to an educational institution or a governmental agency.

In addition, a provider must maintain bodily injury and property damage liability insurance on a motor vehicle used in driver education course instruction, in amounts specified in the Act.

### Renewal Provider Application

A certified driver education provider may apply for the renewal of a certificate by submitting a renewal application to the SOS every other year. The application must include the \$225 or \$360 processing fee described above (unless the applicant is an educational institution or governmental agency). If applicable, the application also must include either of the following:

- A certification that the applicant has used a multiple vehicle driving facility in a driver education course and that the facility has not been altered or changed since the SOS inspected it after the Act's effective date, along with a \$75 review and approval fee.
- A statement that the applicant will use a multiple vehicle driving facility, a detailed description of the facility, and its address, along with a facility review and approval fee of \$125.

Every four years, a provider's designated representative or coordinator must complete to the satisfaction of the SOS a criminal history check on an application to renew a certificate.

### Termination of Operation

A person who stops operating as a driver education provider or no longer qualifies as a certified provider immediately must do all of the following:

- Return the certificate to the SOS.
- Prepare a final inventory listing each Segment 1 or 2 driver education course certificate of completion that the SOS issued to the provider during the past year.
- Return to the SOS each driver education course certificate of completion in the provider's possession that the provider did not issue to a student.
- Inform the SOS of the location where the information, records, or other documents the provider is required to maintain under the Act will be stored for at least four years after the provider stops operating or fails to qualify as a provider.

(Previously, a school had to maintain student records for at least three years after closing.)

A person who fails to comply immediately with the requirements regarding the return of the provider certificate and unissued certificates of completion and the final inventory is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$2,000.

### Multiple Vehicle Driving Facility

The SOS must review and, in writing, approve or deny the use of a multiple vehicle driving facility as he or she determines necessary. The SOS may approve a facility only if it meets criteria that he or she prescribes. The SOS also must perform an on-site inspection of a multiple vehicle driving facility as he or she determines necessary.

### Instructor Certificate Application

Under the previous statute, a driver training school licensee had to apply annually to the Department of State for the licensure of its employees as instructors. The Department had to issue a license certificate to the school for each of its employees who met the requirements for licensure as an instructor. Under the new Act, a person may apply to the SOS for a driver education instructor certificate in adult driver training, teen driver training, and/or truck driver training. The SOS may issue an instructor certificate to a person who presents satisfactory evidence that he or she meets all of the following requirements:

- Submits a properly completed application signed by the applicant.
- Is at least 21 years old on the date of application.
- Possesses a valid driver license that has been in continuous effect for at least five years immediately preceding the application, and provides his or her driver license number.
- Provides a statement indicating whether he or she has ever applied for a certificate in Michigan or any other state, and the result of that application.
- Provides a statement indicating whether he or she has ever been the holder of a certificate that has been revoked or suspended in Michigan or any other state.
- Completes a criminal history check to the satisfaction of the SOS.
- Certifies that he or she does not have a pending criminal matter or an

outstanding arrest, warrant, or conviction since submitting a request for a criminal history check.

- Submits a nonrefundable application processing fee of \$45.
- Submits a certified medical examination report that is not more than 90 days old and includes a statement by the person who certified the report that the applicant is medically qualified to operate a motor vehicle and to train others to do so.
- If not a Michigan resident, submits to the SOS an up-to-date certified driving record from his or her state of residence, and agrees to submit an up-to-date certified driving record every 60 days for as long as he or she is not a Michigan resident.

(Previously, the application fee was \$25 and the medical examination report could not be more than two years old.)

Also, until December 31, 2007, for an original application for an instructor certificate for adult or teen driver training, the applicant must submit an official transcript from an approved college or university that currently offers driver education instructor preparation programs. Beginning January 1, 2008, the applicant must submit an official transcript from an approved college, university, or person to verify the completion of the driver education instructor preparation courses required under the driver education instructor preparation program (both described below). (An applicant approved as a driver education instructor by the SOS before December 31, 2007, is considered to have complied with this requirement.)

Beginning December 31, 2007, an applicant for an original instructor certificate must complete driver education instructor preparation courses. This requirement does not apply to an applicant for an instructor certificate to conduct truck driver training.

#### Renewal Instructor Certificate

A certified driver education instructor may apply to the SOS for renewal of his or her certificate by submitting a properly completed, signed application that includes a certification that he or she has complied with the Act's professional development requirements, a nonrefundable application fee of \$45 (which must be deposited into the

Driver Education Provider and Instructor Fund), and other information and documents prescribed by the SOS. Additionally, every two years, the applicant must include a new certified medical examination report that is less than 90 days old, including a statement that he or she is medically qualified to operate and to train others to operate a motor vehicle.

Every four years, a certified instructor must complete a criminal history check on a renewal application to the satisfaction of the SOS.

#### Provider & Instructor Certificates

A provider or instructor certificate is valid for two years. (Under the previous statute, a driver training school or instructor license expired on December 31 of the calendar year for which it was issued.)

The SOS may develop and prescribe an orientation and education program that a person must complete before the SOS issues the person an original provider or instructor certificate.

#### Previously Licensed Schools & Instructors

A person licensed as a driver training school or instructor by the SOS or approved for Segment 1 and Segment 2 driver education course performance objectives under the previous Driver Education and Training Schools Act, who submits an original provider or instructor certificate application under the new Act by June 1, 2007, may provide driver education instruction while the SOS processes the application. If an application is received after that date, the person may not provide instruction until the SOS processes the application and issues the certificate.

#### Instructor Preparation Program

A college, university, or person approved by the SOS may present a driver education instructor preparation program approved by the SOS. The SOS must prepare a driver education instructor preparation program guide as a model for how to conduct a program. The model program guide must identify the content of each course required under the Act.

Beginning September 1, 2007, a program must consist of at least four driver education preparation courses concentrating on driver task analysis, developing classroom and program knowledge, developing vehicle operation skills, and practicum. A course must consist of at least two semester hours or the equivalent as approved by the SOS, and extend for at least three weeks.

The SOS must review each approved driver education instructor preparation program at least once every three years.

("Practicum" means classroom and behind-the-wheel instruction in a driver education course under the direction of an instructor employed, enlisted, or appointed by a college or university or by a person approved by the SOS and a cooperating instructor, providing practical application of theory and experience for a student in an approved driver education instructor preparation program.)

These provisions do not apply to an applicant for an instructor certificate that is limited to the truck driver training classification.

#### Practicum Course; Conditional Certificate

A person may not participate in a practicum course conducted by a college or university or by a person approved by the SOS unless he or she possesses a conditional driver education instructor certificate. A person must apply to the SOS for a conditional instructor certificate. The SOS may issue the certificate after the person presents satisfactory evidence that he or she meets all of the prescribed driver education instructor application requirements except for completion of a practicum course, and is enrolled in a practicum course conducted by a college, university, or person approved by the SOS.

These provisions do not apply to an applicant for certification as a truck driver training instructor.

#### Professional Development Requirements

Beginning January 1, 2008, the SOS must establish professional development requirements for a certified driver education instructor. The requirements must provide the criteria an instructor must follow to

select an activity to meet the professional development requirements, and the date by which an instructor must complete the requirements.

#### Teen Driver Training

The SOS must prescribe a model curriculum for teen driver training. After September 1, 2007, a provider classified for teen driver training must use the model curriculum or an alternative curriculum that has been reviewed and approved by the SOS. Under a Segment 1 and Segment 2 curriculum combined, each student must receive at least 30 hours of classroom instruction and seven hours of behind-the-wheel driver education course experience. (Previous MDE rules mandated six hours of on-the-road driving experience.)

A provider classified to provide teen driver training must issue a driver education course certificate of completion to a student who successfully passes a written knowledge test prescribed by the SOS for that segment, and successfully completes the other course work required for that segment. A provider may not issue a certificate of completion for Segment 1 if the student is not eligible for a graduated driver license. A provider may not issue a certificate of completion for Segment 2 unless the student has been issued a graduated driver license.

#### Segment 1 & 2 Curriculum

A Segment 1 curriculum must include both classroom and behind-the-wheel course experience. The classroom instruction and behind-the-wheel instruction must be integrated and relate to each other. Each student must receive at least 24 hours of classroom instruction, including at least four hours before the student begins to receive behind-the-wheel instruction. At least three hours of behind-the-wheel instruction must be completed before classroom instruction terminates. Additionally, each student must receive at least six hours of behind-the-wheel instruction or permitted substitute hours at a multiple vehicle driving facility, not to exceed one hour of behind-the-wheel instruction per day.

Except as otherwise provided, a student may receive instruction while operating a motor vehicle at a multiple vehicle driving facility. One hour of instruction received at

such a facility may substitute as credit for one hour of behind-the-wheel experience. A maximum of two hours of behind-the-wheel experience may be substituted with instruction received at a multiple vehicle driving facility. (Previously, MDE rules allowed a maximum of three hours at a multiple vehicle driving facility to be counted toward the six-hour on-the-road requirement.)

A Segment 2 curriculum course may be offered only to a student who has successfully completed a Segment 1 curriculum course, who has held a valid Level 1 graduated driver license (GDL) for at least three continuous months, and who has acquired at least 30 hours' driving experience on a Level 1 GDL that includes at least two hours of night driving with a licensed parent or legal guardian, or with a parent's or legal guardian's permission, with any licensed driver who is at least 21 years old.

Additionally, a Segment 2 curriculum course must contain at least six hours of classroom instruction that is scheduled so the student receives not more than two hours of classroom instruction per day.

#### Coordinated Segment 1 Course

The SOS may approve the giving of a "coordinated segment 1 driver education course" (a Segment 1 course provided by two or more certified driver education providers in the use of auxiliary aids and services, as defined in the Americans with Disabilities Act). A provider may not give such a course without the prior written approval of the SOS, and must enter into a written agreement with a student before providing instruction under these provisions. The agreement must contain information described in the Act, including a description of the instruction that each provider will give; a description of the assessment or test to be administered by each provider; and the amount of the fee or tuition charged and paid for the instruction.

These provisions do not apply to an educational institution or a governmental agency that does not charge a student a fee for driver education instruction.

#### Provider Reports & Records

Before holding a class, a provider must file a projected driver education course schedule report with the SOS. Upon completion of a class, a provider must file with the SOS a completion report containing specified information, including the inventory control number of each issued certificate of completion. By January 31 of each year, a provider must file a year-end report containing the number of students who passed and failed each type of instruction given, the tuition charged for each type of instruction, a list of instructors, and a list of classroom locations.

In addition, on April 15 and October 15 each year, a provider classified for truck driver training must file a report containing student information.

A provider must maintain a record of the instruction given to a student as prescribed by the SOS. A student instruction record must contain the dates and number of hours of classroom and behind-the-wheel instruction given to the student; complete registration and achievement records; a list of the student's payments for tuition, fees, and purchase or rental of supplies or equipment; a copy of the signed contract between the school and the student; and the information contained in a course completion report for the student.

A provider must make information, a record, a report, or other document maintained under the Act available for inspection by the SOS or his or her authorized representative at reasonable times. If a provider fails to do so, the SOS may suspend the provider's certificate after notice and opportunity for a hearing. A provider must maintain a record under the Act for at least four calendar years after a student has ceased receiving instruction from the provider.

#### Provider Agreement with Students

A provider must have a written agreement with each of its students, and may not give instruction to a student until after the provider and the student have entered into the agreement. The agreement must contain information specified in the Act, including a description of the instruction to be given by the provider, and the amount of the fee or tuition charged and paid for the

instruction. Before instruction begins, the provider must give the student a signed copy of the agreement, along with a copy of all of the provider's applicable policies.

These requirements do not apply to an educational institution or a governmental agency that does not charge a student a fee for driver education instruction.

#### Verification by Provider

A provider must verify that an instructor possesses a valid driver education instructor certificate before employing, hiring, contracting, or otherwise engaging the person as an instructor for a driver education course. Additionally, before a provider may provide behind-the-wheel education course instruction to an adult or truck driver training student, it must verify that the student has a valid temporary instruction permit issued by the SOS.

A provider classified for teen driver training must verify that a person enrolled in a driver education course is at least 14 years, eight months of age before beginning a Segment 1 curriculum or, if the student is under that age, that the SOS has issued him or her approval for a minor restricted driver license. The provider also must verify that the student meets the physical and mental requirements for a driver license under the Michigan Vehicle Code.

#### Motor Vehicle Used by Provider

A motor vehicle used by a driver education provider must comply with the motor vehicle safety standards required under Federal and State laws; display an identity that the vehicle is used in a driver education course; and display a provider's identity. A provider may not allow an instructor to use a vehicle with more occupants than the number of safety belts installed in it. A vehicle used by a provider must be "dual-controlled" (equipped with a duplicate brake or, if applicable, a duplicate brake and clutch pedal positioned on the right front floorboard).

#### Criminal History Check

A criminal history check required under the Act must be performed by the Michigan Department of State Police and the Federal Bureau of Investigation (FBI). A person

required to have a criminal history check must send to the MSP a request for the check, along with the fees required by the MSP and the FBI to conduct it.

After conducting the check, the MSP must give the SOS a report containing any criminal history record information on that person maintained by the MSP. Except as otherwise provided, the SOS may not approve an original or renewal driver education provider or instructor certificate before receiving and reviewing the applicable criminal history checks from the MSP and the FBI. The SOS may use the criminal history information only to evaluate an applicant's qualifications to receive a certificate. The SOS may discuss the report or its contents only with staff of the MSP or a person who was involved in the prosecution of a criminal matter noted in a report for purposes of clarifying whether an offense is one of the crimes specified in the Act. A person who uses criminal history information in violation of these provisions is guilty of a misdemeanor punishable by a maximum fine of \$10,000.

#### Notification of Convictions & Disciplinary Action

A certified provider or instructor, or a provider's designated representative or coordinator, immediately must notify the SOS if convicted of a violation or attempted violation listed in the Act. A certified instructor or a designated representative or coordinator also must notify his or her provider employer. A notice must be in a format as prescribed by the SOS and identify the conviction, the date of the conviction, and the court that imposed the conviction, and contain other information as prescribed by the SOS.

The SOS automatically must deny an original or renewal application for a driver education provider or instructor certificate, and automatically must revoke immediately a certificate issued to a person as a provider or instructor, without the necessity for notice and an opportunity for a hearing, if a criminal history check indicates that the applicant, instructor, provider, or the designated representative or coordinator of the applicant or provider has been convicted of a violation or attempted violation, or the SOS receives reliable notice of a conviction



for a violation or attempted violation of any of the following:

- Criminal sexual conduct (CSC), assault with intent to commit CSC, or an attempt to commit CSC in any degree.
- A felony involving a criminal assault or battery on an individual.
- A crime involving felonious assault on a child, first-degree child abuse, cruelty, torture, or indecent exposure involving a child.
- A felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
- A felony conviction involving fraud as an element of the crime.

A denial or revocation must continue for at least 10 years from the date of the conviction.

The Department of Information Technology must work with the SOS and the MSP to develop and implement an automated program that does an annual comparison of the conviction information received by the MSP with an SOS list of people holding a driver education provider or instructor certificate and the people designated as a provider's representative or coordinator. The comparison must include only the people who are actually certified as a provider or instructor, or a designated representative or coordinator of an actually certified provider, at the time of the comparison. Unless otherwise prohibited by law, the comparison must include convictions contained in a nonpublic record. The MSP must take all reasonable and necessary measures using the available technology to ensure the accuracy of the comparison before transmitting the information to the SOS. The SOS must take all reasonable and necessary measures using the available technology to ensure the accuracy of the comparison before notifying a provider, a designated representative or coordinator, or an instructor of a conviction that results in an automatic and immediate revocation of a certificate.

Except as otherwise provided, the SOS automatically must deny a provider or instructor application, or revoke a provider's or instructor's certificate, without notice and an opportunity for a hearing, until the

driving record of the applicant, instructor, provider, or applicant's or provider's designated representative or coordinator does not have within the prior two years any of the following:

- Three or more driver license denials, suspensions, or revocations, or any combination of three or more denials, suspensions, or revocations, imposed by the SOS for failure to appear in court or to comply with a court judgment for a traffic violation reportable to the SOS.
- A conviction or finding of responsibility for a traffic violation in connection with two or more motor vehicle accidents.
- An accumulation of at least six points on his or her driving record.
- A conviction for transporting or possessing alcohol in an open or uncapped container within a vehicle's passenger compartment, operating a vehicle with any bodily alcohol content while under the age of 21, or operating a vehicle in a negligent manner.

When the SOS receives reliable notice of a conviction for a violation or attempted violation by an applicant's or provider's designated representative or coordinator, or when the driving record of an applicant's or provider's designated representative or coordinator is the cause for the SOS to deny an application or revoke a certificate, the SOS automatically must deny an original or renewal application for a driver education provider certificate or revoke a provider's certificate if the applicant or provider fails to terminate immediately the representative's or coordinator's designation or employment.

The SOS automatically must suspend or revoke an instructor's certificate without notice and an opportunity for a hearing if the instructor's driver license is denied, suspended, revoked, or canceled by Michigan or another state. An instructor whose license is denied, suspended, revoked, or canceled immediately must return his or her instructor's certificate to the SOS. The SOS may reinstate an instructor's certificate suspended under this provision if the license denial, suspension, revocation, or cancellation terminates before the certificate expires and the instructor submits to the SOS a written request for reinstatement. The SOS may not reinstate an instructor certificate that is revoked. An instructor whose certificate is revoked under

these provisions may apply to the SOS for an original instructor certificate.

#### Violations of the Act & Dispute Resolution

On his or her own initiative or in response to a complaint, the SOS may make a reasonable and necessary investigation within or outside this State and gather evidence against a person who violates, allegedly violates, or is about to violate the Act, a rule promulgated under it, or an order issued under it, concerning whether a person, an applicant, a provider, or an instructor is in compliance with the Act or a rule promulgated under it.

A person may file with the SOS a complaint against a person, applicant, provider, or instructor based on a violation or attempted violation of the Act or a rule. The SOS may mediate a dispute between a provider or instructor and a student or the student's parent or legal guardian when a dispute arises from a violation or attempted violation.

Additionally, the SOS may develop conditions of probation for the operation of a provider or the training conducted by an instructor in place of further disciplinary proceedings.

#### Deceptive or Unconscionable Methods, Acts, & Practices

A provider or instructor may not engage in a deceptive or unconscionable method, act, or practice. The following are deceptive or unconscionable methods, acts, and practices:

- Using, adopting, or conducting business under a name that is the same as, like, or deceptively similar to, the name of another driver education provider.
- Using the word "state", "government", "municipal", "city", or "county" as part of the provider's name, unless the provider is an educational institution or a governmental agency.
- Advertising, representing, or implying that a provider is supervised, recommended, or endorsed by, affiliated or associated with, employed by, or an agent or representative of the State of Michigan, the SOS, or a bureau of the SOS.

- Advertising or publicizing under a name other than the provider's full business name as identified on the provider's application for a certificate.
- Advertising that the provider is open for business before the SOS issues the provider a certificate.
- Soliciting business on the premises of any facility rented, leased, owned, or used by the SOS.
- Misrepresenting the quantity or quality of the instruction provided or the requirements for a driver license, endorsement, minor restricted or temporary permit, or driver education certificate.
- Failing to restore promptly any deposit, down payment, or other payment that a person is entitled to after an agreement is rescinded, canceled, or otherwise terminated as required under the agreement or applicable law.
- Taking advantage of a student's or potential student's inability to protect his or her interest reasonably because of a disability, illiteracy, or inability to understand the language of an agreement, if the provider knows or reasonably should know of his or her inability.
- Failing to honor a term of a student's, parent's, or legal guardian's agreement.
- Falsifying a document, agreement, record, report, or certificate required under the Act or a rule promulgated under it.
- Causing or allowing a student, parent, or legal guardian to sign a document in blank.

#### Sanctions

Except as otherwise provided, the SOS may impose one or more sanctions (described below) after notice and opportunity for a hearing if the SOS determines that a person, a provider, an instructor, or an applicant for a provider or instructor certificate does any of the following:

- Fails to meet a requirement under the Act or a rule promulgated under it.
- Violates the Act or a rule promulgated under it.
- Makes an untrue or misleading statement of a material fact to the SOS or conceals a material fact in connection with an application for a provider or instructor certificate.

- Permits fraud or engages in a fraudulent method, act, or practice in connection with a driver license or temporary driving permit application submitted to the SOS, or induces or countenances fraud or a fraudulent method, act, or practice on the part of an applicant.
- Engages in an unfair or deceptive method, act, or practice or makes an untrue statement of a material fact.
- Violates a condition of probation or suspension or an order issued under the Act.
- Fails to maintain good moral character in connection with business operations.

After determining that a person, provider, instructor, or applicant has committed a violation described above, the SOS may impose upon the violator one or more of the following sanctions:

- Denial of an application for a provider or instructor certificate.
- Suspension or revocation of a provider or instructor certificate.
- An administrative fine paid to the SOS of up to \$1,000 for each violation.
- A requirement to take the affirmative action determined necessary by the SOS, including payment of restitution to a student or injured person.

The SOS also may issue an order or a temporary order requiring a person to cease and desist from an unlawful method, act, or practice, or to take affirmative action, including payment of restitution to a customer.

#### Summary Suspension Order

The SOS may order the summary suspension of a provider or instructor certificate pursuant to the Administrative Procedures Act (APA) upon an affidavit by a person familiar with the facts set forth in it alleging a violation or attempted violation of the Act or a rule promulgated under it, or a deceptive or unconscionable method, act, or practice. The provider or instructor to whom the order is directed may apply to the SOS and must be granted a hearing within 30 days after application pursuant to the APA. At the hearing, the SOS must set aside, continue, or modify the order of summary suspension.

If the order concerns the issuance or authorization of driver education course certificates of completion, the SOS may discontinue the acceptance of certificates issued or authorized by the provider for students receiving or completing instruction after the effective date of the order. The SOS may decide to resolve the summary suspension matter before determining a driver license issue that involves one or more of the certificates of completion.

#### Practicing without Certificate

A person may not engage in or offer to engage in activity as a provider or instructor unless the person holds a valid certificate under the Act. A person who violates this provision is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$2,000. In addition to any other remedies provided by law, the SOS may impose an administrative fine of \$100 for each day the person is found to have violated this provision.

#### SOS Reimbursement

In a court proceeding involving a violation of the Act, the court may order a person found guilty to reimburse the SOS for the reasonable costs of the investigation that resulted in the conviction, in addition to any other civil or criminal penalties allowed by law. Any costs collected under this provision must be deposited in the Driver Education Provider and Instructor Fund.

#### Driver Education Provider & Instructor Fund

The bill created the Driver Education Provider and Instructor Fund as a separate fund within the State Treasury. The SOS must transfer a nonrefundable application processing fee, a multiple vehicle driving facility review and approval fee, and an administrative fine collected under the Act to the State Treasurer, who must credit the money to the Fund. The SOS must spend money in the Fund to administer the Act. The SOS may deduct money from the Fund to develop a driver education provider and instructor program. The SOS also may deduct the actual administrative costs to administer the Act, including any costs to perform inspections, conduct investigations, or hold administrative hearings.

## Traffic Law Enforcement & Safety Fund

After the deduction of the actual administrative costs of the Department of State, the balance of the revenue from the fees collected under the Act, up to \$15,000 annually, must be deposited in the Traffic Law Enforcement and Safety Fund (from which the MSP may spend money to enhance enforcement of traffic laws and the ability to provide safety on the State's streets and highways).

## Rescission of Administrative Rules

The bill rescinded the Department of State's driver training schools rules, R 388.351 to R 388.362, and the Department of Education's driver education rules, R 388.302 to R 388.338.

MCL 256.621-256.705

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Public Act 70 of 2004 established an October 1, 2006, sunset date on the previous statute to give the Secretary of State time to evaluate the driver education program and identify inconsistencies in regulations between public and private driver training schools. The bill, which implements the SOS's recommendations, will bring uniformity to the regulation of driver training programs by subjecting both public and private programs to the same requirements. For example, all instructors are subject to the same criminal history check and medical examination requirements, regardless of whether they are employed by a public or private program. Additionally, an instructor who desires to work for more than one provider does not need to obtain additional certification. The two-year certification under the new Act also will help to streamline operations; previously, a private instructor's license was valid for only one year, while a public instructor had to obtain a lifetime certification.

This uniformity will improve the driver education program by ensuring that all student drivers receive the same level of instruction from qualified providers and

instructors, regardless of the program the students complete.

### **Supporting Argument**

Reportedly, many parents of student drivers suggested that the GDL program could be improved with the incorporation of more driving experience with an instructor. The new Act requires an additional hour of behind-the-wheel instruction in Segment 2, which will help students prepare for the road test they must pass before obtaining full license privileges. Also, the Act reduces from three to two the number of hours that a student may substitute driving at a multiple vehicle driving facility (a "range") for actual street driving. The Act further requires the SOS to prescribe a model curriculum for teen driver training. These changes, which were recommended by the Secretary of State, will give students a greater opportunity to enhance their skills and become safe drivers.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

Revenue that will be generated to the Driver Education Provider and Instructor Fund is estimated at \$96,250. The former fee structure generated \$67,800 per fiscal year. According to the Department of State, revenue generated to the Fund, and funding from driver fees (\$528,000), will cover its administrative costs.

Under previous law, after the actual administrative costs of the Department of State were deducted, the balance of the revenue from the fees was deposited in the Traffic Law Enforcement and Safety Fund. The bill instead provides that after actual administrative costs of the Department of State are deducted, the balance of the revenue from the fees up to an annual total of \$15,000 must be deposited in the Traffic Law Enforcement Safety Fund. Any unencumbered money in the Driver Education Provider and Instructor Fund at the close of the fiscal year will remain in that Fund.

The bill's criminal penalties will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of the new misdemeanors. Local governments will incur the costs of misdemeanor probation

and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Bill Bowerman  
Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.