

SENATE BILL No. 735

August 18, 2009, Introduced by Senators GARCIA and VAN WOERKOM and referred to the Committee on Commerce and Tourism.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 14 and 248 (MCL 257.14 and 257.248), as
amended by 2004 PA 495.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14. (1) Except as provided in subsection (2),
2 "established place of business" means the place actually occupied
3 either continuously or at regular periods by a dealer or
4 manufacturer where his or her books and records are kept and a
5 large share of his or her business transacted.

6 (2) Established place of business for a class (a) or class (b)
7 dealer means premises that meet all of the following requirements:

8 (a) The premises contain, except as otherwise provided in this
9 act, a permanently enclosed building or structure ~~either~~ **THAT IS**

1 owned, leased, or rented by a dealer, ~~which~~**THAT** is not a residence
2 **UNLESS IT WAS LAWFULLY USED AS A PLACE OF BUSINESS UNDER THIS**
3 **SECTION BEFORE JANUARY 31, 2005, AND THAT IS NOT A** tent, temporary
4 stand, or any temporary quarters; the building or structure is
5 continuously occupied in good faith for the purpose of selling,
6 buying, trading, leasing, or otherwise dealing in motor vehicles;
7 all books, records, and files necessary to conduct the business of
8 a class (a) or class (b) dealer are maintained in the building or
9 structure; and the building or structure houses an office of at
10 least 150 square feet in size, equipped with standard office
11 furniture, working utilities, a working restroom, and a working
12 telephone listed in the name of the business on the dealer's
13 license.

14 (b) The premises have land space of no less than 1,300 square
15 feet to accommodate the display of a minimum of 10 vehicles of the
16 kind and type that the dealer is licensed to sell and an additional
17 650 square feet for customer parking. The display and customer
18 parking areas shall be adequately surfaced and well-lit during
19 business hours. **THIS SUBDIVISION DOES NOT APPLY IF THE PREMISES ARE**
20 **A RESIDENCE.**

21 (c) The premises are identified by an exterior sign displaying
22 the name of the dealership that is permanently affixed to the
23 building or land with letters clearly visible from a highway.

24 (d) The premises contain a conspicuous posting of the dealer's
25 regular hours of operation. The posted hours shall be not less than
26 ~~30~~**20** hours per week.

27 (e) The premises contain a registered repair facility on site

1 for the repair and servicing of motor vehicles of a type sold at
2 the established place of business, unless the dealer has entered
3 into a written servicing agreement with a registered repair
4 facility at a location not ~~to exceed 10~~ **MORE THAN 30** miles'
5 distance from the established place of business. If repairs are
6 conducted ~~pursuant to~~ **UNDER** a servicing agreement, the servicing
7 agreement shall be conspicuously posted in the office.

8 (f) The premises meet all applicable zoning requirements and
9 municipal requirements **OR WAS AN ALLOWABLE NONCONFORMING USE UNDER**
10 **APPLICABLE ZONING REQUIREMENTS AND MUNICIPAL REQUIREMENTS BEFORE**
11 **JANUARY 31, 2005.**

12 Sec. 248. (1) The secretary of state shall not grant a dealer
13 license under this section until an investigation is made of the
14 applicant's qualifications under this act, except that this
15 subsection does not apply to license renewals. The secretary of
16 state shall make the investigation ~~within~~ **NOT MORE THAN** 15 days
17 after receiving the application and make a report on the
18 investigation.

19 (2) An applicant for a new vehicle dealer or a used or
20 secondhand vehicle dealer or broker license shall include a
21 properly executed bond or renewal certificate with the application.
22 If a renewal certificate is used, the bond is considered renewed
23 for each succeeding year in the same amount and with the same
24 effect as an original bond. The bond shall be in the sum of
25 \$10,000.00 with good and sufficient surety to be approved by the
26 secretary of state. The bond shall indemnify or reimburse a
27 purchaser, seller, lessee, financing agency, or governmental agency

1 for monetary loss caused through fraud, cheating, or
2 misrepresentation in the conduct of the vehicle business whether
3 the fraud, cheating, or misrepresentation was made by the dealer or
4 by an employee, agent, or salesperson of the dealer. The surety
5 shall make indemnification or reimbursement for a monetary loss
6 only after judgment based on fraud, cheating, or misrepresentation
7 has been entered in a court of record against the licensee. The
8 bond shall also indemnify or reimburse the state for any sales tax
9 deficiency as provided in the general sales tax act, 1933 PA 167,
10 MCL 205.51 to 205.78, or use tax deficiency as provided in the use
11 tax act, 1937 PA 94, MCL 205.91 to 205.111, for the year in which
12 the bond is in force. The surety shall make indemnification or
13 reimbursement only after final judgment has been entered in a court
14 of record against the licensee. A dealer or applicant who has
15 furnished satisfactory proof that a bond similar to the bond
16 required by this subsection is executed and in force is exempt from
17 the bond provisions set forth in this subsection. The aggregate
18 liability of the surety shall not exceed the sum of the bond. The
19 surety on the bond may cancel the bond upon giving 30 days' notice
20 in writing to the secretary of state and thereafter is not liable
21 for a breach of condition occurring after the effective date of the
22 cancellation.

23 (3) An applicant for a new vehicle dealer or a used or
24 secondhand vehicle dealer license shall apply for not less than 2
25 dealer plates ~~as provided by~~ **UNDER** section 245 and shall include
26 with the application the proper fee as provided by section 803.

27 (4) As a condition precedent to the granting of a license, a

1 dealer shall file with the secretary of state an irrevocable
2 written stipulation, authenticated by the applicant, stipulating
3 and agreeing that legal process affecting the dealer, served on the
4 secretary of state or a deputy of the secretary of state, has the
5 same effect as if personally served on the dealer. This appointment
6 remains in force as long as the dealer has any outstanding
7 liability within this state.

8 (5) A person shall not carry on or conduct the business of
9 buying, selling, brokering, leasing, negotiating a lease, or
10 dealing in 5 or more vehicles of a type required to be titled under
11 this act in a 12-month period unless the person obtains a dealer
12 license from the secretary of state authorizing the carrying on or
13 conducting of that business. A person shall not carry on or conduct
14 the business of buying, selling, brokering, leasing, negotiating a
15 lease, or dealing in 5 or more distressed, late model vehicles or
16 salvageable parts to 5 or more of those vehicles in a 12-month
17 period unless the person obtains a used or secondhand vehicle parts
18 dealer, an automotive recycler, or a salvage pool license from the
19 secretary of state or is an insurance company admitted to conduct
20 business in this state. A person shall not carry on or conduct the
21 business of buying 5 or more vehicles in a 12-month period to
22 process into scrap metal or store or display 5 or more vehicles in
23 a 12-month period as an agent or escrow agent of an insurance
24 company unless the person obtains a dealer license from the
25 secretary of state. A vehicle scrap metal processor who does not
26 purchase vehicles or salvageable parts from unlicensed persons is
27 not required to obtain a dealer license. A person from another

1 state shall not purchase, sell, or otherwise deal in distressed,
 2 late model vehicles or salvageable parts unless the person obtains
 3 a foreign salvage vehicle dealer license from the secretary of
 4 state as prescribed under section 248b. A person, including a
 5 dealer, shall not purchase or acquire a distressed, late model
 6 vehicle or a salvageable part through a salvage pool, auction, or
 7 broker without a license as a salvage vehicle agent. The secretary
 8 of state shall investigate and seek prosecution, if necessary, of
 9 persons allegedly conducting a business without a license.

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

15 (a) ~~Name~~ **THE NAME** of **THE** applicant.

16 (b) ~~Location~~ **THE LOCATION** of **THE** applicant's established place
 17 of business in this state, together with written verification from
 18 the appropriate governing or zoning authority that the established
 19 place of business meets all applicable municipal and zoning
 20 requirements **OR WAS AN ALLOWED NONCONFORMING USE UNDER APPLICABLE**
 21 **MUNICIPAL AND ZONING REQUIREMENTS BEFORE JANUARY 31, 2005.**

22 (c) The name under which business is to be conducted.

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

25 (e) ~~Name~~ **THE NAME**, address, date of birth, and social security
 26 number of each owner or partner and, if a corporation, the name,
 27 address, date of birth, and social security number of each of the

1 principal officers.

2 (f) The county in which the business is to be conducted and
3 the address of each place of business in that county.

4 (g) If new vehicles are to be sold, the make to be handled.
5 Each new vehicle dealer shall send with the application for license
6 a certification that the dealer holds a bona fide contract to act
7 as factory representative, factory distributor, or distributor
8 representative to sell at retail (the make of vehicle to
9 be sold).

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

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

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

23 (k) If the application is for a used or secondhand vehicle
24 parts dealer or an automotive recycler, ~~it~~ **THE APPLICATION** shall
25 include all of the following:

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

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

4 (iii) Evidence of worker's compensation insurance coverage for
5 employees classified under the North American industrial
6 classification system number 42114, entitled "motor vehicle parts
7 (used) wholesalers" or under the national council on compensation
8 insurance classification code number 3821, entitled "automobile
9 dismantling and drivers", if applicable.

10 (l) Certification that neither the applicant nor another person
11 named on the application is acting as the alter ego of any other
12 person ~~or persons~~ in seeking the license. ~~For the purpose of AS~~
13 **USED IN** this subdivision, "alter ego" means a person who acts for
14 and on behalf of, or in the place of, another person for purposes
15 of obtaining a vehicle dealer license.

16 (7) A person shall apply separately for a dealer license for
17 each county in which business is to be conducted. Before moving 1
18 or more of his or her places of business or opening an additional
19 place of business, a dealer shall apply to the secretary of state
20 for and obtain a supplemental dealer license, for which a fee shall
21 not be charged. A supplemental dealer license shall be issued only
22 for a location, including a tent, temporary stand, or any temporary
23 quarters, that does not meet the definition of an established place
24 of business, within the county in which the dealer's established
25 place of business is located. A dealer license entitles the dealer
26 to conduct the business of buying, selling, leasing, and dealing in
27 vehicles or salvageable parts in the county covered by the license.

1 The dealer license shall also entitle the dealer to conduct at any
2 other licensed dealer's established place of business in this state
3 only the business of buying, selling, leasing, or dealing in
4 vehicles at wholesale.

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

- 11 (a) New vehicle dealer.
- 12 (b) Used or secondhand vehicle dealer.
- 13 (c) Used or secondhand vehicle parts dealer.
- 14 (d) Vehicle scrap metal processor.
- 15 (e) Vehicle salvage pool operator.
- 16 (f) Distressed vehicle transporter.
- 17 (g) Broker.
- 18 (h) Foreign salvage vehicle dealer.
- 19 (i) Automotive recycler.
- 20 (j) Beginning April 1, 2005, wholesaler.

21 (9) A dealer license expires on December 31 of the last year
22 for which the license is issued. The secretary of state may renew a
23 dealer license for a period of not more than 4 years upon
24 application and payment of the fee required by section 807.

25 (10) A dealer may conduct the business of buying, selling, or
26 dealing in motor homes, trailer coaches, trailers, or pickup
27 campers at a recreational vehicle show conducted at a location in

1 this state without obtaining a separate or supplemental license
2 under subsection (7) if all of the following apply:

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

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

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