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[No. 11]

(SB 763)

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 sections 2, 3, 4, 5, and 6 (MCL 256.602, 256.603, 256.604, 256.605, and 256.606), as amended by 1992 PA 169, and by adding sections 5b and 5c.

The People of the State of Michigan enact:

256.602 Driver training school; license required; deposit of revenue from fees collected. [M.S.A. 9.1690(2)]

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.

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

256.603 Driver training school; qualifications to operate. [M.S.A. 9.1690(3)]

Sec. 3. In order to qualify to operate a driver training school, a person shall meet all of the following requirements:

- (a) Maintain an established place of business open to the public.
- (b) Provide a continuous surety company bond in the principal sum of \$10,000.00 for a noncommercial motor vehicle driver training school with less than 1,000 students in a calendar year or \$20,000.00 for a noncommercial driver training school with 1,000 or more students in a calendar year and the principal sum of \$10,000.00 for a commercial motor vehicle driver training school for the protection of the contractual rights of students in a form that meets the approval of the department and written by a company authorized to do business in this state. The aggregate liability of the surety for all breaches of the condition of the bond shall not exceed the principal sum of the bond. The surety company may cancel the bond upon giving 30 days' written notice to the department and shall be relieved of liability for a breach of a condition of the bond that occurs after the effective date of cancellation. A person shall provide a separate bond for each classification in which the driver training school is licensed.
- (c) Maintain bodily injury and property damage liability insurance on motor vehicles used in driving instruction, insuring the liability of the driver training school, the driving instructors, and a person taking instruction. The amount of insurance shall be \$100,000.00 for bodily injury to or the death of 1 person in 1 accident, and, subject to the limit for 1 person; \$300,000.00 for bodily injury to or the death of 2 or more persons in 1 accident; and \$10,000.00 for damage to the property of others in 1 accident. Evidence of insurance coverage in the form of a certificate from the insurance carrier shall be filed with the

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department. The certificate shall stipulate that the insurance shall not be canceled except upon 10 days' prior written notice to the department.

(d) Disclose to the department the existence of a concession agreement with another business entity, and disclose the existence of the concession agreement and the limits of responsibility and liability contained in the concession agreement in all advertisements and in all contracts with students. As used in this subdivision, "concession agreement" means a contract, franchise, agreement, or the granting of a privilege, written or oral, between 2 business entities permitting 1 of the entities to operate a driver training school under the sponsorship, name, auspices of, or on the premises of, the other entity.

(e) Possess a driver training school license from the state in which a nonresident applicant's principal place of business is located, if that state licenses driver training schools.

256.604 Application for license; fee; license certificate; expiration of license; application and fee for license renewal.

[M.S.A. 9.1690(4)]

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 when the department is satisfied that the person has met the qualifications required under this act.

(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.

256.605 Instructor to be licensed; application for licensing of employees as instructors; fee; issuance and expiration of licensing certificate; qualifications of instructor. [M.S.A. 9.1690(5)]

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:

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(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 before hiring 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) 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 shall only apply to an applicant who is not currently 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.

256.605b Driver education instructor; criminal history check.

[M.S.A. 9.1690(5b)]

Sec. 5b. (1) Except as otherwise provided in this subsection, a driver training school licensee shall not employ a person as an instructor or, after the effective date of this section, continue to employ a person as a driving instructor 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. A person who is currently employed as a driver education instructor with a public school in this state shall not be required to submit to a criminal history check under this section.

(2) A driver training school licensee shall make a request with payment of the appropriate fee to the criminal records division of the department of state police for a

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criminal history check required under this section on a form and in a manner prescribed by the criminal records division of the department of state police.

(3) Within 45 days after receiving a proper request by a driver training school licensee 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 driver training school licensee and 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.

(4) Criminal history record information received from the criminal records division of the department of state police under subsection (3) shall be used by a driver training school licensee only for the purpose of evaluating a person's qualifications for employment as a driver training instructor. A driver training school licensee or 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(4)(e). A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00.

(5) As used in this section, "criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

256.605c Operator of driver training school; criminal history check.
[M.S.A. 9.1690(5c)]

Sec. 5c. (1) The department shall not license a person to operate a driver training school or, after the effective date of this section, 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(4)(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.

256.606 Investigations by department; denial, suspension, or revocation of driver training school license or driver training instructor license or placing probationary conditions; grounds; notice; hearing; denial of application based upon prior conviction; return of suspended or revoked license. [M.S.A. 9.1690(6)]

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 act or a rule promulgated under this act.

(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 act or a rule promulgated under this act.

(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 act or a rule promulgated under this act.

(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 act.

(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 act or a rule promulgated under this act.

(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 act.

(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 act.

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(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.

Effective date.

Enacting section 1. This amendatory act takes effect June 1, 1998.

This act is ordered to take immediate effect.

Approved March 3, 1998.

Filed with Secretary of State March 4, 1998.
