

SUBSTITUTE FOR  
HOUSE BILL NO. 5364

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
by amending section 11 (MCL 257.11), as amended by 1990 PA 154,  
and by adding section 248j.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 11. (1) ~~"Dealer"~~ EXCEPT AS PROVIDED IN  
2       SUBSECTION (3), "DEALER" means a person ~~engaged~~ WHO IS 1 OR  
3       MORE OF THE FOLLOWING:  
4       (A) A PERSON WHO IN A 12-MONTH PERIOD DID 1 OR MORE OF THE  
5       FOLLOWING:  
6       (i) ENGAGED in the business of purchasing, selling, exchang-  
7       ing, brokering, LEASING, or dealing in vehicles of a type  
8       required to be titled under this act. ~~or parts of those~~  
9       ~~vehicles, a person who negotiates the purchase, sale, deal, or~~  
10      ~~exchange of those vehicles and who has an established place of~~

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1 ~~business for those purposes in this state, a person is engaged in~~  
2 ~~the actual remanufacturing of engines or transmissions, or both,~~  
3 ~~or a person engaged~~

4 (ii) ENGAGED IN THE BUSINESS OF PURCHASING, SELLING,  
5 EXCHANGING, BROKERING, OR DEALING IN SALVAGEABLE PARTS OF 5 OR  
6 MORE VEHICLES.

7 (iii) ENGAGED in the business of buying 5 OR MORE vehicles  
8 to sell vehicle parts or ~~buying vehicles to~~ process into scrap  
9 metal.

10 (B) A PERSON ENGAGED IN THE ACTUAL REMANUFACTURING OF  
11 ENGINES, TRANSMISSIONS, OR SALVAGEABLE VEHICLE PARTS.

12 (2) THERE IS A REBUTTABLE PRESUMPTION THAT A PERSON WHO IN A  
13 12-MONTH PERIOD BUYS AND SELLS, EXCHANGES, BROKERS, LEASES, OR  
14 DEALS IN 5 OR MORE VEHICLES, OR BUYS AND SELLS, EXCHANGES, BRO-  
15 KERS, OR DEALS IN SALVAGEABLE PARTS FOR 5 OR MORE VEHICLES, OR  
16 BUYS 5 OR MORE VEHICLES TO SELL VEHICLE PARTS OR TO PROCESS INTO  
17 SCRAP METAL IS ENGAGED IN A BUSINESS DESCRIBED IN SUBSECTION  
18 (1).

19 [(3) Dealer does not include ~~a~~ ANY OF THE FOLLOWING:

20 (A) A FINANCIAL INSTITUTION, AS DEFINED IN SECTION 10 OF 1909 PA 99,  
21 MCL 129.40, OR AN ENTITY WHOLLY OWNED BY 1 OR MORE FINANCIAL INSTITUTIONS.

22 (B) A BANK HOLDING COMPANY.

23 (C) A person who buys or sells remanufactured vehicle engine  
24 and transmission salvageable vehicle parts or who receives in  
25 exchange used engines or transmissions if the primary business of  
26 the person is the selling of new vehicle parts and the person is

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1 not engaged in any other activity that requires a dealer license  
2 under this act.

3 (D) FOR PURPOSES OF DEALER LICENSING, A PERSON WHO NEGOTIATES THE  
4 LEASE OF A VEHICLE OF A TYPE REQUIRED TO BE TITLED UNDER THIS ACT FOR A  
5 LEASE TERM OF LESS THAN 120 DAYS.

6 (E) A PERSON WHOSE BUSINESS IS THE FINANCING OF THE PURCHASE, SALE,  
7 OR LEASE OF VEHICLES OF A TYPE REQUIRED TO BE TITLED UNDER THIS ACT AND  
8 THAT IS NOT OTHERWISE ENGAGED IN ACTIVITIES DESCRIBED IN SUBSECTION (1).

9 (F) AN EMPLOYEE OR AGENT OF A DEALER ACTING IN THE SCOPE OF HIS OR  
10 HER EMPLOYMENT OR AGENCY.

11 (G) AN INSURER, AS DEFINED IN SECTION 106 OF THE INSURANCE CODE OF  
12 1956, 1956 PA 218, MCL 500.106.

(H) A PERSON THAT LEASES 5 OR MORE VEHICLES, OR ANY NUMBER OF  
VEHICLES WITH A GROSS VEHICLE WEIGHT OF 26,001 OR MORE POUNDS, TO A  
SINGLE ENTITY FOR COMMERCIAL BUSINESS, OR OTHER NONHOUSEHOLD USE.]

13 SEC. 248J. (1) IN ADDITION TO ANY OTHER REMEDIES PROVIDED  
14 BY LAW, IF THE SECRETARY OF STATE DETERMINES THAT A PERSON HAS  
15 ACTED AS A DEALER WITHOUT A DEALER LICENSE, HE OR SHE MAY ISSUE  
16 THE PERSON A VERBAL OR WRITTEN WARNING OR ASSESS AN ADMINISTRA-  
17 TIVE FINE OF NOT MORE THAN \$5,000.00 FOR A FIRST VIOLATION, AND  
18 NOT MORE THAN \$7,500.00 FOR EACH SUBSEQUENT VIOLATION OCCURRING  
19 WITHIN 7 YEARS OF A PRIOR VIOLATION.

20 (2) IF THE SECRETARY OF STATE ASSESSES AN ADMINISTRATIVE  
21 FINE UNDER SUBSECTION (1), THE SECRETARY OF STATE SHALL PROVIDE  
22 NOTICE OF THE ASSESSMENT IN WRITING PURSUANT TO SECTION 212. AT  
23 A MINIMUM, THE NOTICE OF ASSESSMENT SHALL CONTAIN ALL OF THE  
24 FOLLOWING:

25 (A) A UNIQUE IDENTIFICATION NUMBER.

26 (B) A DESCRIPTION OF THE ALLEGED VIOLATION THAT IS THE BASIS  
27 FOR THE ASSESSMENT, INCLUDING THE DATE THE ALLEGED VIOLATION

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1 OCCURRED AND A REFERENCE TO THE SPECIFIC SECTION OR RULE ALLEGED  
2 TO HAVE BEEN VIOLATED.

3 (C) THE ADMINISTRATIVE FINE ESTABLISHED FOR THE VIOLATION.

4 (D) A STATEMENT INDICATING THAT IF THE FINE IS NOT PAID, THE  
5 SECRETARY OF STATE MAY REFER THE FINE TO THE DEPARTMENT OF TREA-  
6 SURY FOR COLLECTION.

7 (E) A STATEMENT INDICATING THAT IF THE ALLEGED VIOLATION IS  
8 CONTESTED, THE PERSON HAS A RIGHT TO REQUEST AN INFORMAL CONFER-  
9 ENCE BEFORE AN ADMINISTRATIVE HEARING, ACCOMPANIED BY SIMPLE  
10 INSTRUCTIONS INFORMING THE PERSON HOW TO REQUEST OR WAIVE THE  
11 INFORMAL CONFERENCE.

12 (3) NOT LATER THAN 20 DAYS AFTER RECEIVING THE WRITTEN  
13 NOTICE OF ASSESSMENT, THE ALLEGED VIOLATOR SHALL DO 1 OF THE  
14 FOLLOWING:

15 (A) PAY THE ADMINISTRATIVE FINE TO THE SECRETARY OF STATE.  
16 A PAYMENT OPERATES TO AUTOMATICALLY WAIVE THE PERSON'S RIGHT TO  
17 AN INFORMAL CONFERENCE AND AN ADMINISTRATIVE HEARING.

18 (B) REQUEST THE SECRETARY OF STATE TO CONDUCT AN INFORMAL  
19 CONFERENCE.

20 (C) WAIVE THE RIGHT TO AN INFORMAL CONFERENCE AND REQUEST  
21 THE SECRETARY OF STATE TO CONDUCT AN ADMINISTRATIVE HEARING.

22 (D) IF THE PERSON IS NOT A LICENSED DEALER, PAY THE ADMINIS-  
23 TRATIVE FINE TO THE SECRETARY OF STATE AND SUBMIT A PROPERLY COM-  
24 PLETED DEALER LICENSE APPLICATION TO THE SECRETARY OF STATE.

25 (4) A PERSON'S REQUEST FOR AN INFORMAL CONFERENCE OR AN  
26 ADMINISTRATIVE HEARING SHALL COMPLY WITH ALL OF THE FOLLOWING  
27 CONDITIONS:

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1 (A) BE IN WRITING.

2 (B) BE POSTMARKED OR RECEIVED BY THE DEPARTMENT WITHIN  
3 20 DAYS AFTER THE DATE THE PERSON RECEIVED THE WRITTEN NOTICE OF  
4 ASSESSMENT.

5 (C) STATE THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE  
6 PERSON REQUESTING THE INFORMAL CONFERENCE OR ADMINISTRATIVE  
7 HEARING.

8 (D) STATE THE WRITTEN NOTICE OF ASSESSMENT'S UNIQUE IDENTI-  
9 FICATION NUMBER.

10 (E) STATE THE REASON FOR THE REQUEST.

11 (F) IF THE REQUEST IS FOR AN ADMINISTRATIVE HEARING WITHOUT  
12 AN INFORMAL CONFERENCE, STATE THE PERSON IS WAIVING HIS OR HER  
13 RIGHT TO AN INFORMAL CONFERENCE.

14 (5) IF THE SECRETARY OF STATE RECEIVES A REQUEST FOR AN  
15 INFORMAL CONFERENCE OR AN ADMINISTRATIVE HEARING THAT MEETS ALL  
16 OF THE CONDITIONS PRESCRIBED IN SUBSECTION (4), THE SECRETARY OF  
17 STATE SHALL SCHEDULE AN INFORMAL CONFERENCE OR AN ADMINISTRATIVE  
18 HEARING, AS APPLICABLE. IF THE REQUEST FAILS TO MEET ALL OF THE  
19 CONDITIONS PRESCRIBED IN SUBSECTION (4), THE SECRETARY OF STATE  
20 MAY IN WRITING DENY THE REQUEST. A DENIAL SHALL BE SERVED ON THE  
21 PERSON BY FIRST-CLASS MAIL AND SHALL DO BOTH OF THE FOLLOWING:

22 (A) STATE THE REASON FOR THE DENIAL.

23 (B) GRANT THE PERSON 14 DAYS TO SUBMIT A VALID REQUEST TO  
24 THE SECRETARY OF STATE.

25 (6) THE SECRETARY OF STATE SHALL CONDUCT AN INFORMAL CONFER-  
26 ENCE UNDER THIS SECTION WITHIN 45 DAYS AFTER RECEIVING A VALID  
27 REQUEST FOR THE CONFERENCE. THE SECRETARY OF STATE SHALL SERVE

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1 UPON THE ALLEGED VIOLATOR, BY FIRST-CLASS MAIL NOT LESS THAN  
2 5 DAYS BEFORE THE CONFERENCE, A WRITTEN NOTICE THAT INCLUDES  
3 TIME, PLACE, AND DATE OF THE INFORMAL CONFERENCE. THE NOTICE  
4 SHALL STATE THAT THE ALLEGED VIOLATOR MAY BE REPRESENTED BY AN  
5 ATTORNEY AT THE INFORMAL CONFERENCE.

6 (7) AFTER THE INFORMAL CONFERENCE, THE SECRETARY OF STATE  
7 SHALL EVALUATE THE VALIDITY OF THE ASSESSMENT OF THE ADMINISTRA-  
8 TIVE FINE AND AFFIRM, MODIFY, OR DISMISS THE ASSESSMENT. IN  
9 MAKING THE EVALUATION, THE SECRETARY OF STATE MAY CONSIDER 1 OR  
10 MORE OF THE FOLLOWING:

11 (A) WHETHER THERE IS REASON TO BELIEVE THE ALLEGED VIOLATION  
12 DID IN FACT OCCUR.

13 (B) THE SEVERITY OF THE ALLEGED VIOLATION AND ITS IMPACT ON  
14 THE PUBLIC.

15 (C) THE NUMBER OF PRIOR OR RELATED VIOLATIONS BY THE  
16 PERSON.

17 (D) THE LIKELIHOOD OF FUTURE COMPLIANCE BY THE PERSON.

18 (E) ANY OTHER CONSIDERATIONS THE SECRETARY OF STATE CONSID-  
19 ERS APPROPRIATE.

20 (8) WITHIN 20 DAYS AFTER CONDUCTING THE INFORMAL CONFERENCE,  
21 THE SECRETARY OF STATE SHALL SERVE UPON THE PERSON BY FIRST-CLASS  
22 MAIL A WRITTEN STATEMENT DESCRIBING WHETHER THE ASSESSMENT OF THE  
23 ADMINISTRATIVE FINE IS AFFIRMED, MODIFIED, OR DISMISSED AND THE  
24 BASIS OF THE ACTION. IF THE ASSESSMENT IS AFFIRMED OR MODIFIED,  
25 THIS STATEMENT SHALL ALSO ADVISE THE PERSON THAT HE OR SHE WILL  
26 RECEIVE A NOTICE OF HEARING WHERE THE VALIDITY OF THE ASSESSMENT  
27 MAY BE CONTESTED OR HE OR SHE MAY IMMEDIATELY PAY THE FINE TO THE

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1 SECRETARY OF STATE AND THAT PAYMENT OF THE FINE WILL PREVENT  
2 SCHEDULING OF AN ADMINISTRATIVE HEARING.

3 (9) A NOTICE OF HEARING UNDER THIS SECTION SHALL BE SERVED  
4 ON THE PERSON BY FIRST-CLASS MAIL NOT LESS THAN 5 DAYS BEFORE THE  
5 DATE SCHEDULED FOR THE ADMINISTRATIVE HEARING AND, AT A MINIMUM,  
6 ADVISE THE PERSON OF ALL OF THE FOLLOWING:

7 (A) THE TIME, PLACE, AND DATE OF HEARING.

8 (B) THAT AN IMPARTIAL HEARING OFFICER WILL CONDUCT THE HEAR-  
9 ING AND ALLOW THE PERSON AN OPPORTUNITY TO EXAMINE THE SECRETARY  
10 OF STATE'S EVIDENCE AND PRESENT EVIDENCE IN PERSON OR IN  
11 WRITING.

12 (C) THAT THE PERSON HAS A RIGHT TO BE REPRESENTED BY AN  
13 ATTORNEY AT THE ADMINISTRATIVE HEARING.

14 (D) THE COMMON REASONS WHY THE SECRETARY OF STATE COULD DIS-  
15 MISS AN ASSESSMENT OF AN ADMINISTRATIVE FINE.

16 (E) THAT THE HEARING OFFICER CONDUCTING THE ADMINISTRATIVE  
17 HEARING WILL BE AUTHORIZED TO DO ALL OF THE FOLLOWING:

18 (i) AFFIRM, MODIFY, OR DISMISS THE ASSESSMENT OF AN ADMINIS-  
19 TRATIVE FINE.

20 (ii) CORRECT ANY ERRORS IN THE DEPARTMENT'S RECORDS THAT  
21 RELATE DIRECTLY TO THE ASSESSMENT.

22 (iii) REFER OR NOT REFER THE FINE TO THE DEPARTMENT OF TREA-  
23 SURY FOR COLLECTION.

24 (iv) TAKE OR ORDER ANY OTHER ACTION OR RESOLUTION CONSIDERED  
25 APPROPRIATE BY THE HEARING OFFICER.

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1           (F) THAT IF THE DEPARTMENT OF TREASURY TAKES ENFORCEMENT  
2 ACTION AGAINST THE PERSON, HE OR SHE MAY SEEK A REVIEW IN THE  
3 COURT OF CLAIMS.

4           (10) THE SECRETARY OF STATE SHALL CONDUCT AN ADMINISTRATIVE  
5 HEARING UNDER THIS SECTION PURSUANT TO THE CONTESTED CASE PROVI-  
6 SIONS OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,  
7 MCL 24.201 TO 24.328. IF AN ADMINISTRATIVE FINE ASSESSED UNDER  
8 THIS SECTION IS AFFIRMED BY THE DECISION OF THE HEARING OFFICER,  
9 THE HEARING OFFICER MAY ASSESS THE PERSON COSTS OF NOT MORE THAN  
10 \$500.00, TO REIMBURSE THE SECRETARY OF STATE FOR PROVING THE  
11 VALIDITY OF THE ALLEGED VIOLATION, IN ADDITION TO ANY OTHER PEN-  
12 ALTIES, SANCTIONS, OR COSTS IMPOSED AS PROVIDED BY LAW.

13           (11) AN ADMINISTRATIVE FINE ASSESSED UNDER THIS SECTION  
14 BECOMES FINAL UPON THE FIRST TO OCCUR OF THE FOLLOWING:

15           (A) THE SECRETARY OF STATE DOES NOT RECEIVE A VALID REQUEST  
16 FOR AN INFORMAL CONFERENCE OR AN ADMINISTRATIVE HEARING WITHIN  
17 THE TIME PERIOD DESCRIBED IN SUBSECTION (4).

18           (B) TWENTY DAYS AFTER A PERSON WAIVES HIS OR HER RIGHT TO AN  
19 ADMINISTRATIVE HEARING.

20           (C) AN ADMINISTRATIVE HEARING DECISION IS SERVED UPON THE  
21 PERSON.

22           (12) AFTER A PERSON PAYS THE SECRETARY OF STATE THE FINE  
23 IMPOSED, THE SECRETARY OF STATE SHALL FORWARD THE MONEY TO THE  
24 DEPARTMENT OF TREASURY FOR DEPOSIT IN A SEPARATE FUND WITHIN THE  
25 GENERAL FUND. UPON APPROPRIATION, THIS MONEY SHALL BE USED FIRST  
26 TO DEFRAY THE EXPENSE OF THE SECRETARY OF STATE IN ADMINISTERING  
27 THIS CHAPTER.



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1           (13) IF AN ADMINISTRATIVE FINE ASSESSED UNDER THIS SECTION  
2   IS NOT PAID WITHIN 60 DAYS AFTER IT BECOMES FINAL, THE SECRETARY  
3   OF STATE MAY REFER THE MATTER TO THE DEPARTMENT OF TREASURY FOR  
4   COLLECTION AS A STATE DEBT THROUGH THE OFFSET OF STATE TAX  
5   REFUNDS AND MAY USE THE SERVICES OF THE DEPARTMENT OF TREASURY TO  
6   LEVY THE SALARY, WAGES, OR OTHER INCOME OR ASSETS OF THE PERSON  
7   AS PROVIDED BY LAW.

8           (14) PAYMENT OF AN ADMINISTRATIVE FINE ASSESSED UNDER THIS  
9   SECTION DOES NOT CONSTITUTE AN ADMISSION OF RESPONSIBILITY OR  
10   GUILT BY THE PERSON. PAYMENT OF AN ADMINISTRATIVE FINE ASSESSED  
11   UNDER THIS SECTION DOES NOT PREVENT THE SECRETARY OF STATE FROM  
12   CHARGING A VIOLATION DESCRIBED IN THE ASSESSMENT OF THE ADMINIS-  
13   TRATIVE FINE IN A SUBSEQUENT OR CONCURRENT CONTESTED CASE PRO-  
14   CEEDING CONDUCTED BY THE SECRETARY OF STATE PURSUANT TO THE  
15   ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
16   24.328.

17           (15) IF THE PERSON SUBMITS A PROPERLY COMPLETED APPLICATION  
18   AND APPROPRIATE FEE FOR A DEALER LICENSE WITHIN 20 DAYS AFTER AN  
19   ADMINISTRATIVE FINE UNDER SUBSECTION (1) IS ASSESSED, AND IF THE  
20   SECRETARY OF STATE ISSUES THE PERSON A DEALER LICENSE WITHIN 45  
21   DAYS OF RECEIVING THE PROPERLY COMPLETED APPLICATION AND FEE, THE  
22   SECRETARY OF STATE SHALL REDUCE THE AMOUNT OF THE ADMINISTRATIVE  
23   FINE BY 50%.

24           (16) THE SECRETARY OF STATE SHALL SERVE A NOTICE, DENIAL,  
25   DECISION, OR STATEMENT UNDER THIS SECTION IN COMPLIANCE WITH  
26   SECTION 212.

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1           (17) AN INFORMAL CONFERENCE UNDER THIS SECTION IS NOT A  
2 COMPLIANCE CONFERENCE UNDER SECTION 92 OF THE ADMINISTRATIVE  
3 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.292.

4           Enacting section 1. This amendatory act takes effect  
5 October 1, 2002.