

HOUSE BILL No. 5364

October 29, 2001, Introduced by Reps. Gilbert, Julian and Howell and referred to the Committee on Commerce.

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~~

~~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, SELLS, EXCHANGES, BROKERS, LEASES, OR DEALS
14 IN 5 OR MORE VEHICLES, OR BUYS, SELLS, EXCHANGES, BROKERS, OR
15 DEALS IN SALVAGEABLE PARTS FOR 5 OR MORE VEHICLES, OR BUYS 5 OR
16 MORE VEHICLES TO SELL VEHICLE PARTS OR TO PROCESS INTO SCRAP
17 METAL IS ENGAGED IN A BUSINESS DESCRIBED IN SUBSECTION (1).

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

19 (A) A BANK, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION.

20 (B) A person who buys or sells remanufactured vehicle engine
21 and transmission salvageable vehicle parts or who receives in
22 exchange used engines or transmissions if the primary business of
23 the person is the selling of new vehicle parts and the person is
24 not engaged in any other activity that requires a dealer license
25 under this act.

1 (C) A PERSON WHO NEGOTIATES THE LEASE OF A VEHICLE OF A TYPE
2 REQUIRED TO BE TITLED UNDER THIS ACT FOR A LEASE TERM OF LESS
3 THAN 120 DAYS.

4 (D) A PERSON WHOSE PRIMARY BUSINESS IS THE FINANCING OF THE
5 PURCHASE, SALE, OR LEASE OF VEHICLES OF A TYPE REQUIRED TO BE
6 TITLED UNDER THIS ACT.

7 (E) AN EMPLOYEE OR AGENT OF A DEALER ACTING IN THE SCOPE OF
8 HIS OR HER EMPLOYMENT OR AGENCY.

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

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

21 (A) A UNIQUE IDENTIFICATION NUMBER.

22 (B) A DESCRIPTION OF THE ALLEGED VIOLATION THAT IS THE BASIS
23 FOR THE ASSESSMENT, INCLUDING THE DATE THE ALLEGED VIOLATION
24 OCCURRED AND A REFERENCE TO THE SPECIFIC SECTION OR RULE ALLEGED
25 TO HAVE BEEN VIOLATED.

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

1 (D) A STATEMENT INDICATING THAT IF THE FINE IS NOT PAID, THE
2 SECRETARY OF STATE MAY REFER THE FINE TO THE DEPARTMENT OF
3 TREASURY FOR COLLECTION.

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

9 (3) NOT LATER THAN 20 DAYS AFTER RECEIVING THE WRITTEN
10 NOTICE OF ASSESSMENT, THE ALLEGED VIOLATOR SHALL DO 1 OF THE
11 FOLLOWING:

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

15 (B) REQUEST THE SECRETARY OF STATE TO CONDUCT AN INFORMAL
16 CONFERENCE.

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

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

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

25 (A) BE IN WRITING.

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

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

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

9 (E) STATE THE REASON FOR THE REQUEST.

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

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

21 (A) STATE THE REASON FOR THE DENIAL.

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

24 (6) THE SECRETARY OF STATE SHALL CONDUCT AN INFORMAL CONFER-
25 ENCE UNDER THIS SECTION WITHIN 45 DAYS AFTER RECEIVING A VALID
26 REQUEST FOR THE CONFERENCE. THE SECRETARY OF STATE SHALL SERVE
27 UPON THE ALLEGED VIOLATOR, BY FIRST-CLASS MAIL NOT LESS THAN

1 5 DAYS BEFORE THE CONFERENCE, A WRITTEN NOTICE THAT INCLUDES
2 TIME, PLACE, AND DATE OF THE INFORMAL CONFERENCE. THE NOTICE
3 SHALL STATE THAT THE ALLEGED VIOLATOR MAY BE REPRESENTED BY AN
4 ATTORNEY AT THE INFORMAL CONFERENCE.

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

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

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

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

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

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

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

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.

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.

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.

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
5 180 days after the date this amendatory act is enacted.