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BILL ANALYSIS

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Senate Bill 1290 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jud Gilbert, II
Committee: Transportation

Date Completed: 7-13-06

RATIONALE

Driver training programs currently are 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). Until several years ago, 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 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 include uniform certification and regulation of public and private driver training schools. Thus, it has been suggested that the administrative rules be rescinded, and that a new statute, under which all driver training programs would be subject to the same requirements, be created.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 would create 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 proposed Act; and require fees and administrative fines

- collected under the bill to be deposited into the Fund.
- Allow a currently licensed driver training school or instructor who applied for a certificate before June 1, 2007, to continue to provide instruction while the SOS processed 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 the SOS to prescribe a model curriculum for teen driver training.
- 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 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 revealed a conviction of any of the specified crimes.
- Require the SOS to suspend or revoke the certificate of an instructor whose driver license was denied, suspended, revoked, or canceled.
- Specify that certain methods, acts, or practices by a provider or instructor would be 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 could be imposed by law.
- Prescribe a misdemeanor penalty for a person who engaged in activity as a provider or instructor without certification.
- Allow a court to order a person who violated the proposed Act to reimburse the SOS for the costs of investigation, and require any costs collected to be deposited into the proposed Fund.
- Allow the SOS to promulgate rules to carry out the Act.

The bill also would eliminate the October 1, 2006, sunset on the existing Driver Education and Training Schools Act, and rescind administrative rules regarding the regulation of driver training schools and instructors. The proposed Act would codify certain provisions of those rules, and reenact some provisions of the existing Act, subject to modifications.

The bill would take effect on October 1, 2007. It is described below in further detail.

Provider Certificate Application

Under the bill, a person could 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 existing Act, the Department of State may license a driver training school in either the noncommercial motor vehicle or the commercial motor vehicle (CMV) classification, or both.)

("Driver education provider" would mean 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 would 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 bill, an applicant would have to submit evidence that he or she had done or would 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 had been inspected and approved by the Fire Marshal or representative.
- Maintain the surety bond required by the bill.
- 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 employed, enlisted, or appointed, or contracted 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 bill.
- 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 had 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 had been denied a certificate or been the holder of a certificate that was suspended or revoked.
- If the applicant were a corporation or partnership, provide a statement indicating whether a partner, employee, officer, or director, or its designated representative or coordinator ever had 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 was not acting as the alter ego of any other person or people in seeking the certificate.
- Affirm that the established office location met all applicable zoning and municipal requirements.
- Obtain written or electronic verification from an insurer that the applicant maintained or would 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 would be maintained a nonrefundable application processing fee of \$225 for a provider who offered adult or teen driver training, or \$360 for a provider who offered truck driver training.
- Provide a statement indicating whether the applicant would 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" would mean 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 existing Act prescribes application fees of \$125 for a driver training school that offers noncommercial motor vehicle training and \$200 for a driver training school that offers CMV training.)

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

Surety Bond & Insurance

An application for an original provider certificate would have to include a properly executed surety bond or renewal certificate. The amount of the bond or certificate would depend on the classification of the provider and the number of students. The bond would have to 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 would have to make indemnification or reimbursement only after a court judgment had been entered against the provider. These requirements would not apply to an educational institution or a governmental agency.

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

Renewal Provider Application

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

- A certification that the applicant had used a multiple vehicle driving facility in a driver education course and that the

facility had not been altered or changed since the SOS inspected it after the bill's effective date, along with a \$75 review and approval fee.

- A statement that the applicant would 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.

A provider's designated representative or coordinator would have to complete a criminal history check to the satisfaction of the SOS every four years on an application to renew a certificate.

Termination of Operation

A person who stopped operating as a driver education provider or no longer qualified as a certified provider immediately would have to 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 was required to maintain under the proposed Act would be stored for at least four years after the provider stopped operating or failed to qualify as a provider.

(The existing Act requires a school to maintain student records for at least three years after closing.)

A person who failed to comply immediately with the requirements regarding the return of the provider certificate and unissued certificates of completion and the final inventory would be 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 would have to review and, in writing, approve or deny the use of a multiple vehicle driving facility as he or she determined necessary. The SOS could

approve a facility only if it met criteria that he or she prescribed. The SOS also would have to perform an on-site inspection of a multiple vehicle driving facility as he or she determined necessary.

Instructor Certificate Application

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

- Submitted a properly completed application signed by the applicant.
- Was at least 21 years old on the date of application.
- Possessed a valid driver license that had been in continuous effect for at least five years immediately preceding the application, and provided his or her driver license number.
- Provided a statement indicating whether he or she had ever applied for a certificate in Michigan or any other state, and the result of that application.
- Provided a statement indicating whether he or she had ever been the holder of a certificate that was revoked or suspended in Michigan or any other state.
- Completed a criminal history check to the satisfaction of the SOS.
- Certified that he or she did not have a pending criminal matter or an outstanding arrest, warrant, or conviction since submitting a request for a criminal history check.
- Submitted a nonrefundable application processing fee of \$45.
- Submitted a certified medical examination report that was not more than 90 days old and included a statement by the person who certified the report that the applicant was medically qualified to operate a motor vehicle and to train others to do so.
- If not a Michigan resident, submitted an up-to-date certified driving record from

his or her state of residence to the SOS, and agreed to submit an up-to-date certified driving record every 60 days for as long as he or she was not a Michigan resident.

(Under the existing Act, the application fee is \$25 and the medical examination report must be not more than two years old.)

Also, for an original application for an instructor certificate for adult or teen driver training, the applicant would have to have submitted an official transcript from a college or university or from a person approved by the SOS 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, would be considered to have complied with this requirement.)

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

Renewal Instructor Certificate

A certified driver education instructor could apply to the SOS for renewal of his or her certificate by submitting a properly completed, signed application that included a certification that he or she complied with the proposed Act's professional development requirements, a nonrefundable application fee of \$45 (which would have to 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 would have to include a new certified medical examination report that was less than 90 days old, including a statement that he or she was medically qualified to operate and to train others to operate a motor vehicle.

A certified instructor would have to complete a criminal history check to the satisfaction of the SOS every four years on a renewal application.

Provider & Instructor Certificates

A provider or instructor certificate would be valid for two years. (Under the existing Act, a driver training school or instructor license expires on December 31 of the calendar year for which it was issued.)

The SOS could develop and prescribe an orientation and education program that a person would have to complete before the SOS issued the person an original provider or instructor certificate.

Currently Licensed Schools & Instructors

A person currently licensed as a driver training school or instructor by the SOS or currently approved for Segment 1 and Segment 2 driver education course performance objectives under the existing Driver Education and Training Schools Act, who submitted an original provider or instructor certificate application under the proposed Act by June 1, 2007, could continue to provide driver education instruction while the SOS processed the application. If an application were received after that date, the person could not provide instruction until the SOS processed the application and issued the certificate.

Instructor Preparation Program

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

Beginning September 1, 2007, a program would have to 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 would have to consist of at least two semester hours or the equivalent as approved by the SOS, and extend for at least three weeks.

The SOS would have to review each approved driver education instructor

preparation program at least once every three years.

("Practicum" would mean 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 would not apply to an applicant for an instructor certificate that was limited to the truck driver training classification.

Practicum Course; Conditional Certificate

A person could not participate in a practicum course conducted by a college or university or by a person approved by the SOS unless he or she possessed a conditional driver education instructor certificate. A person would have to apply to the SOS for a conditional instructor certificate. The SOS could issue the certificate after the person presented satisfactory evidence that he or she met all of the prescribed driver education instructor application requirements except for completion of a practicum course, and was enrolled in a practicum course conducted by a college, university, or person approved by the SOS.

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

Professional Development Requirements

Beginning January 1, 2008, the SOS would have to establish professional development requirements for a certified driver education instructor. The requirements would have to provide the criteria an instructor would have to follow to select an activity to meet the professional development requirements, and the date by which an instructor would have to complete the requirements.

Teen Driver Model Curriculum

The SOS would have to prescribe a model curriculum for teen driver training. After September 1, 2007, a provider classified for teen driver training would have to use the

model curriculum or an alternative curriculum that had been reviewed and approved by the SOS. Under a Segment 1 and Segment 2 curriculum combined, each student would have to receive at least 30 hours of classroom instruction and seven hours of behind-the-wheel driver education course experience. (Current MDE rules mandate six hours of on-the-road driving experience.)

Segment 1 & 2 Curriculum

A Segment 1 curriculum would have to include both classroom and behind-the-wheel course experience. The classroom instruction and behind-the-wheel instruction would have to be integrated and relate to each other, and each student would have to receive at least 24 hours of classroom instruction, including at least four hours before the student began to receive behind-the-wheel instruction and at least three hours of behind-the-wheel instruction before classroom instruction terminated. Additionally, each student would have to 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 could receive instruction while operating a motor vehicle at a multiple vehicle driving facility. One hour of instruction received at such a facility could substitute as credit for one hour of behind-the-wheel experience. A maximum of two hours of behind-the-wheel experience could be substituted with instruction received at a multiple vehicle driving facility. (Currently, MDE rules allow 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 could be offered only to a student who had successfully completed a Segment 1 curriculum course, who held a valid Level 1 graduated driver license (GDL) for at least three continuous months, and who had acquired at least 30 hours' driving experience on a Level 1 GDL that included 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 was at least 21 years old.

Additionally, a Segment 2 curriculum course would have to contain at least six hours of classroom instruction that was scheduled so the student received not more than two hours of classroom instruction per day; and at least one hour of behind-the-wheel instruction and assessment with the student behind the wheel under the guidance of an instructor.

Coordinated Segment 1 Course

The SOS could 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 could not give a such a course without the prior written approval of the SOS, and would have to enter into a written agreement with a student before providing instruction under these provisions. The agreement would have to contain information described in the bill, including a description of the instruction that each provider would 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 would not apply to an educational institution or a governmental agency that did not charge a student a fee for driver education instruction.

Certificate of Completion; Knowledge Test

A provider classified to provide teen driver training would have to issue a driver education course certificate of completion to a student who successfully passed a written knowledge test prescribed by the SOS for that segment, and successfully completed the other course work required for that segment. A provider could not issue a certificate of completion for Segment 1 if the student were not eligible for a graduated driver license. A provider could not issue a certificate of completion for Segment 2 unless the student had been issued a graduated driver license.

Provider Reports & Records

Before holding a class, a provider would have to file a projected driver education course schedule report with the SOS. Upon

completion of a class, a provider would have to 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 would have to 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 would have to file a report containing student information.

A provider would have to maintain a record of the instruction given to a student as prescribed by the SOS. A student instruction record would have to 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 the signed contract between the school and the student; and the information contained in a course completion report for the student.

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

Provider Agreement with Students

A provider would have to have a written agreement with each of its students, and could not give instruction to a student until after the provider and the student had entered into the agreement. The agreement would have to contain information specified in the bill, 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 began, the provider would have to give the student a signed copy of the agreement,

along with a copy of all of the provider's applicable policies.

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

Verification by Provider

A provider would have to verify that an instructor possessed 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 could provide behind-the-wheel education course instruction to an adult or truck driver training student, it would have to verify that the student had a valid temporary instruction permit issued by the SOS.

A provider classified for teen driver training would have to verify that a person enrolled in a driver education course was at least 14 years, eight months of age before beginning a Segment 1 curriculum or, if the student were under that age, that the SOS has issued him or her approval for a minor restricted driver license. The provider also would have to verify that the student met 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 would have to comply with the motor vehicle safety standards required under Federal and State laws; display an identity that the vehicle was used in a driver education course; and display a provider's identity. A provider could 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 would have to 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 proposed Act would have to be performed by the Michigan Department of State Police

(MSP) and the Federal Bureau of Investigation (FBI). A person required to have a criminal history check would have to 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 would have to give the SOS a report containing any criminal history record information on that person maintained by the MSP. Except as otherwise provided, the SOS could 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 could use the criminal history information only to evaluate an applicant's qualifications to receive a certificate. The SOS could 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 was one of the crimes specified in the bill. A person who used criminal history information in violation of these provisions would be 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 would have to notify the SOS if convicted of a violation or attempted violation listed in the bill. A certified instructor or a designated representative or coordinator also would have to notify his or her provider employer. A notice would have to 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 would have to deny an original or renewal application for a driver education provider or instructor certificate, and automatically would have to 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 indicated that the applicant, instructor, provider, or the designated representative or coordinator of the applicant or provider had been

convicted of a violation or attempted violation, or the SOS received 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 would have to continue for at least 10 years from the date of the conviction.

If a criminal arrest fingerprint were submitted to the MSP and matched a fingerprint submitted for a criminal history check under the bill and stored in the MSP's automated fingerprint identification system database, the MSP would have to notify the Department of State.

When the SOS received reliable notice of a conviction for a violation or attempted violation by an applicant's or provider's designated representative or coordinator, the SOS automatically would have to deny an original or renewal application for a provider certificate or revoke immediately a provider's certificate if the applicant or provider failed to terminate immediately the representative's or coordinator's designation or employment.

Except as otherwise provided, the SOS automatically would have to 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 did 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 driving record of an applicant's or provider's designated representative or coordinator was the cause for the SOS to deny an application or revoke a certificate, the SOS automatically would have to deny an original or renewal application for a driver education provider certificate or revoke a provider's certificate if the applicant or provider failed to terminate immediately the representative's or coordinator's designation or employment.

The SOS automatically would have to suspend or revoke an instructor's certificate without notice and an opportunity for a hearing if the instructor's driver license were denied, suspended, revoked, or canceled by Michigan or another state. An instructor whose license was denied, suspended, revoked, or canceled immediately would have to return his or her instructor's certificate to the SOS. The SOS could reinstate an instructor's certificate suspended under this provision if the license denial, suspension, revocation, or cancellation terminated before the certificate expired and the instructor submitted a written request to the SOS for reinstatement. The SOS could not reinstate an instructor certificate that was revoked. An instructor whose certificate was revoked under these provisions could 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 could make a reasonable and necessary investigation within or outside this State and gather evidence against a person who violated,

allegedly violated, or was about to violate the proposed Act, a rule promulgated under it, or an order issued under it, concerning whether a person, an applicant, a provider, or an instructor was in compliance with the Act or a rule promulgated under it.

A person could 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 could mediate a dispute between a provider or instructor and a student or the student's parent or legal guardian when a dispute arose from a violation or attempted violation.

Additionally, the SOS could 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 could not engage in a deceptive or unconscionable method, act, or practice. The following would be deceptive or unconscionable methods, acts, and practices:

- Using, adopting, or conducting business under a name that was the same, like, or deceptively similar to, the name of another driver education provider.
- Except as otherwise provided, using the word "state", "government", "municipal", "city", or "county" as part of the provider's name, unless the provider were an educational institution or a governmental agency.
- Advertising, representing, or implying that a provider was 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 was open for business before the SOS issued 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 was entitled to after an agreement was 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 knew or reasonably should have known 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 proposed 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 could impose one or more sanctions (described below) after notice and opportunity for a hearing if the SOS determined that a person, a provider, an instructor, or an applicant for a provider or instructor certificate did any of the following:

- Failed to meet a requirement under the proposed Act or a rule promulgated under it.
- Violated the Act or a rule promulgated under it.
- Made an untrue or misleading statement of a material fact to the SOS or concealed a material fact in connection with an application for a provider or instructor certificate.
- Permitted fraud or engaged in a fraudulent method, act, or practice in connection with a driver license or temporary driving permit application submitted to the SOS, or induced or countenanced fraud or a fraudulent method, act, or practice on the part of an applicant.

- Engaged in an unfair or deceptive method, act, or practice or made an untrue statement of a material fact.
- Violated a condition of probation or suspension or an order issued under the Act.
- Failed to maintain good moral character in connection with business operations.

After determining that a person, provider, instructor, or applicant committed a violation described above, the SOS could 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 could 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 could 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 proposed Act or a rule promulgated under it, or a deceptive or unconscionable method, act, or practice. The provider or instructor to whom the order was directed could apply to the SOS and would have to be granted a hearing within 30 days after application pursuant to the APA. At the hearing, the SOS would have to set aside, continue, or modify the order of summary suspension.

If the order concerned the issuance or authorization of driver education course certificates of completion, the SOS could 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 could decide to resolve the summary suspension matter before determining a driver license issue that involved one or more of the certificates of completion.

Practicing without Certificate

A person could not engage in or offer to engage in activity as a provider or instructor unless the person held a valid certificate under the proposed Act. A person who violated this provision would be 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 could impose an administrative fine of \$100 for each day the person was found to have violated this provision.

SOS Reimbursement

In a court proceeding involving a violation of the proposed Act, the court could 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 would have to be deposited in the proposed Driver Education Provider and Instructor Fund.

Driver Education Provider & Instructor Fund

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

Rescission of Administrative Rules

The bill would rescind 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.

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 existing Act 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 would implement the SOS's recommendations, would bring uniformity to the regulation of driver training programs by subjecting both public and private programs to the same requirements. For example, all instructors would be subject to the same criminal history check and medical examination requirements, regardless of whether they were employed by a public or private program. Additionally, an instructor who desired to work for more than one provider would not need to obtain additional certification. The two-year certification under the bill also would help to streamline operations; currently, a private instructor's license is valid for only one year, while a public instructor must obtain a lifetime certification.

This uniformity would improve the driver education program by ensuring that all student drivers received the same level of instruction from qualified providers and instructors, regardless of the program the students completed.

Supporting Argument

Reportedly, many parents of student drivers have suggested that the GDL program could be improved with the incorporation of more driving experience with an instructor. The bill would require an additional hour of behind-the-wheel instruction in Segment 2, which could help students prepare for the road test they must pass before obtaining full license privileges. Additionally, the bill would reduce 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 bill also would require the SOS to prescribe a model curriculum for teen driver training. These changes, which were recommended

by the Secretary of State, would give students a greater opportunity to enhance their skills and become safe drivers.

Legislative Analyst: Julie Koval

FISCAL IMPACT

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

Under current law, after the actual administrative costs of the Department of State are deducted, the balance of the revenue from the fees is deposited in the Traffic Law Enforcement and Safety Fund. The bill instead provides that any unencumbered money in the proposed Fund at the close of the fiscal year would remain in the Driver Education Provider and Instructor Fund.

The bill's criminal penalties would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed misdemeanors. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would 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.