

VEHICLE CODE AMENDMENTS: MOBILITY DEALERS, DEALER TRAINING, ETC.

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House Bill 5577 as enacted
Public Act 425 of 2016
Sponsor: Rep. Eric Leutheuser
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 3-27-19

SUMMARY:

House Bill 5577 amends several existing sections of the Michigan Vehicle Code while also adding new sections. Taken together, these amendments revise provisions relating to dealer licensure under the act and add a new category of licensure for mobility dealers.

The bill took effect April 4, 2017.

Mobility dealer endorsement

The bill allows the Secretary of State (SOS) to create a *mobility dealer* endorsement for purposes of the act. All of the following apply to such an endorsement:

- Only a licensed used or secondhand vehicle dealer is eligible for a mobility dealer endorsement.
- The SOS must prescribe the form and content of an application for a mobility dealer endorsement, and the application must require the signature of the applicant.
- A mobility dealer may also obtain a broker license that is issued for the sole purpose of brokering new vehicles that are modified by the addition of permanently affixed ambulatory assistance devices.
- Notwithstanding any other Michigan law, a mobility dealer may do any of the following:
 - Display, hold in inventory, demonstrate, solicit the sale of, or offer for sale a *mobility vehicle*, regardless of the chassis make of the mobility vehicle.
 - If the transaction occurs through or by a franchised dealer of the motor vehicle's chassis line make, arrange for the sale and delivery of a new mobility motor vehicle to a purchaser at the mobility dealer's place of business.
 - Sell and install *mobility equipment* and accessories and other goods and services to meet the particular needs of disabled drivers and passengers.
 - Provide mobility vehicle maintenance and repair services. A mobility dealer may perform repairs on parts that are unique to a mobility vehicle, do not alter the operating condition of a mobility vehicle, and were not part of the original manufactured motor vehicle without a license as a repair facility under the Motor Vehicle Service and Repair Act. Otherwise, a mobility dealer is prohibited from performing repairs on mobility vehicles or other motor vehicles without a license.

A mobility dealer is prohibited from doing any of the following:

- Representing that it is engaged in the sale of new motor vehicles.
- Selling or transferring, or offering to sell or transfer, a new motor vehicle by assigning the vehicle's certificate of origin.
- Selling or offering to sell an adapted vehicle that does not have proof that it has been adapted or modified in compliance with federal law (49 CFR Part 568 or 49 CFR Part 595.)

Mobility dealer means a used or secondhand vehicle dealer that holds an endorsement as a mobility dealer from the Department of State.

Mobility equipment means mechanical or electronic devices, parts, or accessories that are specifically designed to facilitate the use of a motor vehicle by an aging or disabled individual, in compliance with 49 CFR part 571, and that are permanently attached to or incorporated in the vehicle.

Mobility vehicle means a motor vehicle that is specially designed and equipped to transport an individual with a disability, in compliance with 49 CFR Part 568 or 49 CFR Part 595, and that meets all of the following:

- Is designed and built or modified to allow vehicle ingress and egress for an individual who is in a wheelchair or scooter.
- Is equipped with one or more of the following:
 - An electronic or mechanical wheelchair, scooter, or platform lift that enables an individual to enter or exit the vehicle while occupying a wheelchair or scooter.
 - An electronic or mechanical wheelchair ramp.
 - A system to secure a wheelchair or scooter that allows for safe transportation of an individual while he or she is occupying the wheelchair or scooter and that is installed as an integral part or permanent attachment to the vehicle's chassis.

License placed on probation

Under the Vehicle Code, the potential penalties for a violation of certain specified sections of the act could include one of the following:

- Placement of a limitation on the person's license.
- Suspension or revocation of a license.
- Denial of an original or renewal application.
- A civil fine paid to the department in an amount not to exceed \$25,000.
- Condition of probation.
- A requirement to take affirmative action, including payment of restitution.
- A letter of censure.

Under the bill, as an alternative to, or in addition to, administrative action for violations of those sections, the SOS may, by written agreement with a person that holds the license described in that section, place that license on probation and include conditions of probation in the agreement.

If the Secretary of State determines after notice and opportunity for a hearing that a person has violated this chapter, the SOS may then issue an order requiring the person to cease

and desist from the violation or to take an affirmative action that in the judgment of the Secretary of State carries out the purposes of this act, including payment of restitution to a customer.

If the SOS makes a written finding of fact that the public interest will be irreparably harmed by a delay in issuing an order, he or she may issue a temporary cease and desist order. Before issuing a temporary cease and desist order, the SOS, when possible, must notify the person that violated this chapter, by telephone or otherwise, of the intention to issue a temporary cease and desist order. In its terms, a temporary cease and desist order must include a provision that the SOS will, on request, hold a hearing within 30 days to determine whether or not the order shall become permanent.

In the newly added Section 250c, the bill states that the remedies and sanctions under Chapter 2 are independent and cumulative. The use of a remedy or sanction under this chapter, including administrative action by the SOS under Section 248h(1), 249, or 249a(1); an agreement for probation under Section 250a; or an order under Section 250b does not bar other lawful remedies and sanctions against a person and does not limit a person's criminal or civil liability under law.

Surety reimbursement

Under the act, the surety required as part of new vehicle dealer and used or secondhand vehicle dealer licensing must make indemnification or reimbursement for a monetary loss only after judgment based on fraud, cheating, or a misrepresentation has been entered in a court of record against the licensee.

The bill adds language stating that a final order issued by the SOS after an administrative hearing would also trigger indemnification or reimbursement. This would also apply to a provision stating that the bond must also indemnify or reimburse the state for any sales tax or use tax deficiency only after a final judgment has been entered in a court of record against the license.

Temporary registration plates

The bill also allows the SOS to charge a fee in an amount determined to reflect the actual cost of administering the temporary registration plates and markers program, or \$4 per plate or marker, whichever is less. (Previously, statute allowed the Secretary of State to charge \$5 for each group of five temporary plates or markers.) The bill also removes references to other registration methods lasting less than a year that are no longer able to be issued at present.

Specialty registration

A special registration may be valid for up to 30 days under the bill, an increase over the 14 days previously in statute.

Requirements for dealer license

The bill adds a requirement that an applicant, if the applicant is a sole proprietorship, certify that he or she has reviewed and understands the requirements of the act, the rules promulgated under the act, the dealer manual published by the SOS, and any other applicable material provided by the Department of State as part of the dealer license application. If an applicant is a partnership, the partners of the applicant must also certify

that they understand the aforementioned areas, as must the principal officers of the applicant if the applicant is a corporation.

MCL 257.226 et seq.

FISCAL IMPACT:

House Bill 5577 would have a minimal fiscal impact on the Department of State. There would be some minor costs to the department imposed by the bill, but the department notes that these are negligible and should be covered under current appropriation levels. There would be no fiscal impact to local governments.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.