

HOUSE BILL No. 5848

September 8, 2016, Introduced by Rep. Miller, A. and referred to the Committee on Regulatory Reform.

A bill to provide for the regulation and registration of auto glass facilities; to prescribe the powers and duties of certain public officers and agencies; to provide for the promulgation of rules; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Administrator" means the secretary of state or his or her
3 designee.

4 (b) "Auto glass facility" or "facility" means a person that is
5 engaged in the business of performing, or employs individuals who
6 perform, glass installation, repair, or replacement in motor
7 vehicles. The term does not include any of the following:

1 (i) An individual who engages only in the business of
2 installing, repairing, or replacing auto glass for a single
3 commercial or industrial establishment or governmental agency.

4 (ii) An individual who is installing, repairing, or replacing
5 auto glass in his or her own motor vehicle or a family member's
6 motor vehicle.

7 (iii) A facility that is subject to the motor vehicle service
8 and repair act, 1974 PA 300, MCL 257.1302 to 257.1340.

9 (iv) A motor vehicle dealer that performs maintenance, body
10 work, repairs, or other service or repair work on motor vehicles.

11 (c) "Motor vehicle" means that term as defined in section 33
12 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

13 Sec. 3. Unless the act or practice is otherwise exempt under
14 this act, a person shall not engage in the business or activity of
15 an auto glass facility unless the person registers the auto glass
16 facility with the administrator under this act.

17 Sec. 5. (1) The secretary of state or his or her designee
18 shall administer this act. The secretary of state shall not
19 designate an individual to act in his or her place under this
20 section who is affiliated with an auto glass facility.

21 (2) The administrator shall do all of the following:

22 (a) Register auto glass facilities that are subject to this
23 act.

24 (b) Keep a complete register of auto glass facilities and make
25 the registry available for public inspection at the office of the
26 secretary of state.

27 (c) Engage in a public information program to inform public

1 members of their rights and remedies under this act.

2 (3) The administrator may promulgate any rules under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328, that he or she considers necessary to implement,
5 administer, and enforce this act.

6 Sec. 7. (1) An auto glass facility shall register the facility
7 by providing all of the following information to the administrator
8 concerning the facility and the owner of the facility, on a
9 registration form provided by the administrator, accompanied by a
10 registration fee in an amount determined under section 9:

11 (a) The name, address, and form of ownership of the owner of
12 the facility, and if the owner is a corporation, the date and place
13 of incorporation.

14 (b) The name and address of each of the owner's resident
15 agents, officers, directors, or partners in this state.

16 (c) The principal occupation for the past 5 years of all of
17 the following, as applicable:

18 (i) Each person that owns 10% or more of the facility.

19 (ii) For each owner described in subparagraph (i), every
20 officer and director if the owner is a corporation; every partner
21 if the owner is a partnership; or any individual who occupies a
22 similar status or performs similar functions if the owner is
23 another form of legal entity.

24 (d) A description of the repair facility, that includes any
25 information required by the administrator by rule.

26 (e) An irrevocable appointment of the secretary of state as
27 the agent for the facility for service of process.

1 (f) A copy of each instrument, form, contract, or other
2 document used by the applicant in dealing with the public in the
3 installation, repair, or replacement of auto glass, including, but
4 not limited to, all of the following:

5 (i) Any document on which the facility routinely requires the
6 customer's signature.

7 (ii) Any document used by the facility in connection with
8 providing estimates, diagnoses, or repairs.

9 (iii) Any invoices, warranties, or waivers.

10 (iv) Any other document used by the facility to comply with
11 this act or rules promulgated under this act.

12 (g) Other relevant information as the administrator shall
13 require.

14 (2) A person that owns more than 1 auto glass facility shall
15 file a single registration form annually, that includes all of the
16 information described in subsection (1) and also clearly indicates
17 the location of and the individual in charge of each facility. An
18 owner described in this section shall pay a separate registration
19 fee for each facility.

20 (3) The administrator shall issue a certificate of
21 registration to an applicant that is registered under this act. If
22 a certificate of registration is lost, destroyed, or mutilated, the
23 registrant may obtain a duplicate copy by providing proof that is
24 satisfactory to the administrator of the loss, destruction, or
25 mutilation and paying the fee under section 9.

26 Sec. 9. (1) The department shall establish fees for
27 registering an auto glass facility, renewing a registration, and

1 obtaining a replacement certificate of registration for an auto
2 glass facility.

3 (2) Any fees collected under this act shall be credited to the
4 general fund of the state.

5 Sec. 11. If there is a change in ownership of a motor vehicle
6 repair facility, a new registration, and payment of a new
7 registration fee, is required and the facility shall not operate
8 until its registration application is approved by the administrator
9 and the fee is paid. If a name or address of the auto glass
10 facility changes, and there is not a change of ownership, the
11 facility shall notify the administrator in writing of the change
12 and shall make the appropriate changes on the next renewal
13 registration when due.

14 Sec. 13. (1) The owner of an auto glass facility that is
15 registered or is required to register under this act shall ensure
16 that the facility is open to inspection by the administrator and
17 other law enforcement officials during reasonable business hours.
18 During reasonable business hours, the administrator and other law
19 enforcement officials may make periodic unannounced inspections of
20 the premises, parts records, and parts inventories of a facility.

21 (2) The owner of an auto glass facility shall maintain
22 reasonable business records, as required by the administrator by
23 rule, and ensure that those records are open for reasonable
24 inspection by the administrator or other law enforcement officials
25 and are retained for at least 5 years.

26 (3) An owner of a facility, an employee, or any other person
27 shall not hinder, obstruct, or otherwise prevent an inspection

1 under this section.

2 Sec. 15. (1) If the administrator determines after notice and
3 a hearing that a person has violated this act or a rule promulgated
4 under this act, directly or through an agent or employee, he or she
5 may issue an order that requires the person to cease and desist
6 from the violation or to take any affirmative action that the
7 administrator determines is appropriate to carry out the purposes
8 of this act.

9 (2) If the administrator makes a finding of fact in writing
10 that the public interest will be irreparably harmed by delay in
11 issuing an order, he or she may issue a temporary cease and desist
12 order. Before issuing the temporary cease and desist order, the
13 administrator when possible by telephone or otherwise shall give
14 notice of the proposal to issue a temporary cease and desist order
15 to the facility. A temporary cease and desist order shall provide
16 that the administrator on request shall hold a hearing within 30
17 days to determine whether or not the order shall become permanent.

18 Sec. 17. (1) The administrator may order a summary suspension
19 of a registration under this act pursuant to the administrative
20 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, if he or
21 she obtains an affidavit from an individual who is familiar with
22 the facts included in the affidavit and determines based on the
23 affidavit that a facility or an owner of a facility has violated
24 section 13 of this act or section 2 of 1986 PA 119, MCL 257.1352.

25 (2) The facility or owner of a facility to which an order of
26 summary suspension under this section is directed may submit an
27 application to the administrator for a hearing concerning the

1 order. If he or she receives an application under this subsection,
2 the administrator shall hold a hearing within 30 days after the
3 date of the application pursuant to the administrative procedures
4 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

5 (3) At a hearing under subsection (2), the administrator may
6 set aside, continue, or modify the order of summary suspension.

7 Sec. 19. (1) The administrator may take any administrative
8 action described in subsection (2) if the administrator determines
9 that a facility, the owner of a facility, or a stockholder,
10 officer, director, or partner of the owner of a facility that is a
11 corporation or partnership does 1 or more of the following:

12 (a) Makes an untrue statement of a material fact.

13 (b) Violates this act or a rule promulgated under this act.

14 (c) Violates a condition of probation.

15 (d) Makes unnecessary repairs or replacement of auto glass or
16 repairs or replacement of auto glass that is not authorized by the
17 customer.

18 (e) Refuses to honor warranties made by the facility.

19 (f) Causes or allows a customer to sign a document in blank
20 relating to the installation, repair, or replacement of auto glass.

21 (g) Is enjoined by a court of competent jurisdiction from
22 engaging in the business of installing, repairing, or replacing
23 auto glass or from a violation of this act or a rule promulgated
24 under this act.

25 (h) Fails to comply with the terms of a final cease and desist
26 order.

27 (i) Is convicted of a violation of this act.

1 (j) Uses a waiver of liability provision in an attempt to
2 evade this act.

3 (k) Is convicted of a violation of 1986 PA 119, MCL 257.1351
4 to 257.1355.

5 (l) Is convicted under section 413, 415, 535, 535a, or 536a of
6 the Michigan penal code, 1931 PA 328, MCL 750.413, 750.415,
7 750.535, 750.535a, and 750.536a, or is convicted in another state
8 of a violation of a law substantially corresponding to 1 of those
9 sections of the Michigan penal code.

10 (2) After notice and opportunity for a hearing, the
11 administrator may do 1 or more of the following if he or she
12 determines that a facility, an owner of the facility, or a
13 stockholder, officer, director, or partner of an owner of the
14 facility that is a corporation or partnership commits a violation
15 described in subsection (1):

16 (a) Place a limitation on a registration.

17 (b) Suspend a registration.

18 (c) Deny a registration or renewal of a registration.

19 (d) Revoke a registration.

20 (e) Censure the person that holds a registration.

21 (3) As an alternative or in addition to administrative action
22 under subsection (2) for a violation or alleged violation of
23 subsection (1), the administrator may, by written agreement with a
24 person that holds a registration, place the registration on
25 probation and include conditions of probation in the agreement.

26 (4) The remedies and sanctions under this act are independent
27 and cumulative. The use of a remedy or sanction under this act,

1 including, but not limited to, administrative action by the
2 administrator under subsection (2) or an agreement for probation
3 under subsection (3), does not bar other lawful remedies and
4 sanctions against a person and does not limit a person's criminal
5 or civil liability under law.

6 Sec. 21. A registrant under this act, an owner, agent, or
7 employee of a registrant under this act, or any other person that
8 knowingly violates this act is guilty of a misdemeanor punishable
9 by imprisonment for not more than 90 days or a fine of not more
10 than \$1,000.00, or both, for the first conviction under this
11 section, and by imprisonment for not more than 1 year or a fine of
12 not more than \$5,000.00, or both, for any subsequent conviction.

13 Enacting section 1. This act takes effect 90 days after the
14 date it is enacted into law.