

Legislative Analysis



USED CAR DEALER TRAINING PROGRAMS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5260 as enacted

Public Act 17 of 2022

Sponsor: Rep. Angela Witwer

House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

Complete to 2-9-23

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5260 amends the Michigan Vehicle Code to change procedures under which a qualified trade organization can be authorized to conduct certain used vehicle dealer training programs, to authorize the secretary of state to establish an initial and renewal license application fee, and to revise provisions concerning the training programs themselves.

FISCAL IMPACT: The bill would result in a fiscal impact for the Department of State. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

2018 PA 420 amended the Michigan Vehicle Code to require the establishment of a dealer training program that a person must take before applying for an initial license as a used vehicle dealer. The new act also required establishment of a training program for designated employees of the dealer and a continuing education program for designated employees. The precursure training program and the continuing education program may be offered by the Department of State (DOS) or by a qualified trade organization. The employee training program may be conducted by either DOS or a trade organization or by any person designated by DOS.

In testimony provided in 2020 on a similar bill (SB 659), it was reported that the programs were two to three months behind, which meant that persons interested in obtaining a license to sell used vehicles were waiting longer for the required precursure application program (and therefore waiting longer to open a business) and employees were waiting a longer period for programs for which they are eligible. The stated intent of the legislation, which proposed to revamp the training programs to allow either DOS or a qualified trade organization to provide any of them, was to decrease errors by auto dealers and enable businesses to open more quickly by shortening the waiting period for available classes. The legislation passed both chambers and was enrolled, but it was vetoed by the governor (see **Background Information**, below). A revised version of the legislation has been offered.

THE CONTENT OF THE BILL:

2018 PA 420 amended the code to require the secretary of state to establish the following dealer training programs for eligible used vehicle dealers (those who are licensed or seeking licensure as used vehicle dealers and who are *not* licensed or seeking licensure as new vehicle dealers):

- A **precursure** dealer training program for applicants for an original dealer license. In general, this program must be completed by an applicant for an original (not renewal) eligible used vehicle dealer license, and by each partner or officer of the applicant, in the six-month period before the date of the license application.

- A training program for **designated individuals** (those selected by a licensed dealer to receive the training, such as the dealer or a manager or other employee of the dealer). In general, the selection of a designated individual and completion of this training must take place in the 90-day period after the license is issued.
- A **continuing education** training program, which must be completed by a designated individual at least once in every 24-month period after the license is issued.

Under 2018 PA 420, the three training programs described above could be conducted by DOS and, respectively, by a *qualified trade organization* approved by the secretary of state (for a precensure program); by another person designated by the secretary of state (for a designated individual program); or by a *qualified trade organization* approved by DOS after evaluation and approval (for a continuing education program).

Qualified trade organization means a bona fide nonprofit membership organization that is based in Michigan, that has been in existence for at least five years, and whose members are primarily eligible used vehicle dealers.

The bill eliminates those various provisions and instead establishes a procedure, applicable to all three training programs, under which a qualified trade organization (defined as above) may be approved by DOS to conduct a training program.

Under the bill, a dealer may satisfy the act's precensure, dedicated individual, or continuing education training requirements through a training program conducted either by DOS or by a qualified trade organization approved by DOS. The training programs may be conducted online or by other electronic means.

A qualified trade organization may apply to DOS for approval to conduct a training program and cannot conduct a training program without that approval. DOS must develop and make available an application form no later than May 24, 2022 (the date 30 days after the bill took effect).

DOS must establish an application procedure for a qualified trade organization to obtain approval to conduct a training program that includes all of the following requirements:

- Documentation needed to establish that the applicant is a qualified trade organization.
- A training program plan or curriculum for each training program the qualified trade organization intends to conduct.
- Any other information or requirements DOS considers necessary.

DOS may charge a qualified trade organization an annual fee for applying for approval to conduct a training program. The initial application fee may be up to \$500, and a renewal application fee may be up to 50% of the initial application fee. DOS must approve or deny an application in writing no later than 30 days after receiving it, stating the reasons for a denial. An applicant may resubmit an application, correcting the deficiencies identified by DOS in the denial letter. DOS has 10 business days to review a resubmitted application and either approve or deny it. The denial of a resubmitted application must be in writing to the applicant, and the applicant once again has an opportunity to correct any deficiencies identified in the denial letter.

DOS must periodically monitor all approved training programs for compliance with program requirements. If an approved qualified trade organization fails to comply with those requirements, DOS may, after a hearing, suspend or revoke its approval.

Requirements of a qualified trade organization

An approved qualified trade organization must do all of the following:

- Notify the secretary of state of the date, time, and location of the training program at least three days before conducting it.
- Make all training programs available to the secretary of state.
- Report to the secretary of state a list of all participants that completed the program in an electronic format.
- Remit to DOS a payment of \$5 per training program participant. Fees collected under this requirement must be deposited in the Dealer Training Program Fund (below).

Dealer Training Program Fund

The bill creates the Dealer Training Program Fund in the state treasury. The state treasurer must deposit in the fund money and other assets received from DOS from the fees collected from the training program participants or received from any other source. The state treasurer must direct the investment of money in the fund and credit to the fund interest and earnings from those investments. DOS must expend money from the fund, upon appropriation, only to administer section 248I of the code (the dealer training programs).

Other changes

Previously, the prelicensure dealer training program had to be offered at least twice each calendar quarter. The bill eliminates this requirement. However, the designated individual and continuing education training programs still must be offered or conducted, respectively, at least twice quarterly.

Previously, the prelicensure and designated individual training programs could be conducted online or electronically *if* approved by DOS. The bill allows *all* of the training programs to be conducted online or by other electronic means.

Previously, for the prelicensure and continuing education training programs, DOS could consult with other departments to evaluate and *approve* course content it considered appropriate. The bill authorizes DOS, for all three training programs, to consult with other departments to evaluate and *develop* course content it considers appropriate.

The act previously stipulated that an eligible used vehicle dealer (to whom the training requirements apply) did not include a person licensed or seeking licensure as a new vehicle dealer. The bill specifies that an eligible used vehicle dealer does not include an owner, partner, corporate officer, or director of a licensed new vehicle dealer or a person seeking licensure as an owner, partner, corporate officer, or director of a new vehicle dealer.

DOS may promulgate rules and procedures to implement the bill.

The bill took effect April 24, 2022.

MCL 257.248I (added)

BACKGROUND INFORMATION:

As described above, House Bill 5260 is similar to SB 659 of the 2019-20 legislative session, which was passed by both legislative chambers and enrolled, but was subsequently vetoed. In her veto message,¹ Governor Whitmer highlighted the additional administrative burdens the bill would put on the DOS and that the department would be prohibited from collecting fees to pay for the bill's mandates. In addition, she wrote that the bill would undermine "the department's ability to monitor the quality and efficacy of the proposed program" by providing "excessively brief deadlines for application review." However, the governor expressed a willingness to work with the legislature in designing a "workable structure that allows third-parties to conduct used automobile dealership precicensure trainings."

FISCAL INFORMATION:

The bill would result in an increase in administrative duties for DOS that could lead to the need for an additional staff member and an undetermined annual cost that would depend on the number of applicants and fee revenue it receives. The bill would require DOS to establish an application process by which third-party qualified trade organizations could apply for approval to conduct used vehicle dealer training programs. Current law is permissive regarding third-party training, and DOS does not currently utilize any qualified trade organizations for its used vehicle dealer training programs. All dealer training programs are currently administered through DOS's Business Compliance and Regulation Division. The bill would effectively require the use of qualified trade organizations for training. The approval of third-party organizations for training would require DOS to oversee these trainers' curriculum and training services. These responsibilities would be in addition to those necessary for continuing the DOS-administered training programs.

The bill would allow DOS to charge an initial application fee of up to \$500 and a renewal fee of up to \$250 to help cover the costs of administering the program. DOS has reported that these duties would require an additional FTE position at a cost of approximately \$150,000 a year. If so, 300 applicants would need to submit the initial application fee to offset the administrative costs of the program in the first year, as well as new initial applicants, in addition to renewal applicants, in each subsequent year to offset annual costs. DOS has not provided an estimate for the number of applicants or fee revenue it would anticipate receiving but does not believe the fees would cover the department's costs. A search for authorized third-party vehicle dealer training providers in other states found, for the state of California, 48 approved providers. Figures for other states were not available at the time of this analysis.

ARGUMENTS:

For:

By allowing trade organizations to offer training for auto dealers, some of the burden could be lifted from DOS in providing this training, thus enabling new businesses to open more quickly and employees to sooner access additional training and continuing education. Moreover, DOS focuses on state law, whereas training by industry trade organizations could include federal law and best practices, thus providing a broader and more responsive educational experience.

¹ https://content.govdelivery.com/attachments/MIEOG/2020/10/16/file_attachments/1573071/SB%20659%20Veto%20Letter.pdf

DOS would be responsible for approving and licensing a trade organization to conduct the trainings. House Bill 5260, unlike the previous session's bill, would allow DOS to collect initial and renewal application fees, which would mitigate costs to approve a trade organization and oversee its training programs. The bill also extends the time frame for DOS to process an application, compared to the time frame proposed in the vetoed bill.

Against:

The Department of State, while acknowledging that House Bill 5260 is improved over the previous session's bill, still reported concerns. In particular, the bill would increase the workload of the department. DOS would initially have to approve a third party's training program, but it could prove difficult for the department to effectively monitor updates to the curriculum used in that training going forward, especially as to how the third parties were interpreting state law and departmental rules and how the department would handle any complaints made concerning the third-party training. In addition, DOS would have to verify whether a person completed the training offered by a qualified trade organization. Providing the needed oversight would not be impossible, but it would increase, rather than decrease, the demands on the department. Further, the department stressed that it has provided training for auto dealers for decades and is currently meeting the needs of the industry. If trade organizations wish to offer additional training, there is nothing in law that prevents them from doing so.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Michael Cnossen

■ 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.