

USED CAR DEALER TRAINING PROGRAMS

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Senate Bill 659 as enrolled and vetoed
Sponsor: Sen. Peter MacGregor
1st House Committee: Regulatory Reform
2nd House Committee: Ways and Means
Senate Committee: Regulatory Reform
Complete to 2-2-21

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

SUMMARY:

Senate Bill 659 would amend the Michigan Vehicle Code to change procedures under which a qualified trade organization can be authorized to conduct certain used vehicle dealer training programs under that act and to revise a few provisions concerning the training programs themselves.

2018 PA 420 amended the Vehicle 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 **prelicensure** 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 the Department of State (DOS) and, respectively, by a **qualified trade organization** approved by DOS (for a prelicensure 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 would eliminate these various provisions and instead establish a procedure, applicable to all three training programs, under which a qualified trade organization (as defined above) could be approved by DOS to conduct a training program.

Under the bill, a dealer could satisfy the act's prelicensure, 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 could be conducted online or by other electronic means.

A qualified trade organization could apply to DOS for approval to conduct a training program and could not conduct a training program without that approval. DOS would have to develop and make available an application form no later than 30 days after the bill took effect.

DOS would also have to establish an application procedure for a qualified trade organization to obtain approval to conduct a training program. The procedure would have to include all of the following requirements:

- Any 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 could not charge a fee to review, approve, or deny an application. DOS would have to approve or deny an application in writing no later than 10 business days after receiving it, stating the reasons for a denial. An applicant could resubmit an application, correcting the deficiencies identified by DOS in the denial letter. DOS would have five business days to review a resubmitted application and either approve or deny it. The denial of a resubmitted application would have to be in writing to the applicant, and the applicant would once again have an opportunity to correct any deficiencies identified in the denial letter.

If an approved qualified trade organization failed to comply with the requirements of the training programs, DOS could, after a hearing, suspend or revoke its approval.

Other changes

Currently, the prelicensure dealer training program must be offered at least twice each calendar quarter. The bill would eliminate this requirement. (However, the designated individual and continuing education training programs would still have to be offered or conducted, respectively, at least twice quarterly.)

Currently, the prelicensure and designated individual training programs can be conducted online or electronically if approved by DOS. The bill would allow all of the training programs to be conducted online or by other electronic means.

Currently, for the prelicensure and continuing education training programs, DOS can consult with other departments to evaluate and approve course content it considers

appropriate. The bill would authorize DOS, for all three training programs, to consult with other departments to evaluate and develop course content it considers appropriate.

The act currently stipulates that an eligible used vehicle dealer (to whom the training requirements apply) does not include a person who is licensed or seeking licensure as a new vehicle dealer. The bill would further specify 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 could promulgate rules and procedures to implement the bill.

The bill would take effect 60 days after being enacted.

MCL 257.248I

HOUSE COMMITTEE ACTION:

The House Regulatory Reform committee adopted and reported an H-1 substitute to the bill that added a 60-day effective date.

BRIEF DISCUSSION:

The stated intent of the legislation is to decrease errors by auto dealers and enable businesses to open more quickly by shortening the waiting period for available classes. According to committee testimony, the mandatory program required by the 2018 legislation, which has been in operation for 18 months, is already two to three months behind. By allowing trade organizations to offer training for auto dealers, some of the burden could be lifted from the Department of State in providing this training. Moreover, the Department of State focuses on state law, whereas training by industry trade organizations could include federal law and best practices, thereby providing a broader and more responsive educational experience.

The Department of State, on the other hand, pointed out issues and concerns with the bill. While the training program the department offers is free to dealers, the bill would not prohibit a third party from charging a fee for the courses. The department would initially have to approve a third party's training program, but it could prove difficult for the department to effectively monitor 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. 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 would prevent them from doing so.

Senate Bill 659 was subsequently vetoed by Governor Whitmer. In her veto message, the governor highlighted the additional administrative burdens the bill would put on the Department of State 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, Governor Whitmer expressed a willingness to work with the legislature in designing a "workable structure that allows third-parties to conduct used automobile dealerships precicensure trainings."

FISCAL IMPACT:

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 annual cost of approximately \$150,000. 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 not allow for DOS to collect a fee for reviewing, approving, or denying applications. DOS reports that these duties would require an additional FTE at a cost of approximately \$150,000 a year.

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