

MICHIGAN VEHICLE CODE (EXCERPT)
Act 300 of 1949

257.248j Acting as dealer without license; warning; administrative fine; notice of assessment; actions; informal conference; administrative hearing; payment of administrative fine; reduction.

Sec. 248j.

(1) In addition to any other remedies provided by law, if the secretary of state determines that a person has acted as a dealer without a dealer license, he or she may issue the person a verbal or written warning or assess an administrative fine of not more than \$5,000.00 for a first violation, and not more than \$7,500.00 for each subsequent violation occurring within 7 years of a prior violation.

(2) If the secretary of state assesses an administrative fine under subsection (1), the secretary of state shall provide notice of the assessment in writing pursuant to section 212. At a minimum, the notice of assessment shall contain all of the following:

- (a) A unique identification number.
- (b) A description of the alleged violation that is the basis for the assessment, including the date the alleged violation occurred and a reference to the specific section or rule alleged to have been violated.
- (c) The administrative fine established for the violation.
- (d) A statement indicating that if the fine is not paid, the secretary of state may refer the fine to the department of treasury for collection.
- (e) A statement indicating that if the alleged violation is contested, the person has a right to request an informal conference before an administrative hearing, accompanied by simple instructions informing the person how to request or waive the informal conference.

(3) Not later than 20 days after receiving the written notice of assessment, the alleged violator shall do 1 of the following:

- (a) Pay the administrative fine to the secretary of state. A payment waives the person's right to an informal conference and an administrative hearing.
- (b) Request the secretary of state to conduct an informal conference.
- (c) Waive the right to an informal conference and request the secretary of state to conduct an administrative hearing.

(d) If the person is not a licensed dealer, pay the administrative fine to the secretary of state and submit a properly completed dealer license application to the secretary of state.

(4) A person's request for an informal conference or an administrative hearing shall comply with all of the following:

- (a) Be in writing.
- (b) Be postmarked or received by the department within 20 days after the date the person received the written notice of assessment.
- (c) State the name, address, and telephone number of the person requesting the informal conference or administrative hearing.
- (d) State the written notice of assessment's unique identification number.
- (e) State the reason for the request.
- (f) If the request is for an administrative hearing without an informal conference, state the person is waiving his or her right to an informal conference.

(5) If the secretary of state receives a request for an informal conference or an administrative hearing that meets all of the conditions prescribed in subsection (4), the secretary of state shall schedule an informal conference or an administrative hearing, as applicable. If the request fails to meet all of the conditions prescribed in subsection (4), the secretary of state may in writing deny the request. A denial shall be served on the person by first-class mail and shall do both of the following:

- (a) State the reason for the denial.
 - (b) Grant the person 14 days to submit a valid request to the secretary of state.
- (6) The secretary of state shall conduct an informal conference under this section within 45 days after receiving a valid request for the conference. The secretary of state shall serve upon the alleged violator, by first-class mail not less than 5 days before the conference, a written notice that includes time, place, and date of the informal conference. The notice shall state that the alleged violator may be represented by an attorney at the informal conference.

(7) After the informal conference, the secretary of state shall evaluate the validity of the assessment of the administrative fine and affirm, modify, or dismiss the assessment. In making the evaluation, the secretary of state may consider 1 or more of the following:

- (a) Whether there is reason to believe the alleged violation did in fact occur.

- (b) The severity of the alleged violation and its impact on the public.
- (c) The number of prior or related violations by the person.
- (d) The likelihood of future compliance by the person.
- (e) Any other considerations the secretary of state considers appropriate.

(8) Within 20 days after conducting the informal conference, the secretary of state shall serve upon the person by first-class mail a written statement describing whether the assessment of the administrative fine is affirmed, modified, or dismissed and the basis of the action. If the assessment is affirmed or modified, this statement shall also advise the person that he or she will receive a notice of hearing where the validity of the assessment may be contested or he or she may immediately pay the fine to the secretary of state and that payment of the fine will prevent scheduling of an administrative hearing.

(9) A notice of hearing under this section shall be served on the person by first-class mail not less than 5 days before the date scheduled for the administrative hearing and, at a minimum, advise the person of all of the following:

- (a) The time, place, and date of hearing.
- (b) That an impartial hearing officer will conduct the hearing and allow the person an opportunity to examine the secretary of state's evidence and present evidence in person or in writing.
- (c) That the person has a right to be represented by an attorney at the administrative hearing.
- (d) The common reasons why the secretary of state could dismiss an assessment of an administrative fine.
- (e) That the hearing officer conducting the administrative hearing will be authorized to do all of the following:
 - (i) Affirm, modify, or dismiss the assessment of an administrative fine.
 - (ii) Correct any errors in the department's records that relate directly to the assessment.
 - (iii) Refer or not refer the fine to the department of treasury for collection.
 - (iv) Take or order any other action or resolution considered appropriate by the hearing officer.
- (f) That if the department of treasury takes enforcement action against the person, he or she may seek a review in the court of claims.

(10) The secretary of state shall conduct an administrative hearing under this section pursuant to the contested case provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If an administrative fine assessed under this section is affirmed by the decision of the hearing officer, the hearing officer may assess the person costs of not more than \$500.00, to reimburse the secretary of state for proving the validity of the alleged violation, in addition to any other penalties, sanctions, or costs imposed as provided by law.

(11) An administrative fine assessed under this section becomes final upon the first to occur of the following:

- (a) The secretary of state does not receive a valid request for an informal conference or an administrative hearing within the time period described in subsection (4).
- (b) Twenty days after a person waives his or her right to an administrative hearing.
- (c) An administrative hearing decision is served upon the person.

(12) After a person pays the secretary of state the fine imposed, the secretary of state shall forward the money to the department of treasury for deposit in a separate fund within the general fund. Upon appropriation, this money shall be used first to defray the expense of the secretary of state in administering this chapter.

(13) If an administrative fine assessed under this section is not paid within 60 days after it becomes final, the secretary of state may refer the matter to the department of treasury for collection as a state debt through the offset of state tax refunds and may use the services of the department of treasury to levy the salary, wages, or other income or assets of the person as provided by law.

(14) Payment of an administrative fine assessed under this section does not constitute an admission of responsibility or guilt by the person. Payment of an administrative fine assessed under this section does not prevent the secretary of state from charging a violation described in the assessment of the administrative fine in a subsequent or concurrent contested case proceeding conducted by the secretary of state pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) If the person submits a properly completed application and appropriate fee for a dealer license within 20 days after an administrative fine under subsection (1) is assessed, and if the secretary of state issues the person a dealer license within 45 days of receiving the properly completed application and fee, the secretary of state shall reduce the amount of the administrative fine by 50%.

(16) The secretary of state shall serve a notice, denial, decision, or statement under this section in compliance with section 212.

(17) An informal conference under this section is not a compliance conference under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

History: Add. 2002, Act 652, Eff. Jan. 1, 2003