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SENATE BILL 137

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pete Campos

AN ACT

**RELATING TO MOTOR VEHICLES; AMENDING THE MOTOR VEHICLE CODE TO
PROVIDE FOR SEPARATE LICENSES AND BONDS FOR DEALERS, WRECKERS,
WHOLESALEERS, DISTRIBUTORS AND TITLE SERVICE COMPANIES;
PROVIDING ADDITIONAL REQUIREMENTS FOR WRECKERS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 66-4-1 NMSA 1978 (being Laws 1978,
Chapter 35, Section 214, as amended) is amended to read:**

**"66-4-1. DEALERS, WRECKERS, WHOLESALEERS AND DISTRIBUTORS
OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED--
PRESUMPTION OF CONDUCTING BUSINESS. --**

**A. No person, unless licensed to do so by the
department, shall carry on or conduct the active trade or
business of:**

- (1) a dealer in motor vehicles of a type**

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1 subject to registration pursuant to the Motor Vehicle Code;

2 (2) wrecking or dismantling ~~any~~ a vehicle
3 for the resale of the parts. ~~Any~~ A person possessing three
4 or more wrecked, dismantled or partially wrecked or dismantled
5 vehicles and selling or offering for sale a used vehicle part
6 and who regularly sells or offers for sale used vehicles or
7 used vehicle parts shall be presumed to be conducting the
8 business of wrecking or dismantling a vehicle for the resale
9 of the parts;

10 (3) wholesaling of vehicles. ~~Any~~ A person
11 who sells or offers for sale vehicles of a type subject to
12 registration in this state, to a vehicle dealer licensed
13 pursuant to the Motor Vehicle Code or who is franchised by a
14 manufacturer, distributor or vehicle dealer to sell or promote
15 the sale of vehicles dealt in by such manufacturer,
16 distributor or vehicle dealer shall be presumed to be
17 conducting the business of wholesaling; provided, however,
18 that if ~~any such~~ the person also sells a vehicle at retail,
19 he shall be deemed to be a dealer and is subject to the
20 dealer-licensing provisions of the Motor Vehicle Code;

21 (4) distributing of vehicles. ~~Any~~ A person
22 who distributes or sells new or used motor vehicles to dealers
23 and who is not a manufacturer shall be presumed to be
24 conducting the business of distributing vehicles; or

25 (5) a title service company. ~~Any~~ A person

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1 who for consideration prepares or submits applications for the
2 registration of or title to vehicles shall be presumed to be
3 engaging in the business of a title service company.

4 B. A separate license is required for each type of
5 business activity required to be licensed in Subsection A of
6 this section. Application for a dealer, wholesaler,
7 distributor or wrecker of vehicles license or a title service
8 company license shall be made upon the form prescribed by the
9 department and shall contain the name and address of the
10 applicant and, when the applicant is a partnership, the name
11 and address of each partner or, when the applicant is a
12 corporation, the names of the principal officers of the
13 corporation, [~~and~~] the state in which incorporated, [~~and~~] the
14 place where the business is to be conducted, [~~and~~] the nature
15 of the business and such other information as may be required
16 by the department. Every application shall be verified by the
17 oath or affirmation of the applicant, if an individual, or, in
18 the event an applicant is a partnership or corporation, by a
19 partner or officer of the partnership or corporation. Every
20 application shall be accompanied by the fee required by law.

21 C. [~~Any~~] A metal processor or dealer in scrap who
22 dismantles, processes for scrap, shreds, compacts, crushes or
23 otherwise destroys more than three vehicles within a period of
24 one year shall be licensed pursuant to the provisions of
25 Sections 66-4-1 through 66-4-9 NMSA 1978.

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1 D. In order to ensure that a dealer, wholesaler,
2 distributor, wrecker of vehicles or title service company
3 complies with this section, the secretary may apply to a
4 district court of this state to have a person operating
5 without a license as required by this section or operating
6 without the bond required by Section 66-4-7 NMSA 1978 enjoined
7 from engaging in business until that person complies with the
8 requirements of licensing as provided by this section and the
9 bonding requirements of Section 66-4-7 NMSA 1978.

10 E. Upon application to a court for the issuance of
11 an injunction against an unlicensed person, the court may
12 forthwith issue an order temporarily restraining that person
13 from doing business. The court shall hear the matter within
14 three days and, upon a showing by the preponderance of the
15 evidence that the person is operating without a license and
16 that the person has been given notice of the hearing as
17 required by law, the court may enjoin the person from engaging
18 in business in New Mexico until the person ceases to be
19 unlicensed. Upon issuing an injunction, the court may also
20 order the business premises of the person to be sealed by the
21 sheriff and may allow the person access thereto only upon
22 approval of the court.

23 F. No temporary restraining order shall be issued
24 against a person who has complied with the provisions of this
25 section. Upon a showing to the court by a person against whom

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1 a temporary restraining order has been issued that he has a
2 license in accordance with the provisions of this section, the
3 court shall dissolve or set aside the temporary restraining
4 order. "

5 Section 2. Section 66-4-2 NMSA 1978 (being Laws 1978,
6 Chapter 35, Section 215, as amended) is amended to read:

7 "66-4-2. DEPARTMENT TO ISSUE LICENSE. --

8 A. The department, upon receiving application
9 accompanied by the required fee and when satisfied that the
10 applicant is of good character and, so far as can be
11 ascertained, has complied with and will comply with the laws
12 of this state with reference to the registration of vehicles
13 and certificates of title and the provisions of the Motor
14 Vehicle Code, shall issue to the applicant a license [~~which~~
15 that entitles the licensee to carry on and conduct the
16 business of a dealer, wholesaler, distributor, wrecker of
17 vehicles or title service company, as the case may be, during
18 the period for which the license is issued. The license shall
19 expire on the last day of the period for which it is issued
20 and may be renewed upon application and payment of the fee
21 required by law.

22 B. The department shall not issue a license to
23 conduct business as a wrecker of vehicles unless the
24 department is satisfied that the applicant is in compliance
25 with all state and federal environmental laws and rules

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1 related to emissions or discharges from the applicant's
2 business.

3 [B.—Any] C. A dealer or wrecker of vehicles
4 licensee, before moving [~~any~~] one or more of the licensee's
5 places of business or opening [~~any~~] an additional place of
6 business, shall apply to the department for and obtain a
7 supplemental license for which no fee shall be charged. No
8 supplemental license shall be issued to a dealer, other than a
9 dealer in motorcycles, for an additional place of business
10 unless:

11 (1) the place of business is an established
12 place of business; or

13 (2) the majority of dealers, other than
14 dealers in motorcycles, in the county in which the proposed
15 additional place of business would be located have been
16 offered the opportunity, in documentation acceptable to the
17 department, to offer vehicles for sale at the proposed
18 additional place of business by the applicant; provided that
19 the offer shall be for sale of vehicles at all times at which
20 the applicant proposes to sell vehicles and shall not be
21 conditioned upon the payment of any fee by any dealer to whom
22 it is addressed greater than a fair share of the actual
23 expenses incurred.

24 [~~C.~~] D. Any person to whom the department has
25 issued a license to conduct the business of a dealer in

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1 motorcycles is deemed a wrecker of motorcycles without
2 additional license.

3 ~~[D-]~~ E. The department is authorized to establish
4 a staggered system for licensing of dealers, wholesalers,
5 distributors and wreckers of vehicles and of title service
6 companies, provided that any license issued shall expire on
7 the last day of a month. During the initial adjustment period
8 of July 1, 1999 through December 31, 2000, the department may
9 issue licenses for periods less than twelve months or up to
10 twenty-one months to establish a more uniform monthly pattern
11 of expirations. For ~~[any]~~ a license issued for a period other
12 than twelve months during the initial adjustment period, the
13 fee imposed pursuant to Section 66-6-18 NMSA 1978 shall be
14 adjusted accordingly. After the initial adjustment period,
15 licenses issued shall be issued for a period of twelve
16 months. "

17 Section 3. Section 66-4-3 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 216, as amended) is amended to read:

19 "66-4-3. REFUSAL TO ISSUE LICENSE-- CANCELLATION OR
20 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS-- HEARING--
21 APPEAL. --

22 A. The department may refuse to issue a license
23 for just cause and may cancel or suspend a license or use of
24 temporary permits for violation of the Motor Vehicle Code, or,
25 in the case of a license to conduct business as a wrecker of

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1 vehicles, for a violation of a state or federal environmental
2 law or rule related to emissions or discharges from the
3 licensee's business. The department shall take the action
4 authorized in this section only after hearing. Notice of
5 hearing shall be given the party concerned as provided in
6 Section 66-2-11 NMSA 1978. The notice shall state the
7 proposed action of the department and the reason for the
8 proposed action.

9 B. The department shall prepare rules for the
10 conduct of the hearing. At the hearing, the technical rules
11 of evidence do not apply, and a party has the right to be
12 represented by counsel, to call witnesses in his own behalf
13 and to cross-examine the witnesses of other parties.

14 C. The secretary or his designated agent shall
15 conduct the hearing for the department and shall cause a
16 record of hearing to be made.

17 D. Within ten days after completion of the
18 hearing, the secretary shall cause to be served upon all
19 parties, in the manner provided in Section 66-2-11 NMSA 1978,
20 his findings and decision. The decision shall be:

21 (1) granting a license or refusing to grant a
22 license;

23 (2) continuing a license, canceling a license
24 or suspending a license for a time stated; or

25 (3) continuing use of dealer plates and

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1 temporary permits, canceling dealer plates and temporary
2 permits or suspending use of temporary permits for a time
3 stated.

4 E. A party aggrieved by the secretary's decision
5 may file an appeal in the district court pursuant to the
6 provisions of Section 39-3-1.1 NMSA 1978. "

7 Section 4. Section 66-4-7 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 220, as amended) is amended to read:

9 "66-4-7. DEALERS, WHOLESALERS, DISTRIBUTORS AND WRECKERS
10 OF VEHICLES--TITLE SERVICE COMPANIES--DEALERS OF MOTORCYCLES
11 ONLY-- BOND. --

12 A. Before issuance of [~~any~~] a dealer's license,
13 wholesaler's license, distributor's license, wrecker of
14 vehicles license or title service company license, the
15 applicant shall procure and file with the department a
16 corporate surety bond in the amount of fifty thousand dollars
17 (\$50,000). An applicant for a dealer's license for
18 motorcycles only shall procure and file with the department a
19 corporate surety bond in the amount of twelve thousand five
20 hundred dollars (\$12,500). The corporate surety shall be
21 licensed by the public regulation commission or a successor
22 entity to do business in this state as a surety, and the form
23 of the bond shall be approved by the attorney general. The
24 bond shall be payable to the state for the use and benefit of
25 the purchaser and his vendees, conditioned upon payment of any

. 134732. 1

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1 loss, damage and expense sustained by the purchaser or his
2 vendees, or both, by reason of failure of the title of the
3 vendor, by ~~[any]~~ fraudulent misrepresentations or by ~~[any]~~
4 breach of warranty as to freedom from liens on the motor
5 vehicle or motorcycle sold by the dealer, wholesaler,
6 distributor, dealer of motorcycles only or wrecker of
7 vehicles. The bond shall be continuous in form and limited to
8 the payment of fifty thousand dollars (\$50,000) in total
9 aggregate liability on a dealer's license, wholesaler's
10 license, distributor's license, wrecker of vehicles license or
11 a title service company license and twelve thousand five
12 hundred dollars (\$12,500) on a dealer's license for
13 motorcycles only.

14 ~~[B. No applicant for a dealer's license,~~
15 ~~wholesaler's license, distributor's license or dealer's~~
16 ~~license for motorcycles only who files bond in the amount and~~
17 ~~form specified in Subsection A of this section shall be~~
18 ~~required to file any additional bond to conduct a business of~~
19 ~~wrecking or dismantling motor vehicles or motorcycles.~~
20 ~~Conversely, no applicant for a wrecker of vehicles license who~~
21 ~~files bond in the amount and form specified in Subsection A of~~
22 ~~this section shall be required to file any additional bond to~~
23 ~~conduct a business of dealer, distributor, wholesaler or~~
24 ~~dealer of motorcycles only.]~~

25 B. An applicant shall obtain a separate bond for

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1 each type of license applied for.

2 C. In lieu of the bond required in this section,
3 the dealer, wholesaler, distributor, wrecker of vehicles or
4 dealer of motorcycles only may elect to file with the
5 department the equivalent amount of cash or bonds of the
6 United States or New Mexico or of any political subdivision of
7 the state.

8 D. The license of a dealer, wholesaler,
9 distributor or wrecker of vehicles or of a title service
10 company may be suspended or canceled if the dealer,
11 wholesaler, distributor, wrecker of vehicles or title service
12 company fails to have in effect the required bond or other
13 security. "

14 Section 5. Section 66-6-18 NMSA 1978 (being Laws 1978,
15 Chapter 35, Section 353, as amended) is amended to read:

16 "66-6-18. LICENSE FEE FOR DEALERS, WHOLESALERS,
17 DISTRIBUTORS AND WRECKERS OF VEHICLES AND TITLE SERVICE
18 COMPANIES.--For a license to do business as a dealer,
19 wholesaler, distributor or wrecker of vehicles [~~or any~~
20 ~~combination of the foregoing~~] or as a title service company,
21 there shall be paid a fee of fifty dollars (\$50.00) for each
22 license year or portion thereof. A separate fee shall be paid
23 for each license held by the same licensee. "

24 Section 6. TEMPORARY PROVISION--EXISTING LICENSEES.--

25 A. A person, licensed on July 1, 2001 under

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1 Chapter 66, Article 4 NMSA 1978 to conduct more than one
2 business activity under the same license, may continue to
3 conduct all allowed business activities under that license
4 until it expires. Thereafter, the person shall obtain a
5 separate license for each business activity required to be
6 licensed.

7 B. A person, licensed on July 1, 2001 under
8 Chapter 66, Article 4 NMSA 1978 and conducting more than one
9 business activity under the same bond, may continue to conduct
10 all allowed business activities under that bond until the
11 license expires.

12 Section 7. EFFECTIVE DATE. -- The effective date of the
13 provisions of this act is July 1, 2001.