

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING A LICENSE FOR A MOTOR VEHICLE TITLE SERVICE COMPANY TO ENGAGE IN BUSINESS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 66-1-4.17 NMSA 1978 (being Laws 1990, Chapter 120, Section 18, as amended) is amended to read:

"66-1-4.17. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "tank vehicle" means a motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis and that has either a gross vehicle weight rating of twenty-six thousand one or more pounds or is used in the transportation of hazardous materials requiring placarding of the vehicle under applicable law;

B. "taxicab" means a motor vehicle used for hire in the transportation of persons, having a normal seating capacity of not more than seven persons;

C. "through highway" means every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it when stop signs are erected as provided in the Motor Vehicle Code;

D. "title service company" means a person, other than the department, an agent of the department, a licensed dealer or the motor transportation division, who for

consideration issues temporary registration plates or prepares and submits to the department on behalf of others, applications for registration of or title to motor vehicles;

E. "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

F. "traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

G. "traffic safety bureau" means the traffic safety bureau of the state highway and transportation department;

H. "trailer" means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle;

I. "transporter of manufactured homes" means a commercial motor vehicle operation engaged in the business of transporting manufactured homes from the manufacturer's location to the first dealer's location. A "transporter of manufactured homes" may or may not be associated with or affiliated with a particular manufacturer or dealer;

J. "travel trailer" means a trailer that exceeds neither a width of eight feet nor a length of forty feet, when equipped for the road, and includes recreational travel trailers and camping trailers;

K. "trial court" means the magistrate, municipal or district court that tries the case concerning an alleged

violation of a provision of the Motor Vehicle Code;

L. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

M. "truck camper" means a camping body designed to be loaded onto, or affixed to, the bed or chassis of a truck. This camping body, when combined with a truck or truck cab and chassis, even though not attached permanently, becomes a part of the motor vehicle and together they are a recreational unit to be known as a "truck camper"; there are three general types of truck campers:

(1) "slide-in camper" means a camping body designed to be loaded onto and unloaded from the bed of a pickup truck;

(2) "chassis-mount camper" means a camping body designed to be affixed to a truck cab and chassis; and

(3) "pickup cover" or "camper shell" means a camping body designed to provide an all-weather protective enclosure over the bed of a pickup truck and to be affixed thereto; and

N. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."

Section 2. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 214, as amended) is amended to read:

"66-4-1. DEALERS, WRECKERS, WHOLESALERS 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 subject to registration pursuant to the Motor Vehicle Code;

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

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

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

(5) a title service company. Any person who for consideration prepares or submits applications for the registration of or title to vehicles shall be presumed

to be engaging in the business of a title service company.

B. Application for a dealer, wholesaler, distributor or wrecker of vehicles license or a title service company license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

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

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

this section and the bonding requirements of Section 66-4-7 NMSA 1978.

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

F. No temporary restraining order shall be issued against a person who has complied with the provisions of this section. Upon a showing to the court by a person against whom a temporary restraining order has been issued that he has a license in accordance with the provisions of this section, the court shall dissolve or set aside the temporary restraining order."

Section 3. Section 66-4-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 215, as amended) is amended to read:

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

A. The department, upon receiving application accompanied by the required fee and when satisfied that the applicant is of good character and, so far as can be ascertained, has complied with and will comply with the laws of this state with reference to the registration of vehicles

and certificates of title and the provisions of the Motor Vehicle Code, shall issue to the applicant a license which entitles the licensee to carry on and conduct the business of a dealer, wrecker of vehicles or title service company, as the case may be, during the period for which the license is issued. The license shall expire on the last day of the period for which it is issued and may be renewed upon application and payment of the fee required by law.

B. Any dealer or wrecker of vehicles licensee, before moving any one or more of the licensee's places of business or opening any additional place of business, shall apply to the department for and obtain a supplemental license for which no fee shall be charged. No supplemental license shall be issued to a dealer, other than a dealer in motorcycles, for an additional place of business unless:

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

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

C. Any person to whom the department has issued a license to conduct the business of a dealer in motorcycles

is deemed a wrecker of motorcycles without additional license.

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

Section 4. Section 66-4-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 217) is amended to read:

"66-4-4. CRIMINAL OFFENDER'S CHARACTER EVALUATION.-- The provisions of the Criminal Offender Employment Act govern any consideration of criminal records required or permitted by Sections 66-4-1 through 66-4-9 NMSA 1978."

Section 5. Section 66-4-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 218) is amended to read:

"66-4-5. RECORDS OF PURCHASES, OF SALES AND OF VEHICLES DISMANTLED.--

A. Every dealer and wrecker of vehicles licensee shall maintain a record, in form as prescribed by the department of:

(1) every vehicle of a type subject to

registration pursuant to the provisions of the Motor Vehicle Code that is bought, sold or exchanged by the licensee or received by the licensee for sale or exchange;

(2) every motor vehicle body, chassis or engine which is sold or otherwise disposed of; and

(3) every such vehicle which is bought or otherwise acquired and dismantled by the licensee.

B. Every record required to be maintained pursuant to Subsection A of this section shall state the name and address of the person from whom the vehicle was purchased or acquired and the date of the purchase and the name and address of the person to whom the vehicle or the motor vehicle body, chassis or engine was sold or otherwise disposed of and the date of the sale or disposition and a sufficient description of every vehicle or motor vehicle body, chassis or engine by name and identifying numbers sufficient to identify the vehicle or motor vehicle body, chassis or engine.

C. Every title service company licensee shall maintain a record of:

(1) every temporary registration plate issued;

(2) every title and registration application accepted for processing; and

(3) any other information prescribed by the department.

D. Every record required to be maintained pursuant to the provisions of this section shall be retained for a period of three years from the end of the year in which the record was created and shall be open to inspection

by any peace officer or officer of the department during reasonable business hours. If the licensee fails to maintain the records required or to permit their inspection during reasonable business hours, the license becomes invalid."

Section 6. Section 66-4-6 NMSA 1978 (being Laws 1978, Chapter 35, Section 219) is amended to read:

"66-4-6. PLACE OF BUSINESS.--

A. No license shall be issued to a dealer or wrecker of vehicles unless an established place of business as defined in the Motor Vehicle Code is maintained by the dealer or wrecker of vehicles. Each license to carry on or conduct the business of a dealer or wrecker of vehicles becomes invalid when the licensee fails to maintain an established place of business as defined in the Motor Vehicle Code.

B. No license shall be issued to a title service company unless that company maintains a physical place of business accessible to the public and provides the department with the physical address of that place of business. Each such place of business shall be open to inspection by a peace officer or the department during reasonable business hours. The license of the title service company may be suspended or canceled if the title service company fails to maintain a place of business accessible to the public or does not allow inspection during reasonable business hours by a peace officer or the department."

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

"66-4-7. DEALERS, WHOLESALERS, DISTRIBUTORS AND

WRECKERS OF VEHICLES--TITLE SERVICE COMPANIES--DEALERS OF
MOTORCYCLES ONLY--BOND.--

A. Before issuance of any dealer's license, wholesaler's license, distributor's license, wrecker of vehicles license or title service company license, the applicant shall procure and file with the department a corporate surety bond in the amount of fifty thousand dollars (\$50,000). An applicant for a dealer's license for motorcycles only shall procure and file with the department a corporate surety bond in the amount of twelve thousand five hundred dollars (\$12,500). The corporate surety shall be licensed by the public regulation commission or a successor entity to do business in this state as a surety and the form of the bond shall be approved by the attorney general. The bond shall be payable to the state for the use and benefit of the purchaser and his vendees, conditioned upon payment of any loss, damage and expense sustained by the purchaser or his vendees, or both, by reason of failure of the title of the vendor, by any fraudulent misrepresentations or by any breach of warranty as to freedom from liens on the motor vehicle or motorcycle sold by the dealer, wholesaler, distributor, dealer of motorcycles only or wrecker of vehicles. The bond shall be continuous in form and limited to the payment of fifty thousand dollars (\$50,000) in total aggregate liability on a dealer's license, wholesaler's license, distributor's license, wrecker of vehicles license or a title service company license and twelve thousand five hundred dollars (\$12,500) on a dealer's license for motorcycles only.

B. No applicant for a dealer's license,

wholesaler's license, distributor's license or dealer's license for motorcycles only who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of wrecking or dismantling motor vehicles or motorcycles. Conversely, no applicant for a wrecker of vehicles license who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of dealer, distributor, wholesaler or dealer of motorcycles only.

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

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

Section 8. Section 66-4-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 221, as amended) is amended to read:

"66-4-8. EXEMPTIONS FROM LICENSING AND BOND PROVISIONS.--The provisions of Sections 66-4-1 through 66-4-7 NMSA 1978 requiring dealers, wholesalers and distributors of motor vehicles and wreckers of vehicles to be licensed and post a bond do not apply to persons who deal in boats or vessels, off-highway motor vehicles,

