

Automobile Dealer Licensing

Licensing Statutes

- Licensing statutes related to the sale of new and used motor vehicles are found at G.L. c. 140, §57-69

G.L. c. 140, § 57 – License Requirement

- Any person engaged in the business of buying, selling, exchanging, or assembling used vehicles or parts thereof, or any person who allows property to be used for sale or display of vehicles, must obtain a license issued pursuant to G.L. c. 140, § 59
- License is required for any person in the business of conducting auctions for sale of vehicles
- License is required for any person in the business of leasing vehicles and who, as an incident to such business, sells any such lease vehicles to the public
- Licenses to buy/sell used motor vehicles are not required for: (1) Class 1 operations, or (2) businesses which principally finance vehicle purchases or insure vehicles, but which incidentally also acquire and sell used vehicles

G.L. c. 140, § 58 – License Classes

- Class 1 – Agent or Seller License
 - Recognized agent of motor vehicle manufacturer or seller of motor vehicles made by such manufacturer
 - Principal business is the sale of new motor vehicles
 - Any sales of used motor vehicles is incidental or secondary to new vehicle sales
 - Licensee is subject to all statutory and regulatory requirements for any second hand vehicles he/she purchases for the purpose of sales/exchange, and not taken in trade for sale of new motor vehicles
- Class 2 – Used Car Dealer License
 - Person whose principal business is the buying and selling of used cars, or
 - Person who purchases and displays used cars for resale in retail transactions, or
 - Person who displays used cars not owned by him/her pursuant to agreement in which he/she receives compensation
- Class 3 – Motor Vehicle Junk License
 - Principal business is: (1) buying used vehicles for purpose of remodeling, taking apart, or rebuilding and selling the same, or (2) buying or selling parts from used vehicles or tires, or the assembling of used vehicle parts

G.L. c. 140, § 59 – Motor Vehicle Sales License

- Licenses are issued by the municipal licensing authorities.
- Licenses expire on January 1st of each year and must be applied for annually.
- License fees are set by licensing authority up to a maximum of \$200.
- If applicant has not held a license within the previous year, applicant must file copy of application with RMV.

Standard for Issuance of License

- No license granted unless the licensing authority is satisfied from the facts in the application, and any other information which licensing authority may require, that:
 - Applicant is a “proper person” to engage in the business in the classification for which he/she has applied;
 - The business is or will be the applicant’s principal business; and
 - Applicant has available a place of business suitable for the purpose, including but not limited to compliance with local zoning requirements.

Bond and Warranty Requirements

- Class 2 licensee must obtain a surety bond in the amount of \$25,000, or certificate of deposit or letter or credit with equal face value.

Adequate Repair Facilities

- An applicant must have access to sufficient repair facilities to meet the statutory warranty requirements. Pursuant to RMV regulations – 540 CMR 16.02 – “adequate repair facilities” includes:
 - Enclosed repair area 10 feet longer and 5 feet wider than the largest vehicle to be repaired, and used only for the repair of motor vehicles; and
 - Tools and equipment necessary for adequate repair/maintenance of motor vehicles.

Internet Sales

- License may be issued for a business conducted primarily through internet sales.
- All licensing criteria must be met, including having a suitable place of business, i.e. compliance with local zoning requirements and access to adequate repair facilities.
- If vehicles will be displayed or delivered from a location other than the licensed premises, that location will also have to be licensed.

Determination of Proper Person

- Licensing authorities may conduct background checks on applicants during the initial application or renewal process.
- With an applicant’s authorization, a licensing authority may conduct a Criminal Offender Record Information (“CORI”) check.
- There are very specific due process requirements that must be met before an applicant can be denied a license based on his/her criminal history, including CORI. Specifically, written notice and an opportunity to challenge the criminal history must be afforded to the individual and discussion of criminal history must occur in executive session during the licensing hearing process.
- If a municipality has adopted a Civil Fingerprinting Bylaw, national fingerprint based criminal history checks may be conducted, if authorized for motor vehicle license applicants.

Notable Case Law***Grenier v. Board of Selectmen of Shrewsbury, 80 Mass. App. Ct. 460 (2011)***

Board of Selectmen denied Plaintiff's application for Class 2 license based on policy which capped number of Class 2 licenses in town to 20 and fact that the applicant proposed an internet based business. Court held that the cap was in conflict with G.L. c. 140, § 59, which does not impose a cap and which requires a case by case review of all Class 2 permit applications. Court held that denial of license resting on rejection of internet sales as not beneficial to the Town was arbitrary and capricious

Ludvigsen v. Town of Dedham, 48 Mass. App. Ct. 682 (2000)

Board of Selectmen denied Plaintiff's application for Class 2 license. Decision stated that the proposed site was unsuitable, as it would generate excessive traffic and there were already more than an adequate number of Class 2 businesses in the area. Court found that used car businesses, by their nature, do not generate excessive traffic. Court found that there was no evidence presented at the hearing showing that an additional Class 2 business would unduly burden the existing car dealerships. Court ultimately found that the Board's decision was not supported by substantial evidence

Goldie's Salvage, Inc. v. Board of Selectmen of Walpole, 31 Mass. App. Ct. 726 (1992)

Board denied Plaintiff's application for renewals of Class 2 and Class 3 licenses. When a decision of the licensing authority is appealed to Superior Court, the Court must determine whether the decision was based upon an error of law or unsupported by substantial evidence. Court upheld the Board's denial because the record showed the Class 3 junkyard was prohibited by G.L. c. 140, § 59A. The Plaintiff did not qualify for the junkyard license because the required screening by natural objects (trees) had been removed

Smith v. Longmeadow, 29 Mass.App.Ct. 599 (1990)

Applicant applied for license to operate business from her home and to sell vehicles from various locations in other municipalities. Board denied the license on the grounds that the Board could not authorize sales from premises outside the town and because the town's zoning bylaws prohibited use of the applicant's home for business purposes. Court affirmed the reasons for denial and held that the denial did not violate the applicant's federal or state constitutional rights

Roslindale Motor Sales Inc. v. Police Commissioner of Boston, 405 Mass. 79 (1989)

Police Commissioner denied Plaintiff's application seeking renewal of a Class 2 license. Application was denied on the basis that the applicant was not a "proper person" based on police officer's knowledge of investigation into criminal activity at the business location, and an investigation by the state into another one of the applicant's businesses. Court held that the applicant did not have a right to a renewal or a hearing on his application—he was only entitled to fair treatment. The Court, however, reversed the police commissioner's decision because he did not set forth the reasons for his denial.

Contact Attorney Gregg J. Corbo, Esq. (gcorbo@k-plaw.com) at 617.556.0007 with any further questions concerning automobile licensing.

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