

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3092
By: Siebert (Cain)
State Affairs
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Committee Report (Substituted)

DIGEST

Currently, the Texas Motor Vehicle Commission Code provides for the licensing of manufacturers of motor vehicles and their franchised dealers and independent dealers, and includes regulations for relations between and among licensees. The purpose of this bill is to clarify definitions and other provisions contained in the code. C.S.H.B. 3092 provides that a person is eligible for appointment to the Texas Motor Vehicle Board (board) if the person is otherwise eligible under this Act and is a natural person who is either a dealer or is the bona fide owner of at least 20 percent of a dealer entity. This bill also requires a manufacturer or distributor to file with the board a copy of the current requirements the manufacturer or distributor places on its dealer with respect to the dealer's duties under the manufacturer's or distributor's warranty, and vehicle delivery and preparation obligations. In addition, this bill defines "incentive programs" and requires a manufacturer or distributor to file with the board a copy of the rules and procedures of the program, and the duties of a dealer under the program.

PURPOSE

As proposed, C.S.H.B. 3092 clarifies and expands the duties and authorities of the Texas Motor Vehicle Board.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Motor Vehicle Board in SECTION 12 (Section 4.02(d), Texas Motor Vehicle Commission Code, Article 4413(36), V.T.C.S.), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 1.03, Article 4413(36), V.T.C.S. (Texas Motor Vehicle Commission Code), to redefine "broker," "franchise," "lease facilitator," "lessor," "manufacturer," "rule," and "towable recreational vehicle." Makes conforming changes.

SECTION 2. Amends Section 2.02, Article 4413(36), V.T.C.S., by repealing Subsection (b) regarding the executive director of the Motor Vehicle Board (board) of the Texas Department of Transportation (TxDOT), and renumbering Subsection (c) as Subsection (b).

SECTION 3. Amends Section 2.02, Article 4413(36), V.T.C.S., by adding Subsection (c), to set forth qualifications for appointment to the board.

SECTION 4. Amends Sections 2.08(a)-(c), Article 4413(36), V.T.C.S., to provide that the board, rather than the Motor Vehicle Commission (commission), is subject to certain Government Code chapters, and is required to develop and implement certain policies. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 2.08A(c), Article 4413(36), V.T.C.S., to make conforming and nonsubstantive changes.

SECTION 6. Amends Sections 2.09(a) and (e), Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 7. Amends Section 2.13, Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 8. Repealer: Section 3.01A, Article 4413(36), V.T.C.S. (Interaction with the Department).

SECTION 9. Amends Section 3.02, Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 10. Amends Section 3.08(g), Article 4413(36), V.T.C.S., to delete text requiring the signature of the chairman or vice chairman or the director for a written final decision or order.

SECTION 11. Amends Section 4.01B(a), Article 4413(36), V.T.C.S., to authorize the board to issue a license for a certain term for the purpose of coordinating the expiration dates of licenses in certain instances. Makes conforming changes.

SECTION 12. Amends Section 4.02, Article 4413(36), V.T.C.S., to authorize the board to adopt a rule regulating towable recreational vehicles, and requires the rule to authorize the display and sale of such a vehicle at a certain venue. Deletes text granting rulemaking authority to the commission, and regarding a certain venue. Makes conforming and nonsubstantive changes.

SECTION 13. Amends Section 5.02(b), Article 4413(36), V.T.C.S., to require the board to consider injury or benefit to the public, rather than injury to the public welfare. Deletes text regarding failure to compensate dealers for their services, and dealership ownership. Makes conforming changes.

SECTION 14. Amends Article 4413(36), V.T.C.S., by adding Sections 5.02A, 5.02B, and 5.02C, as follows:

Sec. 5.02A. **WARRANTY REIMBURSEMENT.** (a) Requires a manufacturer or distributor to file with the board a copy of the current requirements the manufacturer or distributor places on its dealers with respect to certain duties and obligations.

(b) Provides that warranty or delivery and preparation requirements placed on a dealer by a manufacturer are not enforceable unless they are reasonable and are disclosed and filed in compliance with Subsection (a).

(c) Requires a manufacturer or distributor to fairly and adequately compensate its dealers for warranty work.

(d) Provides that in no event may a manufacturer or distributor pay or reimburse a dealer an amount of money for warranty work that is less than that charged by the dealer to the dealer's retail customers for nonwarranty work of like kind. Sets forth the required procedure for a manufacturer or distributor to use to compute the amount of money charged by the dealer to the dealer's retail customers for labor of like kind.

(e) Authorizes a dealer to request an adjustment in the dealer's warranty labor rate. Requires the request to be by certified mail, return receipt requested. Requires the requesting dealer to set forth the requested rate and include certain information. Requires a manufacturer or distributor to notify the requesting dealer, by a certain date, of the approval or disapproval of the request. Requires the manufacturer or distributor to set forth the reasons for the disapproval of the request. Provides that a requesting dealer who is disapproved or does not receive a response within the required time to file a protest.

(f) Authorizes the board, if a dealer has filed a protest under Subsection (e), to uphold the manufacturer's or distributor's decision only if the manufacturer or distributor has proved by a preponderance of the evidence that the disapproval or failure to respond was reasonable. Requires the board to put the requested rate into effect as of a certain date if the board finds that the disapproval or failure to respond was unreasonable.

(g) Authorizes a warranty labor rate established as provided by this section to be adjusted no more often than annually, except by agreement of the parties.

(h) Requires a manufacturer or distributor to pay a dealer's claim for reimbursement for warranty work or dealer preparation and delivery work by a certain date. Provides that a claim not disapproved within a certain date is approved. Requires the manufacturer or distributor to provide the dealer written notice of the reasons for disapproval.

(i) Prohibits a manufacturer or distributor from charging a dealer back money paid to the dealer

to satisfy a claim approved and paid as provided by this section. Authorizes a manufacturer or distributor to charge back to a dealer money paid to the dealer to satisfy a claim approved and paid as provided by this section under certain conditions.

(j) Prohibits a manufacturer or distributor from performing certain actions.

Sec. 5.02B. MANUFACTURER OR DISTRIBUTOR INCENTIVE PROGRAMS; PROCEDURES. Prohibits a manufacturer or distributor from performing certain actions after the first anniversary of the ending date of a manufacturer or distributor incentive program. Authorizes a manufacturer or distributor to make charge-backs to a dealer if after an audit the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.

Sec. 5.02C. MANUFACTURER OR DISTRIBUTOR OWNERSHIP, OPERATION, OR CONTROL OF DEALERSHIP. (a) Defines “manufacturer.”

(b) Provides that a person or entity is controlled by a manufacturer if the manufacturer has the authority directly or indirectly to direct or influence the management and policies of the person or entity.

(c) Prohibits a manufacturer or distributor from directly or indirectly owning, operating or controlling a dealership, or any interest in a dealership, or acting in the capacity of a dealer.

(d) Authorizes a manufacturer or distributor to own an interest in a franchised dealer, or otherwise control a dealership for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership under certain conditions.

(e) Sets forth the conditions under which a manufacturer or distributor may temporarily own an interest in a dealership.

(f) Authorizes the board to extend the time limit set forth in Subsection (d)(1) on a showing by a manufacturer or distributor of good cause. Prohibits an extension under this subsection from exceeding 12 months. Provides that an application for an extension after the first extension is granted is subject to protest by certain dealers.

(g) Authorizes a person who, on June 7, 1995, held both a motor home dealer’s license and a motor home manufacturer’s license issued under this Act to hold both licenses and operate as both a manufacturer and dealer of motor homes but of no other type of vehicle.

SECTION 15. Amends Section 6.07(a), Article 4413(36), V.T.C.S., to redefine “owner.” Deletes the existing definition of “owner.” Makes conforming changes.

SECTION 16. Amends Section 7.01(f), Article 4413(36), V.T.C.S., to provide that appeal does not affect the enforcement of a final board order unless the board suspends the enforcement of its order pending the final determination of an appeal. Authorizes the board, in the interest of justice, to suspend the enforcement of its order pending final determination of an appeal of that order as provided by this section. Makes conforming changes.

SECTION 17. Amends Section 1A.01, Article 4413(36), V.T.C.S., by adding Subdivision (5), to define “executive director.”

SECTION 18. Amends Section 1A.02, Article 4413(36), V.T.C.S., to require the board to exercise the authority and perform the duties placed on the board by this article or other provision of law independent of the Texas Transportation Commission and the executive director. Provides that the personnel of the division are personnel of TxDOT and are subject to the human resource rules and policies of TxDOT and the Texas Transportation Commission, except that, as applied to employees of the division, any and all powers granted to the executive director by those rules and policies shall reside with the director. Requires the executive director to provide equipment, facilities, property, and services necessary to carry out the division’s purposes, powers, and duties. Requires the executive director to be responsible for allocating resources as necessary and appropriate. Deletes text requiring the board to advise TxDOT on certain matters arising under the Texas Motor Vehicle Commission Code. Makes conforming and nonsubstantive

changes.

SECTION 19. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

Relating clause.

Amends the relating clause to provide that this bill relates to the authority and duties of the Texas Motor Vehicle Board.

SECTION 1.

Amends Sections 1.03, Article 4413(36), V.T.C.S., to redefine “franchise,” “lessor,” and “towable recreational vehicle.” Makes conforming changes. Deletes proposed SECTIONS 2 and 3 concerning definitions of “party” and “towable recreational vehicles.” Renumbers subsequent SECTIONS accordingly.

SECTION 2.

Amends Section 2.02, Article 4413(36), V.T.C.S., by repealing Subsection (b) regarding the executive director of the board, and renumbering Subsection (c) as Subsection (b).

SECTION 3.

Amends Section 2.02, Article 4413(36), V.T.C.S., by adding Subsection (c), to set forth qualifications for appointment to the board of TxDOT.

SECTION 4.

Amends Sections 2.08(a)-(c), Article 4413(36), V.T.C.S., to reinsert deleted text providing that a member appointed under Section 2.02 is not counted in the calculation of a quorum.

SECTION 6.

Amends Sections 2.09(a) and (e), Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 7.

Amends Section 2.13, Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 8.

Repealer: Section 3.01A, Article 4413(36), V.T.C.S. (Interaction with the Department).
Renumbers subsequent SECTIONS accordingly.

SECTION 10.

Amends Section 3.08(g), Article 4413(36), V.T.C.S., to delete text requiring the signature of the chairman or vice chairman or the director for a written final decision or order.

SECTION 11.

Amends Section 4.01B(a), Article 4413(36), V.T.C.S., to authorize the board to issue a license for a certain term for the purpose of coordinating the expiration dates of licenses in certain instances. Makes conforming changes. Renumbers subsequent SECTIONS accordingly.

SECTION 12.

Amends Section 4.02, Article 4413(36), V.T.C.S., to authorize the board to adopt a rule regulating towable recreational vehicles, and requires the rule to authorize the display and sale of

such a vehicle at a private event in a trade area. Makes conforming and nonsubstantive changes. Deletes proposed SECTIONS 10 and 11, requiring the applicant to create a certain list of dealers, and requiring a statement identifying the manufacturer that owns or controls the entity, under certain conditions, to be included in a specified written notice. Renumbers subsequent SECTIONS accordingly.

SECTION 14.

Amends Article 4413(36), V.T.C.S., by adding Sections 5.02A, 5.02B, and 5.02C, regarding warranty reimbursement, manufacturer or distributor incentive programs and procedures, and the ownership, operation, or control of a dealership by a manufacturer or distributor. Deletes proposed SECTION 13 authorizing the board to determine a violation under Chapter 728A and levy an administrative penalty. Renumbers subsequent SECTIONS accordingly.

SECTION 15.

Amends Section 6.07(a), Article 4413(36), V.T.C.S., to redefine “owner.”

SECTION 16.

Amends Section 7.01(f), Article 4413(36), V.T.C.S., to require, rather than provide, that appeal does not affect the enforcement of a final board order unless the board suspends the enforcement of its order pending the final determination of an appeal. Authorizes the board, in the interest of justice, to suspend the enforcement of its order pending final determination of an appeal of that order as provided by this section. Makes conforming changes. Deletes SECTIONS 16-20 regarding miscellaneous provisions and providing that certain SECTIONS of this Act were prospective. Renumbers subsequent SECTIONS accordingly.

SECTION 17.

Amends Section 1A.01, Article 4413(36), V.T.C.S., by adding Subdivision (5), to define “executive director.”

SECTION 18.

Amends Section 1A.02, Article 4413(36), V.T.C.S., to require the board to exercise the authority and perform the duties placed on the board by this article or other provision of law independent of the Texas Transportation Commission and the executive director. Provides that the personnel of the division are personnel of TxDOT and are subject to the human resource rules and policies of TxDOT and the Texas Transportation Commission, except that, as applied to employees of the division, any and all powers granted to the executive director by those rules and policies shall reside with the director. Requires the executive director to provide equipment, facilities, property, and services necessary to carry out the division’s purposes, powers, and duties. Requires the executive director to be responsible for allocating resources as necessary and appropriate. Deletes text requiring the board to advise TxDOT on certain matters arising under the Texas Motor Vehicle Commission Code. Makes conforming and nonsubstantive changes.