

By: Krusee

H.B. No. 2677

Substitute the following for H.B. No. 2677:

By: Garza

C.S.H.B. No. 2677

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of motor vehicle sales and the powers and duties of the Motor Vehicle Board of the Texas Department of Transportation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2301.002(6), (16), (23), and (32), Occupations Code, are amended to read as follows:

(6) "Converter" means a person who, before the retail sale of a motor vehicle other than a motor home, ambulance, or fire-fighting vehicle:

(A) assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle.

(16) "Franchised dealer" means a person who:

(A) holds a franchised motor vehicle dealer's general distinguishing number issued by the board under this chapter and Chapter 503, Transportation Code; and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

(23) "Motor vehicle" means:

1 (A) a fully self-propelled vehicle having two or
2 more wheels that has as its primary purpose the transport of a
3 person or persons, or property, on a public highway;

4 (B) a fully self-propelled vehicle having two or
5 more wheels that:

6 (i) has as its primary purpose the
7 transport of persons or property;

8 (ii) is not manufactured for use on public
9 streets, roads, or highways; and

10 (iii) meets the physical requirements for
11 the issuance of a certificate of title under department rules [~~has~~
12 ~~been issued a certificate of title~~];

13 (C) an engine, transmission, or rear axle,
14 regardless of whether attached to a vehicle chassis, manufactured
15 for installation in a vehicle that has:

16 (i) the transport of persons or property on
17 a public highway as its primary purpose; and

18 (ii) a gross vehicle weight rating of more
19 than 16,000 pounds; or

20 (D) a towable recreational vehicle.

21 (32) "Towable recreational vehicle" means a
22 nonmotorized vehicle that:

23 (A) was originally designed and manufactured
24 primarily to provide temporary human habitation in conjunction with
25 recreational, camping, or seasonal use;

26 (B) is, or under department rules is eligible to
27 be, titled and registered with the department as a travel trailer

1 through a county tax assessor-collector;

2 (C) is permanently built on a single chassis;

3 (D) contains at least one life support system;

4 and

5 (E) is designed to be towable by a motor vehicle.

6 SECTION 2. Section 2301.153(a), Occupations Code, is
7 amended to read as follows:

8 (a) Notwithstanding any other provision of law, the board
9 has all powers necessary, incidental, or convenient to perform a
10 power or duty expressly granted under this chapter, including the
11 power to:

12 (1) initiate and conduct proceedings, investigations,
13 or hearings;

14 (2) administer oaths;

15 (3) receive evidence and pleadings;

16 (4) issue subpoenas to compel the attendance of any
17 person;

18 (5) order the production of any tangible property,
19 including papers, records, or other documents;

20 (6) make findings of fact on all factual issues
21 arising out of a proceeding initiated under this chapter;

22 (7) specify and govern appearance, practice, and
23 procedures before the board;

24 (8) adopt rules and issue conclusions of law and
25 decisions, including declaratory decisions or orders;

26 (9) enter into contracts;

27 (10) accept a donation, including a contribution of

property or services;

(11) [~~(10)~~] execute instruments;

(12) [~~(11)~~] retain counsel;

(13) [~~(12)~~] use the services of the attorney general and institute and direct the conduct of legal proceedings in any forum;

(14) [~~(13)~~] obtain other professional services as necessary and convenient;

(15) [~~(14)~~] impose a sanction for contempt;

(16) [~~(15)~~] assess and collect fees and costs, including attorney's fees;

(17) [~~(16)~~] issue, suspend, or revoke licenses;

(18) [~~(17)~~] prohibit and regulate acts and practices in connection with the distribution and sale of motor vehicles or warranty performance obligations;

(19) [~~(18)~~] issue cease and desist orders in the nature of temporary or permanent injunctions; and

(20) [~~(19)~~] impose a civil penalty.

SECTION 3. Section 2301.251(a), Occupations Code, is amended to read as follows:

(a) Unless a person holds a license issued under this chapter authorizing the activity, and except as provided by this subchapter, the person may not:

(1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator in this state; or

1 (2) perform or offer to perform repair services on a
2 motor vehicle under a franchise and a motor vehicle manufacturer's
3 warranty, regardless of whether the person sells or offers to sell
4 motor vehicles at the same location.

5 SECTION 4. Section 2301.252, Occupations Code, is amended
6 by amending Subsection (b) and adding Subsection (c) to read as
7 follows:

8 (b) For purposes of this section:

9 (1) the make of a conversion is that of the chassis
10 manufacturer; ~~and~~

11 (2) the make of a motor home is that of the motor home
12 manufacturer;

13 (3) the make of an ambulance is that of the ambulance
14 manufacturer; and

15 (4) the make of a fire-fighting vehicle is that of the
16 fire-fighting vehicle manufacturer.

17 (c) In this section:

18 (1) "Ambulance manufacturer" means a person other than
19 the manufacturer of a motor vehicle chassis who, before the retail
20 sale of the motor vehicle, performs modifications on the chassis of
21 a motor vehicle that result in the finished product being
22 classified as an ambulance.

23 (2) "Fire-fighting vehicle manufacturer" means a
24 person other than the manufacturer of a motor vehicle chassis who,
25 before the retail sale of the motor vehicle, performs modifications
26 on the chassis that result in the finished product being classified
27 as a fire-fighting vehicle.

SECTION 5. Subchapter F, Chapter 2301, Occupations Code, is amended by adding Section 2301.266 to read as follows:

Sec. 2301.266. TEMPORARY OPERATION OF DEALERSHIP WITH PENDING APPLICATION. (a) A person may engage in the business of operating a dealership for which the person's license application is pending if the person meets the requirements of this section.

(b) To qualify for this exception, the person must:

(1) notify the board by registered mail, return receipt requested, of the person's intent to operate the dealership under this section; and

(2) have a license application to purchase an existing dealership that:

(A) is substantially complete and on file with the board; and

(B) is not subject to protest under Section 2301.652.

(c) This section does not affect the board's right to deny the application.

SECTION 6. Section 2301.301(c), Occupations Code, is amended to read as follows:

(c) The board by rule may implement a system under which licenses expire on various dates during the year. For a year in which a license expiration date is changed, the fee for the license shall be prorated so that the license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid, except for a fee for an application to relocate a dealership in a municipality in which the dealership is

1 located. On renewal of the license on the new expiration date, the
2 entire license renewal fee is payable.

3 SECTION 7. Section 2301.476, Occupations Code, is amended
4 by adding Subsection (h) to read as follows:

5 (h) A manufacturer or distributor may own an interest in a
6 dealer who:

7 (1) primarily engages in the business of renting to
8 persons motor vehicles that the dealer owns; and

9 (2) does not sell or offer to sell a motor vehicle
10 other than a vehicle that the dealer:

11 (A) owns and has taken from service in the
12 dealer's rental fleet; or

13 (B) accepts in trade as part of the sale of a
14 motor vehicle taken from service in the dealer's rental fleet.

15 SECTION 8. Section 2301.705(b), Occupations Code, is
16 amended to read as follows:

17 (b) Notice must be given by certified mail, return receipt
18 requested, unless the person to whom notice is given resides
19 outside of the United States. Notice to a person who resides
20 outside the United States must be given by:

21 (1) registered mail, return receipt requested; or

22 (2) a private carrier who offers confirmation of
23 delivery.

24 SECTION 9. Section 2301.803(c), Occupations Code, is
25 amended to read as follows:

26 (c) A person affected by a statutory stay imposed by this
27 chapter may request a hearing before the entity that imposed the

1 stay [~~initiate a proceeding before the board~~] to modify, vacate, or
2 clarify the extent and application of the statutory stay.

3 SECTION 10. This Act takes effect September 1, 2003.