

By: Krusee

H.B. No. 2677

A BILL TO BE ENTITLED

AN ACT

relating to the duties and authority of the Texas Motor Vehicle Board.

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

SECTION 1. Section 2301.002, Occupations Code, is amended to read as follows:

Sec. 2301.002. DEFINITIONS. In this chapter:

(1) "Ambulance" means a vehicle that is used exclusively to transport or to provide emergency medical care to an injured or ill person and that includes:

(A) a driver's compartment;

(B) a compartment to accommodate an emergency medical care technician or paramedic and two injured or ill persons in a position that permits one of the injured or ill persons to be given intensive life-support during transit;

(C) equipment and supplies for emergency care of an injured or ill person at the location of the person or at the scene of an injury-producing incident as well as in transit;

(D) two-way radio communication capability; and

(E) equipment for light rescue or extrication procedures.

(2) "Ambulance manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis of

1 a motor vehicle that result in the finished product being
2 classified as an ambulance;

3 (3) [~~(2)~~] "Board" means the Motor Vehicle Board of the
4 Texas Department of Transportation.

5 (4) [~~(3)~~] "Broker" means a person who, for a fee,
6 commission, or other valuable consideration, arranges or offers to
7 arrange a transaction involving the sale of a new motor vehicle,
8 other than a person who is:

9 (A) a franchised dealer or a bona fide employee
10 of a franchised dealer acting for the franchised dealer;

11 (B) a representative or a bona fide employee of a
12 representative acting for the representative;

13 (C) a distributor or a bona fide employee of a
14 distributor acting for the distributor; or

15 (D) the owner of the vehicle at any point in the
16 transaction.

17 (5) [~~(4)~~] "Chassis manufacturer" means a person who
18 manufactures and produces the frame on which the body of a motor
19 vehicle is mounted.

20 (6) [~~(5)~~] "Conversion" means a motor vehicle, other
21 than a motor home, ambulance, or fire-fighting vehicle, that:

22 (A) has been substantially modified by a person
23 other than the manufacturer or distributor of the chassis of the
24 motor vehicle; and

25 (B) has not been the subject of a retail sale.

26 (7) [~~(6)~~] "Converter" means a person who before the
27 retail sale of a motor vehicle:

1 (A) assembles, installs, or affixes a body, cab,
2 or special equipment to a chassis, unless the resulting vehicle is a
3 motor home, ambulance, or fire-fighting vehicle; or

4 (B) substantially adds, subtracts from, or
5 modifies a previously assembled or manufactured motor vehicle,
6 unless the resulting vehicle is a motor home, ambulance, or
7 fire-fighting vehicle.

8 (8) [~~(7)~~] "Dealer" means a person who holds a general
9 distinguishing number issued by the board under Chapter 503,
10 Transportation Code.

11 (9) [~~(8)~~] "Dealership" means the physical premises
12 and business facilities on which a franchised dealer operates the
13 dealer's business, including the sale and repair of motor vehicles.
14 The term includes premises or facilities at which a person engages
15 only in the repair of a motor vehicle if the repair is performed
16 under a franchise and a motor vehicle manufacturer's warranty.

17 (10) [~~(9)~~] "Department" means the Texas Department of
18 Transportation.

19 (11) [~~(10)~~] "Director" means the director of the board
20 and of the division.

21 (12) [~~(11)~~] "Distributor" means a person, other than a
22 manufacturer, who distributes or sells new motor vehicles to a
23 franchised dealer.

24 (13) [~~(12)~~] "Division" means the Motor Vehicle
25 Division of the department.

26 (14) [~~(13)~~] "Executive director" means the executive
27 director of the department.

1 (15) [~~(14)~~] "Fire-fighting vehicle" means a motor
2 vehicle the only purposes of which are to transport firefighters to
3 the scene of a fire and to provide equipment to fight the fire, and
4 that is built on a truck chassis with a gross carrying capacity of
5 at least 10,000 pounds, to which the following have been
6 permanently affixed or mounted:

7 (A) a water tank with a combined capacity of at
8 least 500 gallons; and

9 (B) a centrifugal water pump with a capacity of
10 at least 750 gallons per minute at 150 pounds per square inch net
11 pump pressure.

12 (16) "Fire-fighting vehicle manufacturer" means a
13 person other than the manufacturer of a motor vehicle chassis who,
14 before the retail sale of the motor vehicle, performs modifications
15 on the chassis that result in the finished product being classified
16 as a fire-fighting vehicle;

17 (17) [~~(15)~~] "Franchise" means one or more contracts
18 between a franchised dealer as franchisee and a manufacturer or a
19 distributor as franchisor, including a written communication from a
20 franchisor to a franchisee in which a duty is imposed on the
21 franchisee, under which:

22 (A) the franchisee is granted the right to sell
23 and service new motor vehicles manufactured or distributed by the
24 franchisor or only to service motor vehicles under the contract and
25 a manufacturer's warranty;

26 (B) the franchisee is a component of the
27 franchisor's distribution system as an independent business;

1 (C) the franchisee is substantially associated
2 with the franchisor's trademark, tradename, and commercial symbol;

3 (D) the franchisee's business substantially
4 relies on the franchisor for a continued supply of motor vehicles,
5 parts, and accessories; or

6 (E) any right, duty, or obligation granted or
7 imposed by this chapter is affected.

8 (18) [~~(16)~~] "Franchised dealer" means a person who:

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

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

17 (19) [~~(17)~~] "General distinguishing number" means a
18 dealer license issued by the board under Chapter 503,
19 Transportation Code.

20 (20) [~~(18)~~] "License holder" means a person who holds
21 a license or general distinguishing number issued by the board
22 under this chapter or Chapter 503, Transportation Code.

23 (21) [~~(19)~~] "Manufacturer" means a person who
24 manufactures or assembles new motor vehicles.

25 (22) [~~(20)~~] "Manufacturer's statement of origin"
26 means a certificate on a form prescribed by the department showing
27 the original transfer of a new motor vehicle from the manufacturer

1 to the original purchaser.

2 (23) [~~(21)~~] "Motor home" means a motor vehicle that is
3 designed to provide temporary living quarters and that:

4 (A) is built on a motor vehicle chassis as an
5 integral part of or a permanent attachment to the chassis; and

6 (B) contains at least four of the following
7 independent life support systems that are permanently installed and
8 designed to be removed only for repair or replacement and that meet
9 the standards of the American National Standards Institute,
10 Standards for Recreational Vehicles:

11 (i) a cooking facility with an on-board
12 fuel source;

13 (ii) a gas or electric refrigerator;

14 (iii) a toilet with exterior evacuation;

15 (iv) a heating or air conditioning system
16 with an on-board power or fuel source separate from the vehicle
17 engine;

18 (v) a potable water supply system that
19 includes at least a sink, a faucet, and a water tank with an
20 exterior service supply connection; or

21 (vi) a 110-125 volt electric power supply.

22 (24) [~~(22)~~] "Motor home manufacturer" means a person
23 other than the manufacturer of a motor vehicle chassis who, before
24 the retail sale of the motor vehicle, performs modifications on the
25 chassis that result in the finished product being classified as a
26 motor home.

27 (25) [~~(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 rules of the department
12 ~~[has 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 (26) ~~[(24)]~~ "New motor vehicle" means a motor vehicle
22 that has not been the subject of a retail sale regardless of the
23 mileage of the vehicle.

24 (27) ~~[(25)]~~ "Nonfranchised dealer" means a person who
25 holds an independent motor vehicle dealer's general distinguishing
26 number or a wholesale motor vehicle dealer's general distinguishing
27 number issued by the board under Chapter 503, Transportation Code.

1 (28) [~~(26)~~] "Party" means a person or agency named or
2 admitted as a party and whose legal rights, duties, or privileges
3 are to be determined by the board after an opportunity for
4 adjudicative hearing.

5 (29) [~~(27)~~] "Person" means a natural person,
6 partnership, corporation, association, trust, estate, or any other
7 legal entity.

8 (30) [~~(28)~~] "Relocate" means to transfer an existing
9 dealership operation to facilities at a different location,
10 including a transfer that results in a consolidation or dualing of
11 an existing dealer's operation.

12 (31) [~~(29)~~] "Representative" means a person who:

13 (A) is or acts as an agent or employee for a
14 manufacturer, distributor, or converter; and

15 (B) performs any duty in this state relating to
16 promoting the distribution or sale of new motor vehicles or
17 contacts dealers in this state on behalf of a manufacturer,
18 distributor, or converter.

19 (32) [~~(30)~~] "Retail sale" means any sale of a motor
20 vehicle other than:

21 (A) a sale in which the purchaser acquires a
22 vehicle for resale; or

23 (B) a sale of a vehicle that is operated in
24 accordance with Section 503.061, Transportation Code.

25 (33) [~~(31)~~] "Rule":

26 (A) means a statement by the board of general
27 applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of the board;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of the board and not affecting the rights of a person not connected with the board.

(34) [~~(32)~~] "Towable recreational vehicle" means a nonmotorized vehicle that:

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

(B) is, or under rules of the department is subject to being, titled and registered with the department as a travel trailer through a county tax assessor-collector;

(C) is permanently built on a single chassis;

(D) contains at least one life support system;

and

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

(35) [~~(33)~~] "Transportation commission" means the Texas Transportation Commission of the department.

(36) [~~(34)~~] "Vehicle lease" means a transfer of the right to possess and use a motor vehicle for a term of more than 180 days in return for consideration.

(37) [~~(35)~~] "Vehicle lease facilitator" means a

1 person, other than a franchised dealer, a vehicle lessor, or a bona
2 fide employee of a franchised dealer or vehicle lessor, who:

3 (A) holds the person out to any other person as a
4 "motor vehicle leasing company" or "motor vehicle leasing agent,"
5 or uses a similar title, to solicit or procure another person to
6 enter into an agreement to become the lessee of a motor vehicle that
7 is not, and will not be, titled in the name of or registered to the
8 facilitator;

9 (B) otherwise solicits another person to enter
10 into an agreement to become a lessee of a motor vehicle that is not,
11 and will not be, titled in the name of or registered to the
12 facilitator; or

13 (C) is otherwise engaged in the business of
14 securing lessees or prospective lessees of a motor vehicle that is
15 not, and will not be, titled in the name of or registered to the
16 facilitator.

17 (38) [~~(36)~~] "Vehicle lessor" means a person who, under
18 a lease, transfers to another person the right to possession and use
19 of a motor vehicle titled in the name of the lessor.

20 (39) [~~(37)~~] "Warranty work" means parts, labor, and
21 any other expenses incurred by a franchised dealer in complying
22 with the terms of a manufacturer's or distributor's warranty.

23 SECTION 2. Section 2301. 153(a), Occupations Code, is
24 amended to read as follows:

25 (a) Notwithstanding any other provision of law, the board
26 has all powers necessary, incidental, or convenient to perform a
27 power or duty expressly granted under this chapter, including the

power to:

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

(2) administer oaths;

(3) receive evidence and pleadings;

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

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

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

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

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

(9) enter into contracts;

(10) with the prior approval of the board, accept a donation or contribution of property or services to be used by the board or its staff in the execution of its legal duties;

(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;

1 (16) [~~(15)~~] assess and collect fees and costs,
2 including attorney's fees;

3 (17) [~~(16)~~] issue, suspend, or revoke licenses;

4 (18) [~~(17)~~] prohibit and regulate acts and practices
5 in connection with the distribution and sale of motor vehicles or
6 warranty performance obligations;

7 (19) [~~(18)~~] issue cease and desist orders in the
8 nature of temporary or permanent injunctions; and

9 (20) [~~(19)~~] impose a civil penalty.

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

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

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

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

23 SECTION 4. Subchapter F, Chapter 2301, Occupations Code, is
24 amended by adding Section 2301.266 to read as follows:

25 Sec. 2301.266. OPERATION OF BUSINESS WITHOUT LICENSE. (a)
26 Notwithstanding the terms of this chapter or other provision of
27 law, a person who meets the requirements set forth in this section

1 may engage in the business of the operation of a dealership without
2 a valid license.

3 (b) This section applies to a person who has applied for a
4 license to relocate an existing dealership or to purchase an
5 existing dealership, and whose license application:

6 (1) is substantially complete and on file with the
7 board; and

8 (2) is not subject to protest under Section 2301.652.

9 (c) A person to whom this section applies may on an interim
10 basis engage in the business of operating the dealership for which
11 the person's license application is pending. A person who operates
12 a dealership in the manner provided by this section shall notify the
13 board of the person's intent to do so by registered mail, return
14 receipt requested.

15 (d) This section does not prejudice the board's right to
16 deny a license on the basis and under the circumstances provided by
17 this chapter and rules of the board.

18 SECTION 5. Section 2301.252(b), Occupations Code, is
19 amended to read as follows:

20 (b) For purposes of this section:

21 (1) the make of a conversion is that of the chassis
22 manufacturer; ~~and~~

23 (2) the make of a motor home is that of the motor home
24 manufacturer;

25 (3) the make of an ambulance is that of the ambulance
26 manufacturer; and

27 (4) the make of a fire-fighting vehicle is that of the

1 fire-fighting vehicle manufacturer.

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

4 (c) The board by rule may implement a system under which
5 licenses expire on various dates during the year. For a year in
6 which a license expiration date is changed, except for the fee
7 required in conjunction with an application to relocate a
8 franchised dealership within the city limits of the city in which
9 the dealership is located, the fee for the license shall be prorated
10 so that the license holder pays only that portion of the fee that is
11 allocable to the number of months during which the license is valid.
12 On renewal of the license on the new expiration date, the entire
13 license renewal fee is payable.

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

16 (h) Notwithstanding the terms of this chapter, and subject
17 to the limitations set forth in this subsection, a manufacturer or
18 distributor may own an interest in an entity that holds a general
19 distinguishing number if that entity:

20 (1) is primarily engaged in the business of renting to
21 other persons passenger vehicles or commercial motor vehicles the
22 entity owns; and

23 (2) sells or offers for sale no vehicle other than a
24 vehicle that the entity:

25 (A) owns and has taken from service in its rental
26 fleet; or

27 (B) has taken in trade as part of a transaction

1 involving the sale of a vehicle taken from service in its rental
2 fleet.

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

5 (b) Notice must be given by certified mail, return receipt
6 requested. Notice to a person outside the United States must be
7 given by registered mail, return receipt requested, or by a private
8 carrier who offers confirmation of delivery.

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

11 (c) A person affected by a statutory stay imposed by this
12 chapter may request a hearing [~~initiate a proceeding before the~~
13 ~~board~~] to modify, vacate, or clarify the extent and application of
14 the statutory stay.

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