

By: Geren

H.B. No. 2926

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of marine manufacturers, dealers, and distributors.

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

SECTION 1. Section 31.003, Parks and Wildlife Code, is amended by amending Subdivision (7) and adding Subdivision (16) to read as follows:

(7) "Dealer" means a person [~~customarily~~] engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or outboard motors during a calendar year at an established or permanent place of business in this state [~~and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products~~].

(16) "Distributor" means a person who offers for sale, sells, or processes for distribution new boats or outboard motors to dealers in this state.

SECTION 2. Subchapter A, Chapter 31, Parks and Wildlife Code, is amended by adding Section 31.007 to read as follows:

Sec. 31.007. DEALER REQUIREMENTS. A dealer shall:

(1) display in each of the dealer's places of business a sign that:

- 1 (A) is conspicuous to the public; and
2 (B) shows the name of the dealership; and
3 (2) operate in a space sufficient to maintain an
4 office, service area, and display of products.

5 SECTION 3. Section 31.021, Parks and Wildlife Code, is
6 amended to read as follows:

7 Sec. 31.021. REQUIRED NUMBERING. (a) Each [~~undocumented~~]
8 vessel on the water of this state shall be numbered in accordance
9 with the provisions of this chapter unless specifically exempted.
10 The numbering system shall be in accord with the Federal Boating Act
11 of 1958 and subsequent federal legislation.

12 (b) No person may operate or give permission for the
13 operation of any vessel or may dock, moor, or store a vessel owned
14 by the person on the water of this state unless:

15 (1) the vessel is numbered as required by this
16 chapter;

17 (2) the certificate of number awarded to the vessel is
18 in full force and effect; and

19 (3) the identifying number set forth in the
20 certificate is properly displayed on each side of the bow of the
21 vessel as required by this chapter.

22 SECTION 4. Section 31.032, Parks and Wildlife Code, is
23 amended to read as follows:

24 Sec. 31.032. NUMBERING ON BOW. (a) The owner of a vessel
25 shall paint on or attach to each side of the vessel near the bow the
26 identification number and a validation decal in the manner
27 prescribed by the department. The number shall read from left to

1 right and shall be of block characters of good proportion of not
2 less than three inches in height. The numbers shall be of a color
3 which will contrast with the hull material of the vessel and so
4 maintained as to be clearly visible and legible.

5 (b) The owner of a vessel required to be numbered under this
6 subchapter and documented by the United States Coast Guard is not
7 required to attach an identification number as required by
8 Subsection (a).

9 (c) The commission shall adopt rules for the placement of
10 the validation decal in an alternate location for antique boats. In
11 this subsection, "antique boat" means a boat that:

- 12 (1) is used primarily for recreational purposes; and
13 (2) was manufactured before 1968.

14 SECTION 5. Section 31.039, Parks and Wildlife Code, is
15 amended to read as follows:

16 Sec. 31.039. PUBLIC RECORDS; FEES. (a) All ownership
17 records of the department made or kept under this chapter are public
18 records.

19 (b) The commission may by rule charge a fee for access to
20 ownership records and other records made or kept under this
21 chapter.

22 SECTION 6. Section 31.041, Parks and Wildlife Code, is
23 amended to read as follows:

24 Sec. 31.041. DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S
25 LICENSE [NUMBER]. (a) A person may not engage in business in this
26 state as a dealer, distributor, or manufacturer unless the person
27 holds a license issued under this section for each place of business

1 owned and operated by the person.

2 (b) The commission shall establish the form and manner for
3 display of a license issued under this section.

4 (c) The department shall issue a dealer, distributor, or
5 manufacturer number to each dealer, distributor, or manufacturer
6 licensed under this section in the manner provided by Section
7 31.031(b).

8 (d) A dealer, distributor, or manufacturer of vessels in
9 this state may use the [obtain-a] dealer's, distributor's, or [and]
10 manufacturer's number for vessels the dealer, distributor, or
11 manufacturer wishes to show, demonstrate, or test on the water of
12 this state instead of securing a certificate of number for each
13 vessel. The number shall be attached to any vessel that the dealer,
14 distributor, or manufacturer sends temporarily on the water. For
15 purposes of this subsection, "show, demonstrate, or test" does not
16 include the use of a vessel for recreational purposes or for
17 participation in a contest or event.

18 (e) [~~(b)~~] The application for a license under this section
19 [number] must state that the applicant is a dealer, distributor, or
20 manufacturer within the meaning of this chapter, and the facts
21 stated on the application must be sworn before an officer
22 authorized to administer oaths. The application must be
23 accompanied by photographs of the business sufficient to show any
24 sign the business is required to display and the extent of the space
25 the business is required to maintain. The application must also be
26 accompanied by a copy of the tax permit of the dealer or
27 manufacturer issued by the comptroller under Chapter 151, Tax Code,

1 if the dealer or manufacturer has a tax permit. The two-year fee
2 for a dealer's, distributor's, or [~~and~~] manufacturer's number is
3 \$500 [~~\$45 or an amount set by the commission, whichever amount is~~
4 ~~more~~]. A license [~~No number~~] may not be issued until the provisions
5 of this section have been satisfied.

6 (f) [~~(c)~~] A dealer, distributor, or manufacturer holding a
7 dealer's, distributor's, or [~~and~~] manufacturer's license [~~number~~]
8 may issue a reasonable temporary facsimile of the number issued
9 under Subsection (c), which may be used by any authorized person. A
10 person purchasing a vessel may use the dealer's number for a period
11 not to exceed 15 days prior to filing an application for a
12 certificate of number. The form of the facsimile and the manner of
13 display of the number shall be prescribed by the department.

14 (g) [~~(d)~~] A dealer, distributor, or manufacturer holding a
15 dealer's, distributor's, or [~~and~~] manufacturer's license [~~number~~]
16 may transfer a certificate of number or a certificate of title to a
17 vessel or outboard motor without securing a certificate of number
18 or certificate of title in the dealer's, distributor's, or
19 manufacturer's name if the vessel or outboard motor is sold in the
20 normal course of the dealer's, distributor's, or manufacturer's
21 business. [~~Any other person transferring a vessel or outboard~~
22 ~~motor must secure a certificate of number or certificate of title in~~
23 ~~the person's name before transferring the certificate of number or~~
24 ~~the certificate of title.]~~

25 SECTION 7. Subchapter B, Chapter 31, Parks and Wildlife
26 Code, is amended by adding Sections 31.0411, 31.0412, and 31.0413
27 to read as follows:

1 Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Except as
2 provided by Subsection (b), a license issued under Section 31.041:

3 (1) is valid for two years from the date of issuance;

4 and

5 (2) may not be transferred to another person.

6 (b) A license issued under Section 31.041 in the name of a
7 business remains valid for the business location specified on the
8 license if a change of ownership or business name occurs.

9 (c) A license issued under Section 31.041 may be transferred
10 to a new address if:

11 (1) a business moves to another location; and

12 (2) a change of ownership has not occurred.

13 Sec. 31.0412. LICENSING RULES. The commission may adopt
14 rules regarding licenses issued under Section 31.041, including
15 rules:

16 (1) regarding license transfer procedures;

17 (2) prescribing application forms;

18 (3) regarding application and renewal procedures;

19 (4) prescribing reporting and recordkeeping
20 requirements for license holders; and

21 (5) setting fees to be charged for:

22 (A) a transferred license; or

23 (B) a replacement license.

24 Sec. 31.0413. EXEMPTION FROM DEALER LICENSING
25 REQUIREMENTS. The dealer licensing provisions of this subchapter
26 do not apply to the sale of a canoe, kayak, punt, rowboat, rubber
27 raft, paddleboat, or other vessel that is less than 12 feet in

1 length and has a horsepower rating of five horsepower or less or to
2 the sale of an outboard motor with a manufacturer's rating of five
3 horsepower or less.

4 SECTION 8. Section 31.042(b), Parks and Wildlife Code, is
5 amended to read as follows:

6 (b) Causes for cancellation of certificates and voiding of
7 numbers include:

8 (1) surrender of the certificate for cancellation;

9 (2) issuance of a new number for the same vessel;

10 (3) ~~[issuance of a marine document by the Bureau of~~
11 ~~Customs for the same vessel];~~

12 [~~(4)~~] false or fraudulent certification in an
13 application for number;

14 (4) [~~(5)~~] failure to pay the prescribed fee; and

15 (5) [~~(6)~~] dismantling, destruction, or other change
16 in the form or character of the vessel or outboard motor so that it
17 is no longer correctly described in the certificate or it no longer
18 meets the definition of a vessel or outboard motor.

19 SECTION 9. Subchapter B, Chapter 31, Parks and Wildlife
20 Code, is amended by adding Section 31.044 to read as follows:

21 Sec. 31.044. INSPECTIONS. A dealer, distributor, or
22 manufacturer may not refuse to allow the department or a peace
23 officer to inspect a vessel, outboard motor, or records relating to
24 the possession, origination, ownership, or transfer of a vessel or
25 outboard motor at a dealership or distributor's or manufacturer's
26 place of business during normal business hours.

27 SECTION 10. Subchapter B-1, Chapter 31, Parks and Wildlife

1 Code, is amended by adding Section 31.0465 to read as follows:

2 Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND;
3 RULES. (a) An applicant for a certificate of title under Section
4 31.046 may appeal the department's refusal to issue the title by
5 filing a bond with the department as provided by this section.

6 (b) A bond filed under this section must be:

7 (1) in the form prescribed by the department;

8 (2) executed by the applicant;

9 (3) issued by a person authorized to act as a surety
10 business in this state;

11 (4) in an amount equal to 1-1/2 times the value of the
12 vessel or outboard motor as determined by the department; and

13 (5) conditioned to indemnify all prior owners and
14 lienholders and all subsequent purchasers of the vessel or outboard
15 motor or persons who acquire a security interest in the vessel or
16 outboard motor, and their successors in interest, against any
17 expense, loss, or damage, including reasonable attorney's fees,
18 resulting from:

19 (A) the issuance of the certificate of title for
20 the vessel or outboard motor; or

21 (B) a defect in or undisclosed security interest
22 in the right, title, or interest of the applicant to or in the
23 vessel or outboard motor.

24 (c) The department may issue the certificate of title to the
25 person filing the bond if the applicant proves to the satisfaction
26 of the department that:

27 (1) the vessel or outboard motor is not stolen; and

1 (2) issuance of a certificate of title would not
2 defraud the owner or a lienholder of the vessel or outboard motor.

3 (d) A person described by Subsection (b)(5) has a right of
4 action to recover on the bond for a breach of a condition of the bond
5 described by Subsection (b)(5). The aggregate liability of the
6 surety to all persons may not exceed the amount of the bond.

7 (e) A bond filed under this section expires on the third
8 anniversary of the date the bond became effective. The department
9 shall return an expired bond to the person who filed the bond unless
10 the department has been notified of a pending action to recover on
11 the bond.

12 (f) On return of a bond under Subsection (e), the department
13 shall issue a certificate of title to the person to whom the bond is
14 returned.

15 (g) In addition to the situation described by Subsection
16 (c), the commission by rule may define acceptable situations in
17 which certificates of title may be issued after the filing of a bond
18 under this section.

19 SECTION 11. Section 31.049(c), Parks and Wildlife Code, is
20 amended to read as follows:

21 (c) If there is a lien on the vessel or outboard motor, the
22 original certificate of title shall be sent to the first
23 lienholder [~~and a duplicate original certificate shall be sent to the~~
24 ~~owner,~~] and a copy shall be retained by the department.

25 SECTION 12. Section 31.053, Parks and Wildlife Code, is
26 amended by adding Subsection (f) to read as follows:

27 (f) A person who is not licensed as a dealer, distributor,

1 or manufacturer under this chapter must obtain a certificate of
2 number or certificate of title to a vessel or outboard motor in the
3 person's name before transferring the certificate of number or
4 certificate of title.

5 SECTION 13. Section 31.127(a), Parks and Wildlife Code, is
6 amended to read as follows:

7 (a) A person who violates or fails to comply with any
8 provision of this chapter, or who violates or fails to comply with a
9 proclamation of the commission entered under this chapter or a city
10 ordinance or order of a commissioners court or a political
11 subdivision of the state made or entered under this chapter,
12 commits an offense that is a Class C Parks and Wildlife Code
13 misdemeanor.

14 SECTION 14. (a) Not later than January 1, 2004, the Parks
15 and Wildlife Commission shall adopt any rules necessary to
16 implement this Act.

17 (b) A person is not required to be licensed under Section
18 31.041, Parks and Wildlife Code, as amended by this Act, until March
19 1, 2004. Before that date, the person is governed by the law as it
20 existed immediately before the effective date of this Act, and that
21 law is continued in effect for that purpose.

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