

1-1 By: Geren (Senate Sponsor - Estes) H.B. No. 2926  
1-2 (In the Senate - Received from the House April 28, 2003;  
1-3 May 1, 2003, read first time and referred to Committee on Business  
1-4 and Commerce; May 12, 2003, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 12, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2926 By: Estes

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of marine manufacturers, dealers, and  
1-11 distributors.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 31.003, Parks and Wildlife Code, is  
1-14 amended by amending Subdivision (7) and adding Subdivision (16) to  
1-15 read as follows:

1-16 (7) "Dealer" means a person [~~customarily~~] engaged in  
1-17 the business of buying, selling, selling on consignment, displaying  
1-18 for sale, or exchanging at least five vessels, motorboats, or  
1-19 outboard motors during a calendar year at an established or  
1-20 permanent place of business in this state [~~and that at each place of~~  
1-21 ~~business there is a sign conspicuously displayed showing the name~~  
1-22 ~~of the dealership so that it may be located by the public and~~  
1-23 ~~sufficient space to maintain an office, service area, and display~~  
1-24 ~~of products].~~

1-25 (16) "Distributor" means a person who offers for sale,  
1-26 sells, or processes for distribution new boats or outboard motors  
1-27 to dealers in this state.

1-28 SECTION 2. Subchapter A, Chapter 31, Parks and Wildlife  
1-29 Code, is amended by adding Section 31.007 to read as follows:

1-30 Sec. 31.007. DEALER REQUIREMENTS. A dealer shall:

1-31 (1) display in each of the dealer's places of business  
1-32 a sign that:

1-33 (A) is conspicuous to the public; and

1-34 (B) shows the name of the dealership; and

1-35 (2) operate in a space sufficient to maintain an  
1-36 office, service area, and display of products.

1-37 SECTION 3. Section 31.021, Parks and Wildlife Code, is  
1-38 amended to read as follows:

1-39 Sec. 31.021. REQUIRED NUMBERING. (a) Each [~~undocumented~~]  
1-40 vessel on the water of this state shall be numbered in accordance  
1-41 with the provisions of this chapter unless specifically exempted.  
1-42 The numbering system shall be in accord with the Federal Boating Act  
1-43 of 1958 and subsequent federal legislation.

1-44 (b) No person may operate or give permission for the  
1-45 operation of any vessel or may dock, moor, or store a vessel owned  
1-46 by the person on the water of this state unless:

1-47 (1) the vessel is numbered as required by this  
1-48 chapter;

1-49 (2) the certificate of number awarded to the vessel is  
1-50 in full force and effect; and

1-51 (3) the identifying number set forth in the  
1-52 certificate is properly displayed on each side of the bow of the  
1-53 vessel as required by this chapter.

1-54 SECTION 4. Section 31.032, Parks and Wildlife Code, is  
1-55 amended to read as follows:

1-56 Sec. 31.032. NUMBERING ON BOW. (a) The owner of a vessel  
1-57 shall paint on or attach to each side of the vessel near the bow the  
1-58 identification number and a validation decal in the manner  
1-59 prescribed by the department. The number shall read from left to  
1-60 right and shall be of block characters of good proportion of not  
1-61 less than three inches in height. The numbers shall be of a color  
1-62 which will contrast with the hull material of the vessel and so  
1-63 maintained as to be clearly visible and legible.

2-1           (b) The owner of a vessel required to be numbered under this  
 2-2 subchapter and documented by the United States Coast Guard is not  
 2-3 required to attach an identification number as required by  
 2-4 Subsection (a).

2-5           (c) The commission shall adopt rules for the placement of  
 2-6 the validation decal in an alternate location for antique boats. In  
 2-7 this subsection, "antique boat" means a boat that:

2-8                 (1) is used primarily for recreational purposes; and

2-9                 (2) was manufactured before 1968.

2-10          SECTION 5. Section 31.039, Parks and Wildlife Code, is  
 2-11 amended to read as follows:

2-12          Sec. 31.039. PUBLIC RECORDS; FEES. (a) All ownership  
 2-13 records of the department made or kept under this chapter are public  
 2-14 records.

2-15          (b) The commission may by rule charge a fee for access to  
 2-16 ownership records and other records made or kept under this  
 2-17 chapter.

2-18          SECTION 6. Section 31.041, Parks and Wildlife Code, is  
 2-19 amended to read as follows:

2-20          Sec. 31.041. DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S  
 2-21 LICENSE [NUMBER]. (a) A person may not engage in business in this  
 2-22 state as a dealer, distributor, or manufacturer unless the person  
 2-23 holds a license issued under this section. A dealer must have a  
 2-24 license for each place of business owned and operated by the person.

2-25          (b) The commission shall establish the form and manner for  
 2-26 display of a license issued under this section.

2-27          (c) The department shall issue a dealer, distributor, or  
 2-28 manufacturer number to each dealer, distributor, or manufacturer  
 2-29 licensed under this section in the manner provided by Section  
 2-30 31.031(b).

2-31          (d) A dealer, distributor, or manufacturer of vessels in  
 2-32 this state may use the [obtain a] dealer's, distributor's, or [and]  
 2-33 manufacturer's number for vessels the dealer, distributor, or  
 2-34 manufacturer wishes to show, demonstrate, or test on the water of  
 2-35 this state instead of securing a certificate of number for each  
 2-36 vessel. The number shall be attached to any vessel that the dealer,  
 2-37 distributor, or manufacturer sends temporarily on the water. For  
 2-38 purposes of this subsection, "show, demonstrate, or test" does not  
 2-39 include the use of a vessel for recreational purposes or for  
 2-40 participation in a contest or event.

2-41          (e) [~~(b)~~] The application for a license under this section  
 2-42 [number] must state that the applicant is a dealer, distributor, or  
 2-43 manufacturer within the meaning of this chapter, and the facts  
 2-44 stated on the application must be sworn before an officer  
 2-45 authorized to administer oaths. An [The] application submitted by  
 2-46 a dealer must be accompanied by photographs of the business  
 2-47 sufficient to show any sign the business is required to display and  
 2-48 the extent of the space the business is required to maintain. The  
 2-49 application must also be accompanied by a copy of the tax permit of  
 2-50 the dealer, distributor, or manufacturer issued by the comptroller  
 2-51 under Chapter 151, Tax Code, if the dealer, distributor, or  
 2-52 manufacturer has a tax permit. The two-year fee for a dealer's,  
 2-53 distributor's, or [and] manufacturer's number is \$500 [~~\$45 or an~~  
 2-54 amount set by the commission, whichever amount is more]. A license  
 2-55 [No number] may not be issued until the provisions of this section  
 2-56 have been satisfied.

2-57          (f) [~~(c)~~] A dealer, distributor, or manufacturer holding a  
 2-58 dealer's, distributor's, or [and] manufacturer's license [number]  
 2-59 may issue a reasonable temporary facsimile of the number issued  
 2-60 under Subsection (c), which may be used by any authorized person. A  
 2-61 person purchasing a vessel may use the dealer's number for a period  
 2-62 not to exceed 15 days prior to filing an application for a  
 2-63 certificate of number. The form of the facsimile and the manner of  
 2-64 display of the number shall be prescribed by the department.

2-65          (g) [~~(d)~~] A dealer, distributor, or manufacturer holding a  
 2-66 dealer's, distributor's, or [and] manufacturer's license [number]  
 2-67 may transfer a certificate of number or a certificate of title to a  
 2-68 vessel or outboard motor without securing a certificate of number  
 2-69 or certificate of title in the dealer's, distributor's, or

3-1 manufacturer's name if the vessel or outboard motor is sold in the  
3-2 normal course of the dealer's, distributor's, or manufacturer's  
3-3 business. ~~[Any other person transferring a vessel or outboard  
3-4 motor must secure a certificate of number or certificate of title in  
3-5 the person's name before transferring the certificate of number or  
3-6 the certificate of title.]~~

3-7 SECTION 7. Subchapter B, Chapter 31, Parks and Wildlife  
3-8 Code, is amended by adding Sections 31.0411, 31.0412, and 31.0413  
3-9 to read as follows:

3-10 Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Except as  
3-11 provided by Subsection (b), a license issued under Section 31.041:

3-12 (1) is valid for two years from the date of issuance;  
3-13 and

3-14 (2) may not be transferred to another person.  
3-15 (b) A license issued under Section 31.041 in the name of a  
3-16 business remains valid for the business location specified on the  
3-17 license if a change of ownership or business name occurs.

3-18 (c) A license issued under Section 31.041 may be transferred  
3-19 to a new address if:

3-20 (1) a business moves to another location; and  
3-21 (2) a change of ownership has not occurred.

3-22 Sec. 31.0412. LICENSING RULES. The commission may adopt  
3-23 rules regarding licenses issued under Section 31.041, including  
3-24 rules:

3-25 (1) regarding license transfer procedures;  
3-26 (2) prescribing application forms;  
3-27 (3) regarding application and renewal procedures;  
3-28 (4) prescribing reporting and recordkeeping  
3-29 requirements for license holders; and

3-30 (5) setting fees to be charged for:  
3-31 (A) a transferred license; or  
3-32 (B) a replacement license.

3-33 Sec. 31.0413. EXEMPTION FROM DEALER LICENSING  
3-34 REQUIREMENTS. The dealer licensing provisions of this subchapter  
3-35 do not apply to the sale of a canoe, kayak, punt, rowboat, rubber  
3-36 raft, paddleboat, or other vessel that is less than 12 feet in  
3-37 length and has a horsepower rating of five horsepower or less or to  
3-38 the sale of an outboard motor with a manufacturer's rating of five  
3-39 horsepower or less.

3-40 SECTION 8. Section 31.042(b), Parks and Wildlife Code, is  
3-41 amended to read as follows:

3-42 (b) Causes for cancellation of certificates and voiding of  
3-43 numbers include:

3-44 (1) surrender of the certificate for cancellation;  
3-45 (2) issuance of a new number for the same vessel;  
3-46 (3) ~~[issuance of a marine document by the Bureau of~~  
3-47 ~~Customs for the same vessel;~~

3-48 ~~[(4)]~~ false or fraudulent certification in an  
3-49 application for number;

3-50 ~~(4) [(5)]~~ failure to pay the prescribed fee; and  
3-51 ~~(5) [(6)]~~ dismantling, destruction, or other change  
3-52 in the form or character of the vessel or outboard motor so that it  
3-53 is no longer correctly described in the certificate or it no longer  
3-54 meets the definition of a vessel or outboard motor.

3-55 SECTION 9. Subchapter B, Chapter 31, Parks and Wildlife  
3-56 Code, is amended by adding Section 31.044 to read as follows:

3-57 Sec. 31.044. INSPECTIONS. A dealer, distributor, or  
3-58 manufacturer may not refuse to allow the department or a peace  
3-59 officer to inspect a vessel, outboard motor, or records relating to  
3-60 the possession, origination, ownership, or transfer of a vessel or  
3-61 outboard motor at a dealership or distributor's or manufacturer's  
3-62 place of business during normal business hours.

3-63 SECTION 10. Subchapter B-1, Chapter 31, Parks and Wildlife  
3-64 Code, is amended by adding Section 31.0465 to read as follows:

3-65 Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND;  
3-66 RULES. (a) An applicant for a certificate of title under Section  
3-67 31.046 may appeal the department's refusal to issue the title by  
3-68 filing a bond with the department as provided by this section.

3-69 (b) A bond filed under this section must be:

4-1                   (1) in the form prescribed by the department;  
4-2                   (2) executed by the applicant;  
4-3                   (3) issued by a person authorized to act as a surety  
4-4 business in this state;  
4-5                   (4) in an amount equal to 1-1/2 times the value of the  
4-6 vessel or outboard motor as determined by the department; and  
4-7                   (5) conditioned to indemnify all prior owners and  
4-8 lienholders and all subsequent purchasers of the vessel or outboard  
4-9 motor or persons who acquire a security interest in the vessel or  
4-10 outboard motor, and their successors in interest, against any  
4-11 expense, loss, or damage, including reasonable attorney's fees,  
4-12 resulting from:

4-13                   (A) the issuance of the certificate of title for  
4-14 the vessel or outboard motor; or

4-15                   (B) a defect in or undisclosed security interest  
4-16 in the right, title, or interest of the applicant to or in the  
4-17 vessel or outboard motor.

4-18                   (c) The department may issue the certificate of title to the  
4-19 person filing the bond if the applicant proves to the satisfaction  
4-20 of the department that:

4-21                   (1) the vessel or outboard motor is not stolen; and

4-22                   (2) issuance of a certificate of title would not  
4-23 defraud the owner or a lienholder of the vessel or outboard motor.

4-24                   (d) A person described by Subsection (b)(5) has a right of  
4-25 action to recover on the bond for a breach of a condition of the bond  
4-26 described by Subsection (b)(5). The aggregate liability of the  
4-27 surety to all persons may not exceed the amount of the bond.

4-28                   (e) A bond filed under this section expires on the third  
4-29 anniversary of the date the bond became effective. The department  
4-30 shall return an expired bond to the person who filed the bond unless  
4-31 the department has been notified of a pending action to recover on  
4-32 the bond.

4-33                   (f) On return of a bond under Subsection (e), the department  
4-34 shall issue a certificate of title to the person to whom the bond is  
4-35 returned.

4-36                   (g) In addition to the situation described by Subsection  
4-37 (c), the commission by rule may define acceptable situations in  
4-38 which certificates of title may be issued after the filing of a bond  
4-39 under this section.

4-40                   SECTION 11. Section 31.049(c), Parks and Wildlife Code, is  
4-41 amended to read as follows:

4-42                   (c) If there is a lien on the vessel or outboard motor, the  
4-43 original certificate of title shall be sent to the first  
4-44 lienholder [ ~~, a duplicate original certificate shall be sent to the~~  
4-45 ~~owner,~~] and a copy shall be retained by the department.

4-46                   SECTION 12. Section 31.053, Parks and Wildlife Code, is  
4-47 amended by adding Subsection (f) to read as follows:

4-48                   (f) A person who is not licensed as a dealer, distributor,  
4-49 or manufacturer under this chapter must obtain a certificate of  
4-50 number or certificate of title to a vessel or outboard motor in the  
4-51 person's name before transferring the certificate of number or  
4-52 certificate of title.

4-53                   SECTION 13. Section 31.127(a), Parks and Wildlife Code, is  
4-54 amended to read as follows:

4-55                   (a) A person who violates or fails to comply with any  
4-56 provision of this chapter, or who violates or fails to comply with a  
4-57 proclamation of the commission entered under this chapter or a city  
4-58 ordinance or order of a commissioners court or a political  
4-59 subdivision of the state made or entered under this chapter,  
4-60 commits an offense that is a Class C Parks and Wildlife Code  
4-61 misdemeanor.

4-62                   SECTION 14. (a) Not later than January 1, 2004, the Parks  
4-63 and Wildlife Commission shall adopt any rules necessary to  
4-64 implement this Act.

4-65                   (b) A person is not required to be licensed under Section  
4-66 31.041, Parks and Wildlife Code, as amended by this Act, until March  
4-67 1, 2004. Before that date, the person is governed by the law as it  
4-68 existed immediately before the effective date of this Act, and that  
4-69 law is continued in effect for that purpose.

5-1 SECTION 15. This Act takes effect September 1, 2003.

5-2 \* \* \* \* \*