

By: Harris

S.B. No. 1504

Substitute the following for S.B. No. 1504:

By: Phillips

C.S.S.B. No. 1504

A BILL TO BE ENTITLED

AN ACT

1

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

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

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

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

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

13 (B) substantially adds, subtracts from, or
14 modifies a previously assembled or manufactured motor vehicle
15 [~~other than a motor home, ambulance, or fire-fighting vehicle~~].

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

17 (A) holds a franchised motor vehicle dealer's
18 license issued by the board under this chapter and Chapter 503,
19 Transportation Code; and

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

1 SECTION 2. Section 2301.002(23), Occupations Code, is
2 amended to more closely conform to the law from which it was derived
3 and is further amended to read as follows:

4 (23) "Motor vehicle" means:

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

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

10 (i) has as its primary purpose the
11 transport of a person or persons or property;

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

14 (iii) meets the physical requirements for
15 the issuance of a certificate of title under department rules [~~has~~
16 ~~been issued a certificate of title~~];

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

20 (i) the transport of a person or persons, or
21 property, on a public highway as its primary purpose; and

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

24 (D) a towable recreational vehicle.

25 SECTION 3. Section 2301.002(32), Occupations Code, is
26 amended to read as follows:

27 (32) "Towable recreational vehicle" means a

1 nonmotorized vehicle that:

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

5 (B) is, or under department rules is eligible to
6 be, titled and registered with the department as a travel trailer
7 through a county tax assessor-collector;

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

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

10 and

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

12 SECTION 4. Section 2301.153(a), Occupations Code, is
13 amended to read as follows:

14 (a) Notwithstanding any other provision of law, the board
15 has all powers necessary, incidental, or convenient to perform a
16 power or duty expressly granted under this chapter, including the
17 power to:

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

20 (2) administer oaths;

21 (3) receive evidence and pleadings;

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

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

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

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

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

5 (9) enter into contracts;

6 (10) accept a donation, including a contribution of
7 property or services;

8 (11) [~~(10)~~] execute instruments;

9 (12) [~~(11)~~] retain counsel;

10 (13) [~~(12)~~] use the services of the attorney general
11 and institute and direct the conduct of legal proceedings in any
12 forum;

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

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

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

18 (17) [~~(16)~~] issue, suspend, or revoke licenses;

19 (18) [~~(17)~~] prohibit and regulate acts and practices
20 in connection with the distribution and sale of motor vehicles or
21 warranty performance obligations;

22 (19) [~~(18)~~] issue cease and desist orders in the
23 nature of temporary or permanent injunctions;

24 (20) [~~(19)~~] impose a civil penalty;

25 (21) [~~(20)~~] enter an order requiring a person to:

26 (A) pay costs and expenses of a party in
27 connection with an order entered under Section 2301.465;

1 (B) perform an act other than the payment of
2 money; or

3 (C) refrain from performing an act; and

4 (22) [~~21~~] enforce a board order.

5 SECTION 5. Subchapter D, Chapter 2301, Occupations Code, is
6 amended by adding Section 2301.161 to read as follows:

7 Sec. 2301.161. CONFIDENTIALITY OF INFORMATION RELATING TO
8 LICENSE HOLDERS AND APPLICANTS. (a) Information contained in an
9 application for a license under this chapter and other information
10 relating to a license holder or license applicant that is on file
11 with the board is confidential and not open to public inspection.

12 (b) Information made confidential by this section may be
13 disclosed in a judicial or administrative proceeding in accordance
14 with a lawful subpoena.

15 SECTION 6. Section 2301.251(a), Occupations Code, is
16 amended to read as follows:

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

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

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

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

4 (b) For purposes of this section:

5 (1) the make of a conversion[~~, ambulance, or~~
6 ~~fire-fighting vehicle~~] is that of the chassis manufacturer; ~~[and]~~

7 (2) the make of a motor home is that of the motor home
8 manufacturer;

9 (3) the make of an ambulance is that of the ambulance
10 manufacturer; and

11 (4) the make of a fire-fighting vehicle is that of the
12 fire-fighting vehicle manufacturer.

13 (c) In this section:

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

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

24 SECTION 8. Subchapter F, Chapter 2301, Occupations Code, is
25 amended by adding Section 2301.267 to read as follows:

26 Sec. 2301.267. TEMPORARY OPERATION OF DEALERSHIP WITH
27 PENDING APPLICATION. (a) A person may engage in the business of

1 operating a dealership for which the person's license application
2 is pending if the person meets the requirements of this section.

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

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

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

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

11 (B) is not subject to protest under Section
12 2301.652.

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

15 SECTION 9. Section 2301.301(c), Occupations Code, is
16 amended to read as follows:

17 (c) The board by rule may implement a system under which
18 licenses expire on various dates during the year. For a year in
19 which a license expiration date is changed, the fee for the license
20 shall be prorated so that the license holder pays only that portion
21 of the fee that is allocable to the number of months during which
22 the license is valid, except for a fee for an application to
23 relocate a dealership in a municipality in which the dealership is
24 located. On renewal of the license on the new expiration date, the
25 entire license renewal fee is payable.

26 SECTION 10. Section 2301.476, Occupations Code, is amended
27 by adding Subsection (i) to read as follows:

1 (i) A manufacturer or distributor may own an interest in a
2 dealer who:

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

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

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

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

11 SECTION 11. Section 2301.705(b), Occupations Code, is
12 amended to read as follows:

13 (b) Notice must be given by certified mail, return receipt
14 requested, unless the person to whom notice is given resides
15 outside of the United States. Notice to a person who resides
16 outside the United States must be given by:

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

18 (2) a private carrier who offers confirmation of
19 delivery.

20 SECTION 12. Section 2301.803(c), Occupations Code, is
21 amended to read as follows:

22 (c) A person affected by a statutory stay imposed by this
23 chapter may request a hearing before the entity that imposed the
24 stay [~~initiate a proceeding before the board~~] to modify, vacate, or
25 clarify the extent and application of the statutory stay.

26 SECTION 13. (a) In accordance with Section 311.031(c),
27 Government Code, which gives effect to a substantive amendment

1 enacted by the same legislature that codifies the amended statute:

2 (1) the text of Sections 2301.002(6) and (16),
3 Occupations Code, as set out in Section 1 of this Act, give effect
4 to changes made by Chapter 155, Acts of the 77th Legislature,
5 Regular Session, 2001;

6 (2) the text of Section 2301.153(a), Occupations Code,
7 as set out in Section 4 of this Act, gives effect to changes made by
8 Chapter 155, Acts of the 77th Legislature, Regular Session, 2001;
9 and

10 (3) the text of Section 2301.252(b), Occupations Code,
11 as set out in Section 7 of this Act, gives effect to changes made by
12 Chapter 155, Acts of the 77th Legislature, Regular Session, 2001.

13 (b) To the extent of any conflict, this Act prevails over
14 another Act of the 78th Legislature, Regular Session, 2003,
15 relating to nonsubstantive additions and corrections in enacted
16 codes.

17 SECTION 14. This Act takes effect September 1, 2003.