

1-1 By: Harris S.B. No. 1504  
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read  
1-3 first time and referred to Committee on Infrastructure Development  
1-4 and Security; April 24, 2003, reported favorably, as amended, by  
1-5 the following vote: Yeas 8, Nays 0; April 24, 2003, sent to  
1-6 printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Shapiro

1-8 Amend S.B. No. 1504 by striking, on page 5, line 67, the  
1-9 following after the word "license": "to relocate an existing  
1-10 dealership or".

1-11 A BILL TO BE ENTITLED  
1-12 AN ACT

1-13 relating to the duties and authority of the Texas Motor Vehicle  
1-14 Board of the Texas Department of Transportation.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 SECTION 1. Section 2301.002, Occupations Code, is amended  
1-17 to read as follows:

1-18 Sec. 2301.002. DEFINITIONS. In this chapter:

1-19 (1) "Ambulance" means a vehicle that is used  
1-20 exclusively to transport or to provide emergency medical care to an  
1-21 injured or ill person and that includes:

1-22 (A) a driver's compartment;

1-23 (B) a compartment to accommodate an emergency  
1-24 medical care technician or paramedic and two injured or ill persons  
1-25 in a position that permits one of the injured or ill persons to be  
1-26 given intensive life-support during transit;

1-27 (C) equipment and supplies for emergency care of  
1-28 an injured or ill person at the location of the person or at the  
1-29 scene of an injury-producing incident as well as in transit;

1-30 (D) two-way radio communication capability; and

1-31 (E) equipment for light rescue or extrication  
1-32 procedures.

1-33 (2) "Ambulance manufacturer" means a person other than  
1-34 the manufacturer of a motor vehicle chassis who, before the retail  
1-35 sale of the motor vehicle, performs modifications on the chassis of  
1-36 a motor vehicle that result in the finished product being  
1-37 classified as an ambulance;

1-38 (3) "Board" means the Motor Vehicle Board of the Texas  
1-39 Department of Transportation.

1-40 (4) [~~(3)~~] "Broker" means a person who, for a fee,  
1-41 commission, or other valuable consideration, arranges or offers to  
1-42 arrange a transaction involving the sale of a new motor vehicle,  
1-43 other than a person who is:

1-44 (A) a franchised dealer or a bona fide employee  
1-45 of a franchised dealer acting for the franchised dealer;

1-46 (B) a representative or a bona fide employee of a  
1-47 representative acting for the representative;

1-48 (C) a distributor or a bona fide employee of a  
1-49 distributor acting for the distributor; or

1-50 (D) the owner of the vehicle at any point in the  
1-51 transaction.

1-52 (5) [~~(4)~~] "Chassis manufacturer" means a person who  
1-53 manufactures and produces the frame on which the body of a motor  
1-54 vehicle is mounted.

1-55 (6) [~~(5)~~] "Conversion" means a motor vehicle, other  
1-56 than a motor home, ambulance, or fire-fighting vehicle, that:

1-57 (A) has been substantially modified by a person  
1-58 other than the manufacturer or distributor of the chassis of the  
1-59 motor vehicle; and

1-60 (B) has not been the subject of a retail sale.

1-61 (7) [~~(6)~~] "Converter" means a person who before the  
1-62 retail sale of a motor vehicle:

2-1 (A) assembles, installs, or affixes a body, cab,  
 2-2 or special equipment to a chassis, unless the resulting vehicle is a  
 2-3 motor home, ambulance, or fire-fighting vehicle; or  
 2-4 (B) substantially adds, subtracts from, or  
 2-5 modifies a previously assembled or manufactured motor vehicle,  
 2-6 unless the resulting vehicle is a motor home, ambulance, or  
 2-7 fire-fighting vehicle.  
 2-8 (8) [~~(7)~~] "Dealer" means a person who holds a general  
 2-9 distinguishing number issued by the board under Chapter 503,  
 2-10 Transportation Code.  
 2-11 (9) [~~(8)~~] "Dealership" means the physical premises  
 2-12 and business facilities on which a franchised dealer operates the  
 2-13 dealer's business, including the sale and repair of motor vehicles.  
 2-14 The term includes premises or facilities at which a person engages  
 2-15 only in the repair of a motor vehicle if the repair is performed  
 2-16 under a franchise and a motor vehicle manufacturer's warranty.  
 2-17 (10) [~~(9)~~] "Department" means the Texas Department of  
 2-18 Transportation.  
 2-19 (11) [~~(10)~~] "Director" means the director of the board  
 2-20 and of the division.  
 2-21 (12) [~~(11)~~] "Distributor" means a person, other than a  
 2-22 manufacturer, who distributes or sells new motor vehicles to a  
 2-23 franchised dealer.  
 2-24 (13) [~~(12)~~] "Division" means the Motor Vehicle  
 2-25 Division of the department.  
 2-26 (14) [~~(13)~~] "Executive director" means the executive  
 2-27 director of the department.  
 2-28 (15) [~~(14)~~] "Fire-fighting vehicle" means a motor  
 2-29 vehicle the only purposes of which are to transport firefighters to  
 2-30 the scene of a fire and to provide equipment to fight the fire, and  
 2-31 that is built on a truck chassis with a gross carrying capacity of  
 2-32 at least 10,000 pounds, to which the following have been  
 2-33 permanently affixed or mounted:  
 2-34 (A) a water tank with a combined capacity of at  
 2-35 least 500 gallons; and  
 2-36 (B) a centrifugal water pump with a capacity of  
 2-37 at least 750 gallons per minute at 150 pounds per square inch net  
 2-38 pump pressure.  
 2-39 (16) "Fire-fighting vehicle manufacturer" means a  
 2-40 person other than the manufacturer of a motor vehicle chassis who,  
 2-41 before the retail sale of the motor vehicle, performs modifications  
 2-42 on the chassis that result in the finished product being classified  
 2-43 as a fire-fighting vehicle.  
 2-44 (17) [~~(15)~~] "Franchise" means one or more contracts  
 2-45 between a franchised dealer as franchisee and a manufacturer or a  
 2-46 distributor as franchisor, including a written communication from a  
 2-47 franchisor to a franchisee in which a duty is imposed on the  
 2-48 franchisee, under which:  
 2-49 (A) the franchisee is granted the right to sell  
 2-50 and service new motor vehicles manufactured or distributed by the  
 2-51 franchisor or only to service motor vehicles under the contract and  
 2-52 a manufacturer's warranty;  
 2-53 (B) the franchisee is a component of the  
 2-54 franchisor's distribution system as an independent business;  
 2-55 (C) the franchisee is substantially associated  
 2-56 with the franchisor's trademark, tradename, and commercial symbol;  
 2-57 (D) the franchisee's business substantially  
 2-58 relies on the franchisor for a continued supply of motor vehicles,  
 2-59 parts, and accessories; or  
 2-60 (E) any right, duty, or obligation granted or  
 2-61 imposed by this chapter is affected.  
 2-62 (18) [~~(16)~~] "Franchised dealer" means a person who:  
 2-63 (A) holds a franchised motor vehicle dealer's  
 2-64 general distinguishing number issued by the board under this  
 2-65 chapter and Chapter 503, Transportation Code; and  
 2-66 (B) is engaged in the business of buying,  
 2-67 selling, or exchanging new motor vehicles and servicing or  
 2-68 repairing motor vehicles under a manufacturer's warranty at an  
 2-69 established and permanent place of business under a franchise in

3-1 effect with a manufacturer or distributor.

3-2 (19) [~~(17)~~] "General distinguishing number" means a

3-3 dealer license issued by the board under Chapter 503,

3-4 Transportation Code.

3-5 (20) [~~(18)~~] "License holder" means a person who holds

3-6 a license or general distinguishing number issued by the board

3-7 under this chapter or Chapter 503, Transportation Code.

3-8 (21) [~~(19)~~] "Manufacturer" means a person who

3-9 manufactures or assembles new motor vehicles.

3-10 (22) [~~(20)~~] "Manufacturer's statement of origin"

3-11 means a certificate on a form prescribed by the department showing

3-12 the original transfer of a new motor vehicle from the manufacturer

3-13 to the original purchaser.

3-14 (23) [~~(21)~~] "Motor home" means a motor vehicle that is

3-15 designed to provide temporary living quarters and that:

3-16 (A) is built on a motor vehicle chassis as an

3-17 integral part of or a permanent attachment to the chassis; and

3-18 (B) contains at least four of the following

3-19 independent life support systems that are permanently installed and

3-20 designed to be removed only for repair or replacement and that meet

3-21 the standards of the American National Standards Institute,

3-22 Standards for Recreational Vehicles:

3-23 (i) a cooking facility with an on-board

3-24 fuel source;

3-25 (ii) a gas or electric refrigerator;

3-26 (iii) a toilet with exterior evacuation;

3-27 (iv) a heating or air conditioning system

3-28 with an on-board power or fuel source separate from the vehicle

3-29 engine;

3-30 (v) a potable water supply system that

3-31 includes at least a sink, a faucet, and a water tank with an

3-32 exterior service supply connection; or

3-33 (vi) a 110-125 volt electric power supply.

3-34 (24) [~~(22)~~] "Motor home manufacturer" means a person

3-35 other than the manufacturer of a motor vehicle chassis who, before

3-36 the retail sale of the motor vehicle, performs modifications on the

3-37 chassis that result in the finished product being classified as a

3-38 motor home.

3-39 (25) [~~(23)~~] "Motor vehicle" means:

3-40 (A) a fully self-propelled vehicle having two or

3-41 more wheels that has as its primary purpose the transport of a

3-42 person or persons, or property, on a public highway;

3-43 (B) a fully self-propelled vehicle having two or

3-44 more wheels that:

3-45 (i) has as its primary purpose the

3-46 transport of persons or property;

3-47 (ii) is not manufactured for use on public

3-48 streets, roads, or highways; and

3-49 (iii) meets the physical requirements for

3-50 the issuance of [has been issued] a certificate of title under rules

3-51 of the department;

3-52 (C) an engine, transmission, or rear axle,

3-53 regardless of whether attached to a vehicle chassis, manufactured

3-54 for installation in a vehicle that has:

3-55 (i) the transport of persons or property on

3-56 a public highway as its primary purpose; and

3-57 (ii) a gross vehicle weight rating of more

3-58 than 16,000 pounds; or

3-59 (D) a towable recreational vehicle.

3-60 (26) [~~(24)~~] "New motor vehicle" means a motor vehicle

3-61 that has not been the subject of a retail sale regardless of the

3-62 mileage of the vehicle.

3-63 (27) [~~(25)~~] "Nonfranchised dealer" means a person who

3-64 holds an independent motor vehicle dealer's general distinguishing

3-65 number or a wholesale motor vehicle dealer's general distinguishing

3-66 number issued by the board under Chapter 503, Transportation Code.

3-67 (28) [~~(26)~~] "Party" means a person or agency named or

3-68 admitted as a party and whose legal rights, duties, or privileges

3-69 are to be determined by the board after an opportunity for

4-1 adjudicative hearing.

4-2 (29) [~~(27)~~] "Person" means a natural person,  
 4-3 partnership, corporation, association, trust, estate, or any other  
 4-4 legal entity.

4-5 (30) [~~(28)~~] "Relocate" means to transfer an existing  
 4-6 dealership operation to facilities at a different location,  
 4-7 including a transfer that results in a consolidation or dualing of  
 4-8 an existing dealer's operation.

4-9 (31) [~~(29)~~] "Representative" means a person who:  
 4-10 (A) is or acts as an agent or employee for a  
 4-11 manufacturer, distributor, or converter; and  
 4-12 (B) performs any duty in this state relating to  
 4-13 promoting the distribution or sale of new motor vehicles or  
 4-14 contacts dealers in this state on behalf of a manufacturer,  
 4-15 distributor, or converter.

4-16 (32) [~~(30)~~] "Retail sale" means any sale of a motor  
 4-17 vehicle other than:  
 4-18 (A) a sale in which the purchaser acquires a  
 4-19 vehicle for resale; or  
 4-20 (B) a sale of a vehicle that is operated in  
 4-21 accordance with Section 503.061, Transportation Code.

4-22 (33) [~~(31)~~] "Rule":  
 4-23 (A) means a statement by the board of general  
 4-24 applicability that:  
 4-25 (i) implements, interprets, or prescribes  
 4-26 law or policy; or  
 4-27 (ii) describes the procedure or practice  
 4-28 requirements of the board;  
 4-29 (B) includes the amendment or repeal of a prior  
 4-30 rule; and  
 4-31 (C) does not include a statement regarding only  
 4-32 the internal management or organization of the board and not  
 4-33 affecting the rights of a person not connected with the board.

4-34 (34) [~~(32)~~] "Towable recreational vehicle" means a  
 4-35 nonmotorized vehicle that:  
 4-36 (A) was originally designed and manufactured  
 4-37 primarily to provide temporary human habitation in conjunction with  
 4-38 recreational, camping, or seasonal use;  
 4-39 (B) is, or under rules of the department is  
 4-40 subject to being, titled and registered with the department as a  
 4-41 travel trailer through a county tax assessor-collector;  
 4-42 (C) is permanently built on a single chassis;  
 4-43 (D) contains at least one life support system;  
 4-44 and  
 4-45 (E) is designed to be towable by a motor vehicle.

4-46 (35) [~~(33)~~] "Transportation commission" means the  
 4-47 Texas Transportation Commission of the department.

4-48 (36) [~~(34)~~] "Vehicle lease" means a transfer of the  
 4-49 right to possess and use a motor vehicle for a term of more than 180  
 4-50 days in return for consideration.

4-51 (37) [~~(35)~~] "Vehicle lease facilitator" means a  
 4-52 person, other than a franchised dealer, a vehicle lessor, or a bona  
 4-53 fide employee of a franchised dealer or vehicle lessor, who:  
 4-54 (A) holds the person out to any other person as a  
 4-55 "motor vehicle leasing company" or "motor vehicle leasing agent,"  
 4-56 or uses a similar title, to solicit or procure another person to  
 4-57 enter into an agreement to become the lessee of a motor vehicle that  
 4-58 is not, and will not be, titled in the name of or registered to the  
 4-59 facilitator;  
 4-60 (B) otherwise solicits another person to enter  
 4-61 into an agreement to become a lessee of a motor vehicle that is not,  
 4-62 and will not be, titled in the name of or registered to the  
 4-63 facilitator; or  
 4-64 (C) is otherwise engaged in the business of  
 4-65 securing lessees or prospective lessees of a motor vehicle that is  
 4-66 not, and will not be, titled in the name of or registered to the  
 4-67 facilitator.

4-68 (38) [~~(36)~~] "Vehicle lessor" means a person who, under  
 4-69 a lease, transfers to another person the right to possession and use

of a motor vehicle titled in the name of the lessor.

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

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

(a) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to perform a 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) 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. Subsection (a), Section 2301.251, 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
- (2) perform or offer to perform repair services on a motor vehicle under a franchise and a motor vehicle manufacturer's warranty, regardless of whether the person sells or offers to sell motor vehicles at the same location.

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

Sec. 2301.266. OPERATION OF BUSINESS WITHOUT LICENSE.

(a) Notwithstanding the terms of this chapter or other provision of law, a person who meets the requirements set forth in this section may engage in the business of the operation of a dealership without a valid license.

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

- (1) is substantially complete and on file with the

6-1 board; and

6-2 (2) is not subject to protest under Section 2301.652.

6-3 (c) A person to whom this section applies may on an interim  
6-4 basis engage in the business of operating the dealership for which  
6-5 the person's license application is pending. A person who operates  
6-6 a dealership in the manner provided by this section shall notify the  
6-7 board of the person's intent to do so by registered mail, return  
6-8 receipt requested.

6-9 (d) This section does not prejudice the board's right to  
6-10 deny a license on the basis and under the circumstances provided by  
6-11 this chapter and rules of the board.

6-12 SECTION 5. Subsection (b), Section 2301.252, Occupations  
6-13 Code, is amended to read as follows:

6-14 (b) For purposes of this section:

6-15 (1) the make of a conversion is that of the chassis  
6-16 manufacturer; [and]

6-17 (2) the make of a motor home is that of the motor home  
6-18 manufacturer;

6-19 (3) the make of an ambulance is that of the ambulance  
6-20 manufacturer; and

6-21 (4) the make of a fire-fighting vehicle is that of the  
6-22 fire-fighting vehicle manufacturer.

6-23 SECTION 6. Subsection (c), Section 2301.301, Occupations  
6-24 Code, is amended to read as follows:

6-25 (c) The board by rule may implement a system under which  
6-26 licenses expire on various dates during the year. For a year in  
6-27 which a license expiration date is changed, except for the fee  
6-28 required in conjunction with an application to relocate a  
6-29 franchised dealership within the city limits of the city in which  
6-30 the dealership is located, the fee for the license shall be prorated  
6-31 so that the license holder pays only that portion of the fee that is  
6-32 allocable to the number of months during which the license is valid.  
6-33 On renewal of the license on the new expiration date, the entire  
6-34 license renewal fee is payable.

6-35 SECTION 7. Section 2301.476, Occupations Code, is amended  
6-36 by adding Subsection (h) to read as follows:

6-37 (h) Notwithstanding the terms of this chapter, and subject  
6-38 to the limitations set forth in this subsection, a manufacturer or  
6-39 distributor may own an interest in an entity that holds a general  
6-40 distinguishing number if that entity:

6-41 (1) is primarily engaged in the business of renting to  
6-42 other persons passenger vehicles or commercial motor vehicles the  
6-43 entity owns; and

6-44 (2) sells or offers for sale no vehicle other than a  
6-45 vehicle that the entity:

6-46 (A) owns and has taken from service in its rental  
6-47 fleet; or

6-48 (B) has taken in trade as part of a transaction  
6-49 involving the sale of a vehicle taken from service in its rental  
6-50 fleet.

6-51 SECTION 8. Subsection (b), Section 2301.705, Occupations  
6-52 Code, is amended to read as follows:

6-53 (b) Notice must be given by certified mail, return receipt  
6-54 requested. Notice to a person outside the United States must be  
6-55 given by registered mail, return receipt requested, or by a private  
6-56 carrier who offers confirmation of delivery.

6-57 SECTION 9. Subsection (c), Section 2301.803, Occupations  
6-58 Code, is amended to read as follows:

6-59 (c) A person affected by a statutory stay imposed by this  
6-60 chapter may request a hearing [~~initiate a proceeding before the~~  
6-61 ~~board~~] to modify, vacate, or clarify the extent and application of  
6-62 the statutory stay.

6-63 SECTION 10. This Act takes effect September 1, 2003.

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