

1-1 By: Estes S.B. No. 1775
1-2 (In the Senate - Filed March 14, 2003; March 24, 2003, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 14, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 14, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1775 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 the 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 for each place of business
2-24 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. The application must be
2-46 accompanied by photographs of the business sufficient to show any
2-47 sign the business is required to display and the extent of the space
2-48 the business is required to maintain. The application must also be
2-49 accompanied by a copy of the tax permit of the dealer or
2-50 manufacturer issued by the comptroller under Chapter 151, Tax Code,
2-51 if the dealer or manufacturer has a tax permit. The two-year fee
2-52 for a dealer's, distributor's, or [and] manufacturer's number is
2-53 \$500 [~~\$45 or an amount set by the commission, whichever amount is~~
2-54 more]. A license [No number] may not be issued until the provisions
2-55 of this section have been satisfied.

2-56 (f) [~~(e)~~] A dealer, distributor, or manufacturer holding a
2-57 dealer's, distributor's, or [and] manufacturer's license [number]
2-58 may issue a reasonable temporary facsimile of the number issued
2-59 under Subsection (c), which may be used by any authorized person. A
2-60 person purchasing a vessel may use the dealer's number for a period
2-61 not to exceed 15 days prior to filing an application for a
2-62 certificate of number. The form of the facsimile and the manner of
2-63 display of the number shall be prescribed by the department.

2-64 (g) [~~(d)~~] A dealer, distributor, or manufacturer holding a
2-65 dealer's, distributor's, or [and] manufacturer's license [number]
2-66 may transfer a certificate of number or a certificate of title to a
2-67 vessel or outboard motor without securing a certificate of number
2-68 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 an outboard motor with a manufacturer's rating of five horsepower
3-39 or less.

3-40 SECTION 8. Subsection (b), Section 31.042, Parks and
3-41 Wildlife Code, is 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.

4-1 (b) A bond filed under this section must be:
4-2 (1) in the form prescribed by the department;
4-3 (2) executed by the applicant;
4-4 (3) issued by a person authorized to act as a surety
4-5 business in this state;
4-6 (4) in an amount equal to 1-1/2 times the value of the
4-7 vessel or outboard motor as determined by the department; and
4-8 (5) conditioned to indemnify all prior owners and
4-9 lienholders and all subsequent purchasers of the vessel or outboard
4-10 motor or persons who acquire a security interest in the vessel or
4-11 outboard motor, and their successors in interest, against any
4-12 expense, loss, or damage, including reasonable attorney's fees,
4-13 resulting from:

4-14 (A) the issuance of the certificate of title for
4-15 the vessel or outboard motor; or

4-16 (B) a defect in or undisclosed security interest
4-17 in the right, title, or interest of the applicant to or in the
4-18 vessel or outboard motor.

4-19 (c) The department may issue the certificate of title to the
4-20 person filing the bond if the applicant proves to the satisfaction
4-21 of the department that:

4-22 (1) the vessel or outboard motor is not stolen; and

4-23 (2) issuance of a certificate of title would not
4-24 defraud the owner or a lienholder of the vessel or outboard motor.

4-25 (d) A person described by Subsection (b)(5) has a right of
4-26 action to recover on the bond for a breach of a condition of the bond
4-27 described by Subsection (b)(5). The aggregate liability of the
4-28 surety to all persons may not exceed the amount of the bond.

4-29 (e) A bond filed under this section expires on the third
4-30 anniversary of the date the bond became effective. The department
4-31 shall return an expired bond to the person who filed the bond unless
4-32 the department has been notified of a pending action to recover on
4-33 the bond.

4-34 (f) On return of a bond under Subsection (e), the department
4-35 shall issue a certificate of title to the person to whom the bond is
4-36 returned.

4-37 (g) In addition to the situation described by Subsection
4-38 (c), the commission by rule may define acceptable situations in
4-39 which certificates of title may be issued after the filing of a bond
4-40 under this section.

4-41 SECTION 11. Subsection (c), Section 31.049, Parks and
4-42 Wildlife Code, is amended to read as follows:

4-43 (c) If there is a lien on the vessel or outboard motor, the
4-44 original certificate of title shall be sent to the first
4-45 lienholder [~~a duplicate original certificate shall be sent to the~~
4-46 ~~owner,~~] and a copy shall be retained by the department.

4-47 SECTION 12. Section 31.053, Parks and Wildlife Code, is
4-48 amended by adding Subsection (f) to read as follows:

4-49 (f) A person who is not licensed as a dealer, distributor,
4-50 or manufacturer under this chapter must obtain a certificate of
4-51 number or certificate of title to a vessel or outboard motor in the
4-52 person's name before transferring the certificate of number or
4-53 certificate of title.

4-54 SECTION 13. Subsection (a), Section 31.127, Parks and
4-55 Wildlife Code, is amended to read as follows:

4-56 (a) A person who violates or fails to comply with any
4-57 provision of this chapter, or who violates or fails to comply with a
4-58 proclamation of the commission entered under this chapter or a city
4-59 ordinance or order of a commissioners court or a political
4-60 subdivision of the state made or entered under this chapter,
4-61 commits an offense that is a Class C Parks and Wildlife Code
4-62 misdemeanor.

4-63 SECTION 14. (a) Not later than January 1, 2004, the Parks
4-64 and Wildlife Commission shall adopt any rules necessary to
4-65 implement this Act.

4-66 (b) A person is not required to be licensed under Section
4-67 31.041, Parks and Wildlife Code, as amended by this Act, until March
4-68 1, 2004. Before that date, the person is governed by the law as it

5-1 existed immediately before the effective date of this Act, and that
5-2 law is continued in effect for that purpose.

5-3 SECTION 15. This Act takes effect September 1, 2003.

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