

BILL ANALYSIS

C.S.H.B. 2929
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some observers suggest that the recent transfer of the regulation of salvage vehicle dealers from the Texas Department of Transportation to the Texas Department of Motor Vehicles (TxDMV) has resulted in inconsistent enforcement of violations of laws and rules relating to such dealers because TxDMV has the authority only to deny, suspend, revoke, or reinstate a salvage vehicle dealer license and cannot assess a lesser penalty. Concern is expressed that this limitation has at times forced TxDMV to take drastic enforcement measures for minor violations. C.S.H.B. 2929 proposes to address this situation by providing TxDMV with the option of imposing administrative penalties in the form of fines for violations of laws, rules, and orders relating to salvage vehicle dealers.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2929 amends the Occupations Code to authorize the Texas Department of Motor Vehicles to impose an administrative penalty against a person licensed as a salvage vehicle dealer who violates provisions of law relating to the regulation of salvage vehicle dealers or a rule or order adopted under those provisions. The bill prohibits the penalty from being less than \$50 or more than \$1,000 and establishes that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The bill requires the amount of the penalty to be based on the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation; the economic harm caused by the violation; the history of previous violations; the amount necessary to deter a future violation; efforts to correct the violation; and any other matter that justice requires.

C.S.H.B. 2929 authorizes the person to stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. The bill authorizes a person who cannot afford to pay the penalty or file the bond to stay enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules. The bill establishes that a proceeding to impose an administrative penalty is subject to the Administrative Procedure Act.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2929 contains provisions not included in the original authorizing the Texas Department of Motor Vehicles (TxDMV) to impose an administrative penalty against a person licensed as a salvage vehicle dealer who violates provisions of law relating to the regulation of salvage vehicle dealers or a rule or order adopted under those provisions, establishing limitations on the amount of such a penalty, and requiring that amount to be based on certain conditions.

C.S.H.B. 2929 contains provisions not included in the original authorizing the person to stay enforcement during the time the order is under judicial review if certain requirements are met and authorizing a person who cannot afford to pay the penalty or file the bond to stay enforcement by filing an affidavit in a specified manner. The substitute contains a provision not included in the original establishing that a proceeding to impose an administrative penalty is subject to the Administrative Procedure Act.

C.S.H.B. 2929 omits a provision included in the original exempting from provisions of law relating to the regulation of salvage vehicle dealers a person who purchases not more than five nonrepairable motor vehicles or salvage motor vehicles from specified sources, with certain exceptions. The substitute omits a provision included in the original relating to the assessment of a civil penalty against a person who violates provisions of law relating to the regulation of salvage vehicle dealers or a rule adopted under those provisions and the collection of such a penalty.

C.S.H.B. 2929 omits a provision included in the original redefining "casual sale" to specify that the term applies to the certain sales of nonrepairable or salvage motor vehicles by a salvage vehicle dealer with an endorsement in at least one of the classifications available to an applicant for a salvage vehicle dealer license under the Occupations Code.

C.S.H.B. 2929 differs from the original by establishing that the bill's provisions apply only to a violation of provisions of law relating to the regulation of salvage vehicle dealers or a rule or order of TxDMV adopted under those provisions, whereas the original makes its provisions applicable only to those same provisions of law or a TxDMV rule adopted under those provisions.