

BILL ANALYSIS

Senate Research Center

S.B. 1035
By: Williams
Transportation & Homeland Security
8/19/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1035 amends current law relating to motor vehicle title services and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Motor Vehicles in SECTION 9 (Sections 520.077, 520.082, and 520.084, Transportation Code) of this bill.

Rulemaking authority is expressly granted to the board of the Texas Department of Motor Vehicles in SECTION 9 (Section 520.079, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter E, Chapter 520, Transportation Code, effective January 1, 2012, to read as follows:

SUBCHAPTER E. COUNTY PERMITTING OF MOTOR VEHICLE TITLE SERVICES

SECTION 2. Amends Sections 520.051(2), (3), (4), and (6), Transportation Code, effective January 1, 2010, to redefine "motor vehicle title service," and "title service runner," define "motor vehicle documents" and "title service permit holder," and delete existing definitions for "title documents" and "title service license holder."

SECTION 3. Amends Subchapter E, Chapter 520, Transportation Code, effective January 1, 2012, by adding Section 520.0521, as follows:

Sec. 520.0521. PURPOSE; LIBERAL CONSTRUCTION. (a) Provides that the purpose of this subchapter is to protect the integrity of the submittal of transactional motor vehicle documents by nongovernmental entities through:

(1) the permitting and regulation of titling services and title service runners; and

(2) the enforcement of this chapter to prevent crime, fraud, unfair practices, and discrimination.

(b) Requires that this subchapter be liberally construed to give effect to the purpose of this subchapter.

SECTION 4. Amends Sections 520.052 through 520.060, Transportation Code, effective January 1, 2012, as follows:

Sec. 520.052. APPLICABILITY. Provides that this subchapter applies to any motor vehicle title service operating in a county that requires a permit under Section 520.053, rather than providing that this subchapter applies to any motor vehicle title service operating in a county that has a population of more than 500,000, or in which the commissioners court by order has adopted this subchapter. Makes nonsubstantive changes.

Sec. 520.053. New heading: PERMIT REQUIRED. Authorizes a county to require a motor vehicle title service or a title service runner to obtain a permit from the county in which the titles are required to be filed. Deletes existing text prohibiting a person from acting as a motor vehicle title service or acting as an agent for that business unless that person holds a license issued under this subchapter.

Sec. 520.054. New heading: GENERAL PERMIT APPLICATION REQUIREMENTS. (a) Requires an applicant in a county that requires a motor vehicle title service permit or a title service runner permit to apply on a form prescribed by the county tax assessor-collector, rather than requires an applicant for a motor vehicle title service license to apply on a form prescribed by the county tax assessor-collector. Requires that the application form be signed by the applicant and accompanied by the application fee, which is prohibited from exceeding maximum fee allowed under Section 520.077.

(b) Requires that an application include:

(1)-(3) Makes no changes to these subdivisions;

(4) a statement indicating whether the applicant has previously applied for a permit, rather than a license, under this subchapter, the result of the previous application, and whether the applicant has ever been the holder of a permit, rather than a license, under this subchapter that was revoked or suspended;

(5)-(8) Makes no changes to these subdivisions;

(9) an affirmation of the truth of the information contained in the application signed and sworn to before an officer authorized to administer oaths; and

(10) if for a motor vehicle title service permit, an affirmation that all acts of a motor vehicle title service's employees, agents, contractors, or title service runners are acts of the motor vehicle title service for the purposes of this subchapter.

Makes a nonsubstantive change.

(c) Requires that a permit fee charged under Subsection (a) be deposited in the general fund for the county tax assessor-collector and sheriff to use for the administration and enforcement of the county's motor vehicle title service and title service runner permitting program.

Sec. 520.055. APPLICATION REQUIREMENTS: CORPORATION. Replaces references to a motor vehicle title service license with a motor vehicle title service permit.

Sec. 520.056. APPLICATION REQUIREMENTS: PARTNERSHIP. Replaces references to a motor vehicle title service license with a motor vehicle title service permit.

Sec. 520.057. RECORDS. Deletes existing Subsection (a) designation. Requires a holder of a motor vehicle title service permit, rather than license, to maintain records as required by Section 520.080. Deletes existing text requiring a holder of a motor vehicle title service license to maintain records as required by this section on a form prescribed and made available by the county tax assessor-collector for each transaction in which the license holder receives compensation. Deletes existing text requiring that the records include the date of the transaction; the name, age, address, sex, driver's license number, and a legible photocopy of the driver's license for each customer; and the license plate number, vehicle identification number, and a legible photocopy of proof of financial

responsibility for the motor vehicle involved. Deletes existing Subsection (b) requiring a motor vehicle title service to keep two copies of all records required under this section for at least two years after the date of the transaction, legible photocopies of any documents submitted by a customer; and legible photocopies of any documents submitted to the county tax assessor-collector.

Sec. 520.058. INSPECTION OF RECORDS. Requires that a motor vehicle title service permit, rather than license, holder or any of its employees to allow an inspection of records required under Section 520.057 by the county tax assessor-collector or a peace officer on the premises of the motor vehicle title service at any reasonable time to verify, check, or audit the records.

Sec. 520.059. New heading: DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a)-(d) Replaces references to a license with a permit.

(e) Requires the county tax assessor-collector to provide written notice of denial, suspension, or revocation of a permit.

(f) Provides that, notwithstanding any other provision of law, the county has all powers necessary, incidental, or convenient 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 subchapter;
- (7) specify and govern appearance, practice, and procedures before the county;
- (8) issue conclusions of law and decisions, including declaratory decisions or orders;
- (9) enter into settlement agreements;
- (10) impose a sanction for contempt;
- (11) assess and collect fees and costs, including attorney's fees;
- (12) issue cease and desist orders in the nature of temporary or permanent injunctions;
- (13) impose a civil penalty;
- (14) enter an order requiring a person to pay costs and expenses of a party in connection with an order; perform an act other than the payment of money, or refrain from performing an act; and
- (15) enforce a county order.

Sec. 520.060. New heading: PERMIT RENEWAL. (a)-(e) Replaces references to a license with a permit.

(f) Authorizes a person, notwithstanding Subsection (e), if the person had obtained a permit in this state, rather than if the person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, to renew an expired permit, rather than license. Makes a conforming change.

(g) Replaces a reference to a license with a permit.

SECTION 5. Amends Section 520.061, Transportation Code, effective January 1, 2012, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that except as provided by Subsection (c) or the Penal Code, an offense under this section is a Class A misdemeanor. Makes a nonsubstantive change.

(c) Provides that an offense under this section is a state jail felony if it is based on a violation of Section 520.053; or the falsification of information required under Section 520.054, 520.055, or 520.056.

SECTION 6. Amends Subchapter E, Chapter 520, Transportation Code, effective January 1, 2012, by adding Section 520.0611, as follows:

Sec. 520.0611. CIVIL PENALTY. (a) Provides that a person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each violation.

(b) Provides that each day a violation occurs constitutes a separate violation.

(c) Requires the county by rule to establish factors to be considered in determining the amount of the civil penalty assessed by the county.

(d) Requires that a civil penalty recovered under this subchapter, notwithstanding any other law to the contrary, be deposited to the credit of the county's general fund or other fund as designated by the county.

SECTION 7. Amends Section 520.062(a), Transportation Code, effective January 1, 2012, to authorize the county attorney or a district attorney of the county in which the motor vehicle title service is operating, rather than located, to bring an action to enjoin the operation of a motor vehicle title service or a title service runner if the motor vehicle title service permit, rather than license, holder or a runner of the motor vehicle title service while in the scope of the runner's employment is found to have committed one or more violations of or convicted of more than one offense under this subchapter.

SECTION 8. Amends Section 520.063, Transportation Code, effective January 1, 2012, as follows:

Sec. 520.063. EXEMPTIONS. Provides that the following persons and their agents are exempt from the permitting, rather than licensing, and other requirements established by this subchapter:

(1) Makes no changes to this subdivision;

(2) a vehicle lessor holding a license issued by the Texas Department of Motor Vehicles (TxDMV), rather than the Motor Vehicle Board, under Chapter 2301 (Sale or Lease of Motor Vehicles), Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a) (relating to certain conditions in which a license is not required for certain vehicle lessors or vehicle lease facilitators) of that code;

(3) Makes a conforming change.

(4) a state federally chartered bank or credit union; and

(5) an auctioneer licensed under Chapter 1802 (Auctioneers), Occupations Code.

SECTION 9. Amends Chapter 520, Transportation Code, effective January 1, 2012, by adding Subchapter F, as follows:

SUBCHAPTER F. STATE LICENSING OF MOTOR VEHICLE TITLE SERVICES

Sec. 520.071. **DEFINITIONS.** Defines "board," "motor vehicle," "motor vehicle documents," "motor vehicle title service," "title service license holder," "title service record," and "title service runner" in this chapter.

Sec. 520.072. **APPLICABILITY.** Provides that this subchapter applies to any motor vehicle title service operating in this state.

Sec. 520.073. **PURPOSE; LIBERAL CONSTRUCTION.** (a) Provides that the purpose of this subchapter is to protect the integrity of the submittal of transactional motor vehicle documents by nongovernmental entities through:

(1) the licensing and regulation of titling services and title service runners; and

(2) the enforcement of this chapter to prevent crime, fraud, unfair practices, and discrimination.

(b) Requires that this subchapter be liberally construed to give effect to the purpose of this subchapter.

Sec. 520.074. **LICENSE REQUIRED.** Prohibits a person from acting as a motor vehicle title service or from acting as a title service runner unless that person holds:

(1) a permit issued by the county, if required by the county where the titles are required to be filed; and

(2) a license issued by TxDMV.

Sec. 520.075. **STATE LICENSE APPLICATION REQUIREMENTS.** Requires an applicant for a motor vehicle title service license or a title service runner license to apply on a form prescribed by TxDMV. Requires that the application form be signed by the applicant and accompanied by the application fee.

Sec. 520.076. **ESTABLISHED AND PERMANENT PLACE OF BUSINESS.** (a) Requires that an applicant for a motor vehicle title service license demonstrate that the location for which the applicant requests the license is an established and permanent place of business. Provides that a location is considered to be an established and permanent place of business if the applicant:

(1) owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license; and

(2) maintains on the location a permanent furnished office that is equipped for titling services as specified in TxDMV rules; and a conspicuous sign with letters at least six inches high showing the name of the applicant's business.

(b) Requires the applicant to demonstrate that the applicant intends to remain regularly and actively engaged in the business specified in the application for a time equal to at least the term of the license at the location specified in the

application; and the applicant or a bona fide employee of the applicant will be at the location to transact title services; and available to the public or TxDMV at that location during reasonable and lawful business hours.

Sec. 520.077. LICENSE FEES. (a) Requires TxDMV by rule to adopt fees for an original license and renewal license for motor vehicle title services and for an original license and a renewal license for title service runners.

(b) Prohibits the fee for an original license for a motor vehicle title service or for a title service runner from exceeding \$500.

(c) Prohibits the fee for a renewal license for a motor vehicle title service or for a title service runner from exceeding \$200 annually.

(d) Prohibits the fee for an amendment to a license issued under this subchapter from exceeding \$25.

(e) Prohibits the fee for a duplicate license issued under this subchapter from exceeding \$50.

(f) Prohibits an additional fee from being charged for late renewal of not more than one and one-half times the renewal fee.

(g) Requires that a fee collected under this section be deposited to the credit of the state highway fund. Provides that Section 403.095 (Use of Dedicated Revenue), Government Code, does not apply to money received by TxDMV and deposited to the credit of the state highway fund under this subchapter.

(h) Authorizes TxDMV to refund from funds appropriate to TxDMV for that purpose a fee collected under this subchapter that is not due or that exceeds the amount due.

Sec. 520.078. SURETY BOND. (a) Prohibits TxDMV from issuing or renewing a motor vehicle title service license unless the applicant provides to TxDMV satisfactory proof that the applicant has purchased a properly executed surety bond in the amount of \$25,000 with a good and sufficient surety authorized by Texas Department of Insurance in effect for at least the term of the license.

(b) Requires that the surety bond be:

(1) in a form approved by TxDMV; and

(2) conditioned on the submission by the applicant of money and accurate motor vehicle documents on behalf of another person that are required to be submitted to government agencies, including county tax assessor-collectors, in order to obtain motor vehicle title or registration.

(c) Authorizes a person to recover against a surety bond if the person obtains a judgment assessing damages and reasonable attorney's fees based on an act or omission of the bondholder:

(1) on which the bond is conditioned; and

(2) that occurred during the term for which the motor vehicle title service license was valid.

(d) Provides that the liability imposed on a surety is limited to the amount:

(1) required to be submitted to the appropriate government agencies, including county tax assessor-collectors;

(2) received by the applicant for performing as a motor vehicle title service;

(3) incurred in engaging the applicant to assist in obtaining motor vehicle documents; and

(4) of attorney's fees awarded in the judgment.

(e) Prohibits the liability of a surety from exceeding the face value of the surety bond. Provides that a surety is not liable for successive claims in excess of the bond amount regardless of the number of claims made against the bond or the number of years the bond remains in force.

Sec. 520.079. LICENSE RENEWAL. (a) Requires the board of TxDMV (board) to set the term of a license issued under this subchapter by rule.

(b) Authorizes the person, if a person's license has been expired for 90 days or less, to renew the license by paying a late fee in addition to the renewal fee as described by Section 520.077(f).

Sec. 520.080. RECORDS. (a) Requires a holder of a motor vehicle title service license to:

(1) maintain records as required by TxDMV rule, including any forms prescribed by TxDMV for each transaction presented to the county tax office or appropriate government office under this subchapter; and

(2) provide a copy of the record to the county tax assessor-collector.

(b) Requires that the records maintained under this section include:

(1) the date of the transaction;

(2) the name, age, address, sex, and driver's license number of, and a legible photocopy of the driver's license for, each customer;

(3) the license plate number and vehicle identification number of, and, if applicable, a legible photocopy of proof of financial responsibility for, the motor vehicle involved; and

(4) any other information required to be maintained by TxDMV rule.

(c) Requires that records required by this section be maintained for four years from the date of the transaction.

(d) Requires a motor vehicle title service to keep:

(1) a copy of all records required under this section for at least four years after the date of the transaction;

(2) a legible photocopy of any documents submitted by a customer; and

(3) a legible photocopy of any documents submitted to the county tax assessor-collector.

(e) Requires the license holder, if the records maintained under Subsection (b) by a holder of a motor vehicle title service license include a legible photocopy of a driver's license issued by a foreign government, to also maintain a valid identification document for the customer.

(f) Defines in this section, "valid identification document."

Sec. 520.081. INSPECTION OF RECORDS. Requires a motor vehicle title service license holder or any of its employees to allow during business hours at the license holder's business location an inspection of records required under Section 520.080 by TxDMV, the county tax assessor-collector, or a peace officer.

Sec. 520.082. DENIAL SUSPENSION OR REVOCATION OF LICENSE. (a) Authorizes TxDMV to deny, suspend, revoke, or reinstate a license under this subchapter.

(b) Provides that TxDMV:

(1) is required to adopt rules that establish grounds for the denial, suspension, revocation, or reinstatement of a license and rules that establish procedures for disciplinary action; and

(2) is authorized to adopt rules that allow for the incorporation of findings made by a county that has denied, suspended, revoked, or reinstated a permit issued under Subchapter E.

(c) Provides that procedures established under this subchapter are subject to Chapter 2001 (Administrative Procedure), Government Code.

(d) Requires TxDMV to provide written notice of denial, suspension, or revocation of a license.

(e) Provides that notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to initiate and conduct proceedings, investigations, or hearings; administer oaths; receive evidence and pleadings; issue subpoenas to compel the attendance of any person; order the production of any tangible property, including papers, records, and other documents; make findings of fact on all factual issues arising out of a proceeding initiated under this subchapter; specify and govern appearance, practice and procedures before the board; issue conclusions of law and decisions, including declaratory decisions or orders; enter into settlement agreements; impose a sanction for contempt; assess and collect fees and costs, including attorney's fees; issue cease and desist orders in the nature of temporary or permanent injunctions; impose a civil penalty; enter an order requiring a person to pay costs and expenses of a party in connection with an order, perform an act other than the payment of money, or refrain from performing an act; and enforce board order.

Sec. 520.083. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates this subchapter or a rule adopted by TxDMV or a county tax assessor-collector under this subchapter.

(b) Provides that, except as provided by Subsection (c) or the Penal Code, an offense under this section is a Class A misdemeanor.

(c) Provides that an offense under this section is a state jail felony if it is based on a violation of Section 520.074; or the falsification of information required under Section 520.075 or 520.078.

Sec. 520.084. CIVIL PENALTY. (a) Provides that a person who violates this subchapter is a subject to a civil penalty of not more than \$10,000 for each violation.

(b) Provides that each day a violation occurs constitutes a separate violation.

(c) Requires TxDMV by rule to establish factors to be considered in determining the amount of the civil penalty assessed by TxDMV.

(d) Requires that a civil penalty recovered under this subchapter, notwithstanding any other law to the contrary, be deposited in the state treasury to the credit of the state highway fund.

Sec. 520.085. CEASE AND DESIST ORDER. (a) Authorizes the board after notice, if it appears to the board that a person is violating this subchapter or a board rule or order, to require the person engaged in the conduct to appear and show cause why a cease and desist order should not be issued prohibiting the conduct described in the notice.

(b) Authorizes an interlocutory cease and desist order to be granted with or without bond or other undertaking if:

(1) the order is necessary to the performance of the duties delegated to the board by this subchapter;

(2) the order is necessary or convenient to maintaining the status quo between two or more adverse parties before the board;

(3) a party before the board is entitled to relief demanded of the board and all or part of the relief requires the restraint of some act prejudicial to the party;

(4) a person is performing, about to perform, or procuring or allowing the performance of an act relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board, and that would tend to render the board's order in the case ineffectual; or

(5) substantial injury to the rights of a person subject to the board's jurisdiction is threatened regardless of any remedy available at law.

(c) Requires that a proceeding under this section is governed by this subchapter and the board's rules; and Chapter 2001, Government Code, relating to a contested case, to the extent that chapter is not in conflict with Subdivision (1).

(d) Provides that an interlocutory cease and desist order remains in effect until vacated or incorporated in a final order of the board. Requires that an appeal of an interlocutory cease and desist order be made to the board before seeking review as provided by this subchapter.

(e) Authorizes a permanent cease and desist order to be issued regardless of the requirements of Subsection (b) but only under this procedures for a final order by the board under this subchapter. Provides that an appeal of a permanent cease and desist order is made in the same manner as an appeal of a final order under this subchapter.

Sec. 520.086. INJUNCTION. (a) Authorizes the attorney general or a district attorney of the county in which the motor vehicle title service is operating to bring an action to enjoin the operation of a motor vehicle title service or a title service runner if the motor vehicle title service license holder or a runner of the motor vehicle title service while in the scope of the runner's employment is found to have committed one or more violations of or convicted of more than one offense under this subchapter.

(b) Authorizes the court, if the court grants relief under Subsection (a) to:

(1) enjoin the person from maintaining or participating in the business of a motor vehicle title service for a period of time as determined by the court; or

(2) declare the place where the person's business is located to be closed for any use relating to the business of the motor vehicle title service for as long as the person is enjoined from participating in that business.

Sec. 520.087. COMPLAINT INVESTIGATION AND DISPOSITION. (a) Authorizes TxDMV, if TxDMV has reason to believe, through receipt of a complaint or otherwise, that a violation of this subchapter or a rule, order, or decision of TxDMV has occurred or is likely to occur, to conduct an investigation unless it determines that the complaint is frivolous or for the purpose of harassment.

(b) Requires TxDMV, if the investigation establishes that a violation of this subchapter or a rule, order, or decision of TxDMV has occurred or is likely to occur, to initiate proceedings as it determines appropriate to enforce this subchapter or its rules, orders, and decisions.

Sec. 520.088. EXEMPTIONS. Exempts the following persons and their agents from the licensing and other requirements established by this subchapter:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by TxDMV under Chapter 503 (Dealer's and Manufacturer's Vehicle License Plates);

(2) a vehicle lessor holding a license issued by TxDMV under Chapter 2301, Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a), Occupations Code; and

(3) a vehicle lease facilitator holding a license issued by TxDMV under Chapter 2301, Occupations Code.

(4) a state or federally chartered bank or credit union; and

(5) an auctioneer licensed under Chapter 1802, Occupations Code.

SECTION 10. Amends Section 730.007(c), Transportation Code, effective January 1, 2012, to provide that this section does not prohibit the disclosure of a person's photographic image to a law enforcement agency, TxDMV, a county tax assessor-collector, or a criminal justice agency for an official purpose; an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 (Financial Assistance and Service Programs) or Chapter 33 (Nutritional Assistance Programs), Human Resources Code; or prevent a court from compelling by subpoena the production of a person's photographic image.

SECTION 11. Requires TxDMV, not later than November 1, 2011, to adopt rules and forms to administer Subchapter F, Chapter 520, Transportation Code, as added by this Act.

SECTION 12. Makes application of Section 520.061, Transportation Code, as amended by this Act, prospective to January 1, 2012.

SECTION 13. Effective date, except as otherwise provided by this Act: September 1, 2011.