

House Bill 1692
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 2301.002, Occupations Code, is amended by amending Subdivision (17-a) and adding Subdivision (17-b) to read as follows:

(17-a) "Hearings examiner" means a person employed by the department to preside over hearings under this chapter.

(17-b) "Independent mobility motor vehicle dealer" means a nonfranchised dealer who:

(A) holds a general distinguishing number issued by the board under Chapter 503, Transportation Code;

(B) holds a converter's license issued under this chapter;

(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and

(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.

SECTION 2. Subchapter C, Chapter 2301, Occupations Code, is amended by adding Section 2301.104 to read as follows:

Sec. 2301.104. HEARINGS EXAMINERS. (a) The department may employ a chief hearings examiner and one or more additional hearings examiners.

(b) A hearings examiner must be licensed to practice law in this state.

SECTION 3. Sections 2301.606(b) and (c), Occupations Code, are amended to read as follows:

(b) In a hearing [~~before the director~~] under this subchapter, a

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SECTION 1. Same as House version.

SECTION 2. Same as House version.

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manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:

- (1) is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle; or
- (2) does not substantially impair the use or market value of the motor vehicle.

(c) An order issued under this subchapter may not require ~~[The director may not issue an order requiring]~~ a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

- (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and
- (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

SECTION 4. Section 2301.607(c), Occupations Code, is amended to read as follows:

(c) If a final order is not issued ~~[the administrative law judge does not issue a proposal for decision and recommend to the director a final order]~~ before the 151st day after the date a complaint is filed under this subchapter, the department ~~[director]~~ shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The department ~~[board]~~ shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

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SECTION 5. Section 2301.608, Occupations Code, is amended to read as follows:

Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND. (a) An order issued under this subchapter must [~~In an order issued under this subchapter, the director shall~~] name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically required [~~ordered~~] by the order [~~director~~].

(b) If the final order requires [~~director orders~~] a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the final order [~~director~~] may require [~~order~~] the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the final order [~~director~~] may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

SECTION 6. Section 2301.609(a), Occupations Code, is amended to read as follows:

(a) A party to a proceeding [~~before the director~~] under this subchapter that is affected by a final order [~~of the director~~] is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.

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SECTION 7. Section 2301.610(d), Occupations Code, is amended to read as follows:

(d) The department [~~board~~] shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this subchapter [~~of the director~~]. The department [~~board~~] shall maintain an effective method of providing information to a person who makes a request.

SECTION 8. Section 2301.703, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The parties to a contested case under Section 2301.204 or Subchapter M must participate in mediation as provided by board rule before the parties may have a hearing in the case.

SECTION 9. Section 2301.704, Occupations Code, is amended to read as follows:

Sec. 2301.704. HEARINGS EXAMINER; ADMINISTRATIVE LAW JUDGE. (a) Except as otherwise provided by this section, a [~~A~~] hearing under this chapter [~~subchapter~~] must be held by an administrative law judge of the State Office of Administrative Hearings.

(a-1) A hearing under Section 2301.204 or Subchapter M must be held by a hearings examiner.

(b) An administrative law judge and a hearings examiner have [~~has~~] all of the board's power and authority as provided

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SECTION 8. Section 2301.703, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The parties to a contested case under this chapter or Chapter 503, Transportation Code, other than a contested case in an action brought by the department to enforce this chapter or Chapter 503, Transportation Code, must participate in mediation as provided by board rule before the parties may have a hearing in the case.

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by ~~under~~ this chapter to conduct hearings, including the power to:

- (1) hold a hearing;
 - (2) administer an oath;
 - (3) receive pleadings and evidence;
 - (4) issue a subpoena to compel the attendance of a witness;
 - (5) compel the production of papers and documents;
 - (6) issue an interlocutory order, including a cease and desist order in the nature of a temporary restraining order or a temporary injunction;
 - (7) make findings of fact and conclusions of law; and
 - (8) issue a proposal for decision and recommend a final order.
- (c) In a contested case hearing under Section 2301.204 or Subchapter M, a hearings examiner shall issue a final order.

SECTION 10. Section 2301.713, Occupations Code, is amended to read as follows:

Sec. 2301.713. REHEARING. (a) Except as otherwise provided by this section, a [A] party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.

(b) The board by rule may establish procedures to allow a party to a contested case to file a motion for rehearing.

(c) A motion for rehearing in a contested case under Section 2301.204 or Subchapter M must be filed with and decided by the chief hearings examiner.

SECTION 11. Section 503.009(b), Transportation Code, is amended to read as follows:

(b) The procedures applicable to a hearing conducted under

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this section are those applicable to a hearing conducted as provided by Section 2301.606 [~~2301.606(a)~~], Occupations Code.

SECTION 12. Section 2301.606(a), Occupations Code, is repealed.

SECTION 13. The changes in law made by this Act apply only to a complaint filed or a proceeding commenced on or after the effective date of this Act. A complaint filed or a proceeding commenced before the effective date of this Act is governed by the law in effect on the date the complaint was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 14. The changes in law made by this Act apply to a person who holds a license issued under Chapter 2301, Occupations Code, regardless of the date the license is issued or renewed.

SECTION 15. This Act takes effect January 1, 2014.

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SECTION 12. Same as House version.

SECTION 13. Same as House version.

SECTION 14. Same as House version.

SECTION 15. Same as House version.

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