

By: Kuempel

H.B. No. 3404

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and sale of certain trailers, including cargo and livestock trailers, and cargo and livestock trailers with living quarters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2301, Occupations Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. MANUFACTURERS, DISTRIBUTORS, AND DEALERS OF CARGO OR LIVESTOCK TRAILERS OR CARGO OR LIVESTOCK TRAILERS WITH LIVING QUARTERS

Sec. 2301.901. DEFINITIONS. Notwithstanding Sections 2301.002(7) and (19), in this subchapter:

(1) "Agreement" means a written agreement between a manufacturer or distributor and a dealer for the purchase and sale of new cargo or livestock trailers, and cargo or livestock trailers with living quarters.

(2) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five cargo or livestock trailers or cargo or livestock trailers with living quarters in a calendar year.

(3) "Cargo or livestock trailer, and cargo or livestock trailer with living quarters" means a towable recreational vehicle that is also designed, constructed, or used to transport animals or cargo.

1           (4) "Manufacturer" means a person or entity engaged in  
2 the business of manufacturing cargo or livestock trailers and cargo  
3 or livestock trailers with living quarters for the purpose of sale  
4 or trade.

5           (5) "Territory" means:

6           (A) for the sale of a manufacturer's cargo or  
7 livestock trailer and cargo or livestock trailers with living  
8 quarters, a defined geographical area within which a dealer is  
9 appointed by the manufacturer as the sole authorized dealer; or

10           (B) for the sale of all other manufacturer  
11 products, a market area within which a dealer is appointed by the  
12 manufacturer as an authorized dealer.

13           Sec. 2301.902. AGREEMENT REQUIRED. A manufacturer or  
14 distributor contracting with a dealer may not sell or offer for  
15 sale, and a dealer may not purchase or offer to purchase, a new  
16 cargo or livestock trailer or a cargo or livestock trailer with  
17 living quarters unless the manufacturer or distributor and the  
18 dealer enter into an agreement that complies with this subchapter.

19           Sec. 2301.903. TERMS OF AGREEMENT. (a) An agreement under  
20 this subchapter must include:

21           (1) the dealer's defined territory and permitted  
22 dealership locations;

23           (2) the length of the agreement, which may not be less  
24 than two years;

25           (3) provisions for termination or nonrenewal of the  
26 agreement;

27           (4) the obligations of the manufacturer, distributor,

1 and dealer in the preparation and delivery of and warranty service  
2 on new cargo or livestock trailers and cargo or livestock trailers  
3 with living quarters; and

4 (5) the obligations of the manufacturer, distributor,  
5 and dealer on termination of the agreement, including with respect  
6 to unsold inventory of new cargo or livestock trailers and cargo or  
7 livestock trailers with living quarters.

8 (b) Notwithstanding Subsection (a)(2), an initial agreement  
9 between a manufacturer or distributor and a dealer may not have a  
10 term of less than two years. An extension or renewal of the initial  
11 agreement or a subsequent agreement under this subchapter between  
12 the same manufacturer or distributor and dealer must be for a term  
13 of two or more years.

14 Sec. 2301.904. DEALER TERRITORY. (a) A dealer agreement  
15 must describe a dealer's territory in terms of:

16 (1) a radius measured in miles from the dealer's place  
17 of business; or

18 (2) identification of one or more counties in this  
19 state.

20 (b) During the term of an agreement, a manufacturer may not  
21 appoint another authorized dealer for the sale of the  
22 manufacturer's cargo or livestock trailers and cargo or livestock  
23 trailers with living quarters in a dealer's territory.

24 (c) Except for purposes of advertising without an  
25 advertised price or with a manufacturer's suggested retail price, a  
26 dealer may not advertise or promote the sale of the manufacturer's  
27 cargo or livestock trailers, and cargo or livestock trailers with

1 living quarters outside the dealer's territory, including through  
2 the Internet.

3 (d) A dealer may not use a broker or dealer in another  
4 dealer's territory to sell a manufacturer's cargo or livestock  
5 trailers and cargo or livestock trailer's with living quarters.

6 (e) This subchapter does not prohibit a dealer from selling  
7 a cargo or livestock trailer and cargo or livestock trailers with  
8 living quarters to a customer residing outside of the dealer's  
9 territory who independently visits the dealership and seeks to  
10 purchase a cargo or livestock trailer and cargo or livestock  
11 trailer with living quarters from the dealer.

12 Sec. 2301.905. COMPENSATION FOR WARRANTY SERVICE. (a) A  
13 manufacturer or distributor shall fairly compensate a dealer for  
14 the work and services the dealer performs and for expenses the  
15 dealer incurs to comply with a manufacturer's or distributor's  
16 warranty.

17 (b) Except as provided by Subsection (c), a manufacturer or  
18 distributor may not pay a dealer a labor rate for warranty work that  
19 is less than the rate the dealer charges retail customers for  
20 nonwarranty work of the same kind by similar technicians.

21 (c) A manufacturer or distributor who has a warranty program  
22 shall reimburses a dealer at 100 percent of the dealer's retail  
23 labor rate if the dealer complies with reasonable and objective  
24 criteria

25 (d) A manufacturer or distributor shall approve or deny a  
26 dealer's written claim for warranty work not later than the second  
27 business day after the date of receipt of the claim. If the claim is

1 approved, the manufacturer or distributor shall pay the claim not  
2 later than the 30th day after the date of receipt of the dealer's  
3 written invoice or written proof of completion of the warranty  
4 work. If the claim is denied, the manufacturer or distributor shall  
5 notify the dealer of the grounds for denial.

6 (e) A manufacturer or distributor may not audit a claim  
7 filed for warranty work after the first anniversary of the date the  
8 claim is submitted.

9 (f) A manufacturer shall act as the single source of contact  
10 for the dealer for the manufacturer's component part product  
11 warranties, other than engine-related product warranties.

12 Sec. 2301.906. REPURCHASE BY MANUFACTURER OR DISTRIBUTOR.

13 (a) A manufacturer or distributor who terminates or non renews an  
14 agreement shall repurchase on demand from the dealer any of the  
15 following items, purchased by the dealer from the manufacturer or  
16 distributor, that are free and clear of a lien or encumbrance  
17 notwithstanding floorplans:

18 (1) a new, unsold, and complete cargo or livestock  
19 trailer and cargo or livestock trailer with living quarters, with  
20 accessories and packaged trailers sold with the trailer, that:

21 (A) is in the dealer's inventory; and

22 (B) was purchased during the two years preceding  
23 the date of the termination; and

24 (2) any new, current, unsold, and undamaged parts or  
25 accessories purchased from the manufacturer in the original,  
26 resalable package.

27 (b) A demand for repurchase must be made in writing not

1 later than the 90th day after the date the manufacturer or  
2 distributor terminates the agreement. The dealer shall provide the  
3 manufacturer or distributor with a complete list of the items to be  
4 repurchased. The manufacturer or distributor shall complete the  
5 repurchase not later than the 30th day after the date the dealer  
6 demands the repurchase.

7 (c) The manufacturer or distributor shall:

8 (1) repurchase an item described by Subsection (a)(1)  
9 at the dealer's invoiced cost plus freight, less any allowance paid  
10 to the dealer;

11 (2) repurchase an item described by Subsection (a) (2)  
12 at the dealer's invoiced cost; and

13 (3) it shall be the responsibility of the manufacturer  
14 or distributor to remove the trailers from the dealership and to pay  
15 the cost incurred to remove all products from the dealership and to  
16 transport an item described by Subsection (a) to the manufacturer  
17 or distributor.

18 Sec. 2301.907. CIVIL LIABILITY. A person who violates this  
19 subchapter or an agreement regulated by this subchapter is liable  
20 to an injured party for:

21 (1) the actual damages caused by the violation; and

22 (2) reasonable legal fees and court costs if  
23 litigation is commenced in connection with the violation.

24 Sec. 2301.908. VENUE FOR DISPUTE. Venue for a dispute under  
25 an agreement is in the county of the dealer's principal place of  
26 business as stated in the agreement.

27 SECTION 2. Section 501.002(17), Transportation Code, is

1 amended to read as follows:

2 (17) "Motor vehicle" means:

3 (A) any motor driven or propelled vehicle  
4 required to be registered under the laws of this state;

5 (B) a trailer or semitrailer, other than  
6 manufactured housing [~~, that has a gross vehicle weight that~~  
7 ~~exceeds 4,000 pounds~~];

8 (C) a travel trailer;

9 (D) an all-terrain vehicle or a recreational  
10 off-highway vehicle, as those terms are defined by Section 502.001,  
11 designed by the manufacturer for off-highway use that is not  
12 required to be registered under the laws of this state; or

13 (E) a motorcycle, motor-driven cycle, or moped  
14 that is not required to be registered under the laws of this state.

15 SECTION 3. Section 501.004(b), Transportation Code, is  
16 amended to read as follows:

17 (b) This chapter does not apply to:

18 (1) a [~~trailer or~~] semitrailer used only for the  
19 transportation of farm products if the products are not transported  
20 for hire;

21 (2) the filing or recording of a lien that is created  
22 only on an automobile accessory, including a tire, radio, or  
23 heater;

24 (3) a motor vehicle while it is owned or operated by  
25 the United States; or

26 (4) a new motor vehicle on loan to a political  
27 subdivision of the state for use only in a driver education course

1 conducted by an entity exempt from licensure under Section  
2 1001.002, Education Code.

3 SECTION 4. Section 501.037, Transportation Code, is  
4 repealed.

5 SECTION 5. Subchapter S, Chapter 2301, Occupations Code, as  
6 added by this Act, applies only to an agreement, as defined by  
7 Section 2301.901, Occupations Code, as added by this Act, entered  
8 into on or after the effective date of this Act. An agreement  
9 entered into before the effective date of this Act is governed by  
10 the law in effect on the date the agreement was entered into, and  
11 the former law is continued in effect for that purpose.

12 SECTION 6. This Act takes effect September 1, 2017.