

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1775
By: Estes
Business & Commerce
4-11-2003
Committee Report (Substituted)

DIGEST AND PURPOSE

The Texas Parks and Wildlife Marine Theft Special Investigation Unit has discovered that only 1,102 of 1,577 active, licensed dealers in Texas reported payment of sales tax between 2000 and 2001. This represents lost revenue to the state. C.S.S.B. 1775 requires dealers, distributors, and manufacturers to obtain a license for each business location and establishes the structure governing the required fee, display, and duration of the license, and rules governing the license. C.S.S.B. 1775 establishes the appeal process regarding a certificate of title. This bill also requires that employees of the Parks and Wildlife Department or a peace officer to be allowed to perform certain inspections of a vessel at a dealer's, distributor's, or manufacturer's place of business during business hours.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTION 4 (Section 31.032, Parks and Wildlife Code), SECTION 5 (Section 31.039, Parks and Wildlife Code), SECTION 7 (Section 31.0412, Parks and Wildlife Code), and SECTION 10 (Section 31.0465, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.003, Parks and Wildlife Code, by amending Subdivision (7) and adding Subdivision (16), as follows:

(7) Redefines "dealer."

(16) Defines "distributor."

SECTION 2. Amends Chapter 31A, Parks and Wildlife Code, by adding Section 31.007, as follows:

Sec. 31.007. DEALER REQUIREMENTS. Requires a dealer to display a sign containing certain information in each of the dealer's places of business and to operate in a space sufficient to maintain an office, service area, and display of products.

SECTION 3. Amends Section 31.021, Parks and Wildlife Code, to delete text referring to undocumented vessels. Provides that no person may operate or give permission for the operation of any vessel or may dock, moor, or store a vessel owned by the person on the water of this state unless certain conditions are met.

SECTION 4. Amends Section 31.032, Parks and Wildlife Code, as follows:

Sec. 31.032. NUMBERING ON BOW. (a) Creates this subsection from existing text. Requires the owner of a vessel to display the identification number and a validation decal in a certain manner and place on the vessel.

(b) Exempts the owner of a vessel required to be numbered under this subchapter and documented by the United States Coast Guard from attaching an identification number as required by Subsection (a).

(c) Requires the Texas Parks and Wildlife Commission (commission) to adopt rules for the placement of the validation decal in an alternate location for antique boats. Defines “antique boat” for this subsection.

SECTION 5. Amends Section 31.039, Parks and Wildlife Code, as follows:

Sec. 31.039. New heading: PUBLIC RECORDS; FEES. (a) Creates this subsection from existing text.

(b) Authorizes the commission to charge, by rule, a fee for access to ownership records and other records made or kept under this chapter.

SECTION 6. Amends Section 31.041, Parks and Wildlife Code, as follows:

Sec. 31.041. New heading: DEALER’S, DISTRIBUTOR’S, AND MANUFACTURER’S LICENSE. (a) Prohibits a person from engaging in business in this state as a dealer, distributor, or manufacturer, unless the person holds a license issued under this section for each place of business owned and operated by the person.

(b) Requires the commission to establish the form and manner for display of a license issued under this section.

(c) Requires the Texas Parks and Wildlife Department (TPWD) to issue a dealer, distributor, or manufacturer number to each dealer, distributor, or manufacturer licensed under this section in the manner provided Section 31.031(b) (Numbering Pattern).

(d) Creates this subsection from existing text. Includes distributor, in addition to dealer and manufacturer, as an authorized entity to use, rather than obtain, a dealer’s, distributor’s, or, rather than and, manufacturer’s number for vessels the dealer, distributor, or manufacturer wishes to show, demonstrate, or test on the water of this state, instead of securing a certificate number for each vessel. Provides that for purposes of this subsection “show, demonstrate, or test” does not include the use of a vessel for recreational purposes, or for participation in a contest or event.

(e) Redesignates this subsection from Subsection (b). Requires the application for a license, rather than number, under this section to state that the applicant is a dealer, distributor, or manufacturer within the meaning of this chapter. Increases the amount of the two-year fee for a dealer’s, distributor’s, or manufacturer’s number to \$500 from \$45 or an amount set by the commission. Prohibits a license, rather than number from being issued until the provisions of this Section are satisfied.

(f) Redesignates this subsection from Subsection (c). Authorizes a dealer, distributor, or manufacturer, holding a dealer’s, distributor’s, or manufacturer’s license, rather than number, to issue a reasonable temporary facsimile of the number issued under Subsection (c)

(g) Redesignates this subsection from Subsection (d). Deletes text referring to transferring a vessel and securing a certificate of number or title. Makes conforming changes.

SECTION 7. Amends Chapter 31B, Parks and Wildlife Code, by adding Sections 31.0411, 31.0412, and 31.0413, as follows:

Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Provides that a license issued under Section 31.041 is valid for two years from the date of issuance and is prohibited from being transferred to another person, except as provided by Subsection (b).

(b) Provides that a license issued under Section 31.041 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.

(c) Authorizes a license issued under Section 31.041 to be transferred to a new address if a business moves to another location and a change of ownership has not occurred.

Sec. 31.0412. LICENSING RULES. Authorizes the commission to adopt rules regarding licenses issued under Section 31.041, including certain rules.

Sec. 31.0413. EXEMPTION FROM DEALER LICENSING REQUIREMENTS. Exempts from the dealer licensing provisions of this subchapter, the sale of certain vessels less than 12 feet in length with a horsepower rating of five horsepower or less, or an outboard motor with a manufacturers rating of five horsepower or less.

SECTION 8. Amends Section 31.042(b), Parks and Wildlife Code, to delete Subdivision (3) and redesignate Subdivisions (4) - (6) as Subdivisions (3) - (5).

SECTION 9. Amends Chapter 31B, Parks and Wildlife Code, by adding Section 31.044, as follows:

Sec. 31.044. INSPECTIONS. Prohibits a dealer, distributor, or manufacturer from refusing to allow TPWD or a peace officer to inspect a vessel, outboard motor, or records relating to the possession, origination, ownership, or transfer of a vessel or outboard motor at a dealership, or distributor's, or manufacturer's place of business during normal business hours.

SECTION 10. Amends Chapter 31B-1, Parks and Wildlife Code, by adding Section 31.0465, as follows:

Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND; RULES. (a) Authorizes an applicant for a certificate of title under Section 31.046 to appeal TPWD's refusal to issue the title by filing a bond with TPWD as provided by this section.

(b) Sets forth the requirements for a bond filed under this section.

(c) Authorizes TPWD to issue the certificate of title to the person filing the bond, if the applicant proves, to TPWD's satisfaction, that the vessel or outboard is not stolen and issuance of a certificate of title would not defraud the owner or a lienholder of the vessel or outboard motor.

(d) Provides that a person described by Subsection (b)(5) has a right of action to recover on the bond for a breach of condition of the bond described by Subsection (b)(5). Prohibits the aggregate liability of the surety to all persons from exceeding the amount of the bond.

(e) Provides that a bond filed under this section expires on the third anniversary of the date the bond became effective. Requires TPWD to return an expired bond to the person who filed the bond, unless TPWD has been notified of a pending action to recover on the bond.

(f) Requires TPWD, on return of a bond under Subsection (e), to issue a certificate of title to the person to whom the bond is returned.

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

SECTION 11. Amends Section 31.049(c), Parks and Wildlife Code, to delete text referring to a duplicate original certificate.

SECTION 12. Amends Section 31.053, Parks and Wildlife Code, by adding Subsection (f) to require a person who is not licensed as a dealer, distributor, or manufacturer under this chapter to obtain a certificate of number or certificate of title to a vessel or outboard motor in the person's name before transferring the certificate of number or certificate of title.

SECTION 13. Amends Section 31.127a, Parks and Wildlife Code, to provide that a person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a proclamation of the commission entered under this chapter or a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

SECTION 14. (a) Requires the commission to adopt any rules necessary to implement this Act not later than January 1, 2004.

(b) Makes application of Section 31.041, Parks and Wildlife Code, as amended by this Act, prospective to March 1, 2004.

SECTION 15. Effective date: September 1, 2003.