

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3097
By: McClendon et al. (Carona)
Transportation & Homeland Security
5/13/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Transportation (TxDOT) has historically been an agency whose main function has been to build roads. However, over time, other divisions have been created within TxDOT that are primarily customer service related and vehicle related. These divisions include the Motor Carrier Division (MCD), the Automobile and Burglary Theft Prevention Division (ABTPA), the Motor Vehicle Division (MVD), and the Vehicle Titles and Registration Division (VTR). Maintaining these divisions under the TxDOT umbrella does not allow TxDOT to focus on its core mission of financing and building Texas's transportation infrastructure.

C.S.H.B. 3097 amends current law relating to the creation, organization, governance, duties, and functions of the Texas Department of Motor Vehicles, including the transfer of certain duties to the Texas Department of Motor Vehicles and the Texas Department of Licensing and Regulation and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly prohibited in SECTION 1.01 (Section 1002.002, Transportation Code) and SECTION 3I.07 (Section 2302.053, Occupations Code) and SECTION 4.07 (Section 2309.105) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Motor Vehicles (department) in SECTION 1 (Sections 1003.002 and 1003.003, Transportation Code) and SECTION 3H.04 (Section 130.009, Local Government Code) of this bill.

Rulemaking authority is expressly granted to the board of the department in SECTION 1 (Sections 1002.001, 1002.003, 1003.002, and 1003.003, Transportation Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 4.07 (Section 2309.102, 2309.103, 2309.106, 2309.152, 2309.154 and 2309.156, Occupations Code) and SECTION 4.13 of this bill.

Rulemaking authority previously granted to the Texas Department of Transportation is transferred to the department in SECTION 2H.01 (Section 551.302, Transportation Code), of this bill.

Rulemaking authority previously granted to the Texas Transportation Commission is transferred to the board of the department in SECTION 2T.06 (Section 623.051, Transportation Code), SECTION 2T.09 (Section 623.076, Transportation Code), SECTION 2T.13 (Section 623.145, Transportation Code), SECTION 2T.16 (Sections 623.195 and 623.196, Transportation Code), SECTION 2T.18 (Section 623.239, Transportation Code), SECTION 2T.20 (Section 623.259, Transportation Code), SECTION 3I.07 (Section 2302.051, Occupations Code), SECTION 3I.08 (Section 2302.108, Occupations Code) and SECTION 3I.09 (Section 2302.204, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 6.01 and SECTION 6.02 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends Title 7, Transportation Code, by adding Subtitle M, as follows:

SUBTITLE M. DEPARTMENT OF MOTOR VEHICLES

CHAPTER 1001. ORGANIZATION OF DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. Defines "board" and "department."

Sec. 1001.002. CREATION OF DEPARTMENT; DUTIES. (a) Creates the Texas Department of Motor Vehicles (department) as an agency of this state.

(b) Requires the department, in addition to the other duties required of the department, to administer and enforce Subtitle A; Chapters 623 (Permits for Oversize or Overweight Vehicles), 642 (Identifying Markings on Commercial Motor Vehicles), 643 (Motor Carrier Registration), 645 (Commercial Motor Vehicles), 646 (Commercial Motor Vehicles), and 648 (Foreign Commercial Motor Transportation); and Chapter 2301 (Sale or Lease of Motor Vehicles) and 2302 (Salvage Vehicle Dealers), Occupations Code.

Sec. 1001.003. COMPOSITION OF DEPARTMENT. Provides that the department is composed of an executive director appointed by the board of the department (board) and other employees required to efficiently implement this subtitle, other applicable vehicle laws of this state, and other laws that grant jurisdiction to or are applicable to the department.

Sec. 1001.004. DIVISIONS. Requires the board to organize the department into divisions to accomplish the department's functions and the duties assigned to it, including divisions for administration, motor carriers, motor vehicle board, and vehicle titles and registration.

Sec. 1001.005. SUNSET PROVISION. Provides that the department is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that the department, unless continued in existence as provided by that chapter, is abolished September 1, 2021.

Sec. 1001.006. DEFENSE BY ATTORNEY GENERAL. Requires the attorney general to defend an action brought against the board or the department or an action brought against an employee of the department as a result of the employee's official act or omission, regardless of whether at the time of the institution of the action that person has terminated service with the department.

[Reserves Sections 1001.007-1001.020 for expansion.]

SUBCHAPTER B. BOARD OF DEPARTMENT OF MOTOR VEHICLES

Sec. 1001.021. BOARD. (a) Provides that the board consists of nine members appointed by the governor with the advice and consent of the senate.

(b) Provides that three members must be persons who hold a dealer's license issued under Chapter 2301, Occupations Code, of whom two must be franchised dealers of different classes and one must be an independent dealer; one member must be a representative of a manufacturer or distributor that holds a license issued under Chapter 2301, Occupations Code; one member must be a tax assessor-collector; one member must be a representative of a law enforcement agency of a county or municipality; and one member must be a representative of the motor carrier industry. Requires that the remaining members be public members.

(c) Provides that a person, except as necessary to comply with Subsection (b), is not eligible for appointment as a member of the board if the person or the person's spouse is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the department;

directly or indirectly owns or controls more than 10 percent interest in a business entity or other organization that is regulated by or receives funds from the department; uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses; or is registered, certified, or licensed by the department.

(d) Prohibits a person required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department from serving as a member of the board.

(e) Requires that appointments to the board be made without regard to race, color, disability, sex, religion, age, or national origin of the appointees and reflect the diversity of the population of the state as a whole.

Sec. 1001.022. TERMS. Establishes six-year staggered terms for members of the board, with the terms of either one or two members expiring February 1 of each odd-numbered year.

Sec. 1001.023. CHAIR AND VICE CHAIR; DUTIES. (a) Requires the governor to appoint one of the board's members chair of the board. Requires the board to elect one of its members vice chair of the board. Provides that a chair or vice chair serves at the pleasure of the board.

(b) Requires the chair to preside over board meetings, make rulings on motions and points of order, and determine the order of business; represent the department in dealing with the governor; report to the governor on the state of affairs of the department at least quarterly; report to the board the governor's suggestions for department operations; report to the governor on efforts, including legislative requirements, to maximize the efficiency of department operations through the use of private enterprise; periodically review the department's organizational structure and submit recommendations for structural changes to the governor, the board, and the Legislative Budget Board (LBB); designate one or more employees of the department as a civil rights division of the department and receive regular reports from the division on the department's efforts to comply with civil rights legislation and administrative rules; create subcommittees, appoint board members to subcommittees, and receive the reports of subcommittees to the board as a whole; appoint a member of the board to act in the chair's absence; and serve as the departmental liaison with the governor and the Office of State-Federal Relations to maximize federal funding for transportation.

Sec. 1001.024. BOARD MEETINGS. Requires the board to hold regular meetings at least once a month and special meetings at the call of the chair. Requires board members to attend the meetings of the board. Requires the chair to oversee the preparation of an agenda for each meeting and ensure that a copy is provided to each board member at least seven days prior to the meeting.

Sec. 1001.025. RECOMMENDATIONS TO LEGISLATURE. (a) Requires the board to consider ways in which the department's operations can be improved. Authorizes the board to periodically report to the legislature concerning potential statutory changes that would improve the operation of the department.

(b) Requires the chair, on behalf of the board, to report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of relevant legislative committees on legislative recommendations adopted by the board and relating to the operation of the department.

Sec. 1001.026. COMPENSATION. Entitles a member of the board to compensation as provided by the General Appropriations Act. Entitles each member, if compensation for

board members is not provided by that Act, to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board.

Sec. 1001.027. **GROUND FOR REMOVAL.** (a) Provides that it is a ground for removal from the board if a board member does not have at the time of appointment or maintain during service on the board the qualifications required by Section 1001.021; violates a prohibition provided by Section 1001.021; cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or is absent from more than half of the regularly scheduled board meetings that the board member is eligible to attend during a calendar year, unless the absence is excused by majority vote of the board.

(b) Provides that the validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) Requires the executive director of the department, if the executive director knows that a potential ground for removal exists, to notify the chair of the board of the ground, and the chair to notify the governor and the attorney general that a potential ground for removal exists. Requires the director, if the potential ground for removal relates to the chair, to notify another board member, who shall notify the governor and the attorney general that a potential ground for removal exists.

Sec. 1001.028. **CONFLICT OF INTEREST.** (a) Requires a member of the board to disclose in writing to the executive director if the member has an interest in a matter before the board or has a substantial financial interest in an entity that has a direct interest in the matter.

(b) Requires the member to recuse himself or herself from the board's deliberations and actions on the matter in Subsection (a) and prohibits the board member from participating in the board's decision on the matter.

(c) Provides that a person has a substantial financial interest in an entity if the person is an employee, member, director, or officer of the entity or owns or controls, directly or indirectly, more than a five percent interest in the entity.

Sec. 1001.029. **INFORMATION ON QUALIFICATIONS AND CONDUCT.** Requires the department to provide to the members of the board, as often as necessary, information regarding the members' qualifications for office and their responsibilities under applicable laws relating to standards of conduct for state officers.

Sec. 1001.030. **TRAINING ON DEPARTMENT AND CERTAIN LAWS RELATING TO DEPARTMENT.** (a) Requires a person appointed to the board, to be eligible to take office as a member of the board, to complete at least one course of a training program that complies with this section.

(b) Requires that the training program provide information to the person regarding this subchapter; the programs operated by the department; the role and functions of the department; the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for the department; the results of the most recent formal audit of the department; the requirements of the open meetings law, Chapter 551 (Open Meetings), Government Code; open records law, Chapter 552 (Public Information), Government Code; administrative procedure law, Chapter 2001 (Administrative Procedure), Government Code; the requirements of the conflict of interest laws and other laws relating to public officials; and any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) Entitles a person appointed to the board to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the board.

Sec. 1001.031. **ADVISORY COMMITTEES.** (a) Requires the board to establish separate advisory committees for the motor carrier, motor vehicles, and vehicle titles and registration divisions to make recommendations to the board or executive director on the operation of the applicable division. Provides that a committee has the purposes, powers, and duties, including the manner of reporting its work, prescribed by the board. Provides that a committee and each member serves at the will of the board.

(b) Requires the board to appoint persons to each advisory committee who are selected from a list provided by the executive director and have knowledge about and interests in, and represent a broad range of viewpoints about, the work of the committee or applicable division.

(c) Requires the advisory committee for the motor vehicles division to include a member to represent motor vehicle manufacturers and a member to represent the recreational vehicle industry.

(d) Requires the advisory committee for the motor carrier division to include a member to represent the motor transportation industry.

(e) Prohibits a member of an advisory committee from being compensated by the board or the department for committee service.

[Reserves Sections 1001.032-1001.040 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 1001.041. **DEPARTMENT PERSONNEL.** (a) Requires the executive director, subject to the General Appropriations Act or other law, to appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the department under this code, other applicable vehicle laws of this state, and other laws granting jurisdiction or applicable to the department.

(b) Requires a person appointed under this section to have the professional and administrative experience necessary to qualify the person for the position to which the person is appointed.

Sec. 1001.042. **DIVISION OF RESPONSIBILITIES.** Requires the board to develop and implement policies that clearly define the respective responsibilities of the director and the staff of the department.

Sec. 1001.043. **EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.** (a) Requires the executive director or the director's designee to prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. Requires the policy statement to include certain criteria.

(b) Requires that a policy statement prepared under this section cover an annual period, be updated annually, be reviewed by the civil rights division of the Texas Workforce Commission for compliance with Subsection (a), and be filed by the governor.

(c) Requires the governor to deliver a biennial report to the legislature based on the information received under Subsection (b). Authorizes the report to be made separately or as part of other biennial reports made to the legislature.

Sec. 1001.044. **QUALIFICATIONS AND STANDARDS OF CONDUCT.** Requires the executive director to provide to department employees, as often as necessary, information regarding their qualification for office or employment under this subtitle and responsibilities under applicable laws relating to standards of conduct for state employees.

Sec. 1001.045. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) Requires the executive director or the director's designee to develop an intra-agency career ladder program. Requires that the program require intra-agency posting of all non-entry level positions concurrently with any public posting.

(b) Requires the executive director or the director's designee to develop a system of annual performance evaluations. Requires that all merit pay for department employees be based on the system established under this subsection.

CHAPTER 1002. RULES

Sec. 1002.001. GENERAL RULEMAKING AUTHORITY. Authorizes the board to adopt any rules necessary and appropriate to implement the powers and duties of the department under this code and other laws of this state.

Sec. 1002.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. Prohibits the board from adopting rules restricting advertising or competitive bidding by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

CHAPTER 1003. DEPARTMENT PROCEDURES

Sec. 1003.001. APPLICABILITY OF CERTAIN LAWS. Provides that, except as specifically provided by law, the department is subject to Chapters 2001 (Administrative Procedure) and 2002 (Texas Register and Administrative Code), Government Code.

Sec. 1003.002. SUMMARY PROCEDURES FOR ROUTINE MATTERS. (a) Authorizes the board or department by rule to create a summary procedure for routine matters and designate department activities that otherwise would be subject to Chapter 2001, Government Code, as routine matters to be handled under the summary procedure.

(b) Authorizes that an activity be designated as a routine matter only if the activity is voluminous, repetitive, believed to be noncontroversial, and of limited interest to anyone other than persons immediately involved in or affected by the proposed department action.

(c) Authorizes the rules to establish procedures different from those contained in Chapter 2001, Government Code. Requires that the procedures require, for each party involved, notice of a proposed negative action not later than the fifth day before the date the action is proposed to be taken.

(d) Authorizes that a rule adopted by the board under this section provide for the delegation of authority to take action on a routine matter to a salaried employee of the department designated by the board.

Sec. 1003.003. REVIEW OF ACTION ON ROUTINE MATTER. (a) Entitles a person directly or indirectly affected by an action of the board or the department on a routine matter taken under the summary procedure adopted under Section 1003.002 to a review of the action under Chapter 2001, Government Code.

(b) Requires the person to apply to the board not later than the 60th day after the date of the action to be entitled to the review.

(c) Provides that the timely filing of the application for review immediately stays the action pending a hearing on the merits.

(d) Authorizes the board and department to adopt rules relating to an application for review under this section and consideration of the application.

Sec. 1003.004. **INFORMAL DISPOSITION OF CERTAIN CONTESTED CASES.** Authorizes the board or department, as applicable, on written agreement or stipulation of each party and any intervenor, to informally dispose of a contested case in accordance with Section 2001.056 (Informal Disposition of Contested Case), Government Code, notwithstanding any provision of this code or other law that requires a hearing before the board or the department, as applicable.

CHAPTER 1004. PUBLIC ACCESS

Sec. 1004.001. **ACCESS TO PROGRAMS AND FACILITIES.** (a) Requires the department to prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the department's programs.

(b) Requires the department to comply with federal and state laws for program and facility accessibility.

Sec. 1004.002. **PUBLIC COMMENT.** Requires the board and the department to develop and implement policies that provide the public with a reasonable opportunity to appear before the board or the department and to speak on any issue under the jurisdiction of the board or the department.

Sec. 1004.003. **PUBLIC REPRESENTATION ON ADVISORY BODY.** (a) Requires that at least one-half of the membership of each advisory body appointed by the board, other than an advisory body whose membership is determined by this code or by other law, represent the general public.

(b) Prohibits a public representative from being an officer, director, or employee of a business entity regulated by the department; a person required to register with the Texas Ethics Commission under Chapter 305, Government Code; or a person related within the second degree by affinity or consanguinity to a person described by this subsection.

CHAPTER 1005. STANDARDS OF CONDUCT

Sec. 1005.001. **APPLICATION OF LAW RELATING TO ETHICAL CONDUCT.** Provides that the board, executive director, and each employee or agent of the department is subject to the code of ethics and the standard of conduct imposed by Chapter 572 (Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest), Government Code, and any other law regulating the ethical conduct of state officers and employees.

ARTICLE 2. TRANSFER OF DUTIES AND FUNCTIONS OF THE TEXAS DEPARTMENT OF TRANSPORTATION

PART A. GENERAL PROVISIONS AND ADMINISTRATION

SECTION 2A.01. Amends Section 201.202(a), Transportation Code, to delete existing text requiring the Texas Transportation Commission (TTC) to create the division of motor vehicle titles and registration to accomplish the Texas Department of Transportation's (TxDOT) functions and duties.

SECTION 2A.02. Amends Section 201.931(2), Transportation Code, to delete existing text from the definition of "license" relating to a salvage vehicle dealer or agent license issued under Chapter 2302 Occupations Code; specially designated or specialized license plates issued under Subchapters E and F, Chapter 502 (Registration of Vehicles), Transportation Code; and an apportioned registration issued according to the International Registration Plan under Section 502.054 (Agreements With Other Jurisdictions; Offense), Transportation Code.

SECTION 2A.03. Repealer: Sections 201.202(c) (relating to preference for similar experience when appointing personnel), Transportation Code.

PART B. STATE HIGHWAY TOLL PROJECTS

SECTION 2B.01. Amends Sections 228.055(b) and (h), Transportation Code, to change references to TxDOT to the department.

SECTION 2B.02. Amends Section 228.056(b), Transportation Code, by making a conforming change.

PART C. CAUSEWAYS, BRIDGES, TUNNELS, TURNPIKES, FERRIES, AND HIGHWAYS IN CERTAIN COUNTIES

SECTION 2C.01. Amends Sections 284.0701(b), (e), and (h), Transportation Code, to change references to TxDOT to the department.

PART D. CERTIFICATE OF TITLE ACT

SECTION 2D.01. Amends Section 501.002(3), Transportation Code, to redefine "department" to mean the Texas Department of Motor Vehicles, rather than TxDOT.

PART E. REGISTRATION OF VEHICLES

SECTION 2E.01. Amends Section 502.001, Transportation Code, to redefine "department" to mean the Texas Department of Motor Vehicles, rather than TxDOT and to make conforming changes.

SECTION 2E.02. Amends Sections 502.053(a) and (b), Transportation Code, to redefine "department" to mean the Texas Department of Motor Vehicles, rather than TxDOT.

PART F. DEALER'S AND MANUFACTURER'S VEHICLE LICENSE PLATES

SECTION 2F.01. Amends Sections 503.001(2) and (5), Transportation Code, to redefine "commission" to mean the board of the Texas Department of Motor Vehicles rather than TTC and "department" to mean the Texas Department of Motor Vehicles, rather than TxDOT.

PART G. MISCELLANEOUS PROVISIONS

SECTION 2G.01. Amends Section 520.001, Transportation Code, to redefine "department" as the Texas Department of Motor Vehicles, rather than TxDOT.

PART H. OPERATION OF BICYCLES, MOPEDS, AND PLAY VEHICLES

SECTION 2H.01. Amends Section 551.302, Transportation Code, to transfer rulemaking authority relating to the registration and issuance of license plates to neighborhood electric vehicles from TxDOT to the department.

PART I. MOTOR VEHICLE SAFETY RESPONSIBILITY ACT

SECTION 2I.01. Amends Section 601.023, Transportation Code, to change references to TxDOT to the department.

SECTION 2I.02. Amends Section 601.451, Transportation Code, to redefine "implementing agencies."

SECTION 2I.03. Repealer: Subchapter N (Database Interface System to Verify Financial Responsibility), Chapter 601 (Motor Vehicle Safety Responsibility Act), Transportation Code, as added by Chapter 1325 (H.B. 3588), Acts of the 78th Legislature, Regular Session, 2003.

PART J. IDENTIFYING MARKINGS ON CERTAIN COMMERCIAL MOTOR VEHICLES

SECTION 2J.01. Amends Section 642.002(d), Transportation Code, to make a conforming change.

PART K. MOTOR CARRIER REGISTRATION

SECTION 2K.01. Amends Section 643.001(1), Transportation Code, to redefine "department" to mean the Texas Department of Motor Vehicles, rather than TxDOT.

PART L. SINGLE STATE REGISTRATION

SECTION 2L.01. Amends Section 645.001, Transportation Code, to authorize the department, rather than TxDOT, to the fullest extent practicable, to participate in a federal motor carrier registration program under the unified carrier registration system as defined by Section 643.001 or a single state registration system established under federal law, rather than the single state registration system established under 49 U.S.C. Section 14504.

PART M. MOTOR TRANSPORTATION BROKERS

SECTION 2M.01. Amends Section 646.003(a), Transportation Code, to make a conforming change.

PART N. FOREIGN COMMERCIAL MOTOR TRANSPORTATION

SECTION 2N.01. Amends Section 648.002, Transportation Code, to make a conforming change.

PART O. ABANDONED MOTOR VEHICLES

SECTION 2O.01. Amends Section 683.001(1), Transportation Code, to redefine "department" to mean the Texas Department of Motor Vehicles, rather than TxDOT.

PART P. CONTRACTS FOR ENFORCEMENT OF CERTAIN ARREST WARRANTS

SECTION 2P.01. Amends Section 702.001(1), Transportation Code, to redefine "department" to mean the Texas Department of Motor Vehicles rather than TxDOT.

PART Q. PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM

SECTION 2Q.01. Amends Section 707.001(2), Transportation Code, to redefine "owner of a motor vehicle."

SECTION 2Q.02. Amends Section 707.011(b), Transportation Code, to make conforming changes.

SECTION 2Q.03. Amends Section 707.017, Transportation Code, to make a conforming change.

PART R. SALE OR LEASE OF MOTOR VEHICLES

SECTION 2R.01. Amends Section 2301.002(9), Occupations Code, to redefine "department" as the Texas Department of Motor Vehicles rather than TxDOT.

SECTION 2R.02. Repealer: Section 2301.002(33) (relating to defining transportation commission), Occupations Code.

PART S. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

SECTION 2S.01. Amends Section 1(3), Article 4413(37), V.T.C.S., to redefine "department" to mean the Texas Department of Motor Vehicles rather than TxDOT.

SECTION 2S.02. Amends Section 2, Article 4413(37), V.T.C.S., to establish the Automobile Burglary and Theft Prevention Authority in the department, rather than TxDOT. Provides that the authority is not an advisory body to the department, rather than to TxDOT.

ARTICLE 3. CONFORMING AMENDMENTS PERTAINING TO TEXAS DEPARTMENT OF TRANSPORTATION IN OTHER CODES

PART A. BUSINESS AND COMMERCE CODE

SECTION 3A.01. Amends Section 51.003(b), Business and Commerce Code, as effective April 1, 2009, to replace TxDOT with the Texas Department of Motor Vehicles.

SECTION 3A.02. Amends Section 105.004(b), Business and Commerce Code, as effective April 1, 2009, to make a conforming change.

PART B. CODE OF CRIMINAL PROCEDURE

SECTION 3B.01. Amends Section 1(1), Article 42.22, Code of Criminal Procedure, to define "department" as the Texas Department of Motor Vehicles rather than TxDOT.

SECTION 3B.02. Amends Article 59.04(c), Code of Criminal Procedure, to make conforming changes.

PART C. FAMILY CODE

SECTION 3C.01. Amends Section 157.316(b), Family Code, to change references to TxDOT to the Department of Motor Vehicles.

SECTION 3C.02. Amends Section 232.0022(a), Family Code, to make a conforming change.

SECTION 3C.03. Amends Section 232.014(b), Family Code, to make a conforming change.

SECTION 3C.04. Amends Section 264.502(b), Family Code, to make a conforming change.

PART D. FINANCE CODE

SECTION 3D.01. Amends Section 306.001(9), Finance Code, to change references to TxDOT to the Department of Motor Vehicles.

SECTION 3D.02. Amends Section 348.001(10-a), Finance Code, to make a conforming change.

SECTION 3D.03. Amends Section 348.518, Finance Code, to make a conforming change.

PART E. GOVERNMENT CODE

SECTION 3E.01. Amends Section 411.122(d), Government Code, to change a reference to the Board of Examiners of Perfusionist to the Texas State Perfusionist Advisory Committee, and adding the Texas Department of Motor Vehicles to the list of agencies subject to this section.

PART F. HEALTH AND SAFETY CODE

SECTION 3F.01. Amends Section 382.209(e), Health and Safety Code, to change references to TxDOT to the Texas Department of Motor Vehicles.

SECTION 3F.02. Amends Section 382.210(f), Health and Safety Code, to make a conforming change.

SECTION 3F.03. Amends Section 461.017(a), Health and Safety Code, to change references to the executive director of the Texas Commission on Alcohol and Drug Abuse (TCADA) to the commissioner of the Department of State Health Services (DSHS); the Department of Protective and Regulatory Services to the Department of Family and Protective Services; the Texas Commission on Alcohol and Drug Abuse to DSHS; the Texas Department of Health and the Texas Department of Human Services to the Texas Health and Human Services Commission; the Texas Department of Mental Health and Mental Retardation to the Department of Aging and

Disability Services; the Texas Rehabilitation Commission to the Department of Assistive and Rehabilitative Services; and the Texas Department of Transportation to the Texas Department of Motor Vehicles. Makes nonsubstantive changes.

PART G. HUMAN RESOURCES CODE

SECTION 3G.01. Amends Section 22.041, Human Resources Code, to change references to TxDOT to the Texas Department of Motor Vehicles.

SECTION 3G.02. Amends Section 32.026(g), Human Resources Code, to make a conforming change.

PART H. LOCAL GOVERNMENT CODE

SECTION 3H.01. Amends Section 130.006, Local Government Code, to replace TxDOT with the Texas Department of Motor Vehicles.

SECTION 3H.02. Amends Section 130.007, Local Government Code, to make conforming changes.

SECTION 3H.03. Amends Section 130.008, Local Government Code, to make a conforming change.

SECTION 3H.04. Amends Section 130.009, Local Government Code, to make a conforming change.

PART I. OCCUPATIONS CODE

SECTION 3I.01. Amends Section 554.009(c), Occupations Code, to change references to TxDOT to the Texas Department of Motor Vehicles.

SECTION 3I.02. Amends Section 2301.002(9), Occupations Code, to redefine "department."

SECTION 3I.03. Amends Sections 2301.005(a) and (b), Occupations Code, as follows:

(a) Provides that a reference in law, including a rule, to the Texas Motor Vehicle Commission or to the board means the board of the department, rather than the director, except that a reference to the board means the TTC if it is related to the adoption of rules.

(b) Provides that a reference to law, including a rule, to the executive director of the Texas Motor Vehicle Commission means the executive director of the department.

SECTION 3I.04. Amends Sections 2302.001(2) and (3), Occupations Code, to redefine "board" and "department."

SECTION 3I.05. Amends Section 2302.0015(b), Occupations Code, to make conforming changes.

SECTION 3I.06. Amends the heading to Subchapter B, Chapter 2302, Occupations Code, to read as follows:

SUBCHAPTER B. BOARD POWERS AND DUTIES

SECTION 3I.07. Amends Sections 2302.051, 2302.052, and 2302.053, Occupations Code, as follows:

Sec. 2302.051. RULES AND ENFORCEMENT POWERS. Requires the board to adopt rules a necessary to administer this chapter and may take other action as necessary to enforce this chapter.

Sec. 2302.052. DUTY TO SET FEES. Makes conforming changes.

Sec. 2302.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Makes a conforming change.

(b) Makes a conforming change.

SECTION 3I.08. Amends Section 2302.108(b), Occupations Code, to require the board, rather than TTC, by rule to establish the grounds for denial, suspension, revocation, or reinstatement of a license issued under this chapter and the procedures for disciplinary action.

SECTION 3I.09. Amends Section 2302.204, Occupations Code, as follows:

Sec. 2302.204. CASUAL SALES. Requires the board, rather than TTC, to adopt rules as necessary to regulate casual sales by salvage vehicle dealers, insurance companies, or salvage pool operators and to enforce this section.

SECTION 3I.10. Repealer: Section 2301.002(33) (relating to the definition of "transportation commission"), Occupations Code.

PART J. PENAL CODE

SECTION 3J.01. Amends Section 31.03(c), Penal Code, to replace TxDOT with the Texas Department of Motor Vehicles.

SECTION 3J.02. Amends Section 31.11(b), Penal Code, to provide that it is an affirmative defense to prosecution under this section that the person was acting with respect to a number assigned to a vehicle by TxDOT or the department, as applicable.

PART K. TAX CODE

SECTION 3K.01. Amends Section 21.02, Tax Code, to replace TxDOT with the Texas Department of Motor Vehicles.

SECTION 3K.02. Amends Section 22.04(d), Tax Code, to make conforming changes.

SECTION 3K.03. Amends Sections 23.121(a)(3), (11), and (14), Tax Code, to redefine "dealer," "sales price," and "towable recreational vehicle."

SECTION 3K.04. Amends Sections 23.121(f), (g), and (h), Tax Code, to make nonsubstantive and conforming changes.

SECTION 3K.05. Amends Section 23.123(c), Tax Code, to make nonsubstantive and conforming changes.

SECTION 3K.06. Amends Section 23.124(a)(11), Tax Code, to redefine "sales price."

SECTION 3K.07. Amends Section 113.011, Tax Code, as follows:

Sec. 113.011. New heading: LIENS FILED WITH THE TEXAS DEPARTMENT OF MOTOR VEHICLES. Requires the comptroller to furnish to the Texas Department of Motor Vehicles, rather than TxDOT, each release of a tax lien filed by the comptroller with that department.

SECTION 3K.08. Amends Sections 152.0412(a) and (f), Tax Code, to make conforming changes.

SECTION 3K.09. Amends Section 152.042, Tax Code, to make a conforming change.

SECTION 3K.10. Amends Section 152.121(b), Tax Code, to make a conforming change.

SECTION 3K.11. Amends Section 162.001(52), Tax Code, to redefine "registered gross weight."

ARTICLE 4. USED AUTOMOTIVE PARTS RECYCLERS

SECTION 4.01. Amends Section 2302.001(6), Occupations Code, to redefine "salvage vehicle agent."

SECTION 4.02. Amends Section 2302.006(b), Occupations Code, to provide that this chapter applies to a transaction in which a motor vehicle is sold, transferred, released, or delivered to a metal recycler for the purpose of reuse or resale as a motor vehicle, rather than as a motor vehicle or as a source of used parts, and is used for that purpose.

SECTION 4.03. Amends Subchapter A, Chapter 2302, Occupations Code, by adding Section 2302.008, as follows:

Sec. 2302.008. **APPLICABILITY OF CHAPTER TO USED AUTOMOTIVE PARTS RECYCLERS.** Provides that this chapter does not apply to a used automotive parts recycler licensed under Chapter 2309.

SECTION 4.04. Amends Section 2302.103(b), Occupations Code, to authorize an applicant to apply for a salvage vehicle dealer license with an endorsement in certain classifications. Deletes existing text referencing the classification of used vehicle parts dealer. Makes nonsubstantive changes.

SECTION 4.05. Amends Section 2302.107(d), Occupations Code, to authorize a salvage vehicle agent to acquire, sell, or otherwise deal in, nonrepairable or salvage motor vehicles, rather than nonrepairable or salvage motor vehicles or used parts, as directed by the authorizing dealer.

SECTION 4.06. Amends Section 2302.202, Occupations Code, as follows:

Sec. 2302.202. **RECORDS OF PURCHASES.** Requires a salvage vehicle dealer to maintain a record of each salvage motor vehicle, rather than each salvage motor vehicle and each used part, purchased or sold by the dealer.

SECTION 4.07. Amends Subtitle A, Title 14, Occupations Code, by adding Chapter 2309, as follows:

CHAPTER 2309. USED AUTOMOTIVE PARTS RECYCLERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2309.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Texas Used Automotive Parts Recycling Act.

Sec. 2309.002. **DEFINITIONS.** Defines "insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle title," "salvage vehicle dealer," "commission," "department," "executive director," "used automotive part," "used automotive parts recycler," and "used automotive parts recycling."

Sec. 2309.003. **APPLICABILITY OF CHAPTER TO METAL RECYCLERS.**
(a) Provides that except as provided by Subsection (b), this chapter does not apply to a transaction to which a metal recycler is a party.

(b) Provides that this chapter applies to a transaction in which a motor vehicle is sold, transferred, released, or delivered to a metal recycler as a source of used automotive parts and is used as a source of used automotive parts.

Sec. 2309.004. **APPLICABILITY OF CHAPTER TO SALVAGE VEHICLE DEALERS.** (a) Provides that except as provided by Subsection (b), this chapter does not apply to a transaction in which a salvage vehicle dealer is a party.

(b) Provides that this chapter applies to a salvage vehicle dealer who deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

Sec. 2309.005. **APPLICABILITY OF CHAPTER TO INSURANCE COMPANIES.** Provides that this chapter does not apply to an insurance company.

[Reserves Sections 2309.006-2309.050 for expansion.]

SUBCHAPTER B. ADVISORY BOARD

Sec. 2309.051. **USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD.**

(a) Provides that the Automotive Parts Recycling Advisory Board (advisory board) consists of five members representing the used automotive parts industry in this state appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR) with the approval of TCLR.

(b) Requires the advisory board to include members who represent used automotive parts businesses owned by domestic entities, as defined by Section 1.002 (Definitions), Business Organizations Code.

(c) Requires the advisory board to include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) Prohibits the advisory board from including more than one member from any one used automotive parts business entity.

(e) Requires that appointments to the advisory board be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2309.052. **TERMS; VACANCIES.** (a) Provides that advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(b) Prohibits a member from serving more than two full consecutive terms.

(c) Requires the presiding officer of TCLR, if a vacancy occurs during a term, to appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2309.053. **PRESIDING OFFICER.** Requires the presiding officer of TCLR to appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. Authorizes the presiding officer of the advisory board to vote on any matter before the advisory board.

Sec. 2309.054. **POWERS AND DUTIES OF ADVISORY BOARD.** Requires the advisory board to provide advice and recommendations to the Texas Department of Licensing and Regulation (TDLR) on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Sec. 2309.055. **COMPENSATION; REIMBURSEMENT OF EXPENSES.** Prohibits advisory board members from receiving compensation but entitles advisory board members to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2309.056. MEETINGS. Requires the advisory board to meet twice annually and authorizes the advisory board to meet at other times at the call of the presiding officer of TCLR or the executive director.

[Reserves Sections 2309.057-2309.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 2309.101. GENERAL POWERS AND DUTIES. Authorizes the executive director of TDLR (executive director) or TCLR, as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 2309.102. RULES. (a) Requires TCLR to adopt rules for licensing used automotive parts recyclers and used automotive parts employees.

(b) Requires TCLR by rule to adopt standards of conduct for license holders under this chapter.

Sec. 2309.103. RULES REGARDING LICENSING AND STANDARDS OF CONDUCT. (a) Requires TCLR to adopt rules for licensing applicants, including rules for denial of an application if the applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant, has:

(1) before the application date, been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for a felony or a misdemeanor punishable by confinement in jail or by a fine exceeding \$500;

(2) violated an order of TCLR or the executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false information on the application.

(b) Requires TCLR by rule to adopt standards of conduct for license holders under this chapter.

Sec. 2309.104. FEES. Requires TCLR to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2309.105. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Prohibits TCLR from adopting a rule restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) Prohibits TCLR from including in its rules to prohibit false, misleading, or deceptive practices a rule that restricts the use of any advertising medium; restricts the person's personal appearance or use of the person's voice in an advertisement; relates to the size or duration of an advertisement by the person; or restricts the use of a trade name in advertising by the person.

Sec. 2309.106. PERIODIC AND RISK-BASED INSPECTIONS. (a) Requires TDLR to inspect each used automotive parts recycling facility at least once every two years.

(b) Authorizes TDLR to enter and inspect at any time during business hours the place of business of any person regulated under this chapter or any place in which TDLR has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of TCLR or executive director.

(c) Requires TDLR to conduct additional inspections based on a schedule of risk-based inspections using the inspection history; any history of complaints

involving a used automotive parts recycler; and any other factor determined by TCLR by rule.

(d) Requires a used automotive parts recycler to pay a fee for each risk-based inspection performed under this section. Requires TCLR by rule to set the amount of the fee.

(e) Authorizes TDLR, in conducting an inspection under this section, to inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Sec. 2309.107. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer and enforce this chapter.

[Reserves Sections 2309.108-2309.150 for expansion.]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2309.151. USED AUTOMOTIVE PARTS RECYCLER LICENSE REQUIRED.

(a) Prohibits a person, unless the person holds a used automotive parts recycler license issued under this chapter, from owning or operating a used automotive parts recycling business or selling used automotive parts.

(b) Provides that a used automotive parts recycler license is valid only with respect to the person who applied for the license and authorizes the license holder to operate a used automotive parts recycling business only at the one facility listed on the license.

Sec. 2309.152. GENERAL LICENSE APPLICATION REQUIREMENTS. Requires an applicant for a used automotive parts recycler license under this chapter to submit to TDLR a completed application on a form prescribed by the executive director; the required fees; and any other information required by TCLR rule.

Sec. 2309.153. LICENSE REQUIREMENTS. Requires an applicant for a used automotive parts recycler license under this chapter to provide in a manner prescribed by the executive director a federal tax identification number; proof of general liability insurance in an amount not less than \$250,000; and proof of a storm water permit if the applicant is required by the Texas Commission on Environmental Quality (TCEQ) to obtain a permit.

Sec. 2309.154. USED AUTOMOTIVE PARTS EMPLOYEE LICENSE REQUIRED.

(a) Prohibits a person employed by a used automotive parts recycler from in the scope of the person's employment acquiring a vehicle or used automotive parts and from selling used automotive parts unless the person holds a used automotive parts employee license issued under this chapter.

(b) Requires TCLR by rule to adopt requirements for the application for and issuance of a used automotive parts employee license under this chapter.

Sec. 2309.155. NONTRANSFERABILITY OF LICENSE. Provides that a license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2309.156. LICENSE RENEWAL. (a) Provides that a license issued under this chapter is valid for one year. Authorizes TDLR to adopt a system under which licenses expire at different times during the year.

(b) Requires TDLR to notify the license holder at least 30 days before the date a license expires. Requires the notice to be in writing and sent to the license holder's last known address according to the records of the department.

(c) Requires TCLR by rule to adopt requirements to renew a license issued under this chapter.

[Reserves Sections 2309.157-2309.200 for expansion.]

SUBCHAPTER E. LOCAL REGULATION

Sec. 2309.201. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. (a) Provides that the requirements of this chapter apply in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts.

(b) Provides that this chapter does not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under this chapter.

[Reserves Sections 2309.202-2309.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT

Sec. 2309.251. ADMINISTRATIVE PENALTY. (a) Authorizes TCLR to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51 (Texas Department of Licensing and Regulation), regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule adopted under this chapter or a rule or order of the executive director or TCLR.

(b) Prohibits an administrative penalty from being imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2309.252. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) Authorizes the executive director to issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) Authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352 (Injunctive Relief; Civil Penalty).

Sec. 2309.253. SANCTIONS. Authorizes TDLR to impose sanctions as provided by Section 51.353 (Administrative Sanctions).

Sec. 2309.254. CRIMINAL PENALTY; LICENSING. (a) Provides that a person commits an offense if the person violates the licensing requirements of this chapter; deals in used parts without a license required by this chapter; or employs an individual who does not hold the appropriate license required by this chapter.

(b) Provides that an offense under this section is a Class C misdemeanor.

[Reserves Sections 2309.255-2309.300 for expansion.]

SUBCHAPTER G. CONDUCTING BUSINESS

Sec. 2309.301. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) Requires a used automotive parts recycler who acquires ownership of a salvage motor vehicle to obtain a properly assigned title from the previous owner of the vehicle.

(b) Requires a used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, to, before the 31st day after the date of acquiring the motor vehicle, submit to TxDOT a properly assigned manufacturer's certificate of origin, regular certificate of title,

nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.

(c) Requires TxDOT, after receiving the title or document, to issue the used automotive parts recycler a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document.

(d) Requires the recycler to comply with Subchapter E (Nonrepairable and Salvage Motor Vehicles), Chapter 501 (Certificate of Title Act), Transportation Code.

Sec. 2309.302. **RECORDS OF PURCHASES.** Requires a used automotive parts recycler to maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

Sec. 2309.303. **REGISTRATION OF NEW BUSINESS LOCATION.** Requires a used automotive parts recycler, before moving a place of business, to notify TDLR of the new location. Requires the used automotive parts recycler to provide a storm water permit for the location if a permit is required by TCEQ.

[Reserves Sections 2309.304-2309.350 for expansion.]

SUBCHAPTER H. ADDITIONAL DUTIES OF USED AUTOMOTIVE PARTS RECYCLER IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS

Sec. 2309.351. **DEFINITIONS.** Defines "component part," "interior component part," "minor component part," and "special accessory part."

Sec. 2309.352. **REMOVAL OF LICENSE PLATES.** Requires a used automotive parts recycler, immediately on receipt of a motor vehicle, to remove any unexpired license plates from the vehicle and place the license plates in a secure place until destroyed by the used automotive parts recycler.

Sec. 2309.353. **DISMANTLEMENT OR DISPOSITION OF MOTOR VEHICLE.** Prohibits a used automotive parts recycler from dismantling or disposing of a motor vehicle unless the recycler first obtains a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Chapter 683 (Abandoned Motor Vehicles), Transportation Code, or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

Sec. 2309.354. **RECORD OF PURCHASE; INVENTORY OF PARTS.** (a) Requires a used automotive parts recycler to keep an accurate and legible record of each used component part purchased by or delivered to the recycler. Requires that the record include the date of purchase or delivery; the driver's license number of the seller and a legible photocopy of the seller's driver's license; and a description of the part and, if applicable, the make and model of the part.

(b) Authorizes a used automotive parts recycler, as an alternative to the information required by Subsection (a), to record the name of the person who sold the part or the motor vehicle from which the part was obtained and the Texas certificate of inventory number or the federal taxpayer identification number of the person.

(c) Requires TDLR to prescribe the form of the record required by Subsection (a) and to make the form available to used automotive parts recyclers.

(d) Provides that this section does not apply to an interior component part or special accessory part from a motor vehicle more than 10 years old or a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

Sec. 2309.355. RETENTION OF COMPONENT PARTS. (a) Requires a used automotive parts recycler to retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.

(b) Provides that this section does not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.

Sec. 2309.356. MAINTENANCE OF RECORDS. Requires a used automotive parts recycler to maintain copies of each record required under this subchapter until the first anniversary of the purchase date of the item for which the record is maintained.

Sec. 2309.357. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES.

(a) Requires a used automotive parts recycler to surrender to TxDOT for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by TDLR.

(b) Requires TxDOT to provide a signed receipt for a surrendered certificate of title.

Sec. 2309.358. INSPECTION OF RECORDS. (a) Authorizes a peace officer at any reasonable time to inspect a record required to be maintained under this subchapter, including an inventory record.

(b) Requires a used automotive parts recycler, on demand by a peace officer, to provide to the officer a copy of a record required to be maintained under this subchapter.

(c) Authorizes a peace officer to inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit the records required to be maintained under this subchapter.

(d) Provides that a used automotive parts recycler or an employee of the recycler shall allow and may not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

[Reserves Sections 2309.359-2309.400 for expansion.]

SUBCHAPTER I. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES

Sec. 2309.401. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a used automotive parts facility located in a county with a population of 2.8 million or more.

Sec. 2309.402. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) Prohibits a used automotive parts recycler from operating heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) Provides that this section does not apply to conduct necessary to a sale or purchase by the recycler.

SECTION 4.08. Amends Section 501.091, Transportation Code, by amending Subdivision (17) to redefine "salvage vehicle dealer" and adding Subdivision (20) to define "used part dealer."

SECTION 4.09. Amends Section 501.092(d), Transportation Code, to authorize an insurance company to sell a motor vehicle to which this section applies, or assign a salvage vehicle title or a nonrepairable vehicle title for the motor vehicle, only to a salvage vehicle dealer, an out-of-state buyer, a buyer in a casual sale at auction, a metal recycler, or a used automotive parts recycler.

SECTION 4.10. Amends Section 501.095(a) and (b), Transportation Code, as follows:

(a) Authorizes a business or governmental entity described by Subdivisions (1)-(3), if TDLR has not issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle and an out-of-state ownership document for the motor vehicle has not been issued by another state or jurisdiction, to sell, transfer, or release a nonrepairable motor vehicle or salvage motor vehicle only to certain persons including a licensed salvage vehicle dealer, a used automotive parts recycler under Chapter 2309, Occupations Code, or a metal recycler under Chapter 2302, Occupations Code;

(b) Requires a person, other than a salvage vehicle dealer, a used automotive parts recycler, or an insurance company licensed to do business in this state, who acquired ownership of a nonrepairable or salvage motor vehicle that has not been issued a nonrepairable vehicle title, salvage vehicle title, or a comparable ownership document issued by another state or jurisdiction to, before selling the motor vehicle, surrender the properly assigned certificate of title for the motor vehicle to TDLR and apply to TDLR for certain titles.

SECTION 4.11. Amends Section 501.105, Transportation Code, as follows:

Sec. 501.105. RETENTION OF RECORDS RELATING TO CERTAIN CASUAL SALES. Requires each licensed salvage vehicle dealer, used automotive parts recycler, or insurance company that sells a nonrepairable motor vehicle or a salvage motor vehicle at a casual sale to keep on the business premises of the dealer or the insurance company a list of all casual sales made during the preceding 36-month period that contains certain information.

SECTION 4.12. Repealer: Section 2302.253 (Receipt of Motor Vehicle by Holder of Endorsement as Used Vehicle Parts Dealer), Occupations Code.

SECTION 4.13. Requires TDLR, not later than January 1, 2010, to adopt rules under Section 2309.102, Occupations Code, as added by this Act.

SECTION 4.14. Provides that if there is a conflict between a provision of this Act and a provision of another Act of the 81st Legislature, Regular Session, 2009, that becomes law concerning the licensing or regulation of used automotive parts recyclers, this Act prevails regardless of the relative dates of enactment.

SECTION 4.15. Effective date, Sections 2309.151 and 2309.154, Occupations Code, as added by this article, and Subchapter F, Chapter 2309, Occupations Code, as added by this article: September 1, 2010.

ARTICLE 5. TRANSFERS OF CERTAIN POWERS, DUTIES, OBLIGATIONS, AND RIGHTS OF ACTION

SECTION 5.01. (a) Provides that all powers, duties, obligations, and rights of action of the Motor Carrier Division, the Motor Vehicle Division, and the Vehicle Titles and Registration Division of TxDOT are transferred to the department and all powers, duties, obligations, and rights of action of TTC in connection or associated with those divisions of TxDOT are transferred to the board of the department on November 1, 2009.

(b) Provides that the powers, duties, obligations, and rights of action of the portion of the Motor Carrier Division of TxDOT that is responsible for motor carrier registration and the enforcement of Subtitle F, Title 7, Transportation Code, are transferred to the department and the associated powers, duties, obligations, and rights of action of TTC are transferred to the board of the department on November 1, 2009.

(c) Provides that in connection with the transfers required by Subsections (a) and (b) of this section, the personnel, furniture, computers, other property and equipment, files, and related materials used by the Motor Vehicle Division, the Vehicle Titles and Registration

Division, or the portion of the Motor Carrier Division of TxDOT described in Subsection (b) of this section are transferred to the department.

(d) Requires the department to continue any proceeding involving the Motor Vehicle Division, the Vehicle Titles and Registration Division, or any portion of the Motor Carrier Division of TxDOT described in Subsection (b) of this section that was brought before the effective date of this Act in accordance with the law in effect on the date the proceeding was brought, and the former law is continued in effect for that purpose.

(e) Provides that a certificate, license, document, permit, registration, or other authorization issued by the Motor Carrier Division, the Motor Vehicle Division, or the Vehicle Titles and Registration Division of TxDOT or a registration issued by the Motor Carrier Division of TxDOT in connection with the permitting of oversize or over weight vehicles that is in effect on the effective date of this Act remains valid for the period for which it was issued unless suspended or revoked by the department.

(f) Provides that a rule adopted by TTC or the executive director of TxDOT in connection with or relating to the Motor Vehicle Division, the Vehicle Titles and Registration Division, or the portion of the Motor Carrier Division of TxDOT in described in Subsection (b) of this section continues in effect until it is amended or repealed by the board of the department or the department, as applicable.

(g) Provides that the unobligated and unexpended balance of any appropriations made to TxDOT in connection with or relating to the Motor Carrier Division, the Motor Vehicle Division, and the Vehicle Titles and Registration Division, or the portion of the Motor Carrier Division of TxDOT described in Subsection (b) of this section for the state fiscal biennium ending August 31, 2009, is transferred and reappropriated to the department for the purpose of implementing the powers, duties, obligations, and rights of action transferred to that department under Subsection (a) and (b) of this section.

(h) Requires TxDOT to continue, as necessary, to perform the duties and functions being transferred to the department until the transfer of agency duties and functions is complete.

SECTION 5.02. (a) Provides that, in connection with the establishment by this Act of the Automobile Burglary and Theft Prevention Authority in the department and with the transfer by this Act of the duty to provide personnel and services to the Automobile Burglary and Theft Prevention Authority Division from TxDOT to the department, the personnel, furniture, computers, other property and equipment, files, and related materials used by the Automobile Burglary and Theft Prevention Authority are transferred to the department.

(b) Provides that the unobligated and unexpended balance of any appropriations made to TxDOT in connection with or relating to the office for the state fiscal biennium ending August 31, 2009, is transferred and reappropriated to the department for the purpose of allowing the authority to continue to exercise its powers, duties, and obligations under the auspices of that department.

SECTION 5.03. (a) Provides that, in addition to the positions of TxDOT assigned to the Vehicle Titles and Registration Division, Motor Vehicle Division, Motor Carrier Division, and Automobile Burglary and Theft Prevention Authority Division that are transferred to the department, it is estimated that 75 other full-time equivalent employee positions of TxDOT primarily support the transferred decisions and, subject to this section, those positions are also transferred to the department. Authorizes the number of positions transferred under this subsection to be modified by agreement of the two agencies in a memorandum of understanding.

(b) Prohibits the number of positions transferred under Subsection (a) of this section, if in another Act of the 81st Legislature, Regular Session, 2009, the legislature establishes a maximum number of full-time equivalent employee positions for the department, from resulting in a number of full-time equivalent employee positions of that department that exceeds the maximum.

(c) Requires the department, when filling a position described by Subsection (a) of this section, to give first consideration to an applicant who, as of September 1, 2009, was a full-time employee of TxDOT and primarily supported one or more of the transferred divisions.

ARTICLE 6. APPOINTMENT OF BOARD

SECTION 6.01. Requires the governor, not later than October 1, 2009, to appoint the members of the board of the department in accordance with Subchapter B, Chapter 1001, Transportation Code, as added by this Act.

ARTICLE 7. MEMORANDUM OF UNDERSTANDING

SECTION 7.01. (a) Requires the board of the department and TTC to adopt or revise a joint memorandum of understanding to coordinate the department's and TxDOT's information systems to allow for the sharing of information so that each department may effectively and efficiently perform the functions and duties assigned to it.

(b) Requires the department and TxDOT to implement the joint memorandum of understanding using existing personnel and resources.

(c) Provides that otherwise confidential information shared under the memorandum of understanding remains subject to the same confidentiality requirements and legal restrictions on access to the information that are imposed by law on the department that originally obtained or collected the information.

(d) Authorizes information to be shared under the memorandum of understanding without the consent of the person who is the subject of the information.

(e) Requires that the memorandum of understanding required by Subsection (a) of this section be entered into or revised at the first official meeting of the board members of the department.

SECTION 7.02. (a) Authorizes the board of the department and TTC, in addition to the memorandum of understanding required by Section 7.01 of this article, to enter into or revise one or more other joint memoranda of understanding as considered necessary or appropriate to effectuate the transfer of the powers and duties of TxDOT to the department under this Act. Authorizes that a memorandum of understanding include an agreement for the provision of office space, utilities, and other facility services; the need for full-time equivalent positions of TxDOT to provide support services in addition to the positions transferred to the department under 5.01 of this Act; support services; and the transfer of information technology as necessary or appropriate to effectuate the transfer of the powers and duties of TxDOT to the department.

(b) Provides that Subsections (b), (c), and (d) of Section 7.01 of this article apply to a memorandum of understanding entered into or revised under Subsection (a) of this section.

ARTICLE 8. DEPARTMENT OF MOTOR VEHICLES TRANSITION TEAM

SECTION 8.01. (a) Requires TxDOT to establish a Department of Motor Vehicles Transition Team (transition team) to plan for and make recommendations regarding the transfer of obligations, property, full-time equivalent positions, rights, powers, and duties from TxDOT to the department. Requires the transition team to include the division directors from the Motor Vehicle Division, the Vehicle Titles and Registration Division, and the Motor Carrier Division and the Assistant Executive Director for Support Operations.

(b) Requires the transition team, not later than October 1, 2009, to report on and make recommendations to the board of the department and the Transportation Legislative Oversight Committee regarding the transfer of obligations, property, full-time equivalent positions, rights, powers, and duties from TxDOT to the department.

ARTICLE 9. FINANCIAL AUDIT

SECTION 9.01. (a) Requires the office of the state auditor, as soon as practicable after the effective date of this Act, to conduct an initial financial audit to establish financial benchmarks for the department on its overall status and condition in relation to funds on hand, equipment and other assets, pending matters, and other issues considered appropriate by the office of the state auditor.

(b) Requires that the results of the audit, as soon as practicable after the completion of the audit required by Subsection (a) of this section, be reported by the office of the state auditor to the board of the department and to TTC. Requires the office of the state auditor to also provide a copy of the audit to the board of the department and TTC.

ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. Effective date: September 1, 2009.